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

WASHINGTON, DC

[Two Sessions]

WHEN: October 17 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

ATLANTA, GA

WHEN: September 20 at 9:00 am

WHERE: Centers for Disease Control and Prevention
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA

RESERVATIONS: 404–639–3528 (Atlanta area)
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Reader Aids

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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.

Rules and Regulations

Federal Register
Vol. 60, No. 179
Friday, September 15, 1995

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV95–922–1FIR]

Apricots Grown in Designated Counties in Washington; Temporary Suspension of Grade Requirements for Apricots of the Patterson Variety

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which temporarily suspended for the 1995 season only, the minimum grade requirements (Washington No. 1) for fresh shipments of the Patterson variety of apricots grown in Washington. The suspension will enable handlers of Patterson variety apricots to ship more fruit to the fresh market, taking into consideration the significant hail damage experienced by this variety during the growing season. This action will improve returns to producers of the Patterson variety of apricots. This rule was recommended by the Washington Apricot Marketing Committee (Committee), the agency responsible for the local administration of the marketing order for Washington apricots.

EFFECTIVE DATE: October 16, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 720–5127; or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 30 handlers of Washington apricots subject to regulation under the order and approximately 400 producers of Washington apricots in the regulated production area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of Washington apricots may be classified as small entities.

This rule finalizes the temporary suspension of the minimum grade requirements (Washington No. 1) for fresh shipments of the Patterson variety apricot for the 1995 season only. This temporary suspension allowed handlers of the Patterson variety apricot to ship more fresh apricots to the market due to the significant hail damage the crop has received.

Section 922.52 (7 CFR 922.52) authorizes the issuance of regulations for grade, size, quality, maturity, pack, markings, and container for any variety or varieties of apricots grown in any district or districts of the production area. Section 922.53 (7 CFR 922.53) authorizes the modification, suspension, or termination of the regulations issued under § 922.52.

Minimum grade, color, and size requirements for Washington apricots regulated under the order are specified in § 922.321 *Apricot Regulation* 21 (7 CFR 922.321). Section 922.321 provides that no handler shall handle any container of apricots unless such apricots grade not less than Washington No. 1, except for shipments that are exempt from regulation. In addition, this section provides that, with the exception of exempt shipments, apricots shipped must be reasonably uniform in color, and be at least 1⅝ inches in diameter, except for the Blenheim, Blenril, and Tilton varieties which must be at least 1¼ inches in diameter.

This rule suspends the minimum grade requirements for fresh shipments of the Patterson variety of apricots for the 1995 season. The grade requirements for the Patterson variety will resume April 1, 1996, for the 1996 and future seasons. Color and size

requirements for the Patterson variety will remain unchanged.

The Committee met on May 11, 1995, and unanimously recommended the suspension of grade requirements for the Patterson variety. The Committee requested that this suspension be made effective by July 1, 1995, since the harvest of the Patterson variety was expected to begin shortly thereafter.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington apricots which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Information available to the Committee indicates that the Patterson variety of apricots experienced severe hail damage this season. The excessive damage was a result of location and stage of fruit development. The Patterson variety is the latest variety of apricots produced within the production area. Earlier varieties of apricots did not experience significant hail damage.

This suspension will enable handlers to ship a larger portion of the Patterson variety to the fresh market this season, than if the minimum grade requirements were not suspended. Without suspension of the grade requirements for the Patterson variety, most of the fruit could not be shipped to fresh markets. Last year, 151 tons of the Patterson variety were shipped into the fresh market. Information available to the Committee indicates that with suspension of the grade requirements for the Patterson variety, approximately 125 tons might be shipped to the fresh market. Since the Patterson variety is the latest variety of apricots shipped within the production area, the suspension of the grade requirements for this variety should not adversely affect the marketing of other varieties.

Suspension of the grade requirements for the Patterson variety is intended to increase fresh shipments to meet consumer needs and improve returns to producers.

The interim final rule concerning this action was published in the June 22, 1995, **Federal Register** (60 FR 32429), providing a 30-day comment period ending July 24, 1995. Two comments were received concerning the interim final rule.

Comments were submitted by Gene Stokes, general manager of the California Apricot Advisory Board (Board) and Steve Hash, Vice President of the Agricultural Division of A. Levy and J. Zentner Co., and member of the Board as well. Both contend that the Board is opposed to the temporary suspension of grade requirements because it would adversely affect the California fresh apricot market. Since the California apricot season ends (May through August) just when the Washington apricot season begins (July through September), Messrs. Stokes and Hash believe that any reduction in quality standards in Washington apricots would have a negative effect on purchases of California apricots during the 1996 season. They also contend that this temporary suspension would set a dangerous precedent for the future because hail damage is a common occurrence in Washington and California.

The Department has reviewed the comments of the Board and does not agree that the temporary suspension of grade requirements for one variety of Washington apricots will adversely affect the California market. There is a seven month period of time (from September to May) between the end of Washington apricot shipments for 1995 and the beginning of California apricot shipments for 1996. This period of time between the Washington and California shipping seasons is more than adequate not to have impact on the California apricot market.

After thoroughly analyzing the comments received and other available information, the Department agrees with and upholds the request of the Committee to temporarily suspend grade requirements for the Patterson variety apricot for the 1995 season, only. The Department does not believe that the comments of the Board have merit and concludes that this final rule is appropriate.

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

After consideration of all relevant material presented, the information and recommendations submitted by the Committee, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (60 FR 32429, June 22, 1995) will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the interim final rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 922 which was published at 60 FR 32429 on June 22, 1995, is adopted as a final rule without change.

Dated: September 11, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–22949 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 927

[FV95–927–2IFR]

Winter Pears Grown in Oregon, Washington, and California; Revision of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule reduces the reporting requirements for handlers who have shipped less than 2,500 standard western pear boxes during any two-week reporting period of the shipping season. This action decreases the reporting burden on such handlers while maintaining the information collection necessary for the efficient operation of the program. This rule was recommended by the Winter Pear Control Committee (Committee), the agency responsible for the local administration of the marketing order for winter pears.

EFFECTIVE DATE: September 15, 1995. Comments received by October 16, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments

concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724; or Britthany Beadle, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon, Washington, and California, hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 90 handlers of winter pears subject to regulation under the order and approximately 1,800 producers of winter pears in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of winter pear handlers and producers may be classified as small entities.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for winter pears which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The Committee met on June 2, 1995, and unanimously recommended revising § 927.125 of the winter pear marketing order. This section governs the reporting requirements for handlers of winter pears.

Section 927.70 authorizes the Committee, subject to the approval of the Secretary, to request information from handlers necessary to perform its duties under the order. Section 927.125 provides that each handler shall furnish to the Committee, as of every other Friday, a ''Handler's Statement of Pear Shipments'' and a ''Handler's Packout Report'' containing information used by the Committee for the collection of assessments and the development of statistical data.

This rule revises the reporting requirements to allow handlers who have shipped less than 2,500 standard western pear boxes during any two-week period of the shipping season to report less frequently while maintaining the information collection necessary for the efficient operation of the program.

Handlers are currently required to submit the ''Handler's Statement of Pear Shipments'' and the ''Handler's Packout Report'' every other Friday regardless of the quantity of pears shipped in the preceding two-week reporting period. Industry members have acknowledged that this can be burdensome for small handlers, who have shipments of less than 2,500 standard western pear boxes, to report every two weeks.

The Committee also determined that submission of such winter pear shipment data of less than 2,500 standard western pear boxes is not necessary on a biweekly basis for the efficient administration of the program. As an alternative, handlers may, at their option, not report until their accumulated shipments reach 2,500 standard western pear boxes, provided that they submit the following: a ''Handler's Packout Report'' at the end of harvest which includes a preliminary packout estimate; a ''Handler's Statement of Pear Shipments'' and a ''Handler's Packout Report'' after completion of shipments from regular storage (i.e. non-Controlled Atmosphere storage), at mid-season for Controlled Atmosphere storage, and at the completion of shipments. If the preliminary packout estimate varies from the actual shipments, an explanation of the difference will be required with the final shipment report. The two final reports shall be marked ''final report'' and include an explanation of the actual shipments versus the original estimate, if different.

Information collection requirements will continue to be periodically reviewed by the Committee to ensure that they place a minimal burden on handlers required to file the information. Committee procedures will also continue to be reviewed and streamlined to assure efficiency in administering information collections. The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581–0089.

Based on the above information, the Administrator of the AMS has

determined that this interim final rule will not have a significant impact on a substantial number of small entities and that the action set forth herein will benefit producers and handlers of winter pears.

After consideration of all available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action reduces reporting requirements for winter pear handlers who ship less than 2,500 standard western pear boxes in a two-week reporting period; (2) the Committee unanimously recommended this rule at a public meeting and all interested persons had an opportunity to provide input; (3) winter pear shipments are expected to begin in early August, and this rule should apply to most of the season's shipments; (4) handlers of winter pears are aware of this rule and they need no additional time to comply with the relaxed requirements; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 927.125 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and adding a new paragraph (d) to read as follows:

§ 927.125 Reports.

* * * * *

(d) Each handler who has shipped less than 2,500 standard western pear boxes during any two-week reporting period of the shipping season may, in lieu of reporting biweekly, report as follows:

(1) At completion of harvest, on the next biweekly reporting date, furnish to the Control Committee a ''Handler's Packout Report'';

(2) After unreported shipments total 2,500 standard western pear boxes, furnish to the Control Committee a ''Handler's Statement of Pear Shipments'' and a ''Handler's Packout Report'' on the next biweekly reporting date;

(3) After completion of all shipments from regular storage (i.e. non-Controlled Atmosphere storage) at the end of the shipping season, furnish to the Control Committee a ''Handler's Statement of Pear Shipments'' and a ''Handler's Packout Report'' on the next biweekly reporting date;

(4) At mid-season for Controlled Atmosphere storage, at a date established by the Control Committee, furnish to the Control Committee a ''Handler's Statement of Pear Shipments'' and a ''Handler's Packout Report''; and

(5) At the completion of all seasonal pear shipments, furnish to the Control Committee a ''Handler's Statement of Pear Shipments'' and a ''Handler's Packout Report'' on the next biweekly reporting date. Each of these reports shall be marked ''final report'' and include an explanation of the actual shipments versus the original estimate, if different.

* * * * *

Dated: September 11, 1995.

Sharon Bomer Lauritsen,

Director, Fruit and Vegetable Division.

[FR Doc. 95–22947 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 989

[Docket No. FV95–989–4IFR]

Raisins Produced From Grapes Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 989 for the 1995–96 crop year. Authorization of this budget enables the Raisin Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1995, through July 31, 1996. Comments received by October 16, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, CA 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California raisins are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable raisins handled during the 1995–96 crop year, which began August 1, 1995, and ends July 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than eight handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining eight handlers have sales less than $5,000,000, excluding receipts from any other sources.

The budget of expenses for the 1995–96 crop year was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected acquisitions of California raisins. Because that rate will be applied to actual acquisitions, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met August 15, 1995, and unanimously recommended a 1995–96 budget of $1,500,000, which is $176,000 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Office salaries, $226,000 ($123,000), field and compliance salaries, $75,000 ($44,000), Payroll taxes, $32,000 ($30,000), group retirement, $23,000 ($20,000), employee benefit expense, $6,000 ($2,500), general insurance, $16,000 ($8,000), group medical insurance, $48,000 ($40,000), Committee members insurance, $385 ($350), equipment expense, $20,000 ($10,000), office travel, $20,000 ($14,000), objective measurement survey, $15,500 ($14,750), and export program foreign administration, $385,000 ($357,000). The Committee also recommended $35,000 for export program trade activities and $23,000 for research and communications, for which no funding was recommended last year. Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Executive salaries, $170,000 ($230,000), Committee travel, $50,000 ($75,000), and reserve for contingencies, $142,115 ($142,400).

The Committee unanimously recommended an assessment rate of $5.00 per ton, which is $1.00 more than last year. This rate, when applied to anticipated acquisitions of 300,000 tons, will yield $1,500,000 in assessment income, which will be adequate to cover anticipated administrative expenses. Any unexpended assessment funds from the crop year are required to be credited or refunded to the handlers from whom collected.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis, (2) the crop year began on August 1, 1995, and the marketing order requires that the rate of assessment for the crop year apply to all assessable raisins handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and it is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 989.346 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 989.346 Expenses and assessment rate.

Expenses of $1,500,000 by the Raisin Administrative Committee are authorized, and an assessment rate of $5.00 per ton of assessable California raisins is established for the crop year ending July 31, 1996. Any unexpended funds from that crop year shall be credited or refunded to the handler from whom collected.

Dated: September 11, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–22946 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1211

[FV–94–701]

Pecan Promotion and Research Plan; Termination Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination order.

SUMMARY: This document terminates the Pecan Promotion and Research Plan (Plan) in its entirety. This action is necessary because the promotion and research program for pecans is no longer in operation, the assets of the Pecan Marketing Board have been liquidated, and a final audit of the Board's books has been conducted.

EFFECTIVE DATE: October 16, 1995.

FOR FURTHER INFORMATION: Richard H. Mathews, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, AG Code 0244, PO Box 96456, Room 2535–S, Washington, DC 20090–6456, telephone (202) 720–9915.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Referendum Order issued on July 28, 1993, and published on August 3, 1993 (58 FR 41203); Termination Order issued on March 10, 1994, and published on March 15, 1994 (59 FR 11897).

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

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

This action is governed by section 1917(b) of the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013). The Act authorizes a national pecan promotion, research, and information program. In accordance with the Act, the Department utilized notice and comment rulemaking in developing and implementing the Plan (7 CFR 1211.1–1211.78), which provides the framework for the program. The Plan became effective on May 1, 1992.

Section 1916(a) of the Act required that the Secretary conduct a continuance referendum within 24 months of the effective date of the Plan for the purpose of ascertaining whether growers, grower-shellers, and importers favor continuation, termination, or suspension of the Plan. The order directing that a referendum be conducted was issued on July 28, 1993, and published August 3, 1993 (58 FR 41203). A referendum was conducted with registration of voters from September 27 through October 1, 1993, and mail balloting during October 4–6, 1993.

Termination of the Plan was favored by 62.3 percent of the growers, grower-shellers, and importers casting valid ballots in the referendum. Therefore, pursuant to section 1917(b) of the Act and section 1211.73 of the Plan, it was found and determined that termination of the Plan was favored by a majority of the growers, grower-shellers, and importers voting in the referendum and that the Plan should therefore be terminated. A termination order was issued on March 10, 1994, and published on March 15, 1994 (59 FR 11897) which terminated provisions dealing with establishment and membership of the Pecan Marketing Board (Board), nomination procedures, powers, duties, policies, programs and projects, contracts, budgets, and assessments.

Certain administrative provisions of subpart A of the Plan, such as those relating to refunds, books and records, and the termination of the Plan, remained in effect to facilitate the orderly termination of activities under the Plan. Now, however, all refunds have been paid, all projects have been completed, the Board's assets have been liquidated, and there has been a final audit of the Board's books.

Therefore, it is hereby found and determined that the remaining terms and provisions of 7 CFR part 1211, i.e., Subpart A—Pecan Promotion and Research Plan and Subpart D—Procedure for the Conduct of Referenda in Connection With the Pecan Promotion and Research Plan, do not tend to effectuate the declared policy of the Act. For that reason, this order will terminate 7 CFR part 1211 in its entirety.

Order

It is, therefore, ordered, That 7 CFR part 1211 is hereby terminated effective on October 16, 1995.

List of Subjects in 7 CFR Part 1211

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Pecans, Promotion, Reporting and recordkeeping requirements.

PART 1211—PECAN PROMOTION AND RESEARCH PLAN [REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 6001 *et seq.,* 7 CFR Part 1211 is removed.

Dated: September 11, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–22948 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–52–AD; Amendment 39–9353; AD 95–18–05]

Airworthiness Directives; Fairchild Aircraft Models SA226–AT and SA226–TC Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Fairchild Aircraft Models SA226–AT and SA226–TC airplanes. This action requires replacing the two lower aluminum cargo door receptacles with steel receptacles. A report of cargo door failure on one of the affected airplanes prompted this action. Fatigue of the two bottom cargo door receptacles caused the bottom third of the cargo door to bend outward and upward, causing damage to the fuselage door frame. The actions specified by this AD are intended to prevent decompression injuries and the cargo door from breaking off and striking the empennage or the elevator, which could cause substantial structural failure and loss of control of the airplane.

DATES: Effective September 26, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 1995.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–52–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. This information may also be examined at the Federal

Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–52–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: Hung Viet Nguyen, Aerospace Engineer, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION: The FAA has received a report of failure of a cargo door on a Fairchild Aircraft SA226 series airplane while it was in flight. Fatigue of the two bottom cargo door receptacles caused the bottom third of the cargo door to bend outward and upward, causing damage to the fuselage door frame. This condition, if not detected and corrected, could result in the following:

- Decompression injuries as a result of the door being opened,
- The door separating from the airplane, striking the empennage, and causing substantial structural failure, and
- The door separating from the airplane, striking the elevator, and causing loss of control of the airplane.

Fairchild Service Bulletin (SB) 226–52–008; Issued: April 3, 1979; Revised: April 6, 1984, specifies procedures for replacing the two lower aluminum cargo door receptacles with steel receptacles.

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service bulletin, the FAA has determined that AD action should be taken in order to prevent decompression injuries and the cargo door from breaking off and striking the empennage or the elevator, which could cause substantial structural failure and loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 series airplanes of the same type design, this AD requires replacing the two lower aluminum cargo door receptacles with steel receptacles. The actions shall be accomplished in accordance with Fairchild SB 226–52–008; Issued: April 3, 1979, Revised: April 6, 1984. In future rulemaking actions, the FAA may impose life limits on the cargo door and require additional cargo door modifications.

Since a situation exists (possible decompression and empennage or elevator failure) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior 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 immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–52–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 and that must be issued immediately to correct an unsafe condition in aircraft, and 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

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 a new airworthiness directive (AD) to read as follows:

95–18–05 Fairchild Aircraft Corporation: Amendment 39–9353; Docket No. 95–CE–52–AD.

Applicability: Models SA226–AT (serial numbers AT001 through AT074) and SA226–TC (serial numbers TC201 through TC419) airplanes, 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 within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent decompression injuries and the cargo door from breaking off and striking the empennage or the elevator, which could cause substantial structural failure and loss of control of the airplane, accomplish the following:

(a) Replace the lower two aluminum cargo door receptacles with steel receptacles in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft Service Bulletin (SB) 226–52–008; Issued: April 3, 1979; Revised: April 6, 1984.

(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 airplane 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, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Aircraft Certification Office.

(d) The replacements required by this AD shall be done in accordance with Fairchild Aircraft Service Bulletin 226–52–008; Issued April 3, 1979; Revised April 6, 1984. 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 Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. 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.

(e) This amendment (39–9353) becomes effective on September 26, 1995.

Issued in Kansas City, Missouri, on August 25, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–21673 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–57–AD; Amendment 39–9337; AD 95–17–06]

Airworthiness Directives; Mooney Aircraft Corporation Model M20K Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Mooney Aircraft Corporation (Mooney) Model M20K airplanes with a Continental TSIO–520–NB engine installed in accordance with Supplemental Type Certificate (STC) SA5691NM. This action requires repetitively inspecting the exhaust transition tube and turbo mount assembly for cracks, and replacing any part found cracked. A report of a cracked exhaust transition tube that connects the exhaust manifolds to the turbocharger inlet on one of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent exhaust gases from entering the cabin heating system because of a cracked exhaust transition tube, which, if not detected and corrected, could result in hazardous levels of carbon monoxide in the airplane cabin.

DATES: Effective September 25, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 1995.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–57–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Rocket Engineering Corporation, East 6247 Rutter Road, Felts Field, Spokane, Washington 99212. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–57–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. Kevin Masterson, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone (206) 227–2596; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report of a cracked exhaust transition tube that connects the exhaust manifolds to the turbocharger inlet on a Mooney Model M20K airplane. This airplane has a Continental TSIO–520–NB engine installed in accordance with Supplemental Type Certificate (STC) SA5691NM, which is owned by the Rocket Engineering Corporation. Included with this STC SA5691NM installation is an AiResearch THO8A67 turbocharger and intercooler.

In the above-referenced incident, a 4 to 5-inch crack had developed in the exhaust transition tube. In addition, the turbo mount brace was found cracked. These cracks were discovered following an incident where the pilot reported loss of engine power while in flight. A cracked exhaust transition tube that connects the engine manifolds and the turbocharger inlet could allow exhaust gases to enter the cabin heating system. In this instance, a hazardous level of carbon monoxide could enter the airplane cabin, resulting in pilot injury and subsequent loss of control of the airplane.

The Rocket Engineering Corporation has issued Mandatory Service Bulletin MSB95–305–1, dated August 9, 1995, which specifies procedures for inspecting the exhaust transition tube and turbo mount assembly on Mooney Model M20K airplanes with a Continental TSIO–520–NB engine installed in accordance with STC SA5691NM.

The FAA examined all available information related to the incident described above including the referenced service information and has determined that AD action should be taken to prevent exhaust gases from entering the cabin heating system because of a cracked exhaust transition tube, which, if not detected and corrected, could result in hazardous levels of carbon monoxide in the airplane cabin.

Since an unsafe condition has been identified that is likely to exist or develop on other Mooney Model M20K airplanes of the same type design that have a Continental TSIO–520–NB engine installed in accordance with STC SA5691NM, this AD requires repetitively inspecting the exhaust transition tube and turbo mount assembly for cracks, and replacing any part found cracked. Accomplishment of these actions will be in accordance with Rocket Engineering Corporation Mandatory Service Bulletin MSB95–305–1, dated August 9, 1995.

Since a situation exists (possible hazardous carbon monoxide levels in the airplane cabin) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior 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 immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. 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 request must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–57–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 and that must be issued immediately to correct an unsafe condition in aircraft, and 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

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 a new airworthiness directive (AD) to read as follows:

95–17–06 Mooney Aircraft Corporation: Amendment 39–9337; Docket No. 95–CE–57–AD.

Applicability: Model M20K airplanes (all serial numbers), certificated in any category, that have a Continental TSIO–520–NB engine installed in accordance with Supplemental Type Certificate (STC) SA5691NM, which is owned by the Rocket Engineering Corporation.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, 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 request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially within the next 10 hours time-in-service (TIS) after the effective date of this AD, and thereafter as indicated in the body of this AD.

To prevent exhaust gases from entering the cabin heating system because of a cracked exhaust transition tube, which, if not detected and corrected, could result in hazardous levels of carbon monoxide in the airplane cabin, accomplish the following:

(a) Inspect the following parts of the exhaust system for cracks in accordance with Rocket Engineering Corporation Mandatory Service Bulletin MSB95–305–1, dated August 9, 1995:

(1) Exhaust Transition Tube, part number 305–01–507HS, 305–01–507HS–Rev A, or 305–01–507HS–Rev B.

(2) Left Hand Forward Mount Tube, part number 305–03–501, 305–03–501–Rev A, or 305–03–501–Rev B.

(3) Right Hand Forward Mount Tube, part number 305–03–502 or 305–03–502–Rev A.

(b) If cracks are found in either the exhaust transition tube or the turbo mount tubes during any of the required inspections, prior to further flight, accomplish the following in accordance with Rocket Engineering Corporation Mandatory Service Bulletin MSB95–305–1, dated August 9, 1995.

(1) Replace any cracked exhaust transition tube with Exhaust Transition Tube, part number 305–01–507HS–Rev C, and reinspect this new exhaust transition tube at intervals not to exceed 50 hours TIS.

(2) Replace any cracked left hand forward mount tube with Left Hand Forward Mount Tube, part number 305–03–501–Rev C. The repetitive inspections of this part required by this AD may be terminated after this replacement.

(3) Replace any cracked right hand forward mount tube with Right Hand Forward Mount Tube, part number 305–03–502–Rev B. The repetitive inspections of this part required by this AD may be terminated after this replacement.

(c) If no cracks are found in either the exhaust transition tube or the turbo mount tubes during any of the inspections required by this AD, reinspect at intervals not to exceed 25 hours TIS provided the parts are crack-free.

(d) The replacements required by paragraphs (b)(1), (b)(2), and (b)(3) of this AD may be accomplished regardless of whether a part is found cracked in order to extend the repetitive inspection time of the exhaust transition tube or eliminate the repetitive inspection requirement of the left and right hand forward mount tube as is specified in the applicable paragraph of this AD.

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

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

(g) The inspections and replacements required by this AD shall be done in accordance with Rocket Engineering Corporation Mandatory Service Bulletin MSB95–305–1, dated August 9, 1995. This

incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Rocket Engineering Corporation, East 6247 Rutter Road, Felts Field, Spokane, Washington 99212. 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.

(h) This amendment (39–9337) becomes effective on September 25, 1995.

Issued in Kansas City, Missouri, on August 30, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22048 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[T.D. ATF–367]

RIN 1512–AB37

Importation of Arms, Ammunition and Implements of War (93F–301P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends the list of countries from which the import of defense articles into the United States is proscribed to add Iran, Iraq, Libya, Mongolia, Sudan, and Syria and to remove Albania, Bulgaria, Kampuchea, Outer Mongolia, and Romania. The final rule also removes the proscription on import of defense articles, and technical data relating to defense articles, from South Africa and provides examples of countries with respect to which the United States maintains an arms embargo.

EFFECTIVE DATE: September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Larry White, Coordinator, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION: The Arms Export Control Act of 1976, 22 U.S.C. 2278, gives the President of the United States the authority to control the import and export of defense articles and defense services.

Executive Order 11958 of January 18, 1977, as amended (42 FR 4311), delegated authority to control exports of defense articles and defense services to the Secretary of State. The Executive Order also delegated to the Secretary of the Treasury the authority to control the import of such articles and services. However, as stated in 27 CFR 47.55, ATF is guided by the views of the Departments of State and Defense on matters affecting world peace and the external security and foreign policy of the United States. After consulting these Departments, the Bureau of Alcohol, Tobacco and Firearms (ATF) is revising the provisions of 27 CFR part 47 to conform to the recommendation of the Department of State.

On August 23, 1994, the Department of State recommended that ATF formally add Iran, Iraq, Libya, Mongolia, Sudan and Syria to the list in 27 CFR 47.52(a) of countries from which the import of defense articles into the United States is proscribed. The Department of State also recommended that ATF remove Albania, Bulgaria, Kampuchea, Outer Mongolia, and Romania from the list of proscribed countries in § 47.52(a).

In addition, the Department of State advised ATF of the publication of a final rule on August 17, 1994 (59 FR 42158) amending the International Traffic in Arms Regulations to state that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services destined for or originating in South Africa. This final rule amends the regulations in part 47 to reflect this change.

Finally, pursuant to the Department of State's request, ATF is amending the regulations to provide examples of countries with which the United States maintains an arms embargo.

Executive Order 12866

Because the amendments to 27 CFR part 47 involve a foreign affairs function of the United States, Executive Order 12866 does not apply.

Administrative Procedure Act

Under 27 CFR 47.54, amendments made to 27 CFR part 47 are excluded from the rulemaking provisions of 5 U.S.C. 553 because this Part involves a foreign affairs function of the United States. Accordingly, it is not necessary to issue this Treasury Decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitations in 5 U.S.C. 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no reporting or recordkeeping requirements.

Drafting Information

The principal author of this document is Angela Shanks, Technical Aide, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 47

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegation, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

Authority and Issuance

Title 27, Code of Federal Regulations, part 47, Importation of Arms, Ammunition and Implements of War, is amended as follows:

Paragraph 1. The authority citation for part 47 continues to read as follows:

Authority: 22 U.S.C. 2778.

Par. 2. Section 47.52 is amended by revising paragraph (a), by removing paragraph (c), by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), and by revising the first sentence in the redesignated paragraph (d) to read as follows:

§ 47.52 Import restrictions applicable to certain countries.

(a) It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services originating in certain countries or areas. This policy applies to Cuba, Iran, Iraq, Libya, Mongolia, North Korea, Sudan, Syria, Vietnam and the States that comprise the former Soviet Union (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). This policy applies to countries or areas with respect to which the United States maintains an arms embargo (e.g., Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan, UNITA (Angola), the former Yugoslavia, Zaire). It also applies when an import would not be in furtherance of world

peace and the security and foreign policy of the United States.

* * * * *

(d) Applicants desiring to import articles claimed to meet the criteria specified in paragraph (c) of this section shall explain, and certify to, how the firearms meet the criteria. * * *

Signed: August 4, 1995.

Daniel R. Black,

Acting Director.

Approved: August 14, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–22942 Filed 9–14–95; 8:45 am]

BILLING CODE 4810–31–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in October 1995, and to multiemployer plans with valuation dates in October 1995. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule adopts the October 1995 interest assumptions to be used under the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the ''single-employer regulation'') and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the ''multiemployer regulation'').

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended. Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and ''benefit liabilities,'' *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during October 1995 and multiemployer plans that have undergone mass withdrawal and have valuation dates during October 1995.

For annuity benefits, the interest rates will be 6.30% for the first 20 years following the valuation date and 5.75% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.785% for the period during which benefits are in pay status, and 4.0% during all years preceding the benefit's placement in pay status. The above annuity interest assumptions represent a decrease (from those in effect for September 1995) of .10 percent for the first 20 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent a decrease (from those in effect for September 1995) of .25 percent for the period during which benefits are in pay status and the seven years directly preceding that period. They are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during October 1995, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during October 1995, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 24 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$, interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
24	10–1–95	11–1–95	4.75	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2 * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *		*		*		*
October 1995	.0630	1–20	.0575	>20	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 24 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
24	10–1–95	11–1–95	4.75	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	
October 1995	.0630	1–20	.0575	>20	N/A	N/A

Issued in Washington, DC, on this 12th day of September 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

FR Doc. 95–22993 Filed 9–14–95; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD02–95–056]

RIN 2115–AA97

Safety Zone; Lower Mississippi River, Mile 727.0 to Mile 730.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River between mile 727.0 and mile 730.0. The zone is needed to rig overhead power cables. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

DATES: This regulation is effective at 7 a.m. on September 13, 1995, and terminates at 5 p.m. on September 27, 1995.

FOR FURTHER INFORMATION CONTACT: ENS Bauer, Assistant Chief Port Operations Officer, Captain of the Port, 200 Jefferson Avenue, Suite 1301, Memphis, TN 38103, Phone: (901) 544–3941.

SUPPLEMENTARY INFORMATION:

Background and Purpose

At approximately 7:00 a.m. on September 13, 1995, the Tennessee Valley Authority will commence overhead cable rigging operations across the channel at Lower Mississippi River mile 727.8. The operation is expected to be completed within fourteen days from the commencement date. The navigable channel will be blocked during the operations. A safety zone has been established on the Lower Mississippi River from mile 727.0 to mile 730.0 in order to facilitate safe vessel passage. All vessels shall establish passing arrangements with the LOMRC Representative, via VHF Marine Band Radio, Channel 13, prior to entering the safety zone and shall abide by the conditions of the arrangement. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

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. Specifically, immediate action is necessary to facilitate overhead cable rigging operations during a period when vessel traffic will be least affected. Harm to the public or environment may result if vessel traffic is not controlled during the operations. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

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 (as revised by 59 FR 38654; July 29, 1994), 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 section 165.T02–056 is added to read as follows:

§ 165.T02–056 Safety Zone; Lower Mississippi River.

(a) *Location.* The following area is a Safety Zone: Lower Mississippi River Mile 727.0 to mile 730.0

(b) *Effective dates.* This section is effective at 7 a.m. on September 13, 1995, and terminates at 5 p.m. on September 27, 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. The Captain of the Port, Memphis, Tennessee, will notify the maritime community of conditions affecting the area covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: August 29, 1995.

A. L. Thompson, Jr.,

Commander, USCG, Captain of the Port.

[FR Doc. 95–22982 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–138]

RIN 2115–AA97

Safety Zone: Periphonics Corporation 25th Anniversary Fireworks, Upper New York Bay, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Periphonics Corporation 25th Anniversary fireworks located in Upper New York Bay, New York. The safety zone is in effect from 10 p.m. until 11:20 p.m. on Saturday, September 16, 1995, unless extended or terminated sooner by the Captain of the Port New York. The safety zone temporarily closes all waters of Upper New York Bay, within a 300 yard radius of a fireworks barge anchored approximately 300 yards east of Liberty Island, New York.

EFFECTIVE DATE: This rule is in effect from 10 p.m. until 11:20 p.m. on September 16, 1995, unless extended or terminated sooner by the Captain of the Port New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and CDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exits for not publishing an NPRM, and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date this application was received, there was insufficient time to draft and publish a notice of proposed rulemaking that allows for a reasonable comment period prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to the public interest.

Adequate measures are being taken to ensure mariners are made aware of this regulation. Notification of this rule will be locally published in the First Coast Guard District's Local Notice to Mariners, and announced via Safety Marine Information Broadcasts.

Background and Purpose

On August 22, 1995, Fireworks by Grucci, Inc. submitted an Application for Approval of Marine Event to hold a fireworks program in the waters of Federal Anchorage 20C, in Upper New York Bay. The fireworks program is being sponsored by the Periphonics Corporation. This regulation establishes a temporary safety zone in all waters of Upper New York Bay, within a 300 yard radius of the fireworks barge anchored approximately 300 yards east of Liberty Island, New York, at approximately 40°41′18″ N latitude, 074°02′25″ W longitude (NAD 1983). The safety zone is in effect from 10 p.m. until 11:20 p.m. on September 16, 1995, unless extended or terminated sooner by the Captain of the Port New York. The safety zone prevents vessels from transiting this portion of Upper New York Bay, adjacent to the eastern shoreline of Liberty Island, and is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This regulation closes a portion of Upper New York Bay, Federal Anchorage 20C, off of Liberty Island, New York, to vessel traffic from 10 p.m. until 11:20 p.m. on September 16, 1995, unless extended or terminated sooner by the Captain of the Port New York. Federal Anchorage 20C is mainly used by commercial sightseeing vessels and recreational vessels. Although the regulation prevents traffic from transiting this area, the effect of the regulation will not be significant for

several reasons: the duration of the event is limited; the event is at a late hour; the zone is located within a Federal Anchorage and does not impact a navigable channel; vessel traffic may safely pass to the east of this area; and the extensive, advance advisories which will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons set forth in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. Under the National Environmental Policy Act, the approval of the permit for marine event for this event is a federal action which is categorically excluded in accordance with section 2.B.2.e(35)(h) of Commandant Instruction M16475.1B. This fireworks display lasts less than 30 minutes and is expected to involve less than 200 spectator craft.

List of Subjects in 33 CFR Part 165

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

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

PART 165—[AMENDED]

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

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

2. A temporary section 165.T01–138, is added to read as follows:

§ 165.T01–138 Safety Zone; Periphonics Corporation 25th Anniversary Fireworks, Upper New York Bay, New York.

(a) *Location.* The safety zone includes all waters of Upper New York Bay, within a 300 yard radius of the fireworks barge anchored approximately 300 yards east of Liberty Island, New York, at approximately 40°41′18″ N latitude, 074°02′25″ W longitude (NAD 1983).

(b) *Effective period.* This section is in effect from 10 p.m. until 11:20 p.m. on September 16, 1995, unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: September 5, 1995.

T.H. Gilmour,

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

[FR Doc. 95–22983 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F4331/R2170; FRL–4976–9]

RIN 2070–AB78

Plant Pesticide Bacillus Thuringiensis CryIA(c) Delta-Endotoxin and the Genetic Material Necessary for Its Production in Cotton; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the plant pesticide active ingredient *Bacillus thuringiensis* CryIA(c) delta-endotoxin and the genetic material necessary for its production in cotton. The Monsanto Co. requested the exemption from the requirement of a tolerance under the Federal Food, Drug and Cosmetic Act. The rule eliminates the need to establish a maximum permissible level for residues of this plant pesticide in cotton.

EFFECTIVE DATE: September 15, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number [PP 4F4331/R2170] may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted

on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4F4331/R2170]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Willie H. Nelson, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 51B6 CS, 2800 Crystal Drive, Arlington, VA 22202, telephone no.: 703-308-8128; e-mail: nelson.willie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 14, 1994 (59 FR 47137), which announced that Monsanto Co., 700 Chesterfield Village Parkway, St. Louis, MO 63198, had submitted pesticide petition (PP) 4F4331 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), exempt from the requirement of a tolerance the plant pesticide *Bacillus thuringiensis* var. *kurstaki* delta-endotoxin protein as produced by the CryIA(c) gene and its controlling sequences. EPA has assigned the active ingredient of this product the name *Bacillus thuringiensis* CryIA(c) delta-endotoxin and the genetic material necessary for its production. ''Genetic material necessary for production'' means the CryIA(c) gene and its regulatory regions. ''Regulatory regions'' are the genetic materials that control the expression of the gene, such as promoters, terminators, and enhancers. Monsanto has genetically modified cotton plants to produce the pesticidal protein derived from the common soil bacterium *Bacillus thuringiensis*. The protein produced by these cotton plants is identical to that found in nature.

There were no adverse comments or requests for referral to an advisory committee received in response to the notice of filing.

Residue Chemistry Data

Residue chemistry data were not required because of the lack of toxicity to this active ingredient. This position is similar to that the Agency has taken regarding the submission of residue data for the microbial *Bacillus thuringiensis* products from which this plant pesticide was derived. (See 40 CFR 158.740(b).) For microbial products, residue data are required only when Tier II or III toxicology data are required. The kinds of studies submitted for this plant pesticide are like those in Tier I, not Tier II or III. Submitted data indicated that the product is of low mammalian toxicity/pathogenicity and the kinds of studies required in Tier II or III were not appropriate. Therefore, no residue data are required to grant an exemption from the requirements of a tolerance for Monsanto's plant pesticide, *Bacillus thuringiensis* CryIA(c) delta-endotoxin protein, the CryIA(c) gene and the genetic material necessary for its production in cotton.

Product Analysis

Monsanto submitted information which adequately described the CryIA(c) delta-endotoxin from B.t., as expressed in cotton, along with the genetic material necessary for its production. Because it would be difficult, or impossible, to extract sufficient biologically active toxin from the plants to perform toxicology tests, Monsanto used delta-endotoxin produced in bacteria. Product analysis data were submitted to show that the microbially expressed and purified CryIA(c) delta-endotoxin is sufficiently similar to that expressed in the plant to be used for mammalian toxicological purposes. Plant and microbially produced CryIA(c) delta-endotoxin were shown by these studies to have similar molecular weights and immunoreactivity (SDS-PAGE and Western blots), to lack detectable post-translational modication (glycosylation tests), to have identical amino acid sequences in the *N*-terminal region and to have similar results in bioassays against *Heliothis virescens* and *Helicoverpa zea*. While it is difficult to prove that two proteins are identical, the combined results of the above studies indicate a high probability that these two sources produce proteins that are essentially identical by available protein analytical assays.

Toxicology Assessment

Toxicity

The delta-endotoxin proteins of *B. thuringinesis* have been intensively studied and no indications of mammalian toxicity have been reported. Furthermore, approximately 176 different *B. thuringiensis* products have been registered since 1961, and the Agency has not received any reports of dietary toxicity attributable to their use. This is especially significant because FIFRA section 6(a)(2) requires registrants to report any adverse effects to EPA. Therefore, the Agency does not anticipate any mammalian toxicity from this protein in plants based on the use history of B. thuringiensis products. The *in vitro* digestibility assay provides useful information to predict the metabolic fate of the CryIA(c) protein and its potential as a food allergen. However, it is not clear how this assay's results relate to protein toxicity. Therefore, the Agency requested that an acute oral toxicity study be done to confirm the expected lack of toxicity indicated by the *in vitro* digestibility results.

Monsanto's submitted oral toxicity data support the prediction that this protein would be nontoxic to humans. CryIA(c) delta-endotoxin was chosen in order to obtain sufficient material for mammalian testing if any exposure were anticipated in food or feed. The *in vitro* digestibility studies indicate that the protein would rapidly be degraded following ingestion.

The genetic material necessary for the production of the *Bacillus thuringiensis* CryIA(c) delta endotoxin are the nucleic acids (DNA and RNA) that constitute the CryIA(c) gene and its controlling sequences. DNA and RNA are common to all forms of life, including plants, and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to the consumption of food. These ubiquitous nucleic acids as they appear in the subject active ingredient have been adequately characterized by the applicant. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the *Bacillus thuringiensis* CryIA(c) delta-endotoxin in cotton.

Allergenicity

Despite decades of widespread use of *Bacillus thuringiensis* as a pesticide (it has been registered since 1961), there have been no confirmed reports of immediate or delayed allergic reactions from exposure. Such incidents, should they occur, are required to be reported under FIFRA section 6(a)(2) and as a data requirement for registration of microbial pesticides (40 CFR 158.740 and Subdivision M of the FIFRA testing guidelines, NTIS # PB89-211676).

Studies done in laboratory animals as reported in the literature also have not indicated any potential for allergic reactions to *B. thuringiensis* or its components, including the delta-endotoxin in the crystal protein. Recent *in vitro* studies also confirm that the

delta-endotoxin would be readily digestible *in vivo*.

Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, are glycosylated, and are present at high concentrations in the food (Conference on Scientific Issues, Related to Potential Allergenicity in Transgenic Food Crops, April 18 and 19, Annapolis, MD, sponsored by FDA, EPA, and USDA). The delta-endotoxins are not present at high concentrations, are not resistant to degradation by heat, acid and proteases, and are apparently not glycosylated when produced in plants. The company has submitted data to indicate that the CryIA(c) delta-endotoxin is rapidly degraded by gastric fluid *in vitro*, that it is not present as a major component of food, and that it is apparently nonglycosylated when produced in plants.

Submitted Data

1. *Product characterization (431452-01).* Southern blot analysis restriction digests of DNA extracts from cotton line 531 and the parental Coker 312 showed that there is probably only one insert of the cryIA(c) gene cassette present in the transformed line. The introduced gene appears to be genetically stable in the cotton according to the results of progeny selfing and backcrosses with elite lines. The amino acid sequence is homologous to the cryIA(b) gene from HD-1 for positions 1-466 and homologous to cryIA(c) for positions 467-1178 with a single exception of a leucine–serine 766 in the crystal portion of the protein cleaved prior to toxin activation. Western blot analysis of purified toxin, leaf tissue from cotton line 531 and the parental Coker 312 shows that trypsinized extracts have comigrating bands similar to that found in B.t.k HD-73 protein reference material and commercial preparations.
Classification: Acceptable.

2. *Product characterization (431452-02).* B.t.k. HD-73 toxin isolated from either cotton line 531 or 931 were compared to the same toxin expressed in *E. coli* by SDS-PAGE, western blot, glycosylation and bioactivity (Conference on Scientific Issues Related to Potential Allergenicity in Transgenic Food Crops, April 18 and 19, 1994, Annapolis, MD, sponsored by FDA, EPA, andUSDA). The data presented suggest the bacterially produced protein and that found in cotton are equivalent and suggest the bacterially produced B.t.k. HD-73 toxin can serve as a surrogate test substance for the toxicological tests to support the registration of transgenic cotton. This initial submission was classified as supplementary because of the absence of sufficient description of how the B.t.k. HD-73 protein was isolated and purified from the cotton plant. A cursory description is found in ''Assessment of Equivalence Between *E. coli*-Produced and Cotton-Produced Btk HD73 Protein * * *.'' (MRID 431452-02, p.13). Monsanto has since provided complete details regarding isolation and purification. With the clarification of the extraction procedure described above, the product characterization study (MRID 431452-02) has been upgraded from supplementary to acceptable.
Classification: Acceptable.

3. *Product characterization (431452-03).* The delta-endotoxin from B.t.k. HD-73 (lot 5025385) produced in *E. coli* containing the plasmid pMON10569 was purified, lyophilized and found to have the following characteristics: 4.5% moisture, 75.6% protein (amino acid analysis), 70% protein (BCA), 88% HD-73 specific protein (ELISA), 80% HD-73 specific protein (Coomassie blue PAGE), 1.6 *u*g gram negative endotoxin/mg and no significant trace metals except for sodium, potassium, and phosphate. The molecular weight of the B.t.k. HD-73 toxin was estimated to be 134.8 kD for the full length species and 77.1 kD for the tryptic. The functional activity was found to be an LC_{50} of 0.28 ppm against *Heliothis virescens*.
Classification: Acceptable.

4. *Product characterization (431452-04).* Ten insect pest species from 5 families were tested for their sensitivity to B.t.k. HD-73 protein. Only in the lepidopteran species was there significant mortality. The green peach aphid showed marginal effects from treatment with a tryptic digest of the CryIA(c) toxin from B.t.k. which was not reproducible in a repeat test. The tryptic digest preparation positive control also showed higher mortality in the TBW test.
Classification: Acceptable.

5. *Acute oral toxicity (431452-13).* Ten male and female CD-1 mice per dose level were exposed by oral gavage to 500, 1,000 and 4,200 mg/kg body weight of *E. coli* produced B.t.k. HD-73 toxin. Controls were given the protein equivalent of 6,340 mg/kg of BSA. No mortalities or treatment related adverse effects were seen in either the treated or control mice. There were no observable dose-related effects seen upon necropsy. Classification: Acceptable. Tox category IV.

6. *In vitro digestibility (431452-14).* The B.t.k. HD-73 protein was rapidly degraded to fragments not recognized in a western blot after 7 minutes incubation in simulated gastric fluid (SGF) and was not active in a TBW bioassay after SGF incubation. The *in vitro* digestibility assay provides useful information to predict the metabolic fate of the CryIA(c) protein and its potential as a food allergen.
Classification: Acceptable.

Conclusions

In summary, based upon the submitted studies and other available information, the Agency does not foresee any human health hazards from the use of the *Bacillus thuringiensis* CryIA(c) delta-endotoxin and the genetic material necessary for its production.

Based upon submitted data and a review of its use, EPA has found that when used in accordance with good agricultural practice, this ingredient is useful for the purpose for which the tolerance exemption is sought. Based on the information considered, EPA concludes that a tolerance is not necessary to protect the public health. Therefore, the exemption from the requirement of a tolerance is established as set forth below.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data/information submitted demonstrate that this active ingredient is not toxic to mammalian species. No enforcement actions are expected, based upon the toxicity for this plant pesticide. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections, and must conform to the other requirements of 40 CFR 178.25. Each objection must be accompanied by the fee prescribedby 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue

of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4331/R2170] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4F4331/R2170], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (3) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemption from tolerance requirements do not have a significant economic effect on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (49 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 31, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1155, to read as follows:

§ 180.1155 Bacillus thuringiensis CryIA(c) delta-endotoxin and the genetic material necessary for its production; exemption from the requirement of a tolerance.

Bacillus thuringiensis CryIA(c) delta endotoxin and the genetic material necessary for its production are exempted from the requirement of a tolerance when used as a plant pesticide in cotton. ''Genetic material necessary for its production'' means the CryIA(c) gene and its regulatory regions. ''Regulatory regions'' are the genetic materials that control the expression of the gene, such as promoters, terminators, and enhancers.

[FR Doc. 95–23077 Filed 9–13–95; 12:19 pm]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7159

[AZ-930–1430–01; A–1880, A–12962, A–13003]

Revocation of Coal Land Withdrawals; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in their entirety two Secretarial Orders and two Executive Orders insofar as they affect the remaining 134,960 acres of lands withdrawn for Federal coal classification purposes. The lands are located within the Coronado and Sitgreaves National Forests and the San Carlos Indian Reservation. The withdrawals are no longer needed as the United States Geological Survey has classified the lands as Non-Coal lands and has recommended revocation of the withdrawals. The lands located within the National Forests will be opened to nonmetalliferous mining and to such forms of disposition as may by law be made of National Forest System lands. The lands located within the Indian Reservation will not be opened since reservation lands are not subject to entry under the general land laws or the United States mining laws.

EFFECTIVE DATE: October 16, 1995.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 650–0518.

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. The Secretarial Orders dated November 29, 1909, and December 28, 1909, and the Executive Order dated July 7, 1910, which withdrew lands and created Coal Land Withdrawal, Arizona No. 1, are hereby revoked in their entirety insofar as they affect the remaining withdrawn lands described as follows:

Gila and Salt River Meridian

San Carlos Indian Reservation

T. 4 S., Rgs. 18, 19 and 20 E., (Portion located within the San Carlos Indian Reservation).

Gila and Salt River Meridian

Coronado and Sitgreaves National Forests

T. 4 S., R. 20 E., (Portion located within the Coronado National Forest).
T. 10 N., R. 18 E., (Portion located outside of the Fort Apache Indian Reservation).
T. 11 N., R. 18 E.,
Sec. 13, SW¼ W½SE¼;
Sec. 14, E½SE¼;
Sec. 19, Lots 3, 4, E½SW¼, and SE¼;
Sec. 20, S½;
Sec. 21, SW¼SW¼;
Sec. 22, E½SE¼, N½NW¼SE¼, S½SW¼SE¼, S½N½SW¼SE¼, N½NE¼SW¼,W½SW¼, S½N½SE¼SW¼, and S½SE¼SW¼;
Sec. 23, NE¼NE¼, W½, NE¼SE¼, and S½SE¼;
Sec. 24, NW¼NE¼, and N½NW¼;
Secs. 25 to 30, inclusive;
Secs. 31 to 34, inclusive (portion located outside of the Fort Apache Indian Reservation);
Secs. 35 and 36.
T. 10 N., R. 19 E.,
Secs. 1 to 6, inclusive;
Sec. 7 (portion located outside of the Fort Apache Indian Reservation);
Secs. 8 to 17, inclusive;
Secs. 18 to 20, inclusive (portion located outside of the Fort Apache Indian Reservation);
Secs. 21 to 25, inclusive;
Secs. 26 to 29, inclusive (portion located outside of the Fort Apache Indian Reservation);
Secs. 35 and 36 (portion located outside of the Fort Apache Indian Reservation).
T. 11 N., R. 19 E.,
Sec. 19, Lots 3, and 4, and E½SW¼;
Sec. 25, S½;
Sec. 26, S½;
Sec. 27, S½;
Sec. 29, W½, and W½SE¼;
Secs. 30 and 31;
Sec. 32, W½, and W½E½;
Sec. 33, E½;
Secs. 34 to 36, inclusive.

The areas described aggregate 85,754 acres in Pinal, Graham, and Navajo Counties.

2. The Executive Order dated April 13, 1917, which withdrew lands and created Coal Land Withdrawal, Arizona No. 2 are hereby revoked in their entirety insofar as they affect the remaining withdrawn lands described as follows:

Gila and Salt River Meridian

Sitgreaves National Forest

T. 10 N., R. 16 E.,
Sec. 1, (Portion located outside of the Fort Apache Indian Reservation).
T. 11 N., R. 16 E.,
Sec. 25, S½;
Sec. 36.
T. 10 N., R. 17 E.,
Sec. 3 to 9, inclusive (Portion located outside of the Fort Apache Indian Reservation).
T. 11 N., R. 17 E.,
Sec. 25, S½;
Sec. 26, S½;
Sec. 27, S½;
Sec. 28, S½;
Sec. 29, S½;
Sec. 30, S½;
Secs. 31 to 33, inclusive;
Secs. 34 to 36, inclusive (Portion located outside of the Fort Apache Indian Reservation).
T. 10 N., R. 20 E.,
Secs. 5 to 8, inclusive;
Secs. 13 to 20, inclusive;
Secs. 21 to 23, inclusive (Portion located outside of the Fort Apache Indian Reservation);
Sec. 24;
Secs. 25, 26 and 28 (Portion located outside of the Fort Apache Indian Reservation);
Secs. 29 and 30;
Secs. 31 to 33, inclusive (Portion located outside of the Fort Apache Indian Reservation).
T. 9 N., R. 21 E., (Portion located outside of the Fort Apache Indian Reservation).
T. 10 N., R. 21 E.,
Secs. 19 to 22, inclusive;
Sec. 25, NW¼NW¼NE¼NE¼, N½N½NW¼NE¼, W½NW¼SW¼NE¼, SW¼SW¼NE¼, W½SE¼SW¼NE¼, E½E½NW¼, N½NW¼NE¼NW¼, N½S½NW¼NE¼NW¼, N½N½NW¼NW¼, N½S½N½NW¼NW¼, N½NE¼NE¼SW¼, SW¼NE¼NE¼SW¼, SE¼NW¼NE¼SW¼, E½SW¼NE¼SW¼, SW¼SW¼, W½W½SE¼SW¼, NE¼NW¼SE¼SW¼, NW¼NE¼SE¼SW¼, N½NW¼NW¼SE¼, NW¼NE¼NW¼SE¼, SE¼NE¼NW¼SE¼, E½SE¼NW¼SE¼, E½E½SW¼SE¼, S½N½NE¼SE¼, S½NE¼SE¼, and SE¼SE¼;
Secs. 26 to 29, inclusive;
Secs. 30 to 33, inclusive (Portion located outside of the Fort Apache Indian Reservation);
Secs. 34 to 36, inclusive.
T. 9 N., R. 22 E.,
Secs. 1 to 3, inclusive;
Secs. 6 and 7 (Portion located outside of the Fort Apache Indian Reservation);
Sec. 9;
Sec. 10, E½, E½W½, W½NW¼, W½W½SW¼, W½E½W½SW¼;
Secs. 11 and 12.
T. 10 N., R. 22 E.,
Secs. 28, 31, 34 and 35.
T. 8 N., R. 23 E.,
Sec. 2;
Secs. 11 and 12 (Portion located outside of the Fort Apache Indian Reservation).
T. 9 N., R. 23, E.,
Secs. 7 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28, 29 and 33;
Sec. 34, W½.

The areas described aggregate 49,206 acres in Navajo County.

3. At 10 a.m. on October 16, 1995, the Forest Service lands described in paragraphs 1 and 2 shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry for nonmetalliferous minerals under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. The lands located within the San Carlos Indian Reservation will not be opened since reservation lands are not subject to entry under the general land laws or the United States mining laws.

Dated: September 5, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–22916 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–32–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–73; RM–8568]

Radio Broadcasting Services; Boonville and Fayette, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 230C3 for Channel 230A at Boonville, Missouri, reallots the Channel to Fayette, Missouri, and modifies the license for Station KTLH to specify operation on Channel 230C3 at Fayette, Missouri, in response to a petition filed by Big Country of Missouri. *See* 60 FR 29816, June 6, 1995. The coordinates for Channel 230C3 at Fayette are 39–05–00 and 92–28–30. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 95–73, adopted September 1, 1995, and released September 12, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Boonville, Channel 230A, and adding Fayette, Channel 230C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–22945 Filed 9–14–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94–113; RM–8514, RM–8517, RM–8569 and RM–8570]

Radio Broadcasting Services; Cape Girardeau, Chaffee, Scott City and Miner, MO and Union City, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 296A to Miner, Missouri, as a first local service, in response to a proposal filed by Stephen W. Sikes (RM–8570) and Channel 230A to Scott City, Missouri, as a first local service, in response to a proposal filed by Scott City Broadcasters (RM–8569). *See* 59 FR 50886, October 6, 1994. The coordinates for Channel 296A at Miner are 36–55–14 and 89–40–00 and the coordinates for Channel 230A at Scott City are 37–13–00 and 89–31–28. The proposal filed by Kevin G. Greaser, RM–8514, to add Channel 230A to Cape Girardeau, Missouri, has been dismissed. The proposal filed by Twin States Broadcasting, Inc. to substitute Channel 284C2 for Channel 285A at Union city, Tennessee and substitute Channel 230A for Channel 284A at Chaffee, Missouri, has also been dismissed (RM–8517). With this action, this proceeding is terminated.

DATES: Effective October 27, 1995. The window period for filing applications will open on October 27, 1995, and close on November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 94–113, adopted September 1, 1995, and released September 12, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Miner, Channel 296A and Scott City, Channel 230A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–22944 Filed 9–14–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 76

[MM Docket Nos. 92–266 and 93–215; FCC 95–196]

Cable Act of 1992—Small Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; notice of effective date.

SUBJECT: FCC Form 1230 Approved by Office of Management and Budget.

SUMMARY: The FCC Form 1230 was approved by the Office of Management and Budget on August 21, 1995. That date also serves as the effective date for the rules and regulations adopted in the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation. The Sixth Report and Order amends definitions of small cable entities to encompass a broader range of cable systems that are eligible for special rate and administrative treatment. To implement these rule changes, the Commission created the FCC Form 1230. In introducing the FCC Form 1230 and new simplified small system rate relief, the Commission continues its ongoing efforts to offer small cable companies administrative relief from rate regulation in furtherance of congressional intent.

DATES: Regulations published in MM Doc Nos. 92–266 and 93–215 published on July 12, 1995 (60 FR 35854) are effective August 21, 1995.

FOR FURTHER INFORMATION CONTACT:

Thomas Power at (202) 416–0877.

SUPPLEMENTARY INFORMATION: On June 5, 1995, the Commission released the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (''Sixth Report and Order''), 60 FR 35854 (July 12, 1995). Copies of FCC Form 1230 can be obtained from the Commission's duplicating contractor, International Transcription Service (ITS), at (202) 857–3800; and free of charge from Garcia Consulting, Inc., at (202) 416–0919. Copies can also be obtained via the Commission's Fax on Demand System. To obtain faxed copies, contact (202) 418–0177 from the handset on your fax machine and enter the document retrieval number 001230 when prompted by the system. Assistance with the Fax on Demand System can be obtained by calling Dorothy Conway at (202) 418–0217.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22835 Filed 9–14–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. 95–45; Notice 2]

Passenger Automobile Average Fuel Economy Standards; MedNet Incorporated; Final Decision

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final decision.

SUMMARY: This decision responds to a petition filed by MedNet Incorporated (MedNet) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years 1996 through 1998, and that lower alternative standards be established for it for each of these model years. This decision exempts MedNet and establishes an alternative standard of 17.0 mpg for MY 1996, MY 1997, and MY 1998.

DATES: Effective date: October 30, 1995. This exemption and the alternative standards apply to MedNet for MYs 1996, 1997, and 1998. Petitions for reconsideration must be submitted by October 16, 1995.

ADDRESSES: Petitions for reconsideration must be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590. It is requested, but not required, that 10 copies be provided.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Spinner, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590. Ms. Spinner's telephone number is: (202) 366–4802.

SUPPLEMENTARY INFORMATION: NHTSA is exempting MedNet from the generally applicable average fuel economy standard for 1996, 1997, and 1998 model years and establishing alternative standards applicable to MedNet for each of these model years. This exemption is issued under the authority of 49 U.S.C. 32902(d), providing that NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility
(2) Economic practicability
(3) The effect of other Federal motor vehicle standards on fuel economy, and
(4) The need of the Nation to conserve energy.

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that it would not be technologically feasible and economically practicable for MedNet to improve the fuel economy of its vehicles in MY 1996 through 1998 above an average of 17.0 mpg for MY 1996, 17.0 mpg for MY 1997, and 17.0 mpg for MY 1998 and that the maximum feasible average fuel economy for MedNet is 17.0 mpg in MY 1996, 17.0 mpg in MY 1997, and 17.0 mpg in MY 1998. (60 FR 31937) No comments were received on the proposed decision.

The agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for MedNet in each of MYs 1996, 1997, and 1998 is 17.0 mpg, that other Federal motor vehicle safety standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the nation's need to conserve energy will not be affected by granting this exemption, NHTSA hereby exempts MedNet from the generally applicable passenger automobile average fuel economy standard for the 1996, 1997, and 1998 model years and establishes an alternative standard of 17.0 mpg for MedNet for each of these years.

NHTSA has analyzed this decision and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive Order 12866, the proposal would not establish a ''rule,'' which is defined in the Executive Order as ''an agency statement of general applicability and future effect.'' This exemption is not generally applicable, since it would apply only to MedNet, Inc., as discussed in this decision. Under DOT regulatory policies and procedures, this decision is not a ''significant regulation.'' If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this exemption is that MedNet will not be required to pay civil penalties if it achieves a CAFE level equivalent to the alternative standard published in this notice. Since this decision sets an alternative standard at the level determined to be MedNet's maximum feasible level for MYs 1996 through 1998, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large are minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the decision and alternative standards. Further, since MedNet's MY 1996, 1997, and 1998 automobiles cannot achieve better fuel economy than 17.0 mpg, granting this exemption will not affect the amount of fuel used.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant impact on a substantial number of small entities. This decision does not impose any burdens on MedNet. It does relieve the company from having to pay civil penalties for noncompliance with the generally applicable standard for MY's 1996, 1997, and 1998. Since the price of 1996, 1997, and 1998 MedNet automobiles will not be affected by this decision, the purchasers will not be affected.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor Vehicles.

In consideration of the foregoing, 49 CFR part 531 is amended to read as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 is revised to read as follows:

Authority: 49 U.S.C. 32902; Delegation of authority at 49 CFR 1.50.

2. In § 531.5, the introductory text of paragraph (b) is republished for the convenience of the reader and paragraph (b)(12) is added to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(12) MedNet, Inc.

Model year	Average fuel economy standard (miles per gallon)
1996	17.0
1997	17.0
1998	17.0

Issued on: September 12, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–22998 Filed 9–14–95; 8:45 am]

BILLING CODE: 4910–59–P

49 CFR Part 583

[Docket No. 92–64; Notice 07]

RIN 2127–AG03

Motor Vehicle Content Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; further response to petitions for reconsideration.

SUMMARY: The American Automobile Labeling Act requires passenger cars and other light vehicles to be labeled with information about their domestic and foreign content. This document responds to several petitions for reconsideration of the agency's July 1994 final rule implementing that statute. NHTSA is making several changes to the final rule in response to the petitions, which will reduce the burdens associated with making content calculations and also result in more accurate information. The agency has also decided not to make a number of the changes requested by the petitions.

DATES: *Effective date*. The amendments made by this rule are effective October 16, 1995.

Petitions for reconsideration. Petitions for reconsideration must be received not later than October 16, 1995.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Safety Administration, Room 5313, 400 Seventh Street SW, Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION:

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I. Background

A. Statutory Requirements

Congress enacted the American Automobile Labeling Act (Labeling Act) as part of the Department of Transportation and Related Agencies Appropriation Act for Fiscal Year 1993, P.L. 102–388. The Labeling Act amended Title II of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) by adding a new section 210.

Subsequently, on July 5, 1994, the President signed a bill (P.L. 103–272) which revised and codified ''without substantive change'' the Cost Savings Act and two other NHTSA statutes. The content labeling provisions, which formerly existed as section 210 of the Cost Savings Act, are now codified at 49 U.S.C. § 32304, Passenger motor vehicle country of origin labeling. NHTSA will use the new statutory citations in this notice.

Section 32304 requires passenger motor vehicles [1] manufactured on or after October 1, 1994 to be labeled with information about their domestic and foreign content. The purpose of the section is to enable consumers to take country of origin information into account in deciding which vehicle to purchase.

Section 32304(b) requires each new passenger motor vehicle to be labeled with the following five items of information:

(1) The percentage U.S./Canadian equipment (parts) content;

(2) The names of any countries [2] other than the U.S. and Canada which individually contribute 15 percent or more of the equipment content, and the percentage content for each such country;

(3) The final assembly place by city, state (where appropriate), and country;

(4) The country of origin of the engine; and

(5) The country of origin of the transmission.

Section 32304(b) specifies that the first two items of information, the equipment content percentages for the U.S./Canada and foreign countries, are calculated on a ''carline'' basis rather than for each individual vehicle. The term ''carline'' refers to a name of a group of vehicles which has a degree of commonality in construction such as body and chassis.

Manufacturers of passenger motor vehicles are required to establish the required information annually for each model year, and are responsible for the affixing of the required label to the vehicle. Dealers are responsible for maintaining the labels.

In order to calculate the information required for the label, the vehicle manufacturer must know certain information about the origin of each item of passenger motor vehicle equipment used to assemble its vehicles. For example, in order to calculate the information for the first item of the label, i.e., the percentage of the value of the motor vehicle

[1] The term ''passenger motor vehicle,'' defined in 49 U.S.C. 32101 as a motor vehicle with motive power designed to carry not more than 12 individuals, is amended for purposes of section 32304 to include any ''multipurpose vehicle'' and ''light duty truck'' that is rated at not more than 8,500 pounds gross vehicle weight. Thus, the motor vehicle content labeling requirements apply to passenger cars, light trucks, multipurpose passenger vehicles, and certain small buses. Motorcycles are excluded.

[2] If there are more than two such countries, only the names of the two countries providing the greatest amount of content need be listed.

equipment installed on passenger motor vehicles within a carline which originated in the U.S./Canada, the manufacturer must know the U.S./Canadian content of each item of motor vehicle equipment.

The statute specifies that suppliers of passenger motor vehicle equipment must provide information about the origin of the equipment they supply. For purposes of determining U.S./Canadian origin for the first item on the label, the statute provides different procedures depending on whether equipment is received from an allied supplier (a supplier wholly owned by the manufacturer) or an outside supplier.

For equipment received from outside suppliers, section 32304(a)(9)(A) provides that the equipment is considered U.S./Canadian if it contains at least 70 percent value added in the U.S./Canada. Thus, any equipment that is at least 70 percent U.S./Canadian is valued at 100 percent U.S./Canadian, and any equipment under 70 percent is valued at zero percent. This statutory provision is sometimes referred to as the ''roll-up, roll-down'' provision. For equipment received from allied suppliers, section 32304(a)(9)(B) provides that the actual amount of U.S./Canadian content is used.

The statute requires the Department of Transportation to promulgate regulations implementing the content labeling requirements. Section 32304(d) requires the promulgation of regulations which specify the form and content of the required labels, and the manner and location in which the labels must be affixed. Section 32304(e) requires promulgation of such regulations as may be necessary to carry out the labeling requirements, including regulations to establish a procedure to verify the required labeling information. That section also directs that such regulations provide the ultimate purchaser of a new passenger motor vehicle with the best and most understandable information possible about the foreign content and U.S/Canadian origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers. Finally, section 32304(e) also specifies that the regulations include provisions requiring suppliers to certify whether their equipment is of U.S., U.S./Canadian, or foreign origin.

B. July 1994 Final Rule

On July 21, 1994, NHTSA published in the **Federal Register** (59 FR 37294) a final rule establishing a new regulation, 49 CFR Part 583, Automobile Parts Content Labeling, to implement the Labeling Act. The regulation established requirements for (1) manufacturers of passenger motor vehicles; (2) suppliers of motor vehicle equipment used in the assembly of passenger motor vehicles; and (3) dealers of passenger motor vehicles. A summary of the requirements is set forth below.

1. Manufacturers of Passenger Motor Vehicles

Vehicle manufacturers are required to affix to all new passenger motor vehicles a label which provides the following information:

(1) *U.S./Canadian Parts Content*—the overall percentage, by value, of the U.S./Canadian content of the motor vehicle equipment installed on the carline of which the vehicle is a part;

(2) *Major Sources of Foreign Parts Content*—the names of the two countries, if any, other than the U.S./Canada, which contributed the greatest amount (at least 15 percent), by value, of motor vehicle equipment for the carline, and the percentage, by value, of the equipment originating in each such country;

(3) *Final Assembly Point*—the city, state (where appropriate), and country in which the final assembly of the vehicle occurred;

(4) *Country of Origin for the Engine Parts*;

(5) *Country of Origin for the Transmission Parts*.

The label is also required to include a statement below this information reading as follows:

Note: Parts content does not include final assembly, distribution, or other non-parts costs.

Manufacturers are permitted, but not required, to provide at the end of the note the following additional statement for carlines assembled in the U.S. and/or Canada, and another country:

This carline is assembled in the U.S. and/or Canada, and in [insert name of each other country]. The U.S./Canadian parts content for the portion of the carline assembled in [insert name of country, treating the U.S. and Canada together, i.e., U.S./Canada] is [ ]%.

The information for items (1) and (2) of the label is calculated, prior to the beginning of the model year, for each carline. The information for items (3), (4) and (5) is determined for each individual vehicle. However, the country of origin for groups of engines and transmissions is determined once a model year.

Vehicle manufacturers are to calculate the information for the label, relying on information provided to them by suppliers. Under the final rule, manufacturers and allied suppliers are required to request their suppliers to provide the relevant content information specified in Part 583, and the suppliers are required to provide the specified information in response to such requests. The vehicle manufacturers are required to maintain records of the information used to determine the information provided on the labels.

2. Suppliers of Motor Vehicle Equipment

For any equipment that an outside supplier (a supplier not wholly owned by the vehicle manufacturer) supplies to a vehicle manufacturer, a supplier wholly owned by the vehicle manufacturer (an allied supplier) or, in the case of a joint venture vehicle assembly arrangement, a supplier that is wholly owned by one member of the joint venture arrangement, the outside supplier is required to provide, at the request of that manufacturer or allied supplier, the following information:

(1) the price of the equipment to the manufacturer or allied supplier;

(2) whether the equipment has, or does not have, at least 70 percent of its value added in the U.S. and Canada;

(3) for any equipment for which the U.S./Canadian content is less than 70 percent, the country of origin of the equipment (treating the U.S. and Canada together);

(4) for equipment that may be used in an engine or transmission, the country of origin of the equipment (separating the U.S. and Canada).

For any equipment that an allied supplier supplies to a vehicle manufacturer, the supplier is required to provide, at the request of the manufacturer, the following information:

(1) the price of the equipment to the manufacturer;

(2) the percentage U.S./Canadian content of the equipment;

(3) the country of origin of the equipment (treating the U.S. and Canada together);

(4) for equipment that may be used in an engine or transmission, the country of origin of the equipment (separating the U.S. and Canada).

A supplier of engines and transmissions is, in addition to the above requirements, required to provide, at the request of the vehicle manufacturer, the country of origin for each engine or transmission it supplies to the manufacturer, determined as follows: the country in which the greatest percentage, by value (using the total cost of *equipment* to the engine or transmission supplier, while excluding the cost of final assembly labor), was added to the engine or transmission.

Both outside and allied suppliers that directly supply equipment to vehicle manufacturers are required to provide the specified information directly to the vehicle manufacturers, in the form of a certification. Outside suppliers that directly supply to allied suppliers are required to provide the specified information and certification directly to the allied suppliers. Suppliers are also required to maintain records of the information used to compile the information provided to the manufacturers and outside suppliers.

The requirements apply only to suppliers which supply directly to the vehicle manufacturer or to an allied supplier. No requirements are imposed on suppliers earlier in the chain, *e.g.*, a company which supplies an item of equipment to an outside supplier which then supplies it to a vehicle manufacturer.

3. Dealers of Passenger Motor Vehicles

Dealers are required to maintain the label on each vehicle until the vehicle is sold to a consumer.

II. Petitions for Reconsideration

NHTSA received petitions for reconsideration from the American Automobile Manufacturers Association (AAMA), General Motors (GM), the Association of International Automobile Manufacturers (AIAM), Volkswagen (VW), the American International Automobile Dealers Association (AIADA), and the Kentucky Cabinet for Economic Development (Kentucky Cabinet). A summary of these petitions follows.

AAMA argued that certain requirements specified in section 583.6, *Procedure for determining U.S./Canadian parts content*, result in U.S./Canadian content being understated and impose costly and unnecessary burdens on manufacturers and suppliers. That organization identified three major issues.

First, AAMA was concerned that section 583.6 provides that materials used by a supplier located in the U.S./Canada are considered foreign to whatever extent part or all of the cost of the material is not determined to represent value added in the United States or Canada, traced back to raw materials. AAMA stated that suppliers may avoid the costly process of tracing simply by defaulting U.S./Canadian content to zero, with the result that U.S./Canadian content will be understated. That organization urged that the regulation allow first-tier suppliers to use methods other than tracing to accurately calculate a material's U.S./Canadian value added.

Second, AAMA was concerned that the U.S./Canadian content of components must be defaulted to zero if suppliers fail to respond to a manufacturer's or allied supplier's request for content information. That organization argued that the content information ultimately provided to consumers will be more accurate if manufacturers are permitted to establish the U.S./Canadian content of a component by other means when a supplier fails to respond.

Third, AAMA was concerned that section 583.6 specifies that whenever material or motor vehicle equipment is imported into the U.S. or Canada from a third country, the value added in the U.S./Canada for that material or equipment is considered zero, even if part of the material originated in the U.S. or Canada. AAMA argued that this provision is inconsistent with the Labeling Act's definition of ''foreign.'' It also noted that if a manufacturer installed identical parts both in a vehicle assembled in the U.S or Canada and in one assembled in a third country, the two parts would have different U.S./Canadian content. AAMA urged that if a manufacturer is able to identify the U.S./Canadian content, it should be permitted to include the actual U.S./Canadian content of the imported component in the calculations.

AAMA recommended specific changes to Part 583 in light of the three major issues it identified. That organization also recommended a number of other changes to provide clarification.

GM joined in the AAMA petition and also submitted a separate petition urging the agency to permit manufacturers to use alternative procedures to determine U.S./Canadian parts content. That company expressed concern that Part 583 requires it to collect content data on millions of unique part numbers when tracing beyond the first tier of suppliers is required. According to GM, this represents the most burdensome and costly procedure possible, even more burdensome than any other trade-related content data requirements administered by any other U.S. government entity.

With respect to AAMA's and GM's petitions, NHTSA notes that the FY 1995 Conference Report on DOT Appropriations included the following language:

> The conferees are aware that several petitions for reconsideration have been submitted to NHTSA since the publication of the final rule. Among the issues raised in the petitions are whether it is consistent with the Act that the final rule requires that a first-tier supplier of equipment produced or assembled in the U.S. or Canada must consider material used in that equipment to have zero U.S./Canadian content unless the material's U.S./Canadian value has been verified by full tracing to its origin, and that a manufacturer or supplier that does not receive information from its suppliers concerning the U.S./Canadian content of equipment must consider the U.S./Canadian value of the equipment to be zero.
>
> These provisions of the final rule will not ensure that the most accurate, understandable, and cost-effective information is provided to consumers, and thus contradict the expressed intent of Congress in passing the AALA. Therefore, the conferees direct NHTSA to amend the final rule to permit first-tier suppliers to use other methods, such as country-of-origin marking, substantial transformation, or other customs data in their records, to determine the U.S./Canadian content of equipment, and manufacturers and allied suppliers to use other methods to determine U.S./Canadian content of equipment when suppliers fail to provide adequate information.
>
> Furthermore, to ensure that the final rule does not impose costly and unnecessary burdens on manufacturers, the conferees also direct NHTSA to amend the rule to allow manufacturers to propose alternative procedures for determining domestic content if such procedures produce reliable results.

NHTSA notes that the inclusion of this language in an Appropriations Report does not have the effect of changing the existing statute or the agency's duty to follow that statute. The agency will respectfully treat this language as expressing the sentiment of Congress as to how the issues raised by the petitions for reconsideration should be resolved.

AIAM raised four issues in its petition for reconsideration. First, that organization stated that NHTSA did not respond to its comment on the NPRM urging that the regulation provide that any state action which challenges the information provided on the label is Federally preempted. Second, AIAM argued that the regulation contains an overly broad interpretation of the term ''final assembly.'' That organization stated that the definition includes within its scope (and thereby excludes from U.S./Canada parts content) assembly operations that are not performed on the motor vehicle but instead on parts and components of that motor vehicle. Third, AIAM argued that the provision in the regulation concerning tracing back to raw materials is inconsistent with the language of the Labeling Act and also outside the scope of notice of the NPRM. Finally, AIAM argued that a provision in the regulation which specifies that major foreign source percentages are ''rounded down'' to bring the combined total of U.S./Canadian and major foreign source content to no higher than 100 percent is

outside NHTSA's authority under the Labeling Act.

VW, a member of AIAM, submitted a separate petition requesting that NHTSA reconsider its determination that it is statutorily prohibited from permitting manufacturers selling motor vehicles with minimal U.S./Canadian parts content to state that fact rather than providing specific content numbers. That manufacturer cited the case of *Alabama Power Company* v. *Costle*, 636 F.2d 323 (1979), in support of its request.

AIADA requested that the agency ''reconsider and vacate its final rule on Motor Vehicle Content Labeling.'' That organization stated that the rule is unconstitutionally vague and unequal and discriminatory in its application and therefore constitutes a denial of due process in violation of the Fifth Amendment to the Constitution and the Administrative Procedure Act. It also cited its comments to the agency on the NPRM and on an earlier request for comments but did not provide any other arguments or analysis in support of its petition.

The Kentucky Cabinet argued that the tracing provisions included in the final rule impose unnecessary administrative burdens on the Kentucky automotive industry. It expressed concern that companies will be required to undergo expensive and time-consuming efforts to trace a part back to raw materials. It also stated that in some cases a second tier supplier may not want to divulge proprietary information. The Kentucky Cabinet also expressed concern that the calculations for domestic content do not include the value of labor performed by Kentuckians. It stated that consumers will be forced to make purchasing decisions based on information that does not reflect the actual amount of domestic content. The Kentucky Cabinet specifically expressed concern about the exclusion of final assembly in the calculation of domestic content. It stated that an automotive manufacturer which does substantial ''in-house'' final assembly will not be able to include the full value of domestic parts and therefore be at a competitive disadvantage.

III. Initial Response to Petitions

In a notice published March 16, 1995 (60 FR 14228), the agency partially responded to the petitions for reconsideration by extending a temporary alternative approach for data collection and calculations. This approach permits manufacturers and suppliers to use procedures that are expected to yield similar results. This alternative was originally available, under the July 1994 final rule, for model year 1995 and model year 1996 carlines which were first offered for sale to ultimate purchasers before June 1, 1995. The notice extended the alternative to all model year 1996 carlines and model year 1997 carlines which are first offered for sale to ultimate purchasers before June 1, 1996.

IV. Overview of Further Response to Petitions

In response to the petitions for reconsideration, NHTSA is making several changes in Part 583. These changes include:

(1) Providing that whenever material or motor vehicle equipment is imported into the U.S. or Canada from a third country, the value added in the U.S. or Canada is presumed zero, but that if documentation is available to the supplier which identifies value added in the U.S. or Canada for that equipment, such value added in the U.S. or Canada is counted;

(2) Amending the clarifying procedures concerning the determination of U.S./Canadian content to (a) make it clear that, for materials used by suppliers in producing passenger motor vehicle equipment (other than for materials imported from third countries), suppliers are to make a good faith estimate of the value added in the United States or Canada (to the extent necessary to make required determinations concerning the value added in the U.S./Canada of their passenger motor vehicle equipment), (b) provide suppliers greater flexibility in the information they can use in making these estimates, and (c) reduce the number of stages for which suppliers must consider where value was added (although not to the degree recommended by AAMA);

(3) Providing that manufacturers can petition to use alternative calculation procedures based on representative or statistical sampling to determine U.S./Canadian parts content and major sources of foreign parts content; and

(4) Several minor clarifying changes.

NHTSA is granting the petitions to the extent that they are accommodated by these changes; the agency is otherwise denying the petitions.

V. Response to Petitions

In this section, NHTSA presents its analysis of the issues raised by the petitioners and its response. The major issues are organized according to the sections of the final rule to which they relate.

A. Definition of Final Assembly (Section 583.4)

Section 32304(a)(15) provides that ''costs incurred or profits made at the final assembly place and beyond (including advertising, assembly, labor, interest payments, and profits)'' are excluded from the calculation of parts content. In earlier notices, NHTSA recognized that manufacturers may conduct some pre-assembly operations, e.g., production of parts, at the same location as final assembly. The agency included a definition of ''final assembly'' in the final rule to distinguish between production of parts, for which labor and other costs are included in parts content calculations, and final assembly, for which labor and other costs are not included.

Two of the petitions for reconsideration addressed the exclusion of final assembly costs from the calculation of U.S./Canadian parts content and/or the final rule's definition of final assembly. As indicated above, the Kentucky Cabinet expressed concern that the calculations for domestic content do not include the value of labor performed by Kentuckians. It stated that consumers will be forced to make purchasing decisions based on information that does not reflect the actual amount of domestic content. The Kentucky Cabinet expressed specific concern about the exclusion of final assembly costs in the calculation of domestic content. It stated that an automotive manufacturer which does substantial ''in-house'' final assembly will not be able to include the full value of domestic parts and therefore be at a competitive disadvantage.

AIAM argued that the final rule contains an overly broad interpretation of the term ''final assembly'' that will mislead the motor vehicle purchaser to believe that the value of many auto parts made in-house by a U.S. motor vehicle manufacturer are not part of the U.S./Canadian parts content of the vehicle. It argued that the rule creates an unfair and anomalous situation, since a manufacturer that assembles a large number of components to produce a complex piece of equipment (other than an engine or transmission) must exclude the assembled value of that item from the reported U.S./Canadian parts content of the motor vehicle, while a less integrated manufacturer that obtained the same piece of equipment from an outside supplier in the United States or Canada would include its entire value in the U.S./Canada parts content of the vehicle if the ''70 percent'' test was met. AIAM also argued that the definition of ''final

assembly'' is so broad that it includes within its scope (and thereby excludes from U.S./Canada parts content) assembly operations that are not performed on the motor vehicle but instead are performed on parts and components of that motor vehicle. AIAM alleged that there is no statutory basis, or even a rational one, to exclude substantial U.S. value added to in-house produced components other than engines and transmissions.

With respect to the Kentucky Cabinet's concerns about excluding final assembly costs, including the exclusion of the value of labor performed by Kentuckians, in the calculation of U.S./Canadian parts content, NHTSA notes that Congress decided to require manufacturers to provide prospective passenger motor purchasers with calculations of parts content rather than overall vehicle content. As indicated above, the statute specifically provides that final assembly costs, including labor costs, are excluded from these calculations. NHTSA does not have the authority to depart from the statute. The agency observes, however, that the value of final assembly labor is reflected on the label since the final assembly point is specified by city, state and country. Thus, prospective purchasers will know whether the vehicle they are considering purchasing was assembled in Kentucky.

With respect to AIAM's concerns about the final rule's definition of ''final assembly,'' NHTSA notes that numerous commenters on the NPRM addressed this subject, and the agency discussed it at length in the preamble to the final rule. In its petition, AIAM did not address the agency's extensive analysis of this issue. The agency will repeat a portion of that discussion in this notice (the statutory references in the quoted language have been superseded, but the substance has not changed):

> The starting place for resolving the question of what operations should be considered to be part of ''final assembly'' and therefore excluded from parts content calculations is the language of the Labeling Act. The Act includes several relevant sections. First, section 210(b)(1)(A) provides that the label must indicate ''the percentage (by value) of passenger motor vehicle equipment installed in such vehicle within a carline which originated in the United States and Canada . . . .'' Second, section 210(f)(10) provides that ''(c)osts incurred or profits made *at the final vehicle assembly point* and beyond (i.e., advertising, assembly, labor, interest payments, profits, etc.) shall not be included in [the calculation of value added in the United States and Canada].'' Third, section 210(f)(14) defines ''final assembly point'' as ''the plant, factory, or other *place* at which a new passenger motor vehicle is produced or assembled by a manufacturer and *from* which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such vehicle . . . .'' (Emphasis added.).
>
> While final assembly point can be considered as either a physical place or a phase in the assembly process, it is significant that section 210 defines it as a place, i.e., the plant, factory, or other place at which a new vehicle is produced or assembled. Thus, looking at the plain language of section 210, assembly and labor costs ''at'' the plant, factory or other place at which a new vehicle is assembled are excluded from parts content calculations.
>
> It is also significant that the language in section 210(f)(14) about the vehicle being in such a condition that ''all component parts necessary to the mechanical operation of such automobile are included with such vehicle'' refers to the vehicle when it leaves the final assembly point for delivery to a dealer or importer. In citing this language for the proposition that ''final assembly'' is defined in terms of completeness, AIAM and Toyota confuse the completion of final assembly with the final assembly process. Section 210(f)(14) defines ''final assembly point'' as the plant, factory, or other place at which a vehicle is ''produced or assembled'' by a manufacturer. All of the operations that make up the production or assembly process are part of final assembly. There is no basis to interpret section 210(f)(10)'s requirement that assembly and labor costs incurred ''at the plant, factory or other place'' at which a new vehicle is assembled only applies to the costs associated with the last step in completing the vehicle.
>
> Since section 210 expressly provides that assembly and labor costs at the plant, factory or other place at which a new vehicle is assembled are excluded from parts content calculations, NHTSA believes that all assembly and labor costs that are ordinarily associated with final assembly must be excluded. However, the agency believes that the costs associated with parts production that may occur at a final assembly plant should not be excluded from parts content calculations. . . .
>
> . . . A failure to consider parts produced at the final assembly plant as ''passenger motor vehicle equipment'' would result in significant differences among manufacturers. Further, if a plant were very highly integrated, it could result in a situation where the parts content percentages do not reflect the greater number of a vehicle's parts.
>
> At the same time, however, NHTSA must give full effect to the Congressional intent to exclude the costs of final assembly from parts content calculations. The agency believes that the best way to accomplish this is the method suggested by AAMA: define ''final assembly'' to include all operations involved in the assembly of the vehicle performed at the final assembly point (the final assembly plant), including but not limited to assembly of body panels, painting, final chassis assembly, and trim installation, except engine and transmission fabrication and assembly and the fabrication of motor vehicle equipment components produced at the same final assembly point using stamping, machining or molding processes.
>
> Under this approach, all costs incurred at the final assembly plant are excluded except for those that are incurred in producing either engines/transmissions or in producing parts using forming processes such as stamping, machining or molding. In addition to ensuring that final assembly costs are excluded as required by section 210, the agency also believes that a definition along these lines is much clearer than the proposed definition. For example, this type of definition will not raise issues concerning whether a part is assembled on the main assembly line or off of it.
>
> NHTSA cannot accept the recommendation of foreign vehicle manufacturers to define final assembly as starting at the time when the engine and body are fastened together. Under such a definition, manufacturers could add the engine to the body as the last step in assembling the vehicle, thereby reducing final assembly costs to a nullity. Such an approach would be inconsistent with the statutory requirement to exclude assembly and labor costs at the final assembly plant from parts content calculations.

The arguments raised in AIAM's petition for reconsideration do not lead the agency to change the definition of ''final assembly.'' That organization argued that the definition includes within its scope assembly operations that are not performed on the motor vehicle but instead are performed on parts and components of that motor vehicle. However, this is an incorrect distinction. AIAM views final assembly as performing operations on a vehicle when, in fact, the final assembly process consists of assembling parts to produce a vehicle.

NHTSA recognizes that there are many levels of ''parts.'' For example, any individual item that is used in the assembly of a chassis is a ''part,'' yet the chassis as a whole can also be called a ''part.'' It appears that AIAM would like almost all assembly that takes place at the final assembly plant to be outside the definition of final assembly and instead be considered parts production, so that the costs of such assembly are included within the parts content calculations.

However, NHTSA must give effect to section 32304(a)(15)'s requirement that costs incurred at the final assembly place, including assembly and labor, are excluded from the calculation of parts content. As discussed in the above-quoted section of the final rule preamble, the agency believes that all assembly and labor costs that are ordinarily associated with final assembly must be excluded.

NHTSA believes that the definition of final assembly included in the final rule strikes an appropriate balance in distinguishing between parts production

at a final assembly plant and final assembly. First, all costs associated with producing engines and transmissions are excluded from the definition of final assembly, and hence counted as parts content. These are very expensive parts, and it is common both for manufacturers to assemble them at vehicle final assembly plants and to assemble them at separate plants. Therefore, including these costs in parts content, notwithstanding the fact that these items may have been produced at a final assembly plant, helps maintain comparability of the information provided on the labels of different vehicles.

Second, all costs incurred in producing parts using forming processes such as stamping, machining or molding are excluded from the definition of final assembly. The production of parts using forming processes is not assembly, and these operations are thus readily distinguishable from final assembly.

All other costs incurred at the final assembly plant are included within the definition of final assembly, and are thus not included in parts content. These costs basically reflect all assembly costs at the final assembly plant other than those associated with producing engines and transmissions. NHTSA believes that the bulk of these costs, e.g., assembling body panels, building up the chassis, etc., come within the generally understood meaning of final assembly and must therefore be excluded from parts content calculations under the statute.

NHTSA notes that AIAM did not provide specific details or examples about differences between more integrated and less integrated manufacturers. Since manufacturing processes differ among manufacturers, it is inevitable that some differences will be reflected on the label. However, the final's rule inclusion of all costs associated with engine/transmission production and production of parts using forming processes within parts content will reduce such differences.

B. Procedure for Determining U.S./Canadian Parts Content (Section 583.6)

Section 583.6 of the final rule specifies a procedure for determining U.S./Canadian parts content. A number of the major issues raised by the petitioners for reconsideration relate to this section.

1. Calculation by Suppliers of the Portion of their Equipment's Value that Represents Value Added in the U.S./Canada

One of the major issues addressed in the final rule was how suppliers are to calculate the portion of their equipment's value that represents value added in the U.S./Canada. It is necessary for suppliers to make such calculations [3] since the Labeling Act provides that determinations of U.S./Canadian parts content are based on the value added in the U.S./Canada of the equipment used to assemble vehicles within a carline.

As part of avoiding unnecessary costs and keeping the regulatory scheme as simple as possible, NHTSA decided to limit tracking and reporting requirements to ''first-tier'' suppliers (including both suppliers which deliver equipment to the vehicle manufacturer itself and ones which deliver equipment to an allied supplier). The agency noted in the NPRM, however, that suppliers which are subject to the information requirements may need in some cases to arrange to obtain information from their suppliers.

Commenters on the NPRM raised a number of issues about how suppliers are to make the required determinations about U.S./Canadian content. NHTSA therefore included in the final rule clarifying procedures concerning the determination of value added in the U.S./Canada.

NHTSA recognized that the basic way suppliers add value in the U.S./Canada is by producing or assembling passenger motor vehicle equipment within the territorial borders of the United States or Canada. The final rule (§ 583.6(c)(4)(ii)) therefore specified that, in determining the value added in the United States or Canada of passenger motor vehicle equipment produced or assembled within the territorial boundaries of the United States or Canada, the cost of all foreign materials is subtracted from the total value (e.g., the price paid at the final assembly plant) of the equipment. The procedures specified that material is considered foreign to whatever extent part or all of the cost of the material is not determined to represent value added in the United States or Canada, traced back to raw materials. As explained in the final rule preamble, under this approach, neither suppliers nor anyone else is required to trace the value added in the United States or Canada back to raw materials; however, any portion of the cost of a material which is not traced to value added in the United States or Canada is considered foreign.

The clarifying procedures (§ 583.6(c)(4)(ii) and (iv)) also provided that for any material or equipment which is imported into the United States or Canada from a third country, the value added in the United States or Canada is zero, even if part of the material originated in the United States or Canada. NHTSA stated that, for purposes of simplicity and consistency, it believed it appropriate to deem any materials which are imported in the United States or Canada from a third country as foreign. The agency did not believe that any attempt to separate out the possible portion of such materials that may have originated in the United States or Canada would provide significantly more useful information to the consumer.

The petitioners for reconsideration raised concerns about both the tracing provision and the provision deeming any equipment or materials which are imported into the United States or Canada from a third country as foreign. The agency will discuss the latter concern first.

a. *Issues concerning equipment or materials imported into the U.S. or Canada.* AAMA argued that the final rule's provisions stipulating that whenever material or motor vehicle equipment is imported into the U.S. or Canada from a third country, the value added in the U.S. or Canada is zero, even if part of the material originated in the U.S. or Canada, are inconsistent with the Labeling Act's definition of ''foreign.'' That organization noted that section 210(f)(16) defined foreign or foreign content as ''passenger motor vehicle equipment not determined to be U.S./Canadian origin.'' (This reference has been superseded by 49 U.S.C. 32304(a)(6).) AAMA believed that the provisions at issue are inconsistent with that section since a portion of the value of the material or equipment could be determined to be of U.S./Canadian origin. AAMA also noted that if a manufacturer installed identical parts both in a vehicle assembled in the U.S or Canada and in one assembled in a third country, the two parts would have different U.S./Canadian content.

In additional information provided to the agency in support of its petition, AAMA cited a specific example of the consequences of these provisions. In the example, it was assumed that $800 of U.S. engine parts were shipped abroad to the foreign engine assembly plant of an allied supplier. If the engine were shipped back to the U.S., it would be

[3] As noted in the final rule preamble, however, only allied suppliers typically need to calculate actual value added in the U.S./Canada of their equipment. 59 FR 37309. As a result of the roll-up, roll-down provision, outside suppliers only need to determine whether the value added in the U.S./Canada is at least 70 percent or not. In order to make this determination, of course, outside suppliers need to understand how value added in the U.S./Canada is calculated. Moreover, if the value added in the U.S./Canada of their equipment is close to 70 percent, outside suppliers will need to calculate actual value added.

considered to have $0 U.S./Canadian content. This would occur as a result of the provision which specifies that any motor vehicle equipment imported into the U.S. or Canada from a third country is considered to have zero U.S./Canadian content. However, if the engine were shipped to a foreign vehicle assembly plant, it would be considered to have $800 U.S./Canadian content. This would occur because the provision about motor vehicle equipment being imported into the U.S. or Canada from a third country would not apply.

AAMA urged that if a manufacturer is able to identify the U.S./Canadian content, it should be permitted to include the actual U.S./Canadian content of the imported component in the calculations.

After considering AAMA's arguments, NHTSA has decided to make a change along the lines recommended by the petitioner. The revised final rule provides that whenever material or motor vehicle equipment is imported into the U.S. or Canada from a third country, the value added in the U.S. or Canada is presumed zero, but that if documentation is available to the supplier which identifies value added in the United States or Canada for that equipment, such value added in the United States or Canada is counted.

The agency fully agrees with AAMA that $800 of U.S. engine parts should not be converted to foreign content simply because the engine is assembled in another country. NHTSA included the provision deeming any materials which are imported into the United States or Canada from a third country as foreign for reasons of simplicity and because it did not believe that separating out the portion that may have originated in the United States or Canada would significantly affect the information provided on the label. Since AAMA has clearly demonstrated that the provision can have a significant effect on the label, the agency believes that the change recommended by that organization is appropriate.

b. *Issues concerning tracing provision.* Three of the petitioners for reconsideration, AAMA, AIAM, and the Kentucky Cabinet, raised concerns about the tracing provision. The agency will first discuss two issues raised by AIAM concerning whether NHTSA has the authority to specify such a provision.

AIAM argued in its petition that the requirement to trace back to raw materials is contrary to the language of the Labeling Act. AIAM also argued that the tracing provision was not included in the NPRM and was therefore imposed without notice and opportunity for comment.

In arguing that the requirement to trace back to raw materials is contrary to the language of the Labeling Act, AIAM stated that the Act expressly provides that for purposes of determining U.S./Canada value added for an equipment item, only incorporated foreign passenger motor vehicle equipment, not foreign raw material, is to be treated as foreign content. AIAM's explanation for this position is as follows. First, the term ''value added in the United States and Canada'' is defined in the Labeling Act to mean a percentage derived as follows: value added equals the total purchase price, minus total purchase price of *foreign content,* divided by the total purchase price. Second, ''foreign content'' is defined to mean *passenger motor vehicle equipment* not determined to be of U.S./Canadian origin. Third, ''passenger motor vehicle equipment'' is defined to mean any system, subcomponent or assembly and does not include materials or raw materials. Thus, according to AIAM, the term ''foreign content'' can only refer to passenger motor vehicle equipment and not raw materials.

NHTSA notes that since AIAM's argument cites the specific language of section 210, the agency will respond in the context of that language (while recognizing that language has since been superseded in form but not substance). While AIAM may appear at first glance to simply be applying the statutory definitions, the agency believes that there are several problems with AIAM's argument.

First, a more complete quotation of the definition of ''passenger motor vehicle equipment'' cited by AIAM reads as follows: The term ''passenger motor vehicle equipment'' means any system, subassembly, or component *received at the final assembly point* for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser. Since this definition is limited to items received at the final assembly point, neither it, nor a definition of ''foreign content'' incorporating it, can be directly applied to items being received by a supplier for purposes of producing equipment.

Second, the Labeling Act's primary section concerning the determination of the U.S./Canadian origin of equipment, section 210(f)(5), indicates that, in at least some instances, the foreign content of passenger motor vehicle equipment is determined by subtracting the value of the *foreign material* in that equipment. That section read as follows:

> The terms ''originated in the United States and Canada,'' and ''of U.S./Canadian origin,'' in referring to automobile equipment, means—
>
> (A) for outside suppliers, the purchase price of automotive equipment which contains at least 70 percent value added in the United States and Canada; and
>
> (B) for allied suppliers, the manufacturer shall determine the foreign content of any passenger motor vehicle equipment supplied by the allied supplier by adding up the purchase price of all foreign material purchased from outside suppliers that comprise the individual passenger motor vehicle equipment and subtracting such purchase price from the total purchase price of such equipment. Determination of foreign or U.S./Canadian origin from outside suppliers will be consistent with subparagraph (A).

This section's reference to determining the foreign content of passenger motor vehicle equipment by subtracting the value of the foreign material in that equipment applies to equipment supplied by allied suppliers rather than equipment supplied by outside suppliers, the focus of AIAM's comment. It is significant, however, that the section uses the term ''foreign content'' differently from AIAM's reading of section 210's definition of ''foreign content.''

Third, AIAM's argument begs the ultimate question of how suppliers are to determine the U.S./Canada value added for their equipment. That organization asserts that ''only incorporated foreign passenger motor vehicle equipment, not foreign raw material, is to be treated as foreign content.'' However, first-tier suppliers rarely use raw materials in producing passenger motor vehicle equipment. AIAM's argument leaves unanswered the question of how a supplier determines whether, and the extent to which, the so-called ''passenger motor vehicle equipment'' which it uses to produce passenger motor vehicle equipment is foreign.

For the reasons discussed above, NHTSA does not accept AIAM's argument that tracing back to raw materials is contrary to the Labeling Act. The agency notes that Act's definition of ''value added in the United States and Canada'' makes it clear that, in making that calculation, the purchase price of ''foreign content'' is to be subtracted. As indicated above, the Labeling Act defines ''foreign content'' as meaning passenger motor vehicle equipment not determined to be U.S./Canadian origin. In applying this provision in the context of suppliers determining whether an item they receive to produce passenger

motor vehicle equipment is foreign, the agency believes that the best reading of the provision is that the cost of the item is considered foreign to whatever extent part or all of the cost is not determined to represent value added in the United States or Canada. Since value is added to items at many stages, it is appropriate, in determining the extent to which an item represents value added in the United States or Canada, to take into account the location where value is added in the various stages.

NHTSA also does not accept AIAM's argument that the tracing provision was outside the scope of notice of the NPRM. The NPRM clearly put at issue the subject of how suppliers are to make determinations of U.S./Canadian content. While the NPRM did not mention tracing as such, the inclusion of the provision in the final rule is a logical outgrowth of the proposal.

NHTSA now turns to the other issues raised by the petitioners concerning the tracing provision. These issues relate to the accuracy of the information that will result from that provision and the difficulties associated with tracing.

AAMA expressed concern that suppliers may avoid the costly process of tracing simply by defaulting U.S./Canadian content to zero, with the result that U.S./Canadian content will be understated. That organization added that even if a supplier chooses to trace, it will be difficult and costly for sub-suppliers to certify the actual U.S./Canadian value added. AAMA stated that sub-suppliers may not maintain the required financial inventory records, and that if actual data are not available, the rule would require these suppliers to default their material content to foreign.

AAMA also noted that the Labeling Act requires that a foreign country providing at least 15 percent of a vehicle's content must be identified. That organization stated that the final rule does not address how ''default-to-foreign content'' would be allocated to a foreign country or how that foreign country would be identified.

Based on the above arguments, AAMA expressed concern that, under the final rule, Labeling Act data may be subject to significant variability depending on the response and efforts of the manufacturer's suppliers. It recommended that first-tier suppliers be allowed to base the determination of value added in the U.S./Canada on the country-of-origin markings on the materials it purchases, the first-tier supplier's knowledge of the second-tier supplier's processes and the rule of substantial transformation, or if the material is identified as U.S. or Canadian using any other methodology that is used for customs purposes (U.S. or foreign), so long as a consistent methodology is employed for all items of equipment.

As indicated above, the FY 1995 Conference Report on DOT Appropriations stated that the tracing provision, among others, will not ensure that the most accurate, understandable, and cost-effective information is provided to consumers, and directed NHTSA to amend the final rule to permit first-tier suppliers to use other methods, such as country-of-origin marking, substantial transformation, or other customs data in their records, to determine the U.S./Canadian content of equipment.

In addition to the arguments AIAM made with respect to agency authority to specify a tracing provision, that organization also argued that the tracing provision is inconsistent with the Congressionally stated purpose to provide the best and most understandable information possible without imposing costly and unnecessary burdens on the manufacturers. The Kentucky Cabinet expressed concern that companies will be required to undergo expensive and time-consuming efforts to trace a part back to raw materials and that, in some cases, a second tier supplier may not want to divulge proprietary information.

NHTSA has carefully considered the arguments of all of the petitioners, as well as the Congressional report. The agency shares the concern about the possibility that suppliers may choose to avoid the costly process of tracing simply by defaulting the U.S./Canadian content of materials to zero, with the result that U.S./Canadian content will be understated. The agency also shares the concern that actual tracing may be overly burdensome in some instances.

As discussed below, in light of these concerns, NHTSA has decided to amend the clarifying procedures to (1) make it clear that, for materials used by suppliers in producing passenger motor vehicle equipment (other than for materials imported from third countries), suppliers must make a good faith estimate of the value added in the United States or Canada (to the extent necessary to make required determinations concerning the value added in the U.S./Canada of their passenger motor vehicle equipment), (2) provide suppliers greater flexibility in the information they can use in making these estimates, and (3) reduce the number of stages for which suppliers must consider where value was added, although not to the degree recommended by AAMA.

As indicated above, AAMA urged that first-tier suppliers be allowed to base the determination of value added in the U.S./Canada on the country-of-origin markings on the materials it purchases, the first-tier supplier's knowledge of the second-tier supplier's processes and the rule of substantial transformation, or if the material is identified as U.S. or Canadian using any other methodology that is used for customs purposes (U.S. or foreign), so long as a consistent methodology is employed for all items of equipment. NHTSA believes that a methodology this broad for determining value added in the U.S./Canada would be inconsistent with the Labeling Act's requirement that determinations of U.S./Canadian origin be based on the value added in the U.S./Canada.

NHTSA notes that country of origin determinations for customs purposes do not connote value content. The substantial transformation test is a traditional means of making country of origin determinations for customs purposes. Under this test, an imported good becomes a product of the country where it emerges from a process with a new name, character and use different from that possessed by the good prior to processing. However, application of the test does not indicate any particular level of value content from that country of origin. Therefore, even though the product's country-of-origin might be the United States or Canada, it might have little U.S./Canadian content.

In enacting the Labeling Act, Congress decided, for purposes of making determinations about the U.S./Canada origin of motor vehicle equipment, to specify a value added test rather than substantial transformation. More specifically, Congress decided to require items supplied to vehicle manufacturers or their allied suppliers by outside suppliers to have at least 70 percent value added in the U.S./Canada in order to be considered U.S/Canadian.

NHTSA believes that permitting outside suppliers to use the substantial transformation test for purposes of determining the origin of the materials it uses to produce equipment could allow substantial amounts of foreign content to be converted into the U.S./Canadian content and counted toward the 70 percent threshold. This can be illustrated by a hypothetical situation where a first-tier outside supplier purchases casings from a second-tier supplier to use in producing transmissions. The second-tier supplier, located in the U.S., produces the casings by casting them from imported aluminum. Under AAMA's suggested approach, the entire value of the casings would be considered to be U.S./

Canadian (since the second-tier supplier had performed a substantial transformation) and counted toward the 70 percent threshold, even though the casings were made of imported aluminum. NHTSA observes that just as it agrees with AAMA that $800 of U.S. engine parts should not be converted into foreign content as a result of a regulatory provision intended to provide simplicity, it is equally concerned about the possibility of such a regulatory provision permitting the conversion of a large amount of foreign content into U.S./Canadian content.

A comment on the NPRM signed by Senator Carl Levin and several House members also illustrates how methodologies that permit conversion of substantial foreign content into U.S./Canadian content, for purposes of making country-of-origin determinations for materials suppliers use to produce equipment, could substantially affect the information on the vehicle label.

The comment stated:

> We are writing to urge you to draft American Automobile Labeling Act implementing regulations that reflect the legislation's intent to provide an accurate means of measuring the parts value content of a vehicle.
>
> The trend has been for Japanese transplants to purchase parts assembled in the U.S. by Japanese affiliated parts makers, a high percentage of which are merely assembled here using subcomponents and materials imported from Japan. Nonetheless, they are erroneously counted as U.S. parts for the purposes of calculating U.S. content levels. The Labeling Act was an attempt by Congress to establish a tool to more accurately measure the ''actual'' U.S. and Canadian content of vehicles sold in the U.S. based on the origin of where the parts are made, not where the parts are purchased or assembled. It is our hope that the Labeling Act will achieve this objective by imposing a stringent definition of what is an ''American or Canadian made'' auto part.
>
> Currently, Japanese transplant auto makers claim high levels of U.S. content in their U.S. made vehicles. But they will not provide the necessary data to measure accurately the U.S. content levels of the auto parts used in these vehicles, and thus, it is impossible to verify their claims. After tracing the actual source of parts, a 1992 Economic Strategy Institute study found that the U.S. auto parts used in a 1991 Honda Accord contained ⅔ Japanese content and only ⅓ ''actual'' U.S. content. Even with these low levels of U.S. content, Honda took credit for these parts being totally U.S.-made.
>
> In order to adequately distinguish between parts assembled in the U.S. using imported materials and parts made in the U.S. using U.S. materials, the Labeling Act must include tracing requirements similar to the tracing requirements in the NAFTA rule of origin, with the exception that Mexican parts would not be included as U.S. or Canadian. Tracing should be used to determine if suppliers can be designated as North America (U.S. or Canadian)—if they achieve the 70% North American content value—as well as to determine the country of origin for the engine and transmission. For example, if tracing were required, an engine or transmission that contains 75% Japanese content but is assembled in the U.S. would be correctly found to be primarily of Japanese origin, not of U.S. origin.

NHTSA has also concluded that the concerns identified by the petitioners for reconsideration and the Congressional report can be adequately addressed by making other changes in the procedures for determining value added in the U.S./Canada.

First, the agency is specifying in the regulation that, for materials used by suppliers in producing passenger motor vehicle equipment (other than for materials imported from third countries), suppliers must make a good faith estimate of the value added in the United States or Canada (to the extent necessary to make required determinations concerning the value added in the U.S./Canada of their passenger motor vehicle equipment). Thus, suppliers are not permitted to simply default the U.S./Canadian value of the materials they use to zero, since that would not represent a good faith estimate.

Second, NHTSA is providing greater flexibility to suppliers concerning the information they may use to make their good-faith estimates. Rather than specifying tracing as such, the regulation will permit suppliers to base their estimate on all information that is available to the supplier, e.g., information in its records, information it can obtain from its suppliers, the supplier's knowledge of manufacturing processes, etc.

Third, NHTSA has concluded that it can reduce the number of stages for which suppliers must consider where value was added, although not to the degree recommended by AAMA. As indicated above, the basic problem with adopting AAMA's specific recommendation is that it would permit large amounts of foreign content to be transformed into U.S./Canadian content and counted toward the 70 percent threshold. The agency believes that this possibility can be substantially reduced or eliminated by adopting an approach that requires a supplier to consider, for materials it uses which were produced or assembled in the U.S. or Canada, where value was added at each stage back to and including the two closest stages which represented a substantial processing operation into a new and different product with a different name, character and use, rather than all the way back to raw materials.

NHTSA is adopting the following provision concerning how outside suppliers are to determine the U.S./Canadian content of materials used by the supplier which are produced or assembled in the U.S./Canada:

> (A)(*1*) For any material used by the supplier which was produced or assembled in the U.S. or Canada, the supplier will subtract from the total value of the material any value that was not added in the U.S. and/or Canada. The determination of the value that was not added in the U.S. and/or Canada shall be a good faith estimate based on information that is available to the supplier, e.g., information in its records, information it can obtain from its suppliers, the supplier's knowledge of manufacturing processes, etc.
>
> (*2*) The supplier shall consider the amount of value added and the location in which that value was added—
>
> (*i*) At each earlier stage, counting from the time of receipt of a material by the supplier, back to and including the two closest stages each of which represented a substantial transformation into a new and different product with a different name, character and use.
>
> (*ii*) The value of materials used to produce a product in the earliest of these two substantial transformation stages shall be treated as value added in the country in which that stage occurred.

This approach can be illustrated by returning to the hypothetical situation involving a first-tier supplier of transmissions which purchases aluminum casings from a second-tier supplier located in the United States. Under the July 1994 final rule, the first-tier supplier could count the full value of the aluminum in those casings as U.S./Canadian content only if it traced the aluminum back to raw materials, i.e., back to bauxite, and found the bauxite to be of U.S. or Canadian origin.

Under today's amendments, the first-tier supplier need only consider where value was added back through two stages, i.e., the casting of the casing and the production of the aluminum. The second-tier supplier, with which the first-tier supplier directly deals, will have information on both of these stages, i.e., it will know about its own casting operations and it will know the source of the aluminum it uses for the casting.

If the casing was cast in the U.S. using aluminum made in the U.S. or Canada, the full value of the casing would be counted as U.S./Canadian content for purposes of determining whether the 70 percent threshold were met. If the casing was cast in the U.S. using imported aluminum, the value of the imported aluminum would have to be subtracted from the value of the casing

in determining the amount that could be counted as U.S./Canadian content.

It would not be necessary, under those two circumstances, for the supplier to attempt to determine the origin of the bauxite used to produce the aluminum. For example, if the aluminum were produced in U.S. or Canada, the value of the materials used to make it would be treated as value added in the country where the aluminum was produced. The agency believes that the value of a material this many stages back is likely to be so small as not to affect labeling information. Moreover, it would be much more difficult to obtain information for a still earlier stage (before the aluminum production), since it would likely require contacting parties with which the first-tier supplier does not ordinarily have privity or any other connection.

NHTSA notes that this approach for the materials used by suppliers is similar to the double substantial transformation test specified by customs for determining foreign value content. As indicated above, country of origin determinations for customs purposes do not connote value content. However, there are a number of programs where certain determinations of value must be made. The full value of imported materials is counted toward the full value of the good for purposes of programs such as the Generalized Systems of Preferences, the Caribbean Basin Economic Recovery Act, etc., only when the imported materials undergo what is known in customs law as a ''double substantial transformation.'' Under this standard, foreign materials can be considered ''materials produced in the beneficiary country'' when those materials are substantially transformed in that country into a new or different article of commerce which is then used in the production or manufacture of yet another new or different article (the final product). For a further discussion of this concept, see Treasury Decision 88–17, 53 FR 12143, April 13, 1988.

Particularly given the changes discussed in this section, NHTSA believes that the requirement for suppliers to make content determinations will not be burdensome. The agency notes again that the Labeling Act does not require outside suppliers to provide specific estimates of the U.S./Canada value added of their equipment, but instead only requires them to indicate whether the U.S./Canada value added is at least 70 percent.

NHTSA notes that AAMA indicated that a typical item of motor vehicle equipment represents 59 percent value added by the first-tier supplier and 41 percent purchased material. In order to determine in such an instance whether the 70 percent threshold is satisfied, a U.S./Canada outside first—tier supplier of transmissions would only need to determine whether enough of the 41 percent material cost (i.e., the cost of the casings and other transmission parts) represented value added in the U.S./Canada so as to raise the 59 percent figure for the transmissions to at least 70 percent. The agency notes that, assuming the same 59:41 ratio for value added to material cost for second-tier suppliers, about 83 percent (59 percent + (59 percent)(41 percent)) of the total value added of the transmissions would typically represent value added by the transmission supplier itself or the second-tier suppliers from which it purchases materials. Moreover, the second-tier suppliers will know the source of the materials they use.

As discussed above, the first-tier supplier is not limited to basing its estimates on actual tracing, but may instead consider all available information. To the extent that the value added in the U.S./Canada of motor vehicle equipment is well above or well below 70 percent, it will be easy for suppliers to make the required determination. The most difficult determinations will be for equipment whose value added in the U.S./Canada is close to 70 percent. To the extent that the reasonably available information to the supplier indicates that the U.S./Canada value added is near 70 percent, the supplier will simply have to make its best good-faith judgment whether it is ''at least'' 70 percent.

NHTSA believes that the revised clarifying procedures will, in addition to providing appropriate additional flexibility to suppliers, result in more accurate information being provided to consumers. Full tracing back to raw materials may often be impossible, and, for materials made in the U.S./Canada which are used by suppliers located in the U.S./Canada to make their motor vehicle equipment, the agency believes that good faith estimates by the suppliers of the U.S./Canada value added will be more accurate than a procedure which specifies that any untraced portions of the materials be considered foreign. The agency believes that the concerns expressed by Senator Levin and others in the Congressional comment on the NPRM will be adequately addressed by requiring the suppliers' estimates to reflect consideration of where value was added at each stage back to and including the two closest stages which represented a substantial processing operation into a new and different product with a different name, character and use.

2. Non-Responsive Suppliers

NHTSA included a provision in the final rule which specifies that if a manufacturer or allied supplier does not receive information from one or more of its suppliers concerning the U.S./Canadian content of particular equipment, the U.S./Canadian content of that equipment is considered zero. The agency stated that it does not believe that this situation will occur very often, and that the provision will ensure that U.S./Canadian content is not overstated as a result of the manufacturer or allied supplier simply assuming that equipment is of U.S./Canadian origin in the absence of information from the supplier.

AAMA argued that the agency's expectation that few suppliers will fail to report is unreasonable, especially within the first few years of implementation. That organization stated that, for a comparison, one of its members' requests for data from suppliers for NAFTA certificates of origin has yielded a response rate of 50 to 60 percent. (In later information provided to the agency, AAMA indicated that the percentage of suppliers reporting under NAFTA ranged from 60 to 65 percent for GM, Ford and Chrysler.)

AAMA argued that the content information ultimately provided to consumers will be more accurate if manufacturers are permitted to establish the U.S./Canadian content of components by other means when a supplier fails to respond. That organization recommended that if a manufacturer or allied supplier does not receive a response to its request for information, the manufacturer or allied supplier should be permitted to use the information in its records to determine the U.S. and Canadian content. The determination could be made by such means as examining the customs marking country, applying the substantial transformation test, or other methodologies used for customs purposes.

As indicated above, the FY 1995 Conference Report on DOT Appropriations stated that this provision of the final rule, among others, will not ensure that the most accurate, understandable, and cost-effective information is provided to consumers, and directed NHTSA to amend the final rule to permit manufacturers and allied suppliers to use other methods to determine U.S./Canadian content of equipment when suppliers fail to provide adequate information.

NHTSA has carefully considered AAMA's request and the Congressional report. As discussed below, the agency has concluded that it would be inappropriate under the statute to make the requested change. However, the agency believes that its one-year extension of the temporary alternative approach for data collection and calculations will provide appropriate flexibility in this area.

As discussed above, the Labeling Act provides that passenger motor vehicle equipment supplied by outside suppliers is considered U.S./Canadian if at least 70 percent of its value is added in the U.S./Canada. See 49 U.S.C. 32304(a)(9). The Labeling Act also provides that outside suppliers are required to certify, among other things, whether their equipment is of U.S./Canadian origin.

While it might appear at first glance to be reasonable to permit manufacturers and allied suppliers to make origin determinations concerning equipment provided by an outside supplier in the event that the outside supplier fails to do so, the problem is that the manufacturers and allied suppliers will not possess the information needed to make the required determination. The agency assumes that this is why AAMA suggests that manufacturers and allied suppliers be permitted to determine whether equipment is U.S./Canadian based on methods other than the value added approach specified in the statute. However, the results that would be obtained from those other methods would not necessarily be consistent with the value added approach.

NHTSA also notes that the most likely instance in which an outside supplier would not want to provide the required information is when the U.S./Canadian content was below 70 percent. In such an instance, it would be particularly inappropriate to permit the manufacturer to use alternative methods for determining whether the equipment was U.S./Canadian.

Moreover, the agency believes that vehicle manufacturers can obtain the required information from suppliers, assuming that the manufacturers and suppliers have the time to make any necessary arrangements. Apart from the fact that outside suppliers are required by Federal law to provide the information to manufacturers and allied suppliers, the outside suppliers are dependent on the auto manufacturers for their business. While NHTSA understands that there may be some confusion at the time a new program is first implemented, it does not believe that suppliers will deliberately refuse to provide the information in response to manufacturers' and allied suppliers' requests. The agency notes that the manufacturers can put specific provisions in their purchase agreements to ensure that they receive the required information.

In its March 1995 initial response to petitions, NHTSA extended by one year the temporary alternative approach for data collection and calculations which permits manufacturers and suppliers to use procedures that are expected to yield similar results. For a more complete discussion of this alternative, see 59 FR 37324–25, July 21, 1994.

The extension of this temporary alternative gives an extra year for manufacturers and suppliers to work out any arrangements that are necessary to ensure that suppliers provide the necessary information to manufacturers. The agency believes that this should provide appropriate flexibility in light of AAMA's concerns.

C. Procedure for Determining Major Foreign Sources of Passenger Motor Vehicle Equipment (Section 583.7)

As part of the procedure for determining major foreign sources of passenger motor vehicle equipment, NHTSA included a provision to prevent the possibility that the specified U.S./Canadian content and major foreign sources of foreign content for a carline will together exceed 100 percent. The agency was concerned that, due to differences in calculation methods for U.S./Canadian and foreign content, it would otherwise be possible for the sum of the U.S./Canadian and foreign label values of a carline to be over 100 percent, which could cause confusion for consumers. The agency decided to simply specify that if the U.S./Canada and major foreign source percentages add up to more than 100 percent, the foreign source percentages are proportionately reduced to the extent necessary to bring the percentages down to 100 percent.

AIAM stated that there are a number of serious problems raised by this provision, all involving the central question of the agency's authority to take this step. That organization made the following argument:

> As NHTSA implicitly acknowledges, the statute does not provide authority for such an arbitrary reduction, yet elsewhere in the preamble the Agency has argued that it is strictly bound by the language of the statute, (*see e.g.*, the Agency's discussion on the authority to exclude vehicles with low or high U.S./Canadian content . . .). The Agency has not identified what specific authority the statute affords NHTSA to reduce that number to 100 percent. The excuse the Agency relies upon—that ''such a procedure would necessarily be very complicated, given certain aspects of the procedure for determining U.S./Canadian content'' . . . has, in an analogous situation, been found wanting by NHTSA for giving relief to companies with little U.S. content and who for the sake of ''simplicity'' would agree to claim essentially all foreign content by merely indicating on the label that the U.S. content fell below a specified level. The Agency has refused to grant such a common sense exclusion because ''NHTSA has concluded that it does not have the authority to provide exclusions.'' * * *
>
> A second problem is the absence of any basis in the statute for the Agency's assertion (or justification) that U.S./Canadian percentage ''is the more important of the two items of information for consumers.'' . . . Again, we are unable to find in the language of the statute such a prioritization of the information. Accordingly, AIAM asks the Agency to amend the Rule by deleting § 583.7 to require the use of the percentages as calculated in accordance with the terms of the statute regardless of what the total might be.

NHTSA disagrees with the petitioner's suggestion that the agency lacks authority in this area. Section 32304(e) expressly provides that the agency is to prescribe regulations to carry out [the Labeling Act].

Moreover, AIAM draws an incorrect analogy in comparing this issue with that of whether the agency has authority to exclude vehicles with high or low U.S./Canadian content from certain statutory provisions. In the latter case, the relevant issue was whether the agency could create, by rule, exclusions from express statutory requirements. The provision concerning reducing foreign source percentages does not represent an exclusion from a statutory requirement but instead is simply part of the procedure for determining foreign source percentages.

Rather than representing a departure from the statutory requirements, the provision AIAM objects to was intended to ensure that the statutory provisions concerning determination of U.S./Canadian content are not effectively diluted. NHTSA explained in the final rule preamble that while the method for determining the U.S./Canada percentage is explicitly set forth in the statute, the methodology for determining major foreign source percentages is not in the statute. The agency also explained that since the statute provides a specific methodology for determining the U.S./Canada percentage, ''the § 583.7 procedures have the limited purpose of providing a method for calculating the extent to which the *remaining* percentage is attributable to foreign countries which individually contribute at least 15 percent of the parts content,

and the specific percentage attributable to each such foreign country.''

In the absence of a specific statutory procedure, NHTSA decided to provide wide flexibility concerning how manufacturers are to determine country of origin for purposes of major foreign source percentages. This was for the purpose of minimizing regulatory burdens on manufacturers and suppliers. At the same time, the procedure must not be so flexible that it interferes with other aspects of the statutory scheme. Permitting manufacturers to identify the U.S./Canadian content and major sources of foreign content for a carline as exceeding 100 percent would both confuse consumers and dilute the meaning of U.S./Canadian content as determined under the more specific statutory procedures. NHTSA therefore believes that, far from being arbitrary or inconsistent with the statute, the provision at issue was a reasonable limitation on how major foreign source percentages are determined.

On reconsideration, however, NHTSA has considered whether there may be a better way of addressing this potential problem. The agency notes that the only significant way [4] that U.S./Canadian content and major sources of foreign content can exceed 100 percent is if there is double-counting, i.e., the same value is considered to be both U.S./Canadian *and* foreign. Such double-counting would be inconsistent with the statute, which specifies that foreign content means passenger motor vehicle equipment that is not of United States/Canadian origin.

The agency has considered the extent to which such double-counting might occur under Part 583, absent the provision about reducing foreign percentages.

Double-counting would not occur for equipment supplied by outside suppliers. Such equipment is considered 100 percent U.S./Canadian if 70 percent or more of its value is added in the U.S. and/or Canada and 0 percent U.S/Canadian if less than 70 percent of its value is added in the U.S. and/or Canada. Moreover, the outside supplier is only to provide a country of origin, for purposes of major sources of foreign content, for equipment which has less than 70 percent of its value added in the U.S. and/or Canada. See section 583.10(a)(5).

[4] The U.S./Canadian content and major sources of foreign content could also potentially exceed 100 percent as a result of the vehicle manufacturer rounding the percentages to the nearest five percent, as permitted by the statute. However, this result does not appear likely.

NHTSA believes that Part 583 is not so clear with respect to possible double-counting for equipment supplied by allied suppliers. Under section 583.11, allied suppliers are to provide a specific percentage U.S./Canadian content for their equipment, as well as a country of origin for purposes of major sources of foreign content. A manufacturer might believe that it should count the actual U.S./Canadian content of such equipment for purposes of determining U.S./Canadian parts content, and the total value of such equipment for purposes of determining major sources of foreign content. This would, of course, result in double-counting. The agency has decided to replace the provision about reducing foreign percentages with one that makes it clear that, in calculating major sources of foreign content, manufacturers are not to count any value that has been counted as U.S./Canadian content.

D. Alternative Procedures for Manufacturers

In the final rule preamble, NHTSA addressed comments by a number of manufacturers urging it to permit simplified procedures for estimating U.S./Canadian content. GM, for example, had recommended the use of a high volume configuration model as the basis for establishing the U.S./Canadian content value for a carline.

NHTSA stated that it does not disagree with the concept of permitting simplified procedures for estimating U.S./Canadian content, if such procedures would always ensure reliable results. The agency concluded, however, that the procedures which were suggested by the commenters, which were based on either a high volume configuration or best selling model, would not appear to always ensure meaningful results. By way of example, the agency cited a situation where the high volume configuration or best selling model of a carline was produced in the U.S./Canada and the rest of the carline was produced in a foreign country. NHTSA noted that content calculations based on the portion of the carline assembled in the U.S./Canada would likely not be representative of the carline as a whole.

In petitioning for reconsideration, GM noted the agency's concern that alternative procedures must always produce reliable results, and requested that alternative, simplified procedures be permitted if the Administrator determines that the procedures produce substantially equivalent results. That manufacturer also stated that an optional procedure can be designed to take care of the problem in the example cited by the agency.

GM noted the Labeling Act's provision stating that regulations are to provide the best and most understandable information possible without imposing costly and unnecessary burdens on manufacturers. That company argued that the agency has chosen as the only allowed method of determining U.S./Canadian content the most burdensome and costly procedure possible. GM explained an optional calculation procedure as follows:

> When attempting to average a very large number of values when all of the values themselves are not known, certain well accepted and reasonable approximation procedures can be employed to reduce the amount of data gathering required to calculate with an acceptable level of confidence. In other words, a great deal of the burden can be reduced while maintaining reliable and equivalent test results. Such procedures are accepted by the Commerce Department under North American Free Trade Agreement and by the Environmental Protection Agency in determining whether vehicles are in the manufacturer's domestic or foreign fleet for Corporate Average Fuel Economy (CAFE) purposes. Also such a procedure is used when determining a manufacturer's CAFE. * * * As with any volume-weighted calculation, only that data associated with high volumes will significantly impact the final calculation. Any further data collecting would add significant burden and provide diminishing returns on the accuracy of the calculated average.
>
> GM believes that NHTSA should accept optional calculation methods as an accurate measure of the average percent of U.S./Canadian content. This will dramatically reduce the content data gathering burden while still maintaining a level of accuracy and reliability required by the AALA in the average content value calculation for the carline.

The FY 1995 Conference Report on DOT Appropriations stated that to ensure that the final rule does not impose costly and unnecessary burdens on manufacturers, the conferees also direct NHTSA to amend the rule to allow manufacturers to propose alternative procedures for determining domestic content if such procedure produces reliable results.

After considering GM's petition and the Congressional report, NHTSA has decided to add a provision along the lines suggested by GM. The agency wishes to reduce manufacturer and supplier costs to the extent possible, and the agency believes that the process recommended by GM is consistent with the agency's concern that alternative procedures must always ensure meaningful results.

NHTSA notes that GM suggested adding a single sentence to the regulation indicating that manufacturers may use alternative procedures to determine U.S./Canadian parts content provided the Administrator has determined that the alternative procedure will produce substantially equivalent results. The agency believes that it is also necessary for the regulation to specify the type of alternative procedures that manufacturers can petition for, and a more detailed procedure for manufacturers to follow in submitting petitions.

NHTSA is specifying that manufacturers may petition for an alternative calculation procedure that is based on representative sampling and/or statistical sampling. The agency notes that GM's request to use an optional calculation procedure was in the context of a representative sampling approach, such as the one used by EPA for calculating CAFE.

EPA's procedures provide that a manufacturer's CAFE is calculated based on testing a limited number of vehicles. Because EPA's procedures ensure that the tested vehicles are representative, with respect to fuel economy, of the manufacturer's fleet, the procedures result in a calculated average representative of the manufacturer's actual fleet average. (A manufacturer's actual fleet average would be the average fuel economy that would be measured using the prescribed test procedures if every car produced were actually tested.)

NHTSA believes it is appropriate to similarly permit manufacturers to use a calculation procedure for the motor vehicle content labeling program that is based on vehicles that are representative, with respect to content, for the carline. The agency recognized in the preamble to the July 1994 final rule that a particular high volume configuration carline model might not be representative, with respect to content, of the overall carline. However, the agency believes that the petition process recommended by GM will ensure that manufacturers select vehicles that are representative.

The agency also believes it is appropriate to permit manufacturers to petition for alternative calculation procedures that are based on statistical sampling. NHTSA notes that EPA, in developing its calculation procedures, considered statistical sampling approaches as well as representative sampling. That agency decided not to adopt a statistical sampling approach because it would have been much more costly than representative sampling, due to a need to test more vehicles. The motor vehicle content labeling program does not, of course, involve costly testing. Moreover, a statistical sampling approach would likely be less costly than the main approach specified by Part 583 and might, in some cases, be easier for manufacturers to implement than a representative approach. Therefore, NHTSA believes that statistical sampling, as well as representative sampling, should be included as an option for which manufacturers may petition. (For a further discussion of EPA's consideration of representative and statistical sampling approaches, see 41 FR 38677–79, September 10, 1976.)

The procedures specified in today's amendments require manufacturers to provide analysis demonstrating that the alternative procedure will produce substantially equivalent results. If the Administrator determines that the petition contains adequate justification, he or she will grant the petition.

The procedures also provide that the agency will publish a notice of receipt of the petition and provide an opportunity for the public to submit comments on the petition. The Administrator will consider the public comments in deciding whether to grant the petition. While a manufacturer may submit confidential business information in support of a petition, the basic alternative procedure and supporting analysis must be public information.

NHTSA notes that it is possible that alternative procedures may raise issues which require complex analysis. The agency is therefore including a provision in the regulation which specifies that petitions must be submitted not later than 120 days before the manufacturer wishes to use the procedure.

While GM's petition requested that manufacturers be permitted to petition for alternative procedures for calculating carline U.S./Canadian content, the agency is also making this option available for calculating major sources of foreign parts content. The latter calculations are also made on a carline basis, and the same considerations relevant to this issue apply to calculations for both items.

E. Legal Issues

1. Federal Preemption

AIAM stated that NHTSA did not respond to the concerns it raised in its comment on the NPRM about the possibility of actions taken against automotive manufacturers by state or local authorities as a result of the differential treatment of suppliers or what AIAM termed ''the misleading nature of the information required by the underlying statute or compliance with the final rule.'' That organization argued that the label could foster consumer confusion and requested that NHTSA provide an express statement of Federal preemption of any state or local action initiated as a result of providing the required information on the label in accordance with the rule.

NHTSA wishes to emphasize that, while it will respond to the issue of Federal preemption raised by AIAM, the agency is not accepting the petitioner's argument that the underlying statute or regulation results in misleading information or consumer confusion.

It is a basic principle of Constitutional law that Federal law, including agency regulations, can preempt state law. Section 32304(f) expressly provides that ''(w)hen a label content requirement prescribed under this section is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to the content of vehicles covered by a requirement under this section,'' although a state may prescribe requirements related to the content of passenger motor vehicles obtained for its own use. Moreover, Federal law impliedly preempts state law when, among other things, it is impossible to comply with both. In this context, ''state law'' includes the state's common law, as established through litigation.

Given these principles, and since manufacturers are required to comply with section 32304 and with Part 583, no person may bring an action under state or local law seeking to impose liability against a manufacturer on the basis that it provided information required by Federal law. This result follows from Constitutional law, and it is not necessary to put a specific provision to that effect in the regulation.

2. Due Process

AIADA submitted a very brief petition requesting that the agency ''reconsider and vacate its final rule on Motor Vehicle Content Labeling.'' As grounds for its request, it stated that ''(t)he rule is unconstitutionally vague and unequal and discriminatory in its application and therefore constitutes a denial of due process in violation of the Fifth Amendment to the United States Constitution and the Administrative Procedure Act.'' The petitioner also cited ''(a)l the reasons set forth in AIADA's letters * * * dated January 11, 1992 and January 18, 1994.''

NHTSA cannot grant AIADA's request. The agency notes that it cannot

simply ''vacate'' the content labeling final rule, since the rule is required by section 32304. NHTSA also notes that AIADA's stated concern about ''due process'' is so vague that it is not possible to identify what specific concerns about the final rule it might relate to. While the petition cites that organization's earlier letters, NHTSA has already responded to those issues in previous **Federal Register** notices, including the final rule preamble. AIADA did not discuss why it is unsatisfied with the agency's responses or even acknowledge the responses. Therefore, there is no basis for the agency to give any further consideration to AIADA's petition.

3. Authority to Exclude Vehicles With Low U.S./Canadian Content

VW requested the agency to reconsider its determination that it lacks authority to permit manufacturers selling vehicles with low U.S./Canadian content, e.g., less than 35 percent, from stating such content as ''minimal'' or ''less than 35 percent,'' instead of indicating an actual percentage, as specified in the statute. That company made the following argument:

> The NHTSA acknowledges that it has implied authority to create exclusions from the statutory requirements of the [Labeling Act] in cases of administrative need and where a literal application of the statutory language would lead to absurd or futile results or produces a gain of trivial value or of no value at all. The NHTSA concluded, however, that all manufacturers have the capability of implementing the statutory language literally and that disclosure on the label of the actual U.S./Canadian parts content percentage per carline offers a benefit to the consumer which is more than trivial. We disagree.
>
> While one may argue over whether or not disclosure of the actual percentage in the case of a carline with marginal U.S./Canadian parts content bestows more than trivial benefits on the public when compared with a disclosure of that content as ''minimal,'' we note that the Federal Court of Appeals in the case of *Alabama Power Company* v. *Costle,* 636 F.2d 323 (1979) did not view the ''trivial'' standard to be relevant to a situation where the benefits are exceeded by the costs associated with providing those benefits. The court stated that in that event, the Agency should be guided by the aims of the statute it is implementing and the Congressional intent as expressed in the statute's legislative history.
>
> In the case before us there appears to be no need to explore the legislative history because the statute is plain on its face in providing in section 210(d) that ''the regulations shall provide to the ultimate purchaser of a new passenger motor vehicle the best and most understandable information possible about the foreign and U.S./Canadian origin of equipment of such vehicles *without imposing costly and unnecessary burdens on the manufacturers.*'' (Emphasis supplied by VW)
>
> VW submits that the statute is clear in directing the NHTSA to strike a balance between communicating to the public ''the best and most understandable information possible'' and the ''cost'' and ''necessity'' of burdening the manufacturer. We believe that the NHTSA erred in striking the correct balance between these competing considerations as Congress directed it to do.

VW noted that it imports vehicles from both Germany and Mexico. It stated that the German vehicles are estimated to have a small fraction of U.S./Canadian parts content which could not reasonably be relevant to a U.S. consumer's purchasing decision. That company stated that while its Mexican vehicles are likely to have a greater U.S./Canadian parts content, that content is not sufficient to permit the conclusion that disclosure of the actual percentage would not be dictated by a correct balancing of the factors described in section 210(d). VW argued that its vehicles originating in Mexico are largely manufactured with equipment originating in Europe and Mexico, are marketed and perceived by the U.S. market as foreign made, and are purchased because they are unlike any other offerings to the market by the transplants or the domestic manufacturers.

VW also estimated that the assignment of a staff of five full time employees at a total cost of approximately $500,000 annually will be necessary at its various manufacturer locations to comply with the regulations as adopted, and that $150,000 of that amount is attributable to those portions of the regulation which require the calculation and disclosure of actual percentage figures rather than estimates designed to determine whether or not a particular carline has U.S./Canadian parts content below a range of about 20 percent to 35 percent.

VW argued that the Labeling Act is very specific in directing NHTSA to take costs into account in determining the form and content of the information which the manufacturer must disclose. That company argued that this directive is specific rather than general in nature and that it leaves no room for debate irrespective of whether or not the benefit to the public is trivial or non-trivial.

While NHTSA has carefully considered VW's arguments, it continues to believe that it lacks authority to provide exclusions, along the lines discussed above, for vehicles with low U.S./Canadian content. As discussed below, the agency believes that VW is incorrectly interpreting one sentence in section 210(d) (now replaced by 49 U.S.C. 32304(e)) as overriding more specific statutory provisions.

Since VW based its argument in part on the case of *Alabama Power Co.*, the agency will begin its analysis by quoting the relevant portion of that case:

> *Exemptions for De Minimis Circumstances.* Categorical exemptions may also be permissible as an exercise of agency power, inherent in most statutory schemes, to overlook circumstances that in context may fairly be considered *de minimis.* . . .
>
> Determination of when matters are truly *de minimis* naturally will turn on the assessment of particular circumstances, and the agency will bear the burden of making the required showing. But we think most regulatory statutes . . . permit such agency showings in appropriate cases.
>
> While the difference is one of degree, the difference of degree is an important one. Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value. That implied authority is not available for a situation where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs. For such a situation any implied authority to make cost-benefit decisions must be based not on a general doctrine but on a fair reading of the specific statute, its aims and legislative history. . . . 636 F.2d at 360–61.

In the final rule preamble, NHTSA explained that an exclusion cannot be justified on the *de minimis* theory if non-trivial benefits would otherwise be provided. The agency concluded that it does not have authority to provide the relevant exclusion for vehicles with low U.S./Canadian content because such an exclusion would permit the labels on a substantial portion of the vehicles sold to provide the consumer with significantly less information than Congress intended, thereby eliminating much of the benefit that the Labeling Act was intended to provide.

The agency added:

> For example, a ''low-end'' exclusion would permit a large percentage of foreign vehicles to be labeled with the words ''minimal'' or less than 35 percent (or some other specified percentage) U.S./Canadian content, instead of being labeled with a specific percentage. Consumers would not know whether vehicles bearing such labels contained (on a carline basis) 0 percent, about 15 percent, or possibly even nearly 35 percent U.S./Canadian content. A consumer wishing to make a purchase decision among vehicles bearing such labels would not be able to compare their U.S./Canadian content. . . .
>
> NHTSA notes that section 210(b)(2) allows rounding of the percentages, but limits the

rounding ''to the nearest *five percent*.'' This indicates that specific percentages must be listed (since general percentages aren't amenable to rounding) and that any rounding to a greater degree is prohibited. In this regard, it is particularly important to note that the degree of permissible rounding permitted by the enacted version of § 210 is significantly less than the degree that would have been permitted in the introduced version. In the introduced version, rounding would have been permitted to the nearest 10 percent. The enacted version permits rounding only to the nearest 5 percent. Thus, Congress focused particular attention on the issue of rounding and decided to adopt strict limits. Moreover, implicit in the enacted rounding provision is a judgment by Congress that differences in content of as little as five percentage points are significant enough to be considered by the consumer.

The agency continues to believe that the Labeling Act and its legislative history make it clear that requirements which enable consumers to distinguish vehicles with 0 percent, 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, and 35 percent U.S./Canadian content provide non-trivial benefits. While such information may not make a difference to consumers who wish to purchase a vehicle that is primarily of U.S./Canadian origin, the information may be relevant for consumers in making a purchase decision between vehicles with relatively low U.S./Canadian content, e.g., for a consumer who may be deciding between a vehicle with 0 percent U.S./Canadian content and one which has 20 percent U.S./Canadian content.

VW's primary argument on reconsideration is that ''NHTSA did not properly balance the statutory considerations requiring the parts content label to contain 'the best and most understandable information' to the consumer with the cost and administrative burdens imposed upon a manufacturer such as VW, as Congress expressly directed it to do in the form of a clear and precise mandate.'' However, VW is incorrectly reading a general statutory provision as overriding most of the rest of the statute.

Section 32304(e) reads in relevant part as follows:

> (e) REGULATIONS.—. . . The Secretary of Transportation shall prescribe regulations necessary to carry out this section, including regulations establishing a procedure to verify the label information required under subsection (b)(1) of this section. Those regulations shall provide the ultimate purchaser of a new passenger motor vehicle with the best and most understandable information possible about the foreign content and United States/Canadian origin of the equipment of the vehicles without imposing costly and unnecessary burdens on the manufacturers. . . .

VW is reading the second sentence of section 32304(e) outside of context. The first sentence makes it clear that the required regulations are ''to carry out this section.'' The term ''this section'' refers to section 32304, which includes numerous very specific requirements concerning the content information which manufacturers are required to provide. The second sentence is not an invitation for NHTSA to second-guess Congress on all of the specific requirements in section 32304 concerning content information, e.g., whether the information Congress decided to require manufacturers to provide is ''best,'' whether that information is ''most understandable,'' etc. The sentence instead indicates the factors NHTSA must consider in exercising its limited discretion in developing the required regulation. The agency observes that VW's reading of this sentence would reduce virtually all of the specific requirements of section 32304 to suggestions for NHTSA's consideration.

VW argued that the sentence at issue is specific rather than general in nature. That argument was apparently made in response to the agency's statement in the final rule preamble that, as a matter of statutory construction, general provisions cannot be construed as overriding specific ones. NHTSA isn't arguing that it need not follow that sentence. What is significant is that the second sentence of 49 U.S.C. 32304(e) is general as compared to other relevant provisions of the statute.

Of particular significance, section 32304(b) reads as follows:

> (b) MANUFACTURER REQUIREMENT.—(1) Each manufacturer of a new passenger motor vehicle * * * shall establish each year for each model year and cause to be attached in a prominent place on each of those vehicles, at least one label. The label shall contain the following information:
>
> (A) the *percentage* (by value) of passenger motor vehicle equipment of United States/Canadian origin installed on vehicles in the carline to which that vehicle belongs, identified by the words ''U.S./Canadian content.'' (Emphasis added.)

This subsection expressly and specifically requires manufacturers to provide certain information, on the label, including the percentage U.S./Canadian parts content. Following accepted principles of statutory construction, the agency cannot interpret a more general provision as overriding this specific provision.

F. Clarifying Amendments

NHTSA is making several amendments suggested by AAMA for purposes of clarity. The amendments help clarify when the U.S. and Canada are treated together and when they are treated separately in making country of origin determinations. The amendments also help clarify requirements concerning optional information for carlines assembled in the U.S./Canada and in one or more other countries.

G. Letter From Ford

Ford submitted a letter requesting NHTSA's concurrence on a procedure for determining the U.S./Canadian content and country of origin for foreign-sourced allied and outside supplier components. That company explained its request as follows:

> [Part 583] assigns zero domestic content to all passenger motor vehicle equipment which is imported into the territorial boundaries of the United States or Canada from a third country, even if part of its material originated in the United States or Canada. 49 CFR 583.7 allows the supplier to use methodologies that are used for customs purposes to determine the country of origin. Ford expects that for any imported component, both allied and outside, suppliers would report that the domestic content is zero and the country of origin is the country of manufacture, based on the rules of substantial transformation.
>
> Ford can obtain the same information (zero domestic content, country of manufacture, purchase price) expected to be received from our foreign suppliers from our present purchasing systems. Since the process of soliciting the supplier is costly, Ford plans to assign the domestic content and country of origin of the foreign sourced components without soliciting the data from our foreign suppliers. We are concerned that even if Ford did submit the request to foreign suppliers, that suppliers would have to expend additional resources creating a document which Ford already knows the answer. Even if the foreign supplier does not respond, the domestic content and country of origin will not be any different than if they did respond. Ford believes that requiring these suppliers to respond will impose costly and unnecessary burdens on our foreign suppliers.

NHTSA notes that it decided to address Ford's request in this notice, since it was related to some of the issues raised by the petitions for reconsideration.

After carefully considering Ford's request in light of the Labeling Act and Part 583, NHTSA has decided that, for equipment supplied by foreign suppliers and imported into the U.S. or Canada, manufacturers may use any available information to make determinations of zero U.S./Canadian content, country of manufacture, and purchase price, as an alternative to relying on supplier certifications. The agency notes that this represents a change in position from the final rule preamble. The reasons for the agency's new position are set forth below.

In the final rule preamble, NHTSA noted that Toyota had commented that ''blanket certifications'' should be authorized for use where a supplier's parts contain no U.S./Canadian content and where the country of origin of the equipment is indicated in ordinary business records. In responding to this comment, the agency noted that the Labeling Act provides that the agency's ''regulations shall include provisions applicable to outside suppliers and allied suppliers to require those suppliers to certify whether passenger motor vehicle equipment provided by those suppliers is of United States origin, of United States/Canadian origin, or of foreign content and to provide other information * * * necessary to allow each manufacturer to comply reasonably with this section and to rely on that certification and information.'' 49 U.S.C. 32304(e). NHTSA concluded that, given this statutory provision, it cannot permit the use of ordinary business records instead of specific certifications. See 59 FR 37319. (The agency did note that a certification can cover multiple items of equipment and be incorporated into business records that contain other information.)

On further consideration, NHTSA has concluded that the above-quoted sentence of section 32304(e) should not be read to require manufacturers to obtain information from suppliers that the manufacturer can determine on its own. The agency believes that statutory requirement is met literally by section 583's requirement for suppliers to provide manufacturers and allied suppliers, upon their request, a certificate providing the relevant information. The agency also believes that there is no reason to require manufacturers to request information for which they already know the answer.

With respect to whether manufacturers can make the relevant content determinations, NHTSA believes that it is important to distinguish between passenger motor vehicle equipment that is assembled or produced in the U.S. or Canada, and equipment imported into the U.S. or Canada that was produced in third countries. For reasons discussed in the section on ''non-responsive suppliers,'' manufacturers and allied suppliers will not possess the information needed to determine whether equipment produced in the U.S. or Canada is of U.S./Canadian origin, i.e., whether the equipment has at least 70 percent U.S./Canadian content.

However, manufacturers may possess the information necessary to make content determinations for equipment imported into the U.S. or Canada that was produced in third countries. Under section 583.6(c), the U.S./Canadian content of such equipment is presumed to be zero. Moreover, section 583.7 provides considerable flexibility in making country-of-origin determinations for such equipment. Therefore, for equipment supplied by foreign suppliers which is imported into the U.S. or Canada, the agency believes it is reasonable to permit manufacturers to use any available information to make determinations of zero U.S./Canadian content, country of manufacture, and purchase price, as an alternative to relying on supplier certifications. Manufacturers can, of course, request the information of foreign suppliers instead of making their own determinations.

NHTSA does not believe that there is a need to change the regulation to reflect this new position. The agency notes that section 583.5(h) requires manufacturers and allied suppliers to request their suppliers to provide directly to them the information and certifications ''which are necessary for the manufacturer/allied supplier to carry out its responsibilities under [Part 583].'' Thus, manufacturers and allied suppliers are not required to request information which is unnecessary for them to carry out their responsibilities.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed under Executive Order 12866. The July 1994 final rule was determined to be ''significant'' under the Department's regulatory policies and procedures, given the degree of public interest and the relationship to other Federal programs and agencies, particularly those related to international trade. This final rule is sufficiently related to that final rule to also be considered significant.

NHTSA discussed the costs associated with the July 1994 rule in a Final Regulatory Evaluation which was placed in the docket for this rulemaking. Today's amendments should slightly reduce manufacturer and supplier costs by simplifying the process for making content determinations.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Although certain small businesses, such as parts suppliers and some vehicle manufacturers, are affected by the regulation, the effect on them is minor since the requirements are informational.

C. National Environmental Policy Act

The agency has analyzed the environmental impacts of the regulation in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and has concluded that it will not have a significant effect on the quality of the human environment.

D. Executive Order 12612 (Federalism)

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

E. Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this final rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35.

F. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. States are preempted from promulgating laws and regulations contrary to the provisions of the rule. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 583

Motor vehicles, Imports, Labeling, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 583 is amended as follows:

PART 583—AUTOMOBILE PARTS CONTENT LABELING

1. The authority citation for part 583 continues to read as follows:

Authority: 49 U.S.C. 32304, 49 CFR 1.50, 501.2(f).

2. Section 583.5 is amended by revising paragraph (e)(3) to read as follows:

§ 583.5 Label requirements.

* * * * *

(e) * * *

(3) A manufacturer selecting this option for a particular carline shall

provide the specified additional information on the labels of all vehicles within the carline, providing the U.S./Canadian content that corresponds to the U.S./Canadian content of the manufacturing location shown as the final assembly point (with all U.S. and Canadian locations considered as a single assembly point) on the label.

* * * * *

3. Section 583.6 is revised to read as follows:

§ 583.6 Procedure for determining U.S./Canadian parts content.

(a) Each manufacturer, except as specified in § 583.5(f) and (g), shall determine the percentage U.S./Canadian Parts Content for each carline on a model year basis, before the beginning of each model year. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. All value otherwise added at the final assembly point and beyond, including all final assembly costs, are excluded from the calculation of U.S./Canadian parts content.

(b) *Determining the value of items of equipment.*

(1) For items of equipment received at the final assembly point, the value is the price paid by the manufacturer for the equipment as delivered to the final assembly point.

(2) For items of equipment produced at the final assembly point (but not as part of final assembly), the value is the fair market price that a manufacturer of similar size and location would pay a supplier for such equipment.

(3) For items of equipment received at the factory or plant of an allied supplier, the value is the price paid by the allied supplier for the equipment as delivered to its factory or plant.

(c) *Determining the U.S./Canadian percentage of the value of items of equipment.*

(1) Equipment supplied by an outside supplier to a manufacturer or allied supplier is considered:

(i) 100 percent U.S./Canadian, if 70 percent or more of its value is added in the United States and/or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States and/or Canada.

(2) The extent to which an item of equipment supplied by an allied supplier is considered U.S./Canadian is determined by dividing the value added in the United States and/or Canada by the total value of the equipment. The resulting number is multiplied by 100 to determine the percentage U.S./Canadian content of the equipment.

(3) In determining the value added in the United States and/or Canada of equipment supplied by an allied supplier, any equipment that is delivered to the allied supplier by an outside supplier and is incorporated into the allied supplier's equipment, is considered:

(i) 100 percent U.S./Canadian, if at least 70 percent of its value is added in the United States and/or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States and/or Canada.

(4)(i) Value added in the United States and/or Canada by an allied supplier or outside supplier includes—

(A) The value added in the U.S. and/or Canada for materials used by the supplier, determined according to (4)(ii) for outside suppliers and (4)(iii) for allied suppliers, plus,

(B) For passenger motor vehicle equipment assembled or produced in the U.S. or Canada, the value of the difference between the price paid by the manufacturer or allied supplier for the equipment, as delivered to its factory or plant, and the total value of the materials in the equipment.

(ii) Outside suppliers of passenger motor vehicle equipment will determine the value added in the U.S. and/or Canada for materials in the equipment as specified in paragraphs (A) and (B).

(A)(*1*) For any material used by the supplier which was produced or assembled in the U.S. or Canada, the supplier will subtract from the total value of the material any value that was not added in the U.S. and/or Canada. The determination of the value that was not added in the U.S. and/or Canada shall be a good faith estimate based on information that is available to the supplier, e.g., information in its records, information it can obtain from its suppliers, the supplier's knowledge of manufacturing processes, etc.

(*2*) The supplier shall consider the amount of value added and the location in which that value was added—

(*i*) At each earlier stage, counting from the time of receipt of a material by the supplier, back to and including the two closest stages each of which represented a substantial transformation into a new and different product with a different name, character and use.

(*ii*) The value of materials used to produce a product in the earliest of these two substantial transformation stages shall be treated as value added in the country in which that stage occurred.

(B) For any material used by the supplier which was imported into the United States or Canada from a third country, the value added in the United States and/or Canada is presumed to be zero. However, if documentation is available to the supplier which identifies value added in the United States and/or Canada for that material (determined according to the principles set forth in (A), such value added in the United States and/or Canada is counted.

(iii) Allied suppliers of passenger motor vehicle equipment shall determine the value that is added in the U.S. and/or Canada for materials in the equipment in accordance with (c)(3).

(iv) For the minor items listed in the § 583.4 definition of ''passenger motor vehicle equipment'' as being excluded from that term, outside and allied suppliers may, to the extent that they incorporate such items into their equipment, treat the cost of the minor items as value added in the country of assembly.

(v) For passenger motor vehicle equipment which is imported into the territorial boundaries of the United States or Canada from a third country, the value added in the United States and/or Canada is presumed to be zero. However, if documentation is available to the supplier which identifies value added in the United States and/or Canada for that equipment (determined according to the principles set forth in the rest of (c)(4)), such value added in the United States and/or Canada is counted.

(vi) The payment of duty does not result in value added in the United States and/or Canada.

(5) If a manufacturer or allied supplier does not receive information from one or more of its suppliers concerning the U.S./Canadian content of particular equipment, the U.S./Canadian content of that equipment is considered zero. This provision does not affect the obligation of manufacturers and allied suppliers to request this information from their suppliers or the obligation of the suppliers to provide the information.

(d) *Determination of the U.S./Canadian percentage of the total value of a carline's passenger motor vehicle equipment.* The percentage of the value of a carline's passenger motor vehicle equipment that is U.S./Canadian is determined by—

(1) Adding the total value of all of the equipment (regardless of country of origin) expected to be installed in that carline during the next model year;

(2) Dividing the value of the U.S./Canadian content of such equipment by the amount calculated in paragraph (d)(1) of this section, and

(3) Multiplying the resulting number by 100.

(e) *Alternative calculation procedures.*

(1) A manufacturer may submit a petition to use calculation procedures based on representative or statistical sampling, as an alternative to the calculation procedures specified in this section to determine U.S./Canadian parts content and major sources of foreign parts content.

(2) Each petition must—

(i) Be submitted at least 120 days before the manufacturer would use the alternative procedure;

(ii) Be written in the English language;

(iii) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590;

(iv) State the full name and address of the manufacturer;

(v) Set forth in full the data, views and arguments of the manufacturer that would support granting the petition, including—

(A) the alternative procedure, and

(B) analysis demonstrating that the alternative procedure will produce substantially equivalent results to the procedure set forth in this section;

(vi) Specify and segregate any part of the information and data submitted in the petition that is requested to be withheld from public disclosure in accordance with part 512 of this chapter (the basic alternative procedure and basic supporting analysis must be provided as public information, but confidential business information may also be used in support of the petition).

(3) The NHTSA publishes in the **Federal Register**, affording opportunity for comment, a notice of each petition containing the information required by this part. A copy of the petition is placed in the public docket. However, if NHTSA finds that a petition does not contain the information required by this part, it so informs the petitioner, pointing out the areas of insufficiency and stating that the petition will not receive further consideration until the required information is submitted.

(4) If the Administrator determines that the petition does not contain adequate justification, he or she denies it and notifies the petitioner in writing, explaining the reasons for the denial. A copy of the letter is placed in the public docket.

(5) If the Administrator determines that the petition contains adequate justification, he or she grants it, and notifies the petitioner in writing. A copy of the letter is placed in the public docket.

(6) The Administrator may attach such conditions as he or she deems appropriate to a grant of a petition, which the manufacturer must follow in order to use the alternative procedure.

4. Section 583.7 is amended by revising paragraphs (c)(1) and (f) to read as follows:

§ 583.7 Procedure for determining major foreign sources of passenger motor vehicle equipment.

* * * * *

(c) * * *

(1) Except as provided in (c)(2), the country of origin of each item is the country which contributes the greatest amount of value added to that item (treating the U.S. and Canada together).

* * * * *

(f) In determining the percentage of the total value of a carline's passenger motor vehicle equipment which is attributable to individual countries other than the U.S. and Canada, no value which is counted as U.S./Canadian parts content is also counted as being value which originated in a country other than the U.S. or Canada.

5. Section 583.8 is amended by revising paragraphs (c)(1) and (e) to read as follows:

§ 583.8 Procedure for determining country of origin for engines and transmissions for purposes of determining the information specified by §§ 583.5(a)(4) and 583.5(a)(5) only.

* * * * *

(c) * * *

(1) Except as provided in (c)(2), the country of origin of each item of equipment is the country which contributes the greatest amount of value added to that item (the U.S. and Canada are treated separately).

* * * * *

(e) The country of origin of each engine and the country of origin of each transmission is the country which contributes the greatest amount of value added to that item of equipment (the U.S. and Canada are treated separately).

Issued on: September 11, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–22902 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 60, No. 179
Friday, September 15, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–179–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), which would have superseded an existing AD that is applicable to certain Boeing Model 727 series airplanes. The existing AD currently requires inspections to detect cracks of the elevator rear spar, and repair, if necessary; and provides for a terminating action for the inspections. The previously proposed action would have added a one-time inspection to verify that proper clearance exists between the shear plate and the radii of the elevator rear spar on airplanes on which the terminating action had been accomplished. This action revises the proposed rule by adding new inspections to detect cracks and loose brackets of the elevator rear spar; adding a new terminating modification for the inspections; and expanding the applicability of the rule to include additional airplanes. Additionally, it would supersede two previously issued AD's. The proposed actions are intended to prevent cracking in elements of the elevator rear spar assembly, which could result in excessive free play of the elevator control tab and possible tab flutter.

DATES: Comments must be received by October 12, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–179–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2774; fax (206) 227–1181.

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 94–NM–179–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. 94–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Model 727 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 29, 1994 (59 FR 67238). That NPRM published as Docket 94–NM–179–AD, would have superseded AD 84–22–02, amendment 39–4951 (49 FR 45743, November 20, 1984) to continue to require repetitive visual inspections to detect cracks of the elevator rear spar, and repair, if necessary. That NPRM would have added a one-time inspection to verify that proper clearance exists between the shear plate and the radii of the elevator rear spar on airplanes on which the terminating action specified in AD 84–22–02 has been accomplished. That NPRM would have also provided for an improved modification or repair of the elevator rear spar, which, if accomplished, would have constituted terminating action for the repetitive visual inspection requirements. The proposed action was prompted by reports of cracking in the spar radii at the tab hinge location of the elevator rear spar on certain airplanes. Cracking in this area, if not corrected, could result in excessive free play of the elevator control tab and possible tab flutter.

The FAA issued another proposal, Docket No. 94–NM–197–AD, applicable to certain Boeing Model 727 series airplanes, which was published as a NPRM in the **Federal Register** on January 4, 1995 (60 FR 386). That NPRM proposed to supersede AD 87–24–03, amendment 39–5769 (52 FR 43742, November 16, 1987), and require actions essentially identical to those previously proposed in Docket No. 94–NM–179–AD. The only relevant differences are the specific affected airplanes and certain compliance times.

Since the issuance of those two NPRM's, the FAA has received several reports of cracking found in the elevator

rear spar on a number of Model 727 series airplanes. Investigation has revealed that this cracking occurred on these airplanes following accomplishment of inspections to ensure that proper clearance exists between the shear plate and the rear spar radii. Those inspections of this area would have been required by the two previously-issued NPRM's. The inspection procedure is described in Boeing Service Bulletin 727–55–0085 (which was referenced in Docket No. 94–NM–179–AD as the appropriate source of service information), and Boeing Service Bulletin 727–55–0087 (which was referenced in Docket No. 94–NM–197–AD as the appropriate source of service information). In light of this new cracking, the FAA has determined that these inspections to verify clearance, as proposed in Docket 94–NM–179–AD and Docket 94–NM–197–AD, do not adequately preclude fatigue cracking in the elevator rear spar; this condition could result in excessive free play of the elevator control tab and possible tab flutter.

The FAA has reviewed and approved Boeing Service Bulletin 727–55–0089, dated June 29, 1995. The service bulletin describes procedures for repetitive visual inspections to detect cracks and loose brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate. This service bulletin also describes procedures for various follow-on actions, such as stop drilling and modification. The modification involves replacing the elevator rear spar with a one piece spar assembly and the tee fittings with two support fittings per tab hinge bracket. This modification will prevent fatigue cracks in the elevator rear spar. Accomplishment of the modification eliminates the need for the repetitive visual inspections.

Additionally, this service bulletin expands the effectivity listing to include additional airplanes, which were not previously addressed in Boeing Service Bulletins 727–55–0085 and 727–44–0087, but are subject to the addressed unsafe condition. (Operators should note that Boeing Service Bulletin 727–55–0089 supersedes Boeing Service Bulletins 727–55–0085 and 727–55–0087.)

Since this condition is likely to exist or develop on other products of this same type design, this supplemental NPRM would supersede AD's 84–22–02 and 87–24–03, and would require repetitive visual inspections to detect cracks and loose brackets of the elevator rear spar, and various follow-on actions. The supplemental NPRM would also require installation of a modification that would constitute terminating action for the repetitive inspections. Additionally, the supplemental NPRM would expand the applicability of the existing proposed rule to include additional airplanes. These actions would be required to be accomplished in accordance with Boeing Service Bulletin 727–55–0089, described previously.

The FAA has determined that, in order to adequately address the unsafe condition presented by the problems associated with fatigue cracking in the subject areas, and to facilitate recordkeeping by affected operators, this proposed action (Docket 94–NM–179–AD) will combine the requirements (and applicability) that were previously proposed in two separate rulemaking actions. The FAA intends to withdraw Docket 94–NM–197–AD at a later time by means of a separate rulemaking action.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 1,631 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,166 airplanes of U.S. registry would be affected by this proposed AD.

The inspections would take approximately 17 work hours per airplane to accomplish (this includes the time required to gain access, remove parts, inspect, install, and perform functional testing), at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the proposed inspections requirements on U.S. operators is estimated to be $1,189,320, or $1,020 per airplane, per inspection cycle.

The modification would take approximately 430 work hours per airplane to accomplish, at an average labor rate of $60 per work hours. Required parts would cost approximately $8,580 per airplane. Based on these figures, the total cost impact of the proposed modification requirements on U.S. operators is estimated to be $40,087,080, or $34,380 per airplane.

The total cost impact figures discussed above are 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 FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendments 39–4951 (49 FR 45743, November 20, 1984) and 39–5769 (52 FR 43742, November 16, 1987), and by adding the following new airworthiness directive:

Boeing: Docket 94–NM–179–AD. Supersedes AD 84–22–02, amendment 39–4951; and AD 87–24–03, amendment 39–5769.

Applicability: Model 727 series airplanes, line numbers 1 through 1832 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 (j) 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 excessive free play of the elevator control tab and possible tab flutter, accomplish the following:

(a) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–0085, dated August 31, 1984 (specified as terminating action in AD 84–22–02, amendment 39–4951), has not been accomplished and the repetitive inspections required by AD 84–22–02 have not been initiated: Prior to the accumulation of 8,000 total flight hours since date of manufacture, or within 300 flight hours after the effective date of this AD, whichever occurs later, accomplish paragraph (g) of this AD.

Note 2: AD 84–22–02 pertains to the one-piece elevator rear spar.

(b) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–0085, dated August 31, 1984 (specified as terminating action in AD 84–22–02, amendment 39–4951), has not been accomplished and the repetitive inspections required by AD 84–22–02 have been initiated: Accomplish either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) If any crack has been stop drilled in accordance with AD 84–22–02, accomplish paragraphs (b)(1)(i) and (b)(1)(ii) of this AD, in accordance with Boeing Service Bulletin 727–55–0089, dated June 29, 1995.

(i) Within 1,600 flight hours after stop drilling, accomplish paragraph (g) of this AD.

(ii) Notwithstanding paragraph (h) of this AD, within 3,200 flight hours after stop drilling, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(2) If no crack has been detected as a result of inspections required by AD 84–22–02, within 1,600 flight hours after the last inspection required by that AD, perform a visual inspection to detect cracks and loose brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, and accomplish follow-on actions (i.e., stop drill, modify), in accordance with the Boeing Service Bulletin 727–44–0089, dated June 29, 1995. Repeat the inspection thereafter at intervals not to exceed 1,600 flight hours or 18 months, whichever occurs first. If any crack growth is detected after stop drilling, prior to further flight, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–44–0089, dated June 29, 1995.

(c) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–0085, dated August 31, 1984 (specified as terminating action in AD 84–22–02, amendment 39–4951), has been accomplished: Within 4,000 flight hours after the effective date of this AD, accomplish paragraph (g) of this AD.

(d) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–087, dated June 20, 1986 (specified as terminating action in AD 87–24–03, amendment 39–5769), has not been accomplished and the repetitive inspections required by AD 87–24–03 have not been initiated: Accomplish paragraph (g) of this AD, at the earliest of times specified in paragraph (d)(1), (d)(2), or (d)(3):

Note 3: AD 87–24–03 pertains to the two-piece elevator rear spar.

(1) Prior to the accumulation of 27,000 total flight hours since date of manufacture, or within 4,000 flight hours after December 24, 1987 (the effective date of 87–24–03, amendment 39–5769), whichever occurs later; or

(2) Prior to the accumulation of 12,000 total flight hours since date of manufacture, or within 4,000 flight hours after the effective date of this AD, whichever occurs later; or

(3) Prior to the accumulation of 27,300 total flight hours since date of manufacture, or within 300 flight hours after the effective date of this AD, whichever occurs later.

(e) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–087, dated June 20, 1986 (specified as terminating action in AD 87–24–03, amendment 39–5769), has not been accomplished and the repetitive inspections required by AD 87–24–03 have been initiated: Accomplish either paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) If any crack has been stop drilled in accordance with AD 87–24–03, accomplish paragraphs (e)(1)(i) and (e)(1)(ii) of this AD, in accordance with Boeing Service Bulletin 727–55–0089, dated June 29, 1995.

(i) Within 1,600 flight hours after stop drilling, accomplish paragraph (g) of this AD.

(ii) Notwithstanding paragraph (h) of this AD, within 3,200 flight hours after stop drilling, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(2) If no crack has been detected as a result of inspections required by AD 87–24–03, within 4,000 flight hours after the last inspection required by that AD, perform a visual inspection to detect cracks and loose brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, and accomplish follow-on actions (i.e., stop drill, modify), in accordance with Boeing Service Bulletin 727–44–0089, dated June 29, 1995. Repeat the inspection thereafter at intervals not to exceed 1,600 flight hours or 18 months, whichever occurs first. If any crack growth is detected after stop drilling, prior to further flight, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–44–0089, dated June 29, 1995.

(f) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–087, dated June 20, 1986 (specified as terminating action in AD 87–24–03, amendment 39–5769), has been accomplished: Within 4,000 flight hours after the effective date of this AD, accomplish paragraph (g) of this AD.

(g) At the time specified in paragraphs (a), (b)(1)(i), (c), (d), (e)(1)(i), and (f), as applicable, perform a visual inspection to detect cracks and loose hinge brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, and accomplish follow-on actions (i.e., re-inspect, stop drill, modify) in accordance with Boeing Service Bulletin 727–55–0089, dated June 29, 1995, at the time specified in the service bulletin. If any crack growth is detected after stop drilling, prior to further flight, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–55–0089, dated June 29, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of this AD.

(h) Within 5 years after accomplishing the initial inspection required by this AD, modify the elevator rear spar in accordance with Part II of the Accomplishment

Instructions of Boeing Service Bulletin 727–55–0089, dated June 29, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of this AD.

(i) 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.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Issued in Renton, Washington, on September 11, 1995.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22969 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–CE–02–AD]

Airworthiness Directives; Glasflugel, Model Mosquito Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Glasflugel, model Mosquito sailplanes. The proposed action would require modifying the mounting studs on the lifting/tilting frame of the canopy system, repetitively inspecting the mounting stud, and incorporating flight manual revisions that specify a warning on emergency canopy deployment failure. Canopy system problems discovered during routine checks and periodic inspections of these sailplanes prompted the proposed action. The actions specified in this proposed AD are intended to prevent canopy system failure, which could result in loss of control of the sailplane.

DATES: Comments must be received on or before November 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–02–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Glasflugel, c/o Hansjorg Streifeneder, Glasfer-Flugzeug Service, Hofener Weg, D 72582 Grabenstetten, Germany, telephone number 49.73.82.10.32. This information also may be examined at the Rules Docket at the address above.

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:

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 should 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 that summarizes 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 No. 93–CE–02–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–02–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Glasflugel mode Mosquito sailplanes. The LBA reports: (1) considerable wear to the mounting studs on the canopy lifting/tilting frame caused by the guide bracket on either side of the fuselage; and (2) possible emergency deployment failure of the canopy caused by the ''Pip'' pin not being engaged.

Glasflugel has issued the following Technical Note (TN) 303–18, dated March 1, 1991, which specifies repetitively inspecting the mounting studs on the canopy lifting/tilting frame for wear caused by the guide bracket on either side of the fuselage and modifying the mounting studs if they are less than a specified diameter.

Glasflugel also issued Technical Note 303–9, dated June 22, 1979, which specifies incorporating a flight manual revision to include a warning regarding the emergency canopy deployment system.

In order to assure the continued airworthiness of these sailplanes in Germany, the LBA classified the above-referenced technical notes as mandatory, and also issued LBA AD 91–111. The LBA classifying a technical note as mandatory is the same for sailplanes registered in Germany as the FAA issuing an AD for sailplanes registered in the United States.

This sailplane model is manufactured in Germany 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 between Germany and the United States. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, 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 in other Glasflugel Mosquito sailplanes of the same type design, the proposed AD would require the following:

- Within the next 30 calendar days, after the effective date of this AD, inspect the mounting studs on the canopy lifting/tilting frame for wear, repetitively inspecting the mounting

stud every 100 hours time-in-service (TIS) thereafter,

• Measure the diameter of the mounting stud and if it is less than 5 mm (0.2 inch) increase the diameter to 6 mm (0.24 inch) in accordance with the procedure described in Glasflugel Technical Note (TN) 303–18, dated March 1, 1991,

• Incorporate a change to the Mosquito flight manual on page 19, paragraph 3.3 by inserting the following language in accordance with Glasflugal TN 303–9, dated June 22, 1979:

Whenever the canopy emergency jettison knob is pulled and prior to each flight, if no locking thread is used, it should be ensured that the Pip pines are fully pushed home, so that the locking balls are clear of and behind their fittings.

Initially, the compliance time of the proposed AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected sailplanes ranges throughout the fleet. For example, one owner may operate the sailplane 25 hours in one week, while another operator may operate the sailplane 25 hours in one year. For this reason, the FAA has determined that, in order to ensure that all of the owners/operators of the affected sailplanes initially inspect the canopy system and incorporate the flight manual revisions within a reasonable amount of time, a calendar compliance time is proposed.

The FAA estimates that 40 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $10 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,200. This figure is based on the assumption that no affected owner/operator of the affected sailplanes has incorporated the proposed modification or accomplished the proposed inspection.

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 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) 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 has been placed 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 U.S.C. 106(g); 40101, 40113, 44701.

§ 39.13 [Amended]

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

Glasflugel: Docket No. 93–CE–02–AD.

Applicability; Model Mosquito Sailplanes (all serial numbers).

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (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 sailplane from the applicability of this AD.

Compliance: Required initially within the next 30 calendar days after the effective date of this AD, unless already accomplished, and repetitively inspect thereafter as indicated in the body of this AD.

To prevent canopy frame failure and emergency canopy deployment failure, which could result in loss of control of the sailplane, accomplish the following:

(a) Inspect the mounting studs on the canopy lifting/tilting frame for evidence of wear and diameter specifications in accordance with the recommendation in Glasflugel TN 303–18, dated March 1, 1991.

(1) If the mounting stud is worn or the diameter measures less than 5 mm (0.2 inch), prior to further flight, increase the diameter to 6 mm (0.24 inch) in accordance with the procedure described in Glasflugel Technical Note (TN) 303–18, dated March 1, 1991.

(2) Repeat the inspection specified in paragraph (a) of this AD and increase the diameter as necessary at intervals not to exceed 100 hours time-in-service (TIS).

(b) Incorporate the following language on page 19, paragraph 3.3 of the Mosquito flight manual in accordance with Glasflugel TN 303–9, dated June 22, 1979:

Whenever the canopy emergency jettison knob is pulled and prior to each flight, if no locking thread is used, it should be ensured that the Pip pins are fully pushed home, so that the locking balls are clear of and behind their fittings.

(c) Incorporating the flight manual revision as required by paragraph (b) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the sailplane's records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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 sailplane 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. 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) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Glasflugel, c/o Hansjorg Streifeneder, Glasfaser-Flugzeug Service, Hofener Weg, D 72582 Grabenstetten, Germany, or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 7, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22922 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–131–AD]

Airworthiness Directives; McDonnell Douglas Models DC–9, DC–9–80, and MD–90–30 Series Airplanes, and Model MD–88 Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an exiting airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, that currently requires an inspection to detect chafing of or damage to the wire bundle in the overhead switch panel of the cockpit, application of spiral wrap to the wire bundle, and corrective actions, if necessary. That AD was prompted by reports of chafed and shorted wires that resulted in smoke emanating from the overhead switch panel of the cockpit. This action would expand the applicability of the rule to include certain Model DC–9, C–9 (military), and MD–90–30 series airplanes. This action also proposes to add a requirement to reroute the wire bundle to preclude chafing and damage. The actions specified by the proposed AD are intended to prevent the potential for fire and uncontrolled smoke throughout the cockpit as a result of chafing and shorting in the electrical wire bundles.

DATES: Comments must be received by November 13, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–131–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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5345; fax (310) 627–5210.

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–131–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–131–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 25, 1995, the FAA issued AD 95–09–10, amendment 39–9213 (60 FR 21977, May 4, 1995), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes. That AD requires a one-time visual inspection to detect chafing of or damage to the wire bundle in the overhead switch panel of the cockpit, application of spiral wrap to the wire bundle, repair of chafed wire insulation, and splicing of damaged wires. That action was prompted by reports of chafed and shorted wires that resulted in smoke emanating from the overhead switch panel of the cockpit. The requirements of that AD are intended to prevent the potential for fire and uncontrolled smoke throughout the cockpit as a result of chafing and shorting in the electrical wire bundles.

In the preamble to AD 95–09–10, the FAA indicated that the required actions were considered to be interim action, and that additional rulemaking action was being considered to require modification (rerouting) of the wire bundles. The FAA also indicated that subsequent rulemaking action may be proposed to require the same actions that are required by AD 95–09–10 be applicable to certain Model DC–9, C–9 (military), and MD–90–30 series airplanes.

The FAA now has determined that certain Model DC–9, C–9 (military), and MD–90–30 series airplanes are subject to the same unsafe condition as Model DC–9–80 series airplanes and Model MD–88 airplanes that were identified in the applicability of AD–95–09–10, The wire bundle in the overhead switch panel of the cockpit is routed similarly in all of these airplanes and, therefore, the same potential for wire chafing and damage exists on all of these airplanes. Further, the FAA has determined the rerouting the wire bundles in the overhead switch panel of the cockpit on these airplanes will preclude the potential for fire and uncontrolled smoke throughout the cockpit .

Based on these determinations, the FAA finds that additional rulemaking is indeed necessary, and this proposed rule follows from these determinations.

Additionally, the FAA has reviewed and approved McDonnell Douglass MD–90 Alert Service Bullletin MD90–24A001, dated April 11, 1995, which describes procedures for a one-time visual inspection to detect chafing of the wire bundle in the overhead switch panel of the cockpit, application of spiral wrap, repair of chafed wire insulation, and splicing of damaged wires. This service bulletin pertains only to certain Model MD–90 series airplanes.

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 supersede AD 95–09–10 to continue to require a one-time visual inspection to detect chafing of or damage to the wire bundle in the overhead switch panel of the cockpit, application of spiral wrap to the wire bundle, repair of chafed wire insulation, and splicing of damaged wires. For certain Model MD–90–30 series airplanes, the actions would be

required to be accomplished in accordance with the alert service bulletin described previously. For certain Model DC–9, C–9 (military), DC–9–80 series airplanes, and Model MD–88 airplanes, the actions would continue to be required to be accomplished in accordance with McDonnell Douglas DC–9 Alert Service Bulletin DC9–24A157, dated April 11, 1995 (which was referenced in AD 95–09–10 as the appropriate source of service information).

Additionally, the proposed AD would add a requirement to reroute the wire bundle in accordance with a method approved by the FAA.

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 2,012 Model DC–9, C–9 (military, DC–9–80, and MD–90–30 series airplanes, and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 816 airplanes of U.S. registry would be affected by this proposed AD. The proposed requirement to inspect and spiral wrap the wire bundle would take approximately 3 work hours per airplane to accomplish, and the average labor rate is $60 per work hour. Required parts would cost approximately $5 per airplane. Based on these figures that total cost impact of these proposed actions on U.S. operators is estimated to be $185 per airplane.

The requirement to inspect and spiral wrap the wire bundle, specified in this proposed rule, was previously required by AD 95–09–10, which was applicable to 614 Model DC–9–80 series airplanes and Model MD–88 airplanes of U.S. registry. Based on the figures discussed above, the total cost impact of the current requirements of that AD on U.S. operators of Model DC–9–80 series airplanes and Model MD–88 airplanes is estimated to be $113,590. In consideration of the compliance time and effective date of AD 95–09–10, the FAA assumes that U.S. operators of airplanes that are subject to the requirements of that AD have already initiated the required actions. Therefore, the proposed action to inspect and spiral wrap the wire bundle would add no new costs associated with those airplanes.

However, this proposed action would also be applicable to approximately 202 Model DC–9, C–9 (military), and Model MD–9–30 series airplanes of U.S. registry. Based on the figures discussed above, the total new costs imposed by this proposal on U.S. operators of these airplanes are estimated to be $37,370. This figure is based on assumptions that no operator of these additional airplanes 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 newly proposed requirements of this AD action to reroute the wire bundle would be applicable to 816 Model DC–9, C–9 (military), DC–9–80, and Model MD–90–30 series airplanes, and Model MD–88 airplanes of U.S. registry. The proposed requirement to reroute the wire bundle would take approximately 0.5 work hour per airplane to accomplish, and the average labor rate is $60 per work hour. Required parts would cost approximately $5 per airplane. Based on these figures the total cost impact of this proposed action on U.S. operators is estimated to be $28,560, or $35 per airplane.

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9213 (60 FR 21977, May 4, 1995), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 95–NM–131–AD. Supersedes AD 95–09–10, Amendment 39–9213.

Applicability: Models DC–9, C–9 (military), and DC–9–80 series airplanes, and Model MD–88 airplanes, as listed in McDonnell Douglas DC–9 Alert Service Bulletin DC9–24A157, dated April 11, 1995; and Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–24A001, dated April 11, 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 (b) 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 the potential for fire and uncontrolled smoke throughout the cockpit, accomplish the follows:

(a) For Model DC–9–80 series airplanes and Model MD–88 airplanes: Within 90 days after May 19, 1995 (the effective date of AD 95–09–10, amendment 39–9213), perform a

visual inspection to detect chafing of or damage to the wire bundle in the overhead switch panel of the cockpit, in accordance with McDonnell Douglas Alert Service Bulletin DC9–24A157, dated April 11, 1995.

(1) If no chafing or damage is detected, prior to further flight, apply spiral wrap to the wire bundle in accordance with the alert service bulletin.

(2) If the wire insulation is chafed, prior to further flight, repair it and then apply spiral wrap to the wire bundle, in accordance with the alert service bulletin.

(3) If the wire conductor is damaged, prior to further flight, splice the wires and then apply spiral wrap to the wire bundle, in accordance with the alert service bulletin.

(b) For Model DC–9 and C–9 (military), and MD–90–30 series airplanes: Within 6 months after the effective date of this AD, perform a visual inspection to detect chafing of or damage to the wire bundle in the overhead switch panel of the cockpit, in accordance with McDonnell Douglas CD–9 Alert Service Bulletin DC9–24A157, dated April 11, 1995 [for Model DC–9 and C–9 (military) series airplanes], or McDonnell Douglas MD–90 Alert Service Bulletin MD90–24A001, dated April 11, 1995 (for Model MD–90–30 series airplanes), as applicable.

(1) If no chafing or damage is detected, prior to further flight, apply spiral wrap to the wire bundle in accordance with the applicable alert service bulletin.

(2) If the wire insulation is chafed, prior to further flight, repair it and then apply spiral wrap to the wire bundle, in accordance with the alert service bulletin.

(3) If the wire conductor is damaged, prior to further flight, splice the wires and them apply spiral wrap to the wire bundle, in accordance with the applicable alert service bulletin.

(c) Within 6 months after the effective date of this AD, reroute the wire bundle in the overhead switch panel of the cockpit in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

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

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

Note 3: Alternative methods of compliance previously granted for amendment 39–9213, AD 95–09–10, continue to be considered as acceptable alternative methods of compliance with this amendment.

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

Issued in Renton, Washington, on September 11, 1995.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22967 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–43–AD]

Airworthiness Directives; Raytheon Corporate Jets Model BAe 125–800A and –1000A and Model Hawker 800 and 1000 Series 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 Raytheon Corporate Jets Model BAe 125–800A and –1000A and Model Hawker 800 and 1000 series airplanes. This proposal would require an inspection to determine if the diode soldered connections are clean and functionally sound. This proposal would also require remake of the soldered connection and replacement of the diode with a new diode, if necessary. This proposal is prompted by reports of imperfect soldered connections in the engine starting and battery emergency control circuit. The actions specified by the proposed AD are intended to prevent incorrect fault displays in the cockpit and intermittent fault symptoms in the engine starting and battery emergency control circuits, as a result of imperfect soldered connections.

DATES: Comments must be received by 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–43–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 Raytheon Corporate Jets, Inc., Customer Support Department, Adams Field, P.O. Box 3356, Little Rock, Arkansas 72203. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

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–43–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–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

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 Raytheon Corporate Jets Model BAe 125–800A and –1000A and Model Hawker 800 and 1000 series airplanes. The CAA advises that it has received reports of imperfect soldered connections in the engine starting and battery emergency control circuit. Such connections have led to fault symptoms of an intermittent nature in these circuits. This condition, if not corrected,

could lead to incorrect fault displays in the cockpit and intermittent fault symptoms in the engine starting and battery emergency control circuits.

Raytheon Corporate Jets has issued Hawker Service Bulletin SB 24–317, dated December 22, 1994, which describes procedures for an inspection to determine if diode soldered connections are clean and functionally sound. This service bulletin also describes procedures for remake of the soldered connection or replacement of the diode with a new diode, if necessary. The CAA classified this 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, the proposed AD would require an inspection to determine if the diode soldered connections are clean and functionally sound. The proposed AD would also require remake of the soldered connection or replacement of the diode with a new diode, if necessary. 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.

The FAA estimates that 19 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,140, or $60 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:

Raytheon Corporate Jets, Inc. (Formerly DeHavilland, Hawker Siddeley, British Aerospace PLC): Docket 95–NM–43–AD.

Applicability: Model BAe 125–800A and –1000A, and Model Hawker 800 and 1000 series airplanes, as listed in Raytheon Corporate Jets Hawker Service Bulletin SB 24–317, dated December 22, 1994; 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) 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 incorrect fault displays in the cockpit and intermittent fault symptoms in the engine starting and battery emergency control circuits, as a result of imperfect soldered connections, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform an inspection to determine if each diode soldered connection is clean and functionally sound, in accordance with Hawker Service Bulletin SB 24–317, dated December 22, 1994. If any diode soldered connection is not clean or not functionally sound, prior to further flight, remake the soldered connection or replace the diode with a new diode, in accordance with the service bulletin.

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

(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 September 11, 1995.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22968 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

OSD Privacy Program

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Proposed rule.

SUMMARY: In accordance with the Privacy Act of 1974, the Office of the Joint Staff proposes to exempt the system of records JS004SECDIV, entitled Joint Staff Security Clearance Files. The exemption is needed to comply with prohibitions against disclosure of information provided the government under a promise of confidentiality and to protect privacy rights of individuals identified in the system of records.

DATES: Comments must be received no later than November 14, 1995, to be considered by this agency.

ADDRESSES: Send comments to OSD Privacy Act Officer, Directives and Records Division, Washington Headquarters Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Director, Administration and Management, Office of the Secretary of Defense has determined that this proposed Privacy Act rule for the Department of Defense does not constitute ''significant regulatory action.'' Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act proposed rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Investigative and other records needed to make the judgment of approval or denial of a security clearance may require that certain records in the system be protected using the specific exemption (k)(5), to insure that a source who furnished information to the Government under an express promise of confidentiality be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence will be afforded such protection.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. Law 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 311.7 is amended by adding paragraph (c)(9) as follows:

§ 311.7 Procedures for exemptions.

* * * * *

(c) *Specific exemptions.* * * *

(9) *System identifier and name*--JS004SECDIV, Joint Staff Security Clearance Files.

Exemption. Portions of this system of records are exempt pursuant to the provisions of 5 U.S.C. 552a(k)(5) from subsections 5 U.S.C. 552a(d)(1) through (d)(5).

Authority. 5 U.S.C. 552a(k)(5).

Reasons. From subsections (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

* * * * *

Dated: September 8, 1995.

Linda L. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22978 Filed 9–14–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD–94–026]

RIN 2115–AE78

Inland Waterways Navigation Regulations: Wrangell Narrows, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to allow single barge tows of up to 100 feet in width overall to transit Wrangell Narrows, Alaska. The current size restriction for single barge tows in Wrangell Narrows is 80 feet in width overall. An increase in the maximum barge width in Wrangell Narrows will allow barge operators to carry more cargo on each barge to meet the increasing needs of their Alaskan consumers. Increasing the restriction to 100 feet in width overall will have no adverse effects on navigation and marine safety in Wrangell Narrows.

DATES: Comments must be received on or before November 14, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–026), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to Room 3406 at the above address

between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Diane Schneider Appleby, Project Manager, (202) 267–0352.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 94–026) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

This principal persons involved in drafting this document are Diane Schneider Appleby, Project Manager, and C.G. Green, Project Counsel.

Background and Purpose

Wrangell Narrows is a navigable waterway of the United States located in Southeast Alaska. It connects Frederick Sound on the north end to Sumner Strait on the south. It is approximately 24 miles long and narrows to 300 feet in five places. The longest of the 300 foot wide sections is approximately 5.5 nautical miles in length. The other four sections vary from approximately 600 yards to approximately 1.3 nautical miles in length.

The primary users of Wrangell Narrows are passenger ferries, log carriers, pleasure craft and container barges. Container barges are used to transport consumer goods throughout South East Alaska which is vital to the every day life of Alaskan citizens.

The increased demand for consumer goods in Southeast Alaska has created a greater demand on providers of these goods. The current regulations limit the width of single barge tows allowed to transit Wrangell Narrows to no more than 80 feet in width overall. Increasing the maximum barge width which can transit Wrangell Narrows from 80 to 100 feet would allow barge operators to carry more containers per transit and enable them to more efficiently meet the needs of their Alaskan customers.

Approximately 95,000 containers are shipped through Southeast Alaska each year on approximately 200 transits of Wrangell Narrows. Consumer goods are the primary cargo.

Barges larger than 80 feet in width overall, cannot transit Wrangell Narrows without a waiver of the size restriction. If they cannot use Wrangell Narrows, they must transit through Chatham Strait around Cape Decision which increases the transit distance to the Gulf of Alaska by over 170 miles. Inclement weather, common in Southeast Alaska, often causes delays of as many as two or three days while barge operators wait for better weather to make the passage around Cape Decision. The risk of a marine casualty increases when transporting cargo in severe weather.

Wrangell Narrows is wide enough, even in its narrowest sections, to allow for the safe transit of 100 foot wide barges. Alaska Marine Lines has been safely operating 100 foot wide single barge tows on Wrangell Narrows with a Coast Guard waiver since May 1994, after expressing a written need for an increase in the maximum width of single barge tows. Southeast Alaska relies heavily upon container barges to deliver consumer goods essential to the every day life of its residents. Allowing 100 foot wide single barge tows in Wrangell Narrows would eliminate all current requests for waivers from the width restriction and would reduce unnecessary weather-related delays of consumer good shipments to Alaskan residents. It would also allow most single barge tows to operate in the protected waters of Wrangell Narrows during inclement weather.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard has determined that a Regulatory Evaluation is unnecessary because of the minimal impact expected.

Small Entities

Because it expects the impact of the proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

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

Federalism

This proposed rule has been analyzed in accordance with Executive Order No. 12612 on Federalism (October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental federalism principles in formulating and implementing policies. These policies have been fully considered in the development of the proposed regulation. This proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that this action is Categorically Excluded in accordance with section 2.B.2.e(34)(g) of the NEPA Implementing Procedures, COMDTINST M16475.2B. A copy of the categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 162

Navigation (water), Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 162 as follows:

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for part 162 continues to read as follows:

Authority: 3 U.S.C. 1231; 49 CFR 1.46.

2. In section 162.255, paragraph (e)(2) is revised to read as follows:

§ 162.255 Wrangell Narrows, Alaska; use, administration, and navigation.

* * * * *

(e) * * *

(2) Raft and barge tows of more than one unit shall not exceed 65 feet in width overall. Single barge tows shall not exceed 100 feet in width overall.

* * * * *

Dated: September 7, 1995.

J.A. Creech,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–22985 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–123]

RIN 2115–AA97

Safety Zone: Grande Fiesta Italiana Fireworks, Hempstead Harbor, New York

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal.

SUMMARY: This rulemaking project was initiated to establish a temporary safety zone in Hempstead Harbor, New York, for the Grande Fiesta Italiana Fireworks Program. On August 14, 1995, the Coast Guard was notified that the location of the fireworks program was changed to a point on land. Due to the change in location, a safety zone is no longer required. Therefore, the Coast Guard is terminating further rulemaking under docket number CGD01–95–123.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On August 9, 1995, the Coast Guard published a Notice of proposed rulemaking (NPRM) in the **Federal Register** (60 FR 40543). The proposal was to establish a temporary safety zone in all waters of Hempstead Harbor, shore to shore, within a 300 yard radius of a fireworks barge anchored approximately 300 yards north of Bar Beach, Port Washington, New York, at or near 40°49′52″ N Latitude, 073°39′10″ W longitude (NAD 1983). The safety zone was to be in effect from 9 p.m. until 10:15 p.m. on September 10, 1995, unless extended or terminated sooner by the Captain of the Port New York. No comments were received in response to the NPRM.

On August 14, 1995, Fireworks by Grucci, Inc. informed the Coast Guard that the location of the fireworks program was changed from Hempstead Harbor to a point on land in the vicinity of Bar Beach, Port Washington, New York. The fireworks program will no longer require a safety zone. Therefore, this rulemaking is no longer necessary and the Coast Guard is terminating further rulemaking under docket number CGD01–95–123.

Dated: September 6, 1995.

T.H. Gilmour,

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

[FR Doc. 95–22984 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT26–1–7198; A–1–FRL–5296–4]

Approval and Promulgation of Air Quality Implementation Plans; Approval of the Carbon Monoxide Implementation Plan Submitted by the State of Connecticut Pursuant to Sections 186–187 and 211(m)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes approval of the State implementation plans (SIP) submitted by the State of Connecticut for the purpose of bringing about the attainment of the national ambient air quality standard (NAAQS) for carbon monoxide (CO). The implementation plans were submitted by the State to satisfy the requirements of Sections 187(a)(2)(A), 187(a)(3), 187(a)(7) and 211(m) of the Clean Air Act for an approvable nonattainment area CO SIP for Connecticut's portion of the New York-New Jersey-Connecticut CO nonattainment area. This action is being taken under Section 110 of the Act. The rationale for the approval is set in this document, additional information is available at the address indicated below.

DATES: Comments on this proposed action must be received in writing by October 16, 1995.

ADDRESSES: Comments may be mailed to Susan S. Studlien, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg. (AAA), Boston, MA 02203. Copies of the state's submittal and EPA's technical support document are available for inspection during normal business hours, by appointment at the U.S. Environmental Protection Agency, Jerry Kurtzweg, ANR–443, 401 M Street, SW, Washington, D.C. 20460; the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA 02203; and the Bureau of Air Management, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: Damien F. Houlihan, (617) 565–3266, of the U.S. Environmental Protection Agency in Boston, MA.

SUPPLEMENTARY INFORMATION: On January 12, 1993, January 14, 1993, April 7, 1994, and August 1, 1995, the Connecticut Department of Environmental Protection (DEP) submitted a revision to its State Implementation Plan (SIP) for air quality. The revision is designed to satisfy the requirements of Sections 187(a)(2)(A), 187(a)(3), 187(a)(7) and 211(m) of the Clean Air Act, as amended in 1990 (CAA).

I. Background

The air quality planning requirements for moderate CO nonattainment areas are set out in Sections 186–187 and Section 211(m) of the Clean Air Act (Act) Amendments of 1990 (CAAA). These requirements pertain to the classification of CO nonattainment areas and to the submission requirements of the SIP's for these areas, respectively. The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Connecticut CO SIP, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on today's proposal.

Those States containing CO nonattainment areas with design values greater than 12.7 parts per million (ppm) were required to submit, among other things, a State Implementation Plan revision, by November 15, 1992, that contains a forecast of VMT in the nonattainment area for each year before the year in which the SIP projects the NAAQS for CO to be attained and an attainment demonstration such that the plan will provide for attainment by December 31, 1995 for moderate CO nonattainment areas. The SIP revision is also required to provide for annual

updates of the VMT forecasts along with annual reports regarding the extent to which the forecasts proved to be accurate. In addition, these annual reports must contain estimates of actual VMT in each year for which a forecast was required. The attainment demonstration must include a SIP control strategy, which is also due by November 15, 1992. The SIP control strategy for a given nonattainment area must be designed to ensure that the area meets the specific annual emissions reductions necessary for reaching attainment by the deadline. In addition, section 187(a)(3) requires these areas to implement contingency measures if any estimate of actual vehicle miles travelled (VMT) or any updated VMT forecast for the area contained in an annual report for any year prior to attainment exceeds the number predicted in the most recent VMT forecast. Contingency measures are also triggered by failure to attain the NAAQS for CO by the attainment deadline. Contingency measures must be submitted with the CO SIP by November 15, 1992. In addition, Section 211(m) of the Act requires a SIP revision containing a provision to require that after November 1, 1992, any gasoline sold, or dispensed, to the ultimate consumer in the CO nonattainment area be blended to contain not less than 2.7 percent oxygen by weight during the portion of the year in which the area is prone to high ambient CO levels.

Section 187(a)(2)(A) of the Clean Air Act Amendments of 1990 required EPA, in consultation with the U.S. Department of Transportation (DOT), to develop guidance for states to use in complying with the VMT forecasting and tracking provisions of Section 187. A Notice of Availability for the resulting *Section 187 VMT Forecasting and Tracking Guidance* was published in the **Federal Register** on March 19, 1992.

The Section 187 Guidance identifies the Federal Highway Administration's Highway Performance Monitoring System (HPMS) as the foundation for VMT estimates and forecasts. To develop growth factors for forecasting VMT, the Section 187 Guidance offers as one alternative the use of network-based travel demand models. If these models are properly updated and validated, and if they use an equilibrium approach to allocating trips, they are considered to be the best predictor of growth factors for VMT forecasts.

When determining that actual annual VMT or a VMT forecast has exceeded the most recent prior forecast and, therefore, that contingency measures should be implemented, EPA believes that it is appropriate to take into account the statistical variability in the estimates of VMT generated through HPMS. Consequently, EPA has identified a margin of error to be applied when making VMT comparisons. With the expectation that HPMS sampling procedures will improve over the next few years in response to recent FHWA guidance, the margin of error starts at 5.0 percent for VMT comparisons made in 1994, becomes 4.0 percent for VMT comparisons made in 1995, and is reduced to 3.0 percent for VMT comparisons made in 1996 and thereafter. However, since each revised VMT forecast becomes the VMT baseline for triggering contingency measures, the application of a margin of error every year could allow the forecasts to increase without bound, without ever triggering contingencies. To prevent this occurrence, EPA believes it is appropriate to allow the application of the margin of error only as long as, cumulatively, neither an estimate of actual VMT nor a VMT forecast ever exceed by more than 5.0 percent the VMT forecast relied upon in the area's attainment demonstration.

EPA interprets the requirement for contingency measures to ''take effect without further action by the State or the Administrator'' to mean that no further rulemaking activities by the State or EPA would be needed to implement the measures. The General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, published in the **Federal Register** on April 16, 1992, offers guidance on the type and size of contingencies to be included in the SIP revision. This guidance is advisory in nature and is non-binding. (See the **Federal Register**, April 16, 1992, Volume 57, Number 74, pages 13532 and 13533.)

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (*see* 57 FR 13565–66). The State of Connecticut submitted SIP revisions to EPA on January 12, 1993, January 14, 1993, April 7, 1994, and August 1, 1995 in order to satisfy the requirements of Sections 186–187 and 211(m) of the Act. In order to gain approval, the State submittals must provide for each of the following mandatory elements: (1) a forecast of VMT in the non-attainment area for each year prior to the attainment year; (2) a provision for annual updates of the forecasts along with a provision for annual reports describing the extent to which the forecasts proved to be accurate; these reports shall provide estimates of actual VMT in each year for which a forecast was required; (3) adopted and enforceable contingency measures to be implemented without further action by the State or the Administrator if actual annual VMT or an updated forecast exceeds the most recent prior forecast or if the area fails to attain the CO NAAQS by the attainment date; (4) Attainment Demonstration with Control Strategies and (5) a provision to require that any gasoline sold, or dispensed, to the ultimate consumer in the CO nonattainment area be blended to contain not less than 2.7 percent oxygen by weight during the portion of the year in which the area is prone to high ambient CO levels.

II. Analysis

In today's action EPA proposes to approve Connecticut's CO SIP submittal for the Connecticut portion of the NY-NJ-CT CO nonattainment area and invites public comment on the action. The following items are the basis for approval of the SIP revision. Connecticut has met the requirements of Section 186–187 and 211(m) of the Act by submitting SIP revisions that implement all required elements as discussed below. The state implementation plans submitted by Connecticut on January 12, 1993, January 14, 1993, April 7, 1994, and August 1, 1995, collectively meet the requirements for those particular revisions to the SIP for the Connecticut portion of the NY-NJ-CT Moderate (greater than 12.7 ppm) CO nonattainment area as set forth in Sections 187(a)(2)(A), 187(a)(3), 187(a)(7) and 211(m) of the Act.

1. VMT Forecasts

Section 187(a)(2)(A) requires that the State include in its SIP submittal a forecast of VMT in the nonattainment area for each year before the year in which the SIP projects the National Ambient Air Quality Standard for CO to be attained. The forecasts are to be based on guidance developed by EPA in consultation with DOT, i.e., the *Section 187 VMT Forecasting and Tracking Guidance.* Connecticut has satisfied this requirement with their January 12, 1993 and April 7, 1994 SIP submittals which include VMT forecasts beginning with the year 1993 and including all subsequent years up to the year of attainment (1995). The forecasts were projected using an annual growth factor of two percent as determined from Connecticut's network-based travel demand model. This model is properly updated and validated and uses an equilibrium approach to allocating trips, therefore, it is considered to be the best

predictor of growth factors for VMT forecasts in Connecticut and was used appropriately as set forth in the Section 187 VMT Forecasting and Tracking Guidance.

2. Annual VMT Updates/Reports

Section 187(a)(2)(A) specifies that the SIP revision provide for annual updates of the VMT forecasts and annual reports that describe the accuracy of the forecasts and that provide estimates of actual VMT in each year for which a forecast was required. The Section 187 VMT Forecasting and Tracking Guidance specifies that annual reports should be submitted to EPA by September 30 of the year following the year for which the VMT estimate is made. Connecticut satisfied this requirement with their January 12, 1993 and April 7, 1994 SIP submittals.

3. Contingency Measures

Section 187(a)(3) specifies that the State, in its SIP revision, adopt specific, enforceable contingency measures to be implemented if the annual estimate of actual VMT or a subsequent VMT forecast exceeds the most recent prior forecast of VMT or if the area fails to attain the CO NAAQS by the attainment date. Implementation of the identified contingency measures must not require further rulemaking activities by the State or EPA. Certain actions, such as notification of sources, would probably be needed before a measure could be implemented effectively. Connecticut has satisfied this requirement with their January 12, 1993 and April 7, 1994 SIP submittals which include contingency measures to be implemented if the annual estimate of actual VMT or a subsequent VMT forecast exceeds the most recent prior forecast of VMT or if the area fails to attain the CO NAAQS by the attainment date. Connecticut has demonstrated that expanded implementation of an enhanced inspection and maintenance program, beyond what is required in 57 CFR 52950, will provide CO emission reductions to counteract the effect of one years growth in VMT.

Although implementation of an enhanced I/M program is required in the urbanized area of Connecticut's portion of the NY-NJ-CT CO nonattainment area, Connecticut has demonstrated that requiring vehicles traveling within the nonattainment area, but originating outside the urbanized area, to meet the CO performance standard of the enhanced I/M program, will result in CO emission reductions which offset the CO emissions attributable to a two percent growth (one years growth) of the projected 1995 VMT in the area. The legal authority for the implementation of the enhanced I/M program was passed by the General Assembly of the State of Connecticut in Public Act 90–312 which took effect on July 1, 1993. Connecticut further demonstrated that if the area does not attain the CO standard by the December 31, 1995 attainment date, the state is committed to implementing the Employee Commute Option in the nonattainment area, which will provide reductions in VMT to offset the anticipated growth in VMT from 1994 to the attainment year of 1995. The Connecticut Legislature has effectively authorized implementation of the ECO program through the promulgation Public Act 93–334 which has been codified it into the Connecticut General Statutes.

4. Attainment Demonstration

As noted, CO nonattainment areas with design values greater than 12.7 parts per million (ppm) were required to submit a demonstration by November 15, 1992; the plan must provide for attainment by December 31, 1995 for moderate CO nonattainment areas and December 31, 2000 for serious CO nonattainment areas.

To demonstrate attainment, the 1-hour and 8-hour and National Ambient Air Quality Standards (NAAQS) for CO are not to be exceeded more than once per year. The 1-hour CO NAAQS is 35 ppm (40 mg/m^3) and the 8-hour CO NAAQS is 9 ppm (10 mg/m^3). Connecticut has satisfied this requirement with its April 7, 1994 SIP submittal in which Connecticut conducted an attainment demonstration using intersection modeling for a representative set of the most congested intersections with high traffic volumes and the greatest potential to generate high CO concentrations in the Connecticut portion of the NY-NJ-CT CO nonattainment area. This analysis also demonstrated that the two CO monitors in downtown Bridgeport and downtown Stamford are in fact sited where the local conditions result in the highest CO levels in Connecticut's portion of the nonattainment area. The design value for the entire NY-NJ-CT CO nonattainment area was 13.5 ppm in 1988, based on monitoring data from site in Manhattan, New York. Connecticut's SIP revision indicated that based solely on the two monitors located in the Connecticut portion of the nonattainment area, the design value for the Connecticut portion of the area would have been 6.9 ppm, and these CO monitors have not monitored a violation of the NAAQS since 1984. Therefore, Connecticut demonstrates that the existing CO levels in the Connecticut portion of the NY-NJ-CT nonattainment area are in attainment of the NAAQS and CO emissions will continue to decrease throughout the attainment year of 1995 demonstrating continued attainment through the December 31, 1995 attainment date.

The Act requires that the CO nonattainment area plan revisions demonstrating attainment must contain measures which demonstrate reasonable further progress through specific annual emission reductions as are necessary to attain the standard by December 1995. EPA has reviewed the attainment demonstration and control strategy for the area to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the CO NAAQS by the applicable attainment date (see section 171(1)). Connecticut has demonstrated that the Connecticut portion of the NY-NJ-CT nonattainment area is currently in attainment and although further reduction in CO emissions will result from the implementation of oxygenated fuels, enhanced inspection and maintenance and the Federal Motor Vehicle Control Program, specific emission reductions are not necessary to attain the standard by the attainment date. EPA believes the implementation of these measures will assure that the area CO emissions continue to decrease and therefore ensuring attainment of the area in December 1995.

5. Oxygenated Fuels Program

Motor vehicles are significant contributors of CO emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen, contained within the fuel, enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting. Section 211(m) of the CAAA requires that States with CO nonattainment areas classified as moderate or above, submit state implementation plan revisions to implement oxygenated gasoline programs by no later than November 1, 1992. The oxygenated gasoline program must require gasoline sold or dispensed in the specified control area to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the area is prone to high ambient concentrations of CO (the control period). EPA announced guidance on the establishment of control periods, by area, in the **Federal Register** on October 20, 1992 which also announced the availability of oxygenated gasoline credit program guidelines. Under a credit program, marketable oxygen

credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e., an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. As an alternate to the credit program, the State may elect a program in which a minimum of 2.7 percent by weight oxygen must be present in every gallon of gasoline sold. The EPA also issued labeling regulations under section 211(m)(4) of the CAA. These labeling regulations were also published in the **Federal Register** on October 20, 1992.

Connecticut has satisfied the requirements of Section 211(m) with their January 14, 1993, April 7, 1994, and August 1, 1995 SIP submittals which contain adopted amendments and revisions to the Regulation of Connecticut State Agencies (RCSA), to add Section 22a–174–28, which establishes an Oxygenated Fuel Program. EPA is approving, in a separate direct final rulemaking notice, the oxygenated fuel program, except as it applies to the Southwestern Control Area, as defined in 22a–174–28. In this notice, EPA is proposing approval of the definition for the Southwestern Control Area and that portion of the definition of ''control period'' that applies to the Southwestern Control Area. The program is one in which all oxygenated gasoline must contain a minimum oxygen content of 2.7 percent by weight of oxygen. Connecticut has adopted labeling regulations, enforcement procedures, and oxygenate test methods in accordance with Section 211(m) of the Act.

On August 1, 1995, the State of Connecticut submitted a revision to the control period for the Connecticut portion of the New Jersey/New York/Connecticut CO nonattainment area changing the oxygenated fuels control period to November 1 through the last day of February of each year. Previously, the control period had been October 1 through April 30 of each year. Under Section 211(m) of the CAA, a control period must be that portion of the year in which the control area is prone to high ambient concentrations of CO, but no less than four months in length.

Section 211(m)(2) requires this control period to be based on air quality monitoring data and established by the EPA Administrator. EPA is proposing to approve Connecticut's four-month control period for the Southwestern Control Area because it is consistent with section 211(m)(2) and the EPA 1992 guidance.

EPA is publishing concurrently with this notice a Notice of Proposed Rulemaking to approve New York's oxygenated gasoline SIP submission. That notice proposes to establish a four-month control period for the New York portion of the New York-New Jersey-Connecticut CO nonattainment area. Connecticut's establishment of a four-month control period will be consistent with New York's four-month control period.

The setting of a four-month control period for the nonattainment area is consistent with established Agency guidance (announced for availability at 57 FR 47853, October 20, 1992) regarding oxygenated gasoline control periods to determine the proper control period length for the New York-New Jersey-Connecticut CO nonattainment area. As part of the 1992 guidance document, based on air quality data from 1990 and 1991, EPA suggested that the proper control period for the New York-New Jersey-Connecticut CO nonattainment area was October 1 through April 30. However, the 1992 guidance does not establish a binding norm regarding control periods and provides that the determination of the control period will be an issue to be finally decided by EPA as part of the review of individual state SIP revisions for oxygenated gasoline programs. EPA has set forth the reasons for its proposed approval of the four-month control period for the New York-New Jersey-Connecticut CO nonattainment area in the above-mentioned notice regarding New York's oxygenated gasoline SIP revision published concurrently with this notice. In that notice, EPA explains the rationale for determining that the appropriate control period is from November 1 through the last day of February for the entire nonattainment area. EPA believes sale of gasoline oxygenated to 2.7 percent by weight during the months of October, March and April is no longer necessary for adequate carbon monoxide control in the entire nonattainment area. EPA will not repeat the rationale provided in that notice, but rather incorporates by reference the same rationale into this notice.

Proposed Action

The EPA is proposing to approve collectively the plan revisions submitted to EPA for the Connecticut portion of the NY-NJ-CT CO nonattainment area on January 12, 1993, January 14, 1993, April 7, 1994, and August 1, 1995. Among other things, Connecticut has demonstrated that the Connecticut portion of the NY-NJ-CT CO nonattainment area will continue to attain the CO NAAQS through December 31, 1995, the applicable attainment date.

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 review under Executive Order 12866.

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.

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

As noted, additional submittals for the CO nonattainment areas are required under Section 186 and 187 of the Act. The EPA will determine the adequacy of any such submittal as appropriate. 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.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of Section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 25, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A and section 187(a)(1) of the Clean Air Act. The rules and commitments approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to certain duties. To the extent that the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as mandate upon the private sector, EPA's action will impose no new requirements under State law; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, results from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and record keeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 31, 1995.

John P. DeVillars,

Regional Administrator, EPA-New England.

[FR Doc. 95–22958 Filed 9–14–95; 8:45 am]

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40 CFR Part 52

[Region II Docket No. 140, NY 12–1–6477; FRL–5296–7]

Approval and Promulgation of Implementation Plans; Carbon Monoxide State Implementation Plan Revision State of New York and Revision of Oxygenated Gasoline Control Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing the approval of portions of a request from New York to revise its State Implementation Plan (SIP) related to the control of carbon monoxide. EPA is proposing approval of New York's vehicle miles travelled forecast, contingency measures, carbon monoxide emission inventory, multi-state coordination letter, and Downtown Brooklyn Master Plan. In addition, EPA is proposing approval of the oxygenated gasoline program in the New York City consolidated metropolitan statistical area during the four months when the area is prone to high ambient concentrations of carbon monoxide. New York's oxygenated fuels program also includes a provision for oxygenated fuels to serve as a contingency measure in the Syracuse metropolitan statistical area.

New York has recently updated its enhanced inspection and maintenance submittal which EPA is currently reviewing. Therefore, action on that program, along with the attainment demonstration, which relies on the enhanced inspection and maintenance program, will be taken in a separate **Federal Register** notice. These revisions have been submitted in response to requirements established in the Clean Air Act as amended in 1990 that the states develop a plan to attain the carbon monoxide standard.

DATES: Comments must be received on or before October 16, 1995

ADDRESSES: Written comments should be addressed to:

William S. Baker, Chief, Air Program Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866

Copies of the state submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, New York, New York 10007–1866.

New York Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act, as amended in 1990, sets forth a number of requirements that states designated as moderate nonattainment for carbon monoxide had to submit as revisions to their SIPs by November 15, 1992. Since the New York portion of the ''New York-Northern New Jersey-Long Island'' carbon monoxide nonattainment area is classified as a moderate 2 area (an area that has a design value of 12.8–16.4 ppm.), New York was required to make this submission. These requirements are: an attainment demonstration, an enhanced vehicle inspection and maintenance program, an oxygenated fuels rule, a vehicle miles traveled forecast, contingency measures, a carbon monoxide emission inventory, a revised new source review program, and multi-state coordination letter.

EPA has issued a ''General Preamble'' describing its preliminary views on how it intends to review SIPs and SIP revisions submitted in order to meet Title I requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. The reader should refer to the General Preamble for a more detailed discussion of the Title I requirements and what EPA views as necessary to adequately comply with Title I provisions.

On November 13, 1992, New York submitted to EPA proposed revisions to its carbon monoxide SIP that addressed each of the above requirements for its moderate carbon monoxide nonattainment area. In addition, in a submittal dated March 21, 1994, New York submitted to EPA additional information pertaining to its carbon monoxide SIP.

As part of Federal Environmental Impact Statement work, certain projects in Brooklyn were identified as causing violations of the carbon monoxide standard. The State said that they would revise the carbon monoxide SIP to mitigate these problems. On September 21, 1990, New York submitted a revision to the New York SIP to attain the carbon monoxide air quality standard in the Brooklyn portion of the New York City metropolitan area.

These three submittals are the subject of this **Federal Register**. The following summarizes EPA's evaluation of New York's SIP submittals and EPA's proposed actions. The details of EPA's review are contained in the Technical Support Document available at EPA's Region II office.

Attainment Demonstration

Section 187(a)(7) of the Clean Air Act requires each state that contains all or part of a moderate 2 area to submit to the Administrator an attainment demonstration by November 15, 1992. This attainment demonstration documents how the State will attain the 8-hour carbon monoxide NAAQS of 9 ppm by December 31, 1995.

New York, using emissions from the EPA-approved MOBILE4.1 model, demonstrated attainment of the carbon monoxide standard with the EPA-approved CAL3QHC air quality dispersion model. New York took emission reductions credit from enhanced I/M, oxygenated fuels, and the federal motor vehicle control program (vehicle turnover) as control measures to attain the standard. A detailed explanation of this modeling is contained in the Technical Support Document.

New York's analysis demonstrated that all of the modeled intersections attained the 8-hour carbon monoxide standard of 9 ppm. The highest value obtained was 9.0 ppm which occurred at two intersections. Since air quality values at the most congested intersections was determined to not exceed the standard, New York has demonstrated that the entire area will be in attainment for carbon monoxide by December 31, 1995.

New York used appropriate modeling techniques and modeling inputs in this demonstration, however one of the control measures used to demonstrate attainment, the enhanced inspection and maintenance program, submitted on November 15, 1993 had not been fully adopted in accordance with State requirements. On July 31, 1995, New York submitted an updated enhanced inspection and maintenance program which EPA determined to be complete on August 2, 1995. EPA will take action on the enhanced inspection and maintenance program and the attainment demonstration in a separate **Federal Register** notice.

Enhanced Inspection and Maintenance Program

Section 187(a)(6) of the Clean Air Act requires implementation of enhanced inspection and maintenance programs in moderate 2 carbon monoxide nonattainment areas and includes provisions as required under section 182(c)(3) concerning serious ozone nonattainment areas. Such provisions require implementation of an enhanced inspection and maintenance program in urbanized areas with a population greater than 200,000.

On November 15, 1993 New York submitted draft regulations and other information pertaining to the enhanced inspection and maintenance program. Since New York did not submit a fully adopted enhanced inspection and maintenance program, on February 2, 1994 EPA notified the State that this submittal was incomplete and a sanctions process was begun. New York then made an updated submittal on July 31, 1995 which EPA will be taking action on in a separate **Federal Register** notice.

Oxygenated Fuels Rule

I. Introduction

Section 211(m) of the Clean Air Act requires that various states submit revisions to their SIPs, and implement oxygenated gasoline programs by no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements are to generally cover all gasoline sold or dispensed in the larger of the consolidated metropolitan statistical area or the metropolitan statistical area in which the nonattainment area is located. Under section 211(m)(2), the length of the control period, to be established by the EPA Administrator, shall not be less than four months in length unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992.[1]

State Submittal

In order to fulfill the Clean Air Act requirement, on September 27, 1993 New York submitted a request to revise its State Implementation Plan to incorporate adopted revisions to Title 6 Subpart 225–3 of the New York Code of Rules and Regulations, entitled ''Fuel Composition and Use—Volatile Motor Fuel,'' effective on September 2, 1993.

Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. New York has established control periods for the New York City consolidated metropolitan statistical area and the Syracuse metropolitan statistical areas which are consistent with the 1992 EPA guidance.

New York's oxygenated gasoline regulations require oxygenated gasoline to be sold in the larger of the consolidated metropolitan statistical area (CMSA) or metropolitan statistical area (MSA) in which the nonattainment area is located, consistent with the requirements of section 211(m)(2) of the Act. The New York City CMSA consists of the following counties: Bronx, Kings, Queens, New York, Richmond, Orange, Rockland, Putnam, Westchester, Nassau and Suffolk. New York's current regulation requires oxygenated gasoline to be sold in this area from October 1 through April 30. While this control period had been appropriate in previous carbon monoxide control seasons in the New York City CMSA, EPA is proposing to determine, based on more recent ambient air monitoring data, that the appropriate oxygenated gasoline control period for the area should be shorter in length. Four months is the minimum program length allowed by the Clean Air Act, except as indicated in section 211(m)(B) which, at the request of a state with respect to any carbon monoxide nonattainment area, allows the EPA Administrator to reduce the period below four months. Such a determination can only occur if the State can demonstrate that due to meteorological conditions a shorter period will assure that no carbon monoxide exceedances will occur outside of that shorter period.

New York also requires the sale of oxygenated gasoline in any area of the State which had been designated as nonattainment for carbon monoxide but was redesignated as attainment, if it is required to maintain the standard in that area.

In the case of the Syracuse metropolitan statistical area, which has been officially redesignated as attainment for carbon monoxide (See 58 FR 50851), the oxygenated gasoline program is no longer required in that area since the attainment demonstration did not depend on the program. The oxygenated gasoline program constitutes the State's contingency measure for the Syracuse metropolitan statistical area, in

[1] *See* ''Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under Section 211(m) of the Clean Air Act as Amended—Notice of Availability,'' 57 FR 47849 (October 20, 1992).

the event that the carbon monoxide standard is violated in this area. If this program should need to be re-instituted in this area, the period of sale would be November 1 through the last day of February.

In this notice EPA is applying established Agency guidance (announced for availability at 57 FR 47853, October 20, 1992) regarding oxygenated gasoline control periods to determine the proper control period length for the New York City CMSA. As part of the 1992 guidance document, based on air quality data from 1990 and 1991, EPA suggested that the proper control period for the New York City CMSA was October 1 through April 30. However, the 1992 guidance does not establish a binding norm regarding control periods and provides that the determination of the control period will be an issue to be finally decided by EPA as part of the review of individual state SIP revisions for oxygenated gasoline programs. For the reasons set forth below, EPA is now proposing to determine that the appropriate control period is from November 1 through the last day of February; EPA believes sale of gasoline oxygenated to 2.7 percent by weight during the months of October, March and April is no longer necessary for adequate carbon monoxide control in the New York City CMSA.

Section 211(m), cited in the 1992 EPA guidance, requires control period length to be decided by the EPA Administrator based on the period an area is prone to high carbon monoxide concentrations. The three-state New York City CMSA has not recorded an exceedance of the carbon monoxide national ambient air quality standard (NAAQS) in the three months proposed to be dropped since October of 1991. Furthermore, since 1992 the CMSA has not been prone to high ambient concentrations of carbon monoxide, during those three months. Under the approach used in EPA's guidance, ''prone to high ambient concentrations of carbon monoxide'' is a criterion more stringent than the NAAQS.

While the successful reduction in ambient carbon monoxide levels during October, March and April in the New York City CMSA can in part be attributed to the sale of oxygenated gasoline, EPA believes that implementation of new programs under the Clean Air Act in the New York City CMSA will adequately ensure continued observance of reduced levels of carbon monoxide during the months of October, March and April. Reformulated gasoline, a year round clean gasoline program, which was implemented on January 1, 1995 in the New York City CMSA [see 59 FR 7716, February 16, 1994.] provides gasoline oxygenated to 2.0 percent. EPA believes that implementation of enhanced inspection and maintenance programs [40 CFR Part 51, Subpart S] and the turnover of the New York City CMSA fleet, to newer, cleaner vehicles combined with the use of reformulated gasoline will ensure continued lower carbon monoxide emissions from motor vehicles for the CMSA during October, March and April.

While the established guidance bases the determination of control period only on air quality monitoring data (which exists for the entire New York City CMSA for 1992 to 1995), EPA believes that it is prudent also to provide a technical analysis further supporting the reduction of oxygen content during the shoulder months in the area. To support the contention that in future years, starting with 1996, without sales of gasoline oxygenated to 2.7 percent, but with implementation of federal reformulated gasoline (RFG) and enhanced I/M combined with vehicle turnover carbon monoxide emissions will continue to be lower during October, March and April in the area, EPA performed a series of computer model runs. Since the first observance after the implementation of the oxygenated fuels program of low CO levels during those months was in 1993, average vehicle emissions from that year were used as an upper limit in determining the adequacy of removal of the higher oxygen content in October, March and April.

The comparison was performed utilizing the most current version of EPA's emission factor model for mobile sources, MOBILE5a. All modeling assumed implementation of RFG (with 2.0 percent oxygen content) for 1995 and later, and for 1996 and future years, the effect of an enhanced I/M program are included. MOBILE5a variables such as vehicle speeds and a vehicle miles traveled growth rate were supplied by the New York State Department of Environmental Conservation. For further details regarding the MOBILE5a runs and the subsequent comparisons, the reader is referred to the technical support document. Modeling shows that removing oxygenated gasoline (to 2.7 percent) but accounting for the effects of RFG, enhanced I/M and vehicle turnover, vehicle emissions of CO, through calendar year 2020 (based on an average day in the CO season in each of those years), will still be at least 22.74 percent less than vehicle emissions of CO in 1993 with 2.7 percent oxygenated gasoline. Thus elimination of oxygenated gasoline program requirements in the shoulder months in the area appears to be technically sound.

Based on the proposed determination that the appropriate control period runs from November through February, EPA is proposing to approve New York's oxygenated gasoline requirement only for that four month period. This EPA action on New York's SIP revision takes into account the interaction of the current New York regulation and the RFG regulation promulgated by EPA on February 16, 1994. During the entire seven month period of October through April, the current New York standard for oxygen content in the New York portion of the New York City CMSA is a minimum of 2.7 percent oxygen by weight. The same New York portion of the New York City CMSA is also subject to RFG requirements, which include a year-round oxygenate standard of 2.0 percent. 40 CFR section 80 subpart D. As discussed below, the RFG requirements act to preempt an extension of the state oxygenated gasoline provisions beyond the four month period prone to high ambient concentrations of CO.

EPA's authority to regulate fuels and fuel additives is found in section 211 of the Clean Air Act. Under section 211(c)(1), the Administrator has the authority to control or prohibit the manufacture and sale of fuels and fuel additives on the grounds of danger to public health or impairment of emissions control devices. Section 211(c)(4) provides that where the Administrator has set such a control or prohibition under section 211(c)(1) applicable to a characteristic or component of a fuel or fuel additive, no state may set a control or prohibition respecting that characteristic or component, unless the state control or prohibition is identical to the federal control or prohibition. This provision preempts state fuel controls that are nonidentical to federal section 211(c)(1) controls on the same characteristic or component.

EPA promulgated the RFG program under the authority of sections 211(k) and 211(c)(1) [59 FR 7716, February 16, 1994]. RFG must contain 2.0% oxygen content by weight, and it is required year-round in the New York City CMSA. In the absence of section 211(m), section 211(c)(4) would preempt states from establishing their own minimum oxygen content requirements different from the RFG requirements in RFG areas. Because section 211(m) is a specific, more stringent requirement, it overrides the general preemption provision, and states are not preempted from complying with section 211(m) in RFG

areas. However, states are preempted from setting nonidentical controls or prohibitions on oxygen content in RFG areas to the extent that such controls or prohibitions are not mandated by section 211(m).

In this notice, EPA is proposing to determine that the New York City CMSA is prone to high ambient concentrations of carbon monoxide during the four month period of November through February. Section 211(m) only requires states to adopt 2.7% oxygenated gasoline requirements for the period prone to high ambient concentrations of carbon monoxide, as determined by the Administrator. Thus, upon finalization of EPA's proposed determination, section 211(m) would only require New York to adopt a 2.7% minimum oxygen content standard for four months. The RFG oxygen content requirement preempts any state from prescribing or enforcing oxygen content requirements in this area that go beyond what is mandated by section 211(m). Because New York would be preempted from enforcing the additional months of October, March and April, EPA is only proposing to approve New York's oxygenated fuel requirements for the months of November through February in the counties of Bronx, Kings, Queens, New York, Richmond, Orange, Rockland, Putnam, Westchester, Nassau and Suffolk. EPA is publishing concurrently with this notice a Notice of Proposed Rulemaking to approve Connecticut's oxygenated gasoline SIP submission. That notice proposes to establish the same four-month control period for the Connecticut portion of the New York-New Jersey-Connecticut CO nonattainment area. New York's four-month control period will be consistent with Connecticut's four-month control period.

Through a letter dated August 11, 1995 from New York State Department of Environmental Conservation Deputy Commissioner David Sterman to EPA Regional Administrator Jeanne Fox, the State of New York has communicated to EPA their intent to revise Subpart 225–3 to reflect the shorter control period, identical to the control period EPA is proposing to approve. In the same letter, New York requests EPA to revise its control period guidance to shorten the period to four months. Rather than revising the guidance, in this proposal EPA is applying the guidance to make a determination that the appropriate control period for this area is four months. EPA believes it is appropriate to approve New York's oxygenated fuel requirement for only four of the seven months provided in New York's submission because this approval would not increase the stringency of the State submission and conforms with the State's intended revisions to the regulation. Also, section 110(a)(2)(A) requires SIPs to include ''enforceable * * * control measures.'' EPA only has authority to approve the enforceable portion of the State submission, which, upon finalization of EPA's proposed determination, would correspond to a four month control period.

Transfer Documents

New York has included requirements related to transfer documentation in its regulation. These transfer document requirements enhance the enforcement of the oxygenated gasoline regulation, by providing a traceable record for each gasoline sample taken by state enforcement personnel.

Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. EPA recommends that states visit regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation. New York has provided for a comprehensive penalty schedule in accordance with EPA guidance. In addition to having authority to assess a civil administrative penalty, the State has authority to use further measures such as issuance of abatement orders.

Waiver Provisions

EPA is proposing to not approve sections 225–3.8 and 225–3.9(a), which would allow the Commissioner of the Department of Environmental Conservation, upon application, to grant waivers from the State's minimum oxygen content requirement, and the minimum Reid vapor pressure (RVP) requirement, respectively, due to a shortage of gasoline which meets those requirements.

In its revision to section 225–3.8, the State revised the RVP waiver provision originally approved by EPA at 54 FR 26030 on June 21, 1989. At the time, New York had adopted its own summertime RVP standards, more stringent than national standards, as part of an initiative on the parts of northeastern states to make progress toward achieving the National Ambient Air Quality Standard for ozone. Since that time, the national RVP standards have been lowered to the same levels as were initiated by New York in 1989. Because the State's RVP standards are again equal to EPA's national standards and because gasoline RVP is regulated on the Federal level, New York can no longer effectively grant waivers for RVP. To avoid confusion that EPA's approval of the New York RVP requirement might mean that State waivers would waive the Federal requirements, EPA is not approving the State's waiver provision (section 225–3.8).

EPA is also proposing to not approve section 225–3.9(a), which allows the State to grant waivers of the minimum oxygen content requirement. Generally, EPA does not approve state variance or waiver provisions in SIP submissions that would allow the state to grant waivers without EPA approval. To the extent that a waiver provision would allow a state to exempt a source from compliance required by the statute, such a waiver could be inconsistent with the applicable statutory requirements. However, in guidance for oxygenated fuels programs, EPA has identified circumstances under which the Agency may approve a very narrow state variance provision authorizing the state to allow supply of nonconforming gasoline due to extraordinary circumstances. See Guidelines for Oxygenated Gasoline Credit Programs under section 211(m) of the Clean Air Act as Amended. The guidance establishes five conditions to be included in an approvable variance provision. One of these conditions is that the ''refiner agrees to make up the air quality detriment associated with the nonconforming gasoline, where practicable.'' The New York variance provision does not include this requirement. This is a key condition because it reduces the likelihood that granting of a variance would detrimentally affect the environment. Given this deviation from the conditions specified in the guidance, EPA believes that the New York variance provision is not approvable because the limits of the discretion do not clearly meet EPA policy for approving such an exercise of discretion, EPA is not approving this waiver provision. Such waivers would need to be approved by EPA as SIP revisions consistent with EPA policy on such waivers.

Test Methods and Laboratory Review

EPA's sampling procedures are detailed in Appendix D of 40 CFR Part 80. EPA has recommended, in its credit program guidelines, that states adopt these sampling procedures. New York has incorporated by reference EPA sampling methods.

Labeling

EPA requires the labeling of gasoline pumps and has strongly recommended that states adopt their own labeling regulations, consistent with the federal regulation. New York has adopted labeling regulations consistent with the federal regulation.

Credit Program

EPA guidance announced the availability of an optional oxygenated gasoline credit program (57 FR 47849, October 20, 1992), where marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required. New York has opted not to implement such a credit program and requires a per-gallon minimum oxygen content of 2.7% during the control period.

II. Proposed Action

EPA's review of Subpart 225–3 indicates that the State has adopted an oxygenated gasoline regulation in accordance with the requirements of the Clean Air Act. Therefore, EPA is proposing to approve New York's Subpart 225–3 oxygenated gasoline program as a revision to the State's SIP. EPA is proposing not to approve sections 225–3.8 and 225–3.9(a), which unduly allow the State's Commissioner to grant waivers from the minimum oxygen content and minimum RVP requirement, respectively.

Vehicle Miles Travelled Forecast

Section 187(a)(2)(A) of the Clean Air Act requires moderate carbon monoxide nonattainment areas, such as that portion of New York included in the ''New York-Northern New Jersey-Long Island'' carbon monoxide nonattainment area, to submit a SIP revision that forecasts vehicle miles travelled through the year 1995. In addition, annual reports and annual updates are required by the State.

The vehicle miles travelled forecast must meet several requirements. It must estimate the vehicle miles travelled from 1990 through 1995 using a method acceptable to EPA, must be conducted in the appropriate geographic area and must provide for annual updates of the forecasts and annual reports on the extent to which the forecasts were accurate, as well as estimates of actual vehicle miles travelled in each year for which a forecast was required (57 FR 13532, April 16, 1992). Moreover, the state should develop the vehicle miles travelled forecast based on EPA guidance.

Contingency measures are to be implemented in a case where the actual annual vehicle miles travelled or the updated forecast contained in an annual report exceeds the most recent prior vehicle miles travelled forecast by an acceptable margin of error (5.0 percent in 1994, 4.0 percent in 1995, and 3.0 percent thereafter) and/or if estimated actual vehicle miles travelled or forecasted vehicle miles travelled exceeds a cumulative 5 percent cap above the attainment demonstration.

The estimated vehicle miles travelled for 1990 and 1991 are 130.7 and 134.6 million miles per day, respectively. In addition, the future forecasts were (in million miles per day) 138.5 for 1992, 142.5 for 1993, 146.4 for 1994, and 150.3 for 1995.

On November 15, 1994, New York submitted a vehicle miles travelled tracking report for the State's 1992 New York City Metropolitan area Carbon Monoxide SIP. This report showed that for 1990, the actual vehicle miles travelled was 130.8. The actual vehicle miles travelled for 1991 to 1993 were below the original forecast: 131.8 for 1991; 135.8 for 1992 and 137.1 for 1993.

New York has submitted documentation satisfying these requirements and EPA, therefore, proposes approval of New York's vehicle miles travelled forecast SIP revision.

Contingency Measures

Section 187(a)(3) of the Clean Air Act requires that states adopt contingency measures to take effect without further action by the Administrator or the state if the state fails to attain the NAAQS by the required date or if any estimate of actual vehicle miles travelled in the nonattainment area or any updated forecast of vehicle miles travelled contained in an annual report for any year prior to attainment is exceeded beyond the allowable limit as discussed in the vehicle miles travelled forecast section. Contingency measures should be capable of reducing vehicle miles travelled or resultant emissions by an amount equal to the projected annual growth rate for vehicle miles travelled (57 FR 13532, April 16, 1992). New York identified two contingency measures, the employee commute option program and winter gasoline volatility reductions, to fulfill this requirement. These programs would both act as contingency measures for failure to attain the carbon monoxide standard or for exceeding the vehicle miles travelled forecast.

1. Employee Commute Option Program

New York is required by section 182(d)(1)(B) of the Clean Air Act to submit its Employee Commute Option program as part of its ozone nonattainment SIP. New York's program applies to employers with 100 or more employees who arrive at the workplace between the hours of 6 and 10 a.m. The goal of this program is to increase the average passenger occupancies by 25% above the average for all vehicles arriving to all workplaces within the zone. This would decrease the amount of automobiles arriving at the workplace, and therefore, decrease the vehicle miles travelled.

New York enacted enabling legislation on August 9, 1993 and the New York State Department of Transportation adopted regulations on April 6, 1994 to implement the program. New York then submitted a SIP revision on June 6, 1994 that contained an adopted employee commute option program. EPA will be taking action on the employee commute option program submittal as a requirement of the ozone SIP in a separate **Federal Register** notice since there are specific requirements an employee commute option program must meet for an ozone SIP but not for contingency measures in a carbon monoxide SIP.

2. Winter Time Gasoline Volatility

New York identified Winter Time Gasoline Volatility as an additional contingency measure. New York State's Subpart 225–3 ''Fuel Composition and Use—Volatile Motor Fuel'' permits the commissioner to set a winter RVP level for gasoline if such a level is necessary for air quality purposes. This regulation was adopted on June 30, 1993.

EPA is proposing to approve the State's use of the winter time gasoline volatility program as a carbon monoxide contingency measure because it is an adopted measure that will serve to reduce emissions of carbon monoxide. Also, section 211(c)(4) does not preempt the State from adopting a limit on gasoline RVP in the winter time. Under section 211(c)(4), states are preempted from prescribing any control or prohibition respecting any characteristic or component of a fuel, where there is a nonidentical Federal control or prohibition applicable to such characteristic or component. There are two sources of Federal controls on RVP, the Phase II Federal RVP controls promulgated under section 211(h) and section 211(c)(1), and the Federal RVP controls for reformulated gasoline promulgated under section 211(k) and section 211(c)(1). Both of these Federal RVP controls apply only in the summer months. There is no Federal RVP control applicable to gasoline in the winter time, and thus no Federal preemption of the New York winter time RVP control.

Although New York identified two acceptable contingency measures, only one is approvable by EPA at this time. Therefore, EPA proposes to approve the winter time gasoline volatility program as an adequate contingency measure should New York fail to attain the carbon monoxide standard or exceed the vehicle miles travelled forecast. Action on the employee commute option program will be taken in a separate **Federal Register** notice.

Carbon Monoxide Emission Inventory

New York submitted a carbon monoxide emission inventory on November 15, 1992 as required by section 187(a)(1) and as described in section 172(c)(3) of the Clean Air Act. Additional inventory information was submitted in January and March of 1993.

The emission inventory is for a typical carbon monoxide season weekday occurring during December, January, and February and represents a comprehensive, actual inventory of all carbon monoxide emission sources in the New York Metropolitan area. It includes emissions from point, area, and mobile sources (see 1990 base year carbon monoxide emissions summary in Table 1).

TABLE 1.—SUMMARY OF 1990 BASE YEAR CARBON MONOXIDE EMISSIONS BY SOURCE CATEGORY FOR NEW YORK

Source category	CO emissions (tons/day)
Point	31.26
Area	380.16
Non-Road Mobile	577.71
On-Road Mobile	4138.02
Total	5127.15

The inventory was developed according to EPA guidance and has been quality assured. Sources that emit in excess of 100 tons per year of carbon monoxide are defined as point sources. Stationary sources that emit below this threshold are too small to be considered point source and are, therefore, considered to be area sources. The area and off-highway mobile sources include such categories as stationary source fuel combustion, aircraft, marine vessels, and railroads. Highway mobile source emissions were calculated using an updated version of EPA's MOBILE 4.1 model (MOBILE5). Input parameters to this model included vehicle miles travelled, speed, temperature, and registration distribution.

EPA proposes to approve New York's 1990 base year emission inventory for carbon monoxide.

New Source Review Regulation

Section 173 of the Clean Air Act requires states to submit new source review (NSR) revisions that, among other things, incorporate new offset ratios and applicability limits in new source review permitting regulations by November 15, 1992.

EPA will address New York's NSR regulation in a separate **Federal Register** notice.

Multi-State Coordination Letter

Section 187(e) of the Clean Air Act establishes the requirements for ''multi-state carbon monoxide nonattainment areas,'' which are defined as single carbon monoxide nonattainment areas that cover more than one state. To satisfy this requirement, states must develop and submit to EPA a joint workplan to demonstrate early cooperation and integration. This workplan can be in the form of a letter co-signed by all states in the nonattainment area, or, EPA has decided, it can consist of signed individual letters from each of the states. New York submitted its letter, containing a detailed schedule of milestones and a commitment to coordinate with EPA and each of the states involved, on September 16, 1992.

Therefore, EPA proposes to find that New York has fulfilled this requirement and proposes approval of this SIP revision.

Downtown Brooklyn Master Plan

On September 21, 1990, New York submitted a revision to the New York SIP to attain the carbon monoxide air quality standard in the Brooklyn portion of the New York City metropolitan area. This submittal consisted of a plan that was developed in 1987 by the Commissioners of the New York City Departments of Transportation and Environmental Protection called the Downtown Brooklyn Master Plan (DBMP). The DBMP committed the City to implement 13 capital projects in order to reduce high levels of carbon monoxide at intersections in Downtown Brooklyn. The submittal was found to be administratively complete on November 19, 1990.

The 13 projects that made up the DBMP were devised to alleviate predicted violations of the carbon monoxide standard that resulted from several development projects in Downtown Brooklyn. The effects of the individual projects that made up the DBMP were evaluated as a package as part of EPA's review of the Environmental Impact Statement for the Metrotech project. EPA has determined that, taken together, the projects would eliminate the predicted violations.

In its submittal of November 15, 1992 the State included a status report on the DBMP. This status report was updated in a July 14, 1994 letter from Thomas Allen, Department of Environmental Conservation. The status of the DBMP as of July 1994 is displayed in the following table. It shows that, of the 13 capital projects that made up the original plan, five have been completed, one has been partially completed, and two were found to be unnecessary. Of the six projects yet to be completed, two were expected to be completed prior to December 31, 1995. The remaining four projects are unlikely to be completed by that date.

The State is free to revise this element of the SIP, either by demonstrating that the entire DBMP is no longer necessary or by submitting another program of measures equivalent to those it wants to remove.

EPA proposes to approve the DBMP as a revision to the SIP.

TABLE 2.—DOWNTOWN BROOKLYN MASTER PLAN

Downtown Brooklyn master plan status as of July 1994	Original completion date	ISOPIA region II 27–Jul-94
Project		Status
Capital Project Hwk 197A2, Flatbush Ave: 4th Ave to Nassau St, Jay St: Fulton St to Sands St, Willoughby St: Flatbush Ave to Gold St.	31–Dec-91	Completed 12/91.
Capital Porject Hwk 565, Jay St: Fulton St to Sands St	31–Dec-91	Completed 12/91.
Capital Project Hwk 739, Willoughby St: Flatbush Ave to Gold St	31–Dec-91	Completed 12/91.
Capital Project Hwy 197A3R, Flatbush Ave: Atlantic Ave to 4th Ave, Atlantic Ave: Flatbush Ave to 4th Ave, 4th Ave: Pacific St to Flatbush Ave[1].	30–Jun-95	Delayed due to MTA station reconstruction. Estimated bid date Spring 1995.

TABLE 2.—DOWNTOWN BROOKLYN MASTER PLAN—Continued

Downtown Brooklyn master plan status as of July 1994	Original completion date	ISOPIA region II 27–Jul-94
Project		Status
Capital Project Hwk 197G, Ashland Place: Fulton St to Dekalb Ave	30–Jun-93	Completed 6/93.
Capital Project Hwk 197B, Concord St: Flatbush Ave to Gold St		Capital project no longer necessary.
Capital Project Hwk 197C, Concord St: Gold St to Navy St		Capital Project no longer necessary.
Capital Project Hwk 197D, Gold St: Nassau St to Tillary St	30–Mar-89	Completed 3/89.
Capital Project Hbk 667A, Adams/Tillary Underpass, Adams St SVC Rd N/B: Willoughby to Sands, Adams St SVC Rd S/B: Willoughby to Red Cross [1].	31–Dec-95	Project to be re-evaluated.
Capital Project Hbk 667B, BQE: W/B off Ramp @ Ashland Place [1]	31–Dec-95	Timeframe is significantly past 1995.
Capital Project Hwk 565A, Tillary/Jay St intersection double left turns [1]	31–Jan-95	Project tied to underpass construction.
Capital Project Hwk 565A, Atlantic Ave W/B: Ft Greene Pl to Flatbush [1]	31–May-93	MTA approval (delayed) needed to begin construction.
Capital Project ED 75 (Project 201; Subproject E 175):		
A: Atlantic Ave E/B: 4th Ave to Flatbush Ave	30–Jun-95	Construction Completed.
B: 4th Avenue N/B: Pacific St to Atlantic Ave	30–Jun-95	Construction Completed.
C: Vanderbilt Ave @ Atlantic Ave [1]	31–Mar-94	Awaiting land acquisition
D: Atura Streets [1]	31–Mar-94	Under Construction. Completion 9/94.

[1] Projects not yet completed.

Summary

EPA is proposing approval of New York's vehicle miles travelled forecast, contingency measures, carbon monoxide emission inventory, multi-state coordination letter, and Downtown Brooklyn Master Plan as revisions to its carbon monoxide SIP. EPA also proposes approval of New York's winter time gasoline volatility program as a contingency measure. The employee commute option program will be acted upon in a separate **Federal Register** notice. In addition, with the exception of sections 225–3.8 and 225.3.9(a), EPA is proposing to approve the oxygenated gasoline program in the New York City consolidated metropolitan statistical area. This program also includes a provision for oxygenated fuels to serve as a contingency measure in the Syracuse metropolitan statistical area. New York has recently updated their enhanced inspection and maintenance submittal which EPA is currently reviewing. Therefore, action on that program, along with the attainment demonstration, which relies on the enhanced inspection and maintenance program, will be taken in a separate **Federal Register** document.

EPA will address the new source review regulation and transportation and conformity rules in separate **Federal Register** documents.

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

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

SIP approvals under section 110 and subchapter I, Part D of the 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, I certify that it does not have a significant impact on any small entities affected. Moveover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory 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 *US EPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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

Through submission of this state implementation plan or plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under section 187 of the Clean Air Act. These rules may bind state, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action would impose any mandate upon the state, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action would impose no new requirements; such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated annual costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 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, Carbon monoxide, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C 7401–7671q.

Dated: September 6, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 95–22957 Filed 9–14–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5293–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Clothier Disposal site from the National Priorities List: Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Clothier Disposal site from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan ((NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the Clothier Disposal site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the Clothier Disposal site from the NPL may be submitted on or before October 15, 1995.

ADDRESSES: Comments concerning the deletion of the Clothier Disposal site from the NPL may be submitted to: Herbert H. King, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th floor, New York, NY 10007–1866.

Comprehensive information on the Clothier Disposal site is contained in the EPA Region II public docket, which is located at EPA's Region II office (the 18th floor), and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. For further information, or to request an appointment to review the public docket, please contact Mr. King at (212) 637–4268.

Background information from the Regional public docket is also available for viewing at the Clothier Disposal site's Administrative Record repository located at: Fulton Library, 160 South First Street, Fulton, NY 13069.

FOR FURTHER INFORMATION CONTACT:

Mr. Herbert H. King, (212) 637–4268.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region II announces its intent to delete the Clothier Disposal site from the NPL and requests public comment on this action. The NPL is Appendix B to the NCP, which EPA promulgated pursuant to Section 105 of CERCLA, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions (RAs) financed by the Hazardous Substances Superfund Response Trust Fund (the ''Fund''). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed RAs, if conditions at such site warrant action.

EPA will accept comments concerning the Clothier Disposal site for thirty (30) days after publication of this notice in the **Federal Register** (until October 15, 1995).

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses how the Clothier Disposal site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, will consider whether any of the following criteria have been met:

1. That responsible or other persons have implemented all appropriate response actions required; or

2. All appropriate Fund-financed responses under CERCLA have been implemented, and no further cleanup by responsible parties is appropriate; or

3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist agency management.

The following procedures were used for the intended deletion of the Clothier Disposal site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New York has concurred with the deletion decision.

3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This notice announces a thirty (30)-day public comment period on the deletion package starting on September 15, 1995 and concluding on October 15, 1995.

4. The Region has made all relevant documents available in the regional office and the local site information repository.

EPA Region II will accept and evaluate public comments and prepare a Responsiveness Summary which will address the comments received, before a final decision is made. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. If, after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next update. Public notices and copies of the Responsiveness Summary will be made available to the public by EPA Region II.

IV. Basis for Intended Site Deletion

Site History and Background

The Clothier Disposal site, located in the Town of Granby, Oswego County, New York, is a fifteen-acre, privately-owned parcel of land, of which six acres were used for waste disposal. Ox Creek flows through the site in a northerly direction, feeding into the Oswego River.

In 1973, the Oswego County Health Department found approximately 2,200 drums of chemical waste dumped on the site and requested an investigation by the New York State Department of Environmental Conservation (NYSDEC). In 1976, NYSDEC brought suit against the owner of the property of operating an illegal dump. Subsequently, a temporary permit was granted for a period of one year to clean up the site. In 1977, the owner made an attempt to bury or cover the waste materials dumped on the site. In doing so, drums were broken open and drained. Between early 1978 and 1980, additional efforts were made by the owner to clean up the property. Again these efforts largely entailed burying or covering previously exposed wastes.

In 1983, Engineering-Service, Inc. performed a Phase I Engineering Investigation and Evaluation of the site for NYSDEC, for the purpose of computing a Hazard Ranking System score needed to evaluate whether or not the site should be placed on the NPL. The site was proposed for listing on the NPL on October 15, 1984 (49 FR 40320); it was included on the NPL on June 10, 1986 (51 FR 21504).

In 1985, NYSDEC, through its contractor, URS Company, Inc. undertook a geophysical survey of the site, and staged and sampled on-site drums as part of the remedial investigation/feasibility study (RI/FS) designed to determine the nature and extent of the contamination at the site, to assess the threat that the site posed to public health and the environment, and to develop and evaluate various alternatives to remediate the site.

Performed concurrently with the RI/FS, a number of potentially responsible parties (PRPs), operating under an Administrative Order, removed and disposed of 1,858 drums and stockpiled visibly-contaminated soil in1986. The remaining drums, as well as the visibly-contaminated surficial soils, were removed by EPA during 1987 and 1988.

A number of data quality problems complicated the completion of the RI/FS, which led to EPA tasking Ebasco Services, Inc. (Ebasco) to perform a supplemental RI/FS.

The supplemental RI/FS report, issued in August 1988, concluded that, as a result of the removal actions taken at the site, only low-level residual soil contamination remained on-site. The RI/FS also concluded that the risk levels associated with this residual contamination were within the acceptable range of 10^{-4} to 10^{-6} (representing a one in ten thousand and a one in a million incremental individual lifetime cancer risk, respectively). The risk assessment indicated that the major route of human exposure at the site was through direct contact with on-site soil residually contaminated with polychlorinated biphenyls (PCBs) and carcinogenic polyaromatic hydrocarbons (CPAHs). The highest PCB concentration observed in the soil was 2.5 parts per million (ppm). In order to develop a full range of remedial alternatives, any concentration above 1 ppm PCBs in the soil was considered to require remediation. This level was based on the Toxic Substances Control Act definition of ''clean'' soil and is associated with a risk below 4×10^{-7} for current use and 7×10^{-6} for plausible maximum exposure during future site use. For CPAHs (benzo(a)anthrance, benzo(b)fluoranthene, benzo(k)fluoranthene, Benzo(a)pyrene and chrysene), the highest total concentration at any location was observed to be 0.9 ppm. For these compounds, a total concentration of 0.33 ppm was set as the limit above which remediation was required. This level was based on the CPAH detection limit for the EPA contract laboratory program and is associated with a risk for 2×10^{-7} for current use or 3×10^{-6} for plausible maximum exposure during future site use.

The U.S. Fish and Wildlife (USFWS) conducted an investigation of Ox Creek, and in August 1988, issued a report of its findings, entitled, Effects of Contaminants from the Clothier Disposal Site on Fish and Wildlife Resources of Ox Creek, Oswego County, New York. This report stated that there was no evidence of either environmental damage in the area around the site or contamination of Ox Creek at levels likely to be associated with risks to wildlife.

On December 28, 1988, a Record of Decision (ROD) was signed, selecting as the remedy for the site:

- Placement of a one-foot clean soil cover over the residually-contaminated areas;
- Regarding and revegetating of the site to prevent soil erosion and to minimize surface water runoff,
- Installation of rip-rap, as needed, on the embankment sloping towards the adjacent Ox Creek to prevent soil erosion;
- Performance of long-term monitoring of the groundwater and soil, and Ox Creek sediments and surface water; and
- Application of institutional controls to prevent the utilization of the underlying groundwater and the future development of the site for residential use.

The ROD also noted that the maximum contaminant concentrations (although not the geometric mean concentrations) in some of the groundwater sample collected during the RI/FS marginally exceeded a number of Applicable or Relevant and Appropriate Requirements (the maximum concentrations of tetrachloroethene and trichloroethene of 24 parts per billion (ppb) and 18 ppb, respectively, exceeded the New York State standard of 5 ppb of each; and antimony, barium, beryllium, chromium, lead, magnesium, and manganese exceeded New York State inorganic groundwater standards or guidances). Thus, further evaluation to determine whether remediation of the groundwater was necessary was called for in the ROD.

A local citizen's group, after reviewing the USFWS report, expressed concern that the USFWS investigation did not include an eleven-acre wetland located adjacent to the site.

To determine whether remediation of the groundwater was necessary and to evaluate the threat to the wetland located adjacent to the site, EPA tasked Ebasco to perform a post-RI/FS investigation, specifically to collect and evaluate samples of the groundwater and the surface water and sediment in the wetland. The results of this investigation, which were presented in January 1990 in the Post RI/FS Evaluation of Groundwater and Wetlands Report, indicated that a significant threat to human health and the environment did not exist at that time, and RAs for the groundwater and wetlands were not warranted.

In September 1989, a Consent Decree was entered by the Northern District of New York with the Settling Defendants to undertake the design and construction of the remedy selected for the site and to perform the long-term monitoring and maintenance of the site upon completion of the construction. The Settling Defendant's contractor, Canonie Environmental Services Corporation (Canonie), performed pre-design sampling to more precisely determine the area extent of the

residual, low-level contamination on-site. Based upon these results, Canonie prepared the remedial design (RD) plans and specifications. As part of the RD, calculations were performed, based on a 100-year storm event, that determined that the erosive forces due to the overland flow velocities would be minimal, and that rip-rap protection on the slopes to the wetland (called for the ROD) would not be required. EPA approved the RD in June 1991.

The Settling Defendants awarded a contract to Sevenson Environmental Services, Inc. to implement the remedy in July 1991. During the course of regrading the areas to be covered with clean soil, it was discovered that an above-grade mound of soil contained parts of four drums. Further, while regrading the slope to the wetland, parts of three other buried drums were uncovered. The drum parts and the surrounding soil were excavated and were subsequently disposed of at an EPA-approved hazardous waste facility. The results of analyses of the soil in the areas where the drum parts were discovered indicated that the contaminants and their concentrations were comparable to those found during the RI and, therefore, the remedy selected in the ROD remained appropriate.

In May 1992, a representative of NYSDEC, during an inspection of the site, observed three seeps located at the foot of the west slope to the wetlands. After an analysis of the seeps and the soil surrounding the seeps, it was concluded that the seeps were caused by the discharge of groundwater at the wetland margin. The results of the analyses of the seeps indicated low concentrations of PCBs. Since the samples were not filtered prior to analysis, the PCBs were believed to be a result of PCBs adsorbed to sediment suspended in the liquid while collecting the samples (this premise has been confirmed, in that no PCBs have been identified in five rounds of ground water testing.) The results of the analyses of the soil associated with these seeps indicated contaminant concentrations that are consistent with those detected during the RI. Considering these results, EPA directed the Settling Defendants to continue with the implementation of the remedy. The installation of the soil cap and revegetation was completed in September 1992.

Following EPA's approval of the Settling Defendants' operation and maintenance and long-term monitoring plan, a Superfund Site Close-Out Report was approved on December 29, 1993.

During the first post-RA inspection/monitoring in April 1994, a small area of black, odorous soil was observed on the western portion of the soil cover. Three buried drums that were subsequently discovered in this area were excavated and overpacked. A geophysical investigation, performed to determine whether other buried drums were present in this area, followed by the installation of two trenches in areas of concern, revealed one crushed drum, metallic debris, and some stained soil. The drum, debris, and soil were excavated and, along with the overpacked drums mentioned above, were disposed of at approved disposal facilities.

Summary of Operation and Maintenance and Five-Year Review Requirements

Since the remedy involved the installation of a soil cover, there are no operational requirements.

The Settling Defendants are to monitor the site for five years, commencing with the first inspection/monitoring event that occurred on April 26, 1994.

The long-term monitoring program consists of monitoring the groundwater, soil, and Ox Creek sediments and surface water quarterly the first year, semi-annually the second year, and annually thereafter.

Site inspections, which will be conducted quarterly for the first year and semi-annually thereafter, are to be coincident with the monitoring events. Additional inspections will be conducted after any major flooding (100-year) or rainfall events in the Ox Creek area. The inspections will include visual observations of the soil cover, erosion controls and silt fencing, groundwater monitoring wells, site security, and general site conditions. Maintenance, if required, will consist of correcting observed deficiencies (e.g., restoring the soil cover and its vegetation to its original condition, repair of fencing, etc.) The six groundwater monitoring wells (four located within the limits of the soil cover, one just adjacent to it, and one up-gradient) that comprise the groundwater monitoring program will be inspected to ensure their integrity. They will be repaired should they become damaged, or replaced should they become non-functional.

So that EPA can evaluate the remedy's effectiveness, following each inspection/sampling event, the Settling Defendants are to submit to EPA a monitoring and inspection program report, summarizing the inspection and sampling results, and describing any corrective maintenance actions that were taken. In addition, a review of the long-term monitoring and inspection program reports will be performed five years after the initiation of the RA to assure that the remedy remains effective in protecting human health and the environment.

Summary of How the Deletion Criteria Has Been Met

Based upon the results of RA sample analyses, survey results, and site inspections, the site meets the requirements set forth in the ROD, in that a one-foot clean-soil cover has been installed over those residually-contaminated locations at which concentrations above 1 ppm PCBs and 0.33 ppmm CPAHs were detected, the site has been regraded and revegetated to prevent soil erosion and to minimize surface water runoff, and institutional controls (an easement) have been put into place to prevent the utilization of the underlying groundwater and the future development of the site for residential use.

EPA and the State have determined that the response actions undertaken at the Clothier Disposal site are protective of human health and the environment.

In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. EPA, in consultation with the State, has determined that all appropriate responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Having met the deletion criteria, EPA proposes to delete the Clothier Disposal site from the NPL.

Dated: August 21, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 95–22488 Filed 9–14–95; 8:45 am]

BILLING CODE 6460–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3170

[ES–930–05–1310–01–241A]

RIN 1004–AC27

Coalbed Methane

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new part to the oil and gas leasing regulations. This regulation is intended to encourage the production of coalbed

methane in States where production has been impeded by conflicts in ownership. These regulations are a requirement of section 1339 of the Energy Policy Act of 1992, Ownership of Coalbed Methane.

DATES: Comments should be submitted by November 14, 1995. Comments received or postmarked after the above date may not be considered in the decision making process on the final rule.

ADDRESSES: Comments should be sent to: Director (120), Bureau of Land Management, Room 5558, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments can also be sent to internet!WO140@attmail.com. Please include ''attn: AC27'' and your name and address in your internet message. Comments will be available for review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David R. Stewart, Bureau of Land Management, Eastern States at (703) 440–1728.

SUPPLEMENTARY INFORMATION: This proposed rule is intended to implement section 1339 of the Energy Policy Act of 1992 (hereinafter ''the Act''), Ownership of Coalbed Methane (Pub. L. 102–486 Section 1339; 106 Stat. 2986; 42 U.S.C. 13368). The Act requires promulgation of regulations by October 24, 1995 to carry out the requirements of the Act. This rule is needed to promote the orderly development of coalbed methane by removing the impediment that conflicting ownership poses to the development of that resource in affected States. The legislative history of the Energy Policy Act indicates that Congress intended Section 1339 to apply to all lands within affected States, and not just Federal lands. *See* H.R. Rep. 102–474(I) at 147–48 and 214–16 (*reprinted in* 1992 U.S. Code Cong. & Admin. News at 1954); Cong. Rec., Feb. 6, 1992 at E 232 (Remark of Rep. Rahall that predecessor bill to section 1339 was offered ''with the hopes that the entire Appalachian region will experience the benefits of coalbed methane development.'' (see also 58 FR 21589).

This regulation essentially force-pools conflicting owners of coalbed methane. It does this by requiring conflicting owners to enter into the development of a drilling unit. The regulation provides that any proceeds from a well, where there is a conflict in ownership, will be placed in an escrow account until the ownership issue is resolved by a State entity of competent jurisdiction. The mechanism of forced pooling, coupled with the escrow account requirements, is intended to remove the impediment that conflicts in ownership of coalbed methane poses to development.

These regulations will affect the development of coalbed methane in five States (Illinois, Indiana, Kentucky, Pennsylvania, and Tennessee). The list of affected States was originally published in the **Federal Register** on April 22, 1993 (58 FR 21589). West Virginia and Ohio were on the original list of affected States but have complied with the requirements of the Act and therefore have been removed from the list. West Virginia was removed from the list of affected States because it implemented a State program that promoted the production of coalbed methane gas within the State. Ohio was removed from the list of affected States as a result of a resolution passed by both houses of the Ohio Legislature requesting removal from the list. West Virginia was removed from the list of affected States on December 8, 1994, (59 FR 63376), and Ohio was removed from the list of affected States on February 8, 1995 (60 FR 7576).

The principal author of this rule is David R. Stewart of the Bureau of Land Management (BLM), Eastern States, assisted by Ian Senio of the Regulatory Management Team of BLM. The staff, Fuels Resources Management Division, U.S. Department of Energy, Morgantown Energy Technology Center, also assisted BLM in drafting this proposed rule. BLM interprets Section 1339 of the Act as giving it the primary responsibility for making day-to-day decisions necessary to carry out the regulations, while also requiring it to consult with and consider the view of the Department of Energy regarding the administration of this program.

We have determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not meet any of the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, ''categorical exclusion'' means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. This rule will not have a significant economic effect on the coalbed methane industry. The rule will not 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 communities. The rule applies to five States not all of which have substantial quantities of economically recoverable coalbed methane. Furthermore, BLM anticipates that several more States will qualify for removal from the list of affected States, further diminishing the already minor economic impact of these regulations.

The regulations regarding the location and spacing of wells will have little or no economic impact as all of the States on the list of affected States already utilize some method of spacing for gas wells. The regulations pertaining to pooling of interests are reasonable and reflect standard, good management practices for gas wells and will have little economic impact. The section of the regulations that deals with the establishment of an escrow account in cases where it is not clear who owns the coalbed methane gas will also have little economic impact. The escrow account will hold the funds from producing wells while the ownership of the coalbed methane is being determined.

There will be little or no cost increase imposed on the coalbed methane industry and therefore there will be no substantial effects on government agencies or competition. Further, for the same reasons, the Department has determined that under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the rule will not have a significant economic impact on a substantial number of small entities. The rule does not distinguish between entities based on their size.

The BLM has determined that this regulation is not significant under the Unfunded Mandates Reform Act of 1995 since it will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This regulation will not significantly or uniquely affect small governments.

The Department certifies that this proposed rule does not represent a

government action capable of interference with constitutionally protected property rights. There will be no private property rights impaired as a result of this rule. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

The Regulatory Management Team of BLM wrote these regulations in plain English. We used plain English in an attempt to effectively communicate the information and legal requirements of these regulations. In addition to comments on the substance and content of these regulations, please comment on the use of plain English in these regulations.

List of Subjects for 43 CFR Part 3170

Public lands—Mineral resources, Reporting and record keeping requirements, Coalbed methane.

For the reasons set out in the preamble, part 3170, Group 3100, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is added to read as follows:

PART 3170—COALBED METHANE

General Provisions

Sec.

States Affected by These Regulations

How To Establish a Spacing Unit

How To Get a Pooling Order

Escrow Accounts

Getting Authorization To Drill and Stimulate Coalbed Methane Wells

Notice and Objection

Hearing and Decision on Objections to Drilling and Stimulation of Coalbed Methane Wells

Plugging of Coalbed Methane Wells

Venting for Safety

Appeals

Authority: 42 U.S.C. 1336; 43 U.S.C. 174.0.

General Provisions

§ 3170.0–1 Purpose of these regulations.

The regulations in this part govern operations associated with the development of coalbed methane in those States listed as affected States. They seek to promote the orderly and efficient development of coalbed methane and preserve the ability to mine coal seams in the affected States.

§ 3170.0–3 Authority for these regulations

Section 1339 of the Energy Policy Act of October 24, 1992 (106 Stat. 2776, 2986; 42 U.S.C. 13368).

§ 3170.0–5 Definitions.

(a) *Affected State* means a State listed by the Secretary of the Interior, with the participation of the Secretary of Energy, as published in the **Federal Register** on April 22, 1993, 58 FR 21589 (1993), and as subsequently amended.

(b) *Coalbed methane* means natural gas that is produced, or may be produced, from coalbeds and rock strata associated with the coalbed.

(c) *Coal operator* means any person who has the right to operate or does operate a coal mine.

(d) *Coal owner* means any person who owns or leases a coal seam.

(e) *Coal seam* means any layer of coal 20 inches or more in thickness. The term also applies to a stratum of less thickness that is being commercially worked, or in the Bureau of Land Management's judgment can foreseeably be commercially worked and will require protection if wells are being drilled through it.

(f) *Nonparticipating working-interest owner* means a coalbed methane owner who relinquishes his working interest in a well to participating working-interest

owners until the proceeds allocable to his share equal 300 percent of his share of the costs of drilling and equipping the well. Afterwards, the nonparticipating working-interest owner becomes a participating working-interest owner. Here, proceeds equal gross revenue less operating costs.

(g) *Participating working-interest owner* means a coalbed methane owner who elects to share the risks and costs of drilling, completing, equipping, gathering, operating (including any and all disposal costs), plugging, and abandoning a well(s) under a pooling order and to receive a share of the well's production.

(h) *Pooling* means joining of interests for common development within an approved spacing unit.

(i) *Spacing unit* means an area that may contain one or more coalbed methane wells for the purpose of orderly development of coalbed methane.

(j) *Stimulate* means any action taken to increase the inherent productivity of a coalbed methane well such as hydraulic fracturing.

(k) *Unit operator* means the party designated in a pooling order to develop a spacing unit by the drilling of one or more coalbed methane wells.

(l) *Vent* means release of coalbed methane into the atmosphere.

§ 3170.0–7 Applicability of these regulations.

The regulations apply to any deposit of coal capable of producing coalbed methane in an affected State and are in addition to State permitting requirements for individual wells. These regulations don't apply to coalbed methane development where there is a voluntary agreement between all ownership interests.

States Affected by These Regulations

§ 3171.1 Which States are affected States?

The five affected States are Pennsylvania, Kentucky, Tennessee, Indiana, and Illinois. Excluded by statute from any extension or revision of the list of affected States are the States of Colorado, Montana, New Mexico, Wyoming, Utah, Virginia, Washington, Mississippi, Louisiana, and Alabama.

§ 3171.2–1 How does BLM add a State to the list of affected States?

BLM may add to the list of affected States when BLM determines that all three of the following conditions apply—

(a) Development of significant deposits of coalbed methane is being impeded by disputes, uncertainty or litigation regarding ownership of coalbed methane;

(b) No statutory or regulatory procedure or existing case law permits and encourages the development of coalbed methane within that State; and

(c) No extensive development of coalbed methane exists within that State, but the potential for coalbed methane development exists.

§ 3171.2–2 How does BLM remove a State from the list of affected States?

BLM will remove a State from the list of affected States when any of the following events occurs:

(a) The Governor of the State petitions the Secretary of the Interior for removal, and the State's legislature doesn't object. The Governor first must notify the legislature of the petition during a legislative session and allow six months for consideration. If, in that time, the legislature enacts no law or resolution disapproving the petition, the Governor may petition the Secretary to delete the State from the list of affected States. The petition must include a copy of the Governor's notice to the State legislature and a statement that the legislature hasn't disapproved removal of the State from the list of affected States;

(b) The State's legislature passes a law or resolution requesting removal from the list of affected States. A representative of the legislature must send BLM a copy of the law or resolution; or

(c) BLM determines that the State no longer meets all of the criteria for an affected State listed in § 3171.2–1.

How To Establish a Spacing Unit

§ 3172.1 What distance requirements apply to a spacing unit?

If the State has distance requirements for coalbed methane wells those distance requirements apply. Otherwise, a coalbed methane well must be both—

(a) 1,000 feet or more from any other coalbed methane well; and

(b) 200 feet or more from the boundary of the spacing unit.

Coalbed methane wells in the gob will be spaced by BLM on an individual basis. Gob means an area in an underground mine where mining activity has occurred that may be packed with waste rock and in which there is a reasonable likelihood of buildup of coalbed methane. Exceptions to paragraphs (a) and (b) of this section require BLM's prior approval.

§ 3172.2–1 Who may apply for a spacing unit?

You may file an application to establish spacing units for drilling and operating coalbed methane wells if you claim a coalbed methane ownership interest within a proposed spacing unit.

§ 3172.2–2 What must my application for a spacing unit contain?

You must file with BLM an original and two copies of an application to establish or modify spacing. In it—

(a) Give your name and address and those of any counsel or representative;

(b) If you are applying to vacate or amend an order, identify the order you want vacated or amended and state the relief you seek;

(c) Justify the size and shape of the proposed spacing unit based on geologic characteristics of the subject coalbed(s) and the engineering and economic characteristics of well(s) within the unit;

(d) Give a legal description of the area to be spaced relative to a known survey point and the total acreage to be included in the order;

(e) Give a map depicting the boundary of the area to be spaced;

(f) List the names and addresses of each owner of the surface estate, and any oil, gas, coal or other mineral interest underlying the land which is the subject of your request; and

(g) Certify by affidavit that you used due diligence to locate and serve notice of the request for spacing to each of the owners identified under § 3172.2–2(f).

§ 3172.2–3 What must be in my notice to interest owners required by § 3172.2–2(g)?

Your notice must—

(a) Briefly describe the proposed action;

(b) Give the address of the BLM office where your application is filed;

(c) Invite interest owners to send written comments to that BLM office within 30 calendar days of receiving your notice; and

(d) Give a general-location map of the area.

§ 3172.2–4 As a notified interest owner under § 3172.2–2(f) how do I object to the spacing?

Provide BLM with written objections within 30 calendar days of your notification.

§ 3172.2–5 What does BLM consider when reviewing my application for spacing?

(a) Besides the information you submitted in your application for spacing, BLM considers—

(1) Proposed mine development plans;

(2) Existing mine operations;

(3) Drilling of multiple coalbed methane wells on each spacing unit;

(4) Existing spacing laws or orders; and

(5) Objections received under § 3172.2–4.

(b) If you don't send enough information for BLM to determine spacing unit size or shape, BLM may enter a temporary order establishing provisional spacing units for the orderly development of the area. The provisional spacing stays in effect until BLM receives the information it needs to determine the ultimate spacing for the wells.

§ 3172.2–6 How does BLM tell me that the spacing unit has been approved?

After reviewing your application for spacing, BLM issues a spacing order that establishes the following:

(a) The size and shape of the spacing units;

(b) The formations to which the order applies;

(c) The acreage included in the order; and

(d) Well locations on each unit.

BLM will send you and any parties that request it, a copy of the spacing order.

How To Get a Pooling Order

§ 3172.3–1 What is a pooling order?

The pooling order is an order that joins conflicting interests in one or more spacing units and spreads their costs and revenues.

§ 3172.3–2 Is a pooling order required if there is a voluntary agreement between ownership interests in the coalbed methane?

No pooling order is required if the parties claiming an ownership interest in the coalbed methane voluntarily agreed to drill and operate the well.

§ 3172.3–3 Who may apply for a pooling order?

You may apply for a pooling order if you are claiming a coalbed methane ownership interest and are proposing to drill a coalbed methane well.

§ 3172.3–4 What must my application for a pooling order contain?

You must file an original and two copies of your application. In it—

(a) Give your name and address and those of any counsel or representative;

(b) If you are applying to vacate or amend an order, identify the order you want vacated or amended and state the relief you seek. If you are seeking to amend an order, you may reference information already on file with BLM and don't need to send it again;

(c) Justify the proposed action which may include citing statutes, rules, orders, and decided cases;

(d) Give a legal description of the area to be pooled;

(e) Include a map that shows the proposed pooling unit boundary and the boundaries of individual tracts of ownership in the unit, certified by a registered land surveyor or engineer;

(f) For each tract in the unit, give—

(1) The acreage and its percentage to the total acreage of the pooling area;

(2) The names, addresses and ownership percentages for all owners of the surface, coal, oil and gas. If any owner's name and address is unknown, say so;

(g) Describe the coalbed methane ownership interests to be pooled;

(h) Give your percentage of the total interest in the proposed unit;

(i) Describe the conflicting claims to ownership of the coalbed methane;

(j) Give the percentages of coalbed methane ownership interests to be escrowed and a plan for escrowing the costs of drilling and operating the well(s) and the proceeds from the well(s).

(k) Describe the geology of any coalbeds and adjacent strata from which coalbed methane is to be produced;

(l) Describe the proposed development, including at least—

(1) The number, location, and depths of proposed wells (with maps as appropriate);

(2) The anticipated drilling schedule;

(3) A description of production measurement and allocation; and

(4) Any other unique aspect of the operation;

(m) Estimate production over the life of well(s) and the total reserves of the unit;

(n) Estimate the allocable costs, providing sufficient detail of the types of direct and indirect costs; and

(o) Certify by affidavit that you used due diligence to locate and identify all interest owners.

§ 3172.3–5 Will there be a hearing on my application for pooling?

Yes. BLM holds a hearing 45 calendar days or more after receiving an application for pooling.

§ 3172.3–6 How will I know about the pooling order hearing?

BLM provides notice of the hearing by certified mail (return receipt requested) or makes a reasonable and diligent effort to provide notice to each party claiming an ownership interest in the coalbed methane within the proposed pooling area. The notice—

(a) Will describe the purpose of the hearing;

(b) Invites each party to submit written objections;

(c) Invites each party to appear before BLM at the pooling hearing; and

(d) States the anticipated date, time, and place of the hearing.

§ 3172.3–7 What will the pooling order establish?

After reviewing your application for pooling and holding the hearing BLM issues a pooling order which, among other things, establishes—

(a) The boundary of the order;

(b) The coalbed methane ownership interests and formations to be pooled;

(c) The unit operator;

(d) Escrow provisions as provided in 3172.4; and

(e) Election options.

§ 3172.3–8 What options do I have in participating in the pooling order?

After BLM issues the pooling order, if you are an owner or claim ownership of the coalbed methane, you must choose a participation option. You must give written notice of your election to BLM and the designated unit operator within 30 calendar days after the effective date of the pooling order. The participation options are—

(a) You elect to sell or lease your coalbed methane ownership interest to the unit operator at a royalty rate determined by BLM in the pooling order;

(b) You elect to become a participating working-interest owner; or

(c) You elect to become a nonparticipating working-interest owner.

§ 3172.3–9 What if I make no election?

No election means you have agreed to lease your coalbed methane interest to the unit operator under the terms and conditions in the pooling order. The pooling order must clearly state that this is what no election means.

Escrow Accounts

§ 3172.4–1 What is the purpose of the escrow account BLM establishes?

BLM establishes an escrow account to maintain custody of the costs and proceeds for the interests described in the pooling order. The costs for administering the escrow account come out of the funds deposited as proceeds in the escrow account. The escrow account will be established at a federally insured bank.

§ 3172.4–2 What funds must I deposit into the escrow account?

(a) If you are a participating working-interest owner but not the unit operator, you must deposit into the escrow account your share of drilling, equipping, and abandonment costs, as set out in the pooling order;

(b) If you are the unit operator, you must deposit into the escrow account all royalties attributable to the conflicting interests of the lessees plus all proceeds

that exceed ongoing operational expenses (including reasonable overhead costs) attributable to conflicting working interests.

§ 3172.4–3 When will I receive my share of the funds paid into the escrow account?

BLM orders payment of principal and accrued interest from the escrow account within 30 calendar days in one of two ways:

(a) To all legally entitled parties after BLM receives notification of the final legal determination of entitlement. Notification consists of certified copies of the order issued by a court or other body of competent legal jurisdiction.

(b) To all parties who claim an ownership in the coalbed methane when they voluntarily agree on the ownership of the coalbed methane. You must send BLM a copy of the voluntary agreement. This agreement must consist of a notarized writing, signed by all parties claiming an interest in the coalbed methane, which at a minimum clarifies ownership interests in the coalbed methane.

§ 3172.4–4 How will the funds from the escrow account be allocated?

You must give BLM either a certified copy of the order issued by a court or other body of competent legal jurisdiction or a copy of the agreement between parties claiming ownership in the coalbed methane. Then—

(a) If you are a legally entitled participating working-interest owner, you receive a proportionate share of the proceeds attributable to your conflicting ownership interest;

(b) If you are a legally entitled nonparticipating working-interest owner, you receive a proportionate share of the proceeds attributable to your conflicting ownership interest, less your proportionate share of 300 percent of the cost of drilling, equipping and abandoning the well;

(c) If you lease (or are considered to have leased under § 3172.3–9) your coalbed methane ownership interest to the unit operator, you receive a share of the royalty proceeds attributable to the conflicting interests of lessees, as set out in the pooling order; or

(d) If you are the unit operator, you receive the costs each legally entitled participating working-interest owner contributed to the escrow account.

Getting Authorization To Drill and Stimulate Coalbed Methane Wells

§ 3172.5–1 After the pooling order is issued may I begin to drill and stimulate the coalbed methane well(s)?

No. You must send to BLM an application for each well. Each coalbed methane well drilled within the area covered by the order must conform with approved well spacing. Drilling operations, stimulation of a coal seam, or surface disturbance preliminary to drilling may begin only after BLM approves the application.

§ 3172.5–2 What must I include when applying for authorization to drill a coalbed methane well or stimulate a coal seam?

You must send to BLM an original and two copies of your application. Include in it—

(a) A cover sheet containing the information specified in applicable notices or orders, including at least—

(1) The operator's name, address and telephone number;

(2) The name of the individual responsible for on-the-ground operations;

(3) The well name, number, location, and the total acreage committed to the well;

(4) The serial number assigned to the pooling order; and

(5) A statement certifying that you have the right to conduct the operations.

(b) A drilling plan containing the information specified in applicable notices or orders, including at least—

(1) A copy of an approved State permit to drill the well(s);

(2) A description of the drilling and casing program;

(3) A general discussion of the local geology;

(4) A discussion of how you will conform to any mine development plan near the proposed coalbed methane well; and

(5) An explanation of procedures you will follow to protect the safety of persons working in underground coal mines near the coalbed methane well.

(c) When proposed, a stimulation plan containing the information specified in applicable notices or orders. In it—

(1) Describe the stimulation procedure;

(2) Identify all parties who either are operating a coal mine or have by virtue of their property rights in the coal the ability to operate a coal mine within 750 horizontal feet and 100 vertical feet above and below the coal bearing stratum which you propose to stimulate;

(3) Certify that each party identified in § 3172.5–2(c)(2) received a stimulation plan and that the plan—

(i) Tells each notified party that it may witness stimulation activity;

(ii) Explains how you and the notified party will share information on the results of stimulation; and

(iii) States the notified party's right to ask for a hearing before BLM;

(4) Include a signed consent from each party identified in § 3172.5–2(c)(2) agreeing to the proposed stimulation plan. The required consent to stimulate a coal seam in no way impairs, abridges, or affects any rights or obligations arising out of a coalbed methane contract or coalbed methane lease in existence as of October 24, 1992, between a coalbed methane operator or interest owner and a coal operator or interest owner. BLM considers a lease or contractual agreement allowing for coalbed methane development and any extensions or renewals of a lease or agreement as fully meeting consent requirements; and

(d) Provide any other data BLM may request.

§ 3172.5–3 What if I can't get signed consent from a party identified in § 3172.5–2(c)(2)?

(a) If all parties identified above haven't given signed consent, you must file a request with BLM for a determination whether to approve or deny the proposed stimulation of the coal seam(s) described in § 3172.5–2(c)(1). In your request—

(1) Say you lack written consent from a party from whom consent is required;

(2) Detail your efforts to obtain written consent;

(3) Offer any reasons you know for the lack of consent; and

(4) Give prima facie evidence that the method of stimulation proposed by the coalbed methane operator won't cause unreasonable loss or damage to the coal seam. For this section, prima facie evidence is evidence that proves a particular fact but might be overcome by other evidence that proves a contradictory fact. This evidence should consider all factors, including the possibility that coal seams for which no actual or proposed mining plans exists may be mined at some future date. This evidence should also take into consideration the economics of the coal industry and mine safety requirements.

(b) If a coal operator denies consent for reasons of safety, BLM seeks the views and recommendations of the appropriate State and Federal coal mine safety agencies. BLM then makes a determination which is in accordance with Federal and State coal mine safety laws and recommendations of Federal and State coal mine safety agencies.

Notice and Objection

§ 3172.6–1 As the unit operator, whom must I notify before I drill a coalbed methane well?

You must notify—

(a) All parties who either are operating a coal mine or have, by virtue of their property rights in the coal, the ability to operate a coal mine within 750

horizontal feet and 100 vertical feet above and below the coal-bearing stratum which you propose to stimulate; and

(b) All parties claiming an interest in the coalbed methane in the spacing unit.

§ 3172.6–2 How do I prove that I notified all appropriate parties?

You must send BLM a copy of—

(a) A signed receipt of delivery of notice by certified mail;

(b) A signed receipt acknowledging personal delivery of the notice; or

(c) The mailing log or other proof of the date you sent the notice by certified mail, return receipt requested, if all receipts of delivery of notice by certified mail haven't been signed and returned to you within 15 calendar days of mailing.

§ 3172.6–3 If I am notified of the application to drill a coalbed methane well, may I object to the drilling of the well?

Yes. You may submit to the BLM office where the application was filed your written objections about drilling the well within 30 calendar days after you receive a notice from the unit operator of the coalbed methane well.

§ 3172.6–4 What must I include in my objections to the application to drill a coalbed methane well?

Your objections to an application must contain—

(a) Your name, address and telephone number;

(b) The date you received notice of the application to drill;

(c) A description of the proposed activity you object to;

(d) A statement of the specific reason(s) you object;

(e) Conditions under which the permit would be acceptable; and

(f) Any other information you wish to provide including but not limited to mine maps, structural maps, mine plans, and stratigraphic information.

§ 3172.6–5 Under what circumstances may BLM refuse to approve the drilling of the well?

BLM may refuse to approve the drilling of the well if BLM determines that the proposed activity would—

(a) Cause unreasonable loss or damage to any operating, inactive or abandoned coal mine, including any coal mine already projected but not yet being operated, due to its proximity to any coal mine opening, shaft, underground workings, or to any proposed extension of the coal mine;

(b) Not conform with a coal operator's development plan for an existing or proposed operation;

(c) Interfere unreasonably with present or future coal mining operations, including the ability to comply with other applicable laws and regulations;

(d) Possibly be unsafe, considering the dangers of creeps, squeezes or other disturbances because of the extraction of coal;

(e) Interfere unreasonably with the safe recovery of coal, oil, and gas; or

(f) Impinge directly upon the notified parties' coalbed methane interest.

§ 3172.6–6 Under what circumstances is BLM required to deny approval for the drilling of a well?

BLM must deny approval for the drilling of a well if BLM determines that—

(a) The well would not comply with applicable spacing or other requirements;

(b) The unit operator hasn't notified, or hasn't made a diligent effort to notify, all entities that claim ownership of coalbed methane to be drained by the well;

(c) The unit operator hasn't provided entities that claim ownership of coalbed methane to be drained by the well an opportunity to object in accordance with these rules; or

(d) Conflicting interests exist that haven't been resolved by voluntary agreement or by final determination by a court or other body of competent legal jurisdiction and BLM has not issued a pooling order.

§ 3172.6–7 If my application to drill a well is unacceptable because a notified party objects, may I modify my proposal to mitigate the objection?

Yes. BLM considers whether drilling is acceptable if you modify the proposed activity so that—

(a) You can reasonably drill through an existing or planned pillar of coal, or are close to an existing well, taking into consideration surface topography;

(b) You can instead move the drilling to a mined-out area, or to some other feasible area;

(c) You can agree to a drilling moratorium of not more than two years to complete coal mining operations in the subject area; or

(d) You can locate the spacing unit or well in a uniform pattern with other spacing units or wells.

Hearing and Decision on Objections to Drilling and Stimulation of Coalbed Methane Wells

§ 3172.7–1 If I have been notified of the proposal to drill or stimulate a coalbed methane well and I object, am I entitled to a formal hearing?

No. However, BLM may decide to hold an informal fact-finding hearing on any objection filed about an application for drilling or stimulation, or both, of a coalbed methane well. In determining whether to have an informal hearing, BLM takes into account at least—

(a) Whether the party objecting to the application has standing to object. Only parties entitled to notice under § 3172.6–1 have standing;

(b) Whether the objection was filed on time; and

(c) Whether the objection contains all of the information required under § 3172.6–4.

§ 3172.7–2 May parties other than notified parties participate in these proceedings?

Yes. Other interested parties may comment on the stimulation plan only. You must submit comments in writing to the BLM office where the proposed plan was filed before the close of the objection period.

§ 3172.7–3 How will I find out about the informal hearing on objections to the drilling and/or stimulation of the well?

If BLM determines that a hearing is warranted, the hearing takes place within 30 calendar days after the close of the objection period. BLM notifies the applicant and each party with standing to object within ten calendar days after the objection period closes. The notice states the time and place of the hearing, all objections, and who made them.

§ 3172.7–4 What if BLM decides not to have a hearing on objections to the drilling and/or stimulation of the well?

If BLM decides not to hold a hearing on any objections filed with BLM, we explain why we are not holding a hearing in writing to the party who objects and the permit applicant and advise the objecting party of the right to appeal the decision.

§ 3172.7–5 When does BLM decide on my request for approval to drill and/or stimulate the coal seam?

Not later than 45 calendar days after receiving your request for approval to drill and/or stimulate, BLM—

(a) Approves your request as submitted or with appropriate modifications or conditions;

(b) Denies your request and advises you of the reasons for disapproval; or

(c) Advises you, either in writing or orally with later written confirmation, of the reasons why final action will be delayed along with the date you can expect the final action.

§ 3172.7–6 Do I need only BLM's approval to start operations?

No. Approval of drilling locations by BLM doesn't relieve you of obtaining the necessary permits from other appropriate State or Federal regulatory

authorities and surface managing agencies.

Plugging of Coalbed Methane Wells

§ 3172.8–1 When must I plug a coalbed methane well?

You must promptly plug and abandon each coalbed methane well that isn't commercially producible and not otherwise required for any other use. If the well you are abandoning—

(a) Penetrates a minable coal seam with remaining reserves, you must provide for safe mining later. When you abandon and plug a well, you must consult with BLM and any Federal or State agencies with authority over coal mine safety; or

(b) Is associated with mined-out or unminable coal seams, you must consult with any Federal or State agencies with authority over coal mine safety.

Venting for Safety

§ 3172.9 May I vent coalbed methane for safety reasons?

Yes. Nothing in this section prevents or inhibits a party who has the right to develop and mine coal from venting coalbed methane to ensure safe mine operations in accordance with any applicable Federal and State requirements.

Appeals

§ 3172.10 What if I have been adversely affected by a decision made by BLM under these regulations?

You may appeal that decision to the Interior Board of Land Appeals under the regulations in part 4 of this title.

Dated: July 17, 1995.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

[FR Doc. 95–22698 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–GJ–P

Notices

Federal Register

Vol. 60, No. 179

Friday, September 15, 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

Forest Service

Revised Arapaho and Roosevelt National Forest and Pawnee National Grassland Land and Resource Management Plan (Forest Plan) Arapaho and Roosevelt National Forest and Pawnee National Grassland; Boulder, Clear Creek, Gilpin, Grand, Jefferson, Larimer, Park, and Weld Counties, Colorado

AGENCY: Forest Service, USDA.

ACTION: Revised Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Supervisor of the Arapaho and Roosevelt National Forest and the Pawnee National Grassland gives notice of the agency's intent to prepare an environmental impact statement on the revision of the Arapaho and Roosevelt National Forests and Pawnee National Grassland Land and Resource Management Plan (Forest Plan).

The original Notice of Intent to Prepare an Environmental Impact Statement for this Forest Plan Revision was published July 10, 1990. Due to the delay in publishing a Draft EIS, this Notice serves to revise the Notice of July 1990.

FOR FURTHER INFORMATION CONTACT: Howard Sargent, Forest Planner, (970) 498–1201, 240 West Prospect Road, Fort Collins, CO 80526.

SUPPLEMENTARY INFORMATION: A Forest Plan shall ordinarily be revised on a 10-year cycle or at least every 15 years. A plan may also be revised whenever the Forest Supervisor determines that conditions or demands in the area covered by the plan have changed significantly. The current Arapaho and Roosevelt National Forest Land and Resource Management Plan was approved on May 4, 1984. The Forest is scheduled to complete its revision of the Forest Plan and FEIS in Fall, 1996.

Through evaluation of the Forest Plan, documented in the ''Five Year Evaluation: Forest Plan Monitoring and Evaluation Report'' (1990) and further refined in 1993 in the ''Analysis of the Management Situation,'' the Forest Supervisor of the Arapaho and Roosevelt National Forest and the Pawnee National Grassland has determined that the following topics should be the primary focus of the Forest Plan Revision:

1. Biological diversity including old growth;
2. National Forest-residential intermix areas;
3. Oil and gas leasing;
4. Recreation-related items such as recreation settings, scenic resources and wild and scenic rivers;
5. Roadless areas and additions to the Wilderness Preservation System;
6. Timber management, including suitable lands, allowable sale quantity, silvicultural practices;
7. Travel management; and
8. Water yield and management.

Public involvement in the Plan Revision process has been extensive since the original Notice of Intent was published, utilizing a variety of scoping techniques. These included mailings to individuals and organizations known to be interested in the Plan Revision, newspaper articles, newsletters, public meetings, and open houses. After release of the Draft Environmental Impact Statement, more open houses will be held and will be announced in local news media and in newsletters.

Revision of the Forest Plan began in 1990; the draft environmental impact statement and Proposed Revised Forest Plan should be available for public review in November, 1995. The final environmental impact statement, Record of Decision, and Revised Forest Plan are scheduled to be completed by Fall, 1996.

The comment period on the draft environmental impact statement will be a minimum of 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 1978*). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The official responsible for approving the revised Forest Plan is the Regional Forester, Rocky Mountain Region, USDA Forest Service, 11177 West 8th Avenue, P.O. Box 25127, Lakewood, Colorado 80225. The Forest Supervisor, Arapaho and Roosevelt National Forests and Pawnee National Grassland, is delegated responsibility for preparing the revision.

Dated: August 29, 1995.

William P. Lisowsky,

Acting Forest Supervisor.

[FR Doc. 95–22938 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–11–M

Oil and Gas Leasing Analysis; Los Padres National Forest, Los Angeles, Kern, Monterey, San Luis Obispo, Santa Barbara and Ventura Counties, California; Notice of Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service (FS) and the Bureau of Land Management (BLM) are conducting an analysis to identify lands within Los Padres National Forest that should or should not be made available for oil and gas leasing. The analysis will be documented in an environmental impact statement (EIS). The Forest Service is the Federal lead agency. The Bureau of Land Management is participating in the analysis as a cooperating agency.

The purpose of the EIS is to implement the authority and responsibility granted to the FS by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (P.L. 100–203) and to meet the regulatory requirements of 36 CFR 228 Subpart E. This Act gives the FS authority to approve or disapprove the leasing of National Forest System lands for development of oil and gas resources. The Act also authorizes the FS to identify appropriate stipulations to be applied to a lease to protect the surface resources. The BLM issues the leases and administers operations connected with the extraction of the mineral resources. The FS approves all surface disturbing activities and administers all surface operations.

The FS and BLM, Federal agencies with separate responsibilities for administration of oil and gas leasing on lands within Los Padres National Forest, propose the following specific actions:

(1) The Forest Supervisor will decide, within Los Padres National Forest, which National Forest System (NFS) lands and non-Federal lands with Federal mineral ownership (split-estate lands) are administratively available for oil and gas leasing and under what conditions. A significant part of the leasing decision is to determine stipulations to become part of any lands offered for lease. There are numerous possible varieties and combinations of these lease stipulations but each can be placed into one of the following categories: no lease; no surface occupancy; timing limitations; controlled surface use; and, lease with standard BLM lease terms.

(2) The Forest Supervisor will decide which specific NFS lands the BLM is authorized to offer for lease, subject to the FS ensuring that correct stipulations will be attached to leases issued by the BLM.

(3) The FS proposes to amend Los Padres National Forest Land and Resource Management Plan to incorporate the leasing decision in place of guidelines for oil and gas leasing contained in the Forest Plan.

(4) The BLM conducts public offerings to lease the specific lands authorized by the Forest Service.

The decisions made as a result of this analysis will not result in on-the-ground activities. Ground disturbing projects such as exploration, drilling or field development would require further environmental analysis and separate site specific decisions prior to approval.

Since the Forest Plan was completed prior to the passage of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, the current Forest Plan did not determine the availability of NFS lands for oil and gas leasing. The Plan directs that later analyses and decisions to lease, or not lease, specific lands would be documented in an EIS.

The area involved in this leasing analysis includes all Federal lands within the boundary of Los Padres National Forest except for lands which have been legislatively withdrawn from mineral entry—wilderness, the Santa Ynez municipal watershed and the Big Sur coastal zone. The study area encompasses approximately 743,000 acres or 42 percent of the total area within the Forest boundary.

Possible oil and gas exploration and development that could result from leasing Federal lands within Los Padres National Forest could affect the lands and resources of the Forest in several ways. The FS and BLM have identified the following as tentative issues and resources to be addressed during the analysis process: wildlife and wildlife habitat; threatened, endangered and sensitive animals and plants; soils and water; riparian, wetlands and floodplains; and, visual and recreation resources. In addition, the possible effects of leasing on opportunities to explore for and develop oil and gas resources within the analysis area and possible effects on local communities and socioeconomic values will be analyzed.

The range of alternatives for this analysis is being developed. The following alternatives are proposed at this time. This list will be changed/supplemented as needed as a result of scoping.

(1) No leasing.

(2) Current Forest Plan direction.

(3) Emphasize biodiversity and watershed protection.

(4) Emphasize visual and recreational resources.

(5) Balanced resources emphasis.

(6) Emphasize oil and gas development.

Federal, State and local agencies, organizations, and individuals who may be interested in or affected by the decision will be invited to participate in the scoping process. Scoping will include mailings, media announcements, and public meetings. The scoping process will identify potential issues, identify those issues to be analyzed in depth, and eliminate insignificant issues. Scoping will also determine the extent of the analysis necessary for an informed decision including identification of alternatives.

The FS will hold public meetings at the following locations:

Frazier Park, CA—Saturday, Sept. 30, 1995, 10:00 A.M., Chuchupate Ranger Station, Lockwood Valley Road.

King City, CA—Monday, Oct. 2, 1995, 7:30 P.M., Orradre Building, Salinas Valley Fairgrounds, 625 Division Street.

Arroyo Grande, CA—Tuesday, Oct. 3, 1995, 7:30 P.M., South County Regional Center, 800 West Branch Street.

Goleta, CA—Wednesday, Oct. 4, 1995, 7:30 P.M., Goleta Community Center, 5679 Hollister Avenue.

Ventura, CA—Thursday, Oct. 5, 1995, 7:30 P.M., De Anza Middle School, 2060 Cameron.

David W. Dahl, Forest Supervisor, Los Padres National Forest, Goleta, California, is the responsible official.

Written comments and suggestions concerning the analysis should be sent to Los Padres National Forest, Att'n: Oil & Gas EIS, 6144 Calle Real, Goleta, CA 93117, by October 20, 1995.

The environmental analysis is expected to take about 18 months to complete. The draft environmental impact statement should be available for public review in August, 1996. The final environmental impact statement is scheduled to be completed by April, 1997.

The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The FS believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an

agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Questions about the proposed action and environmental impact statement should be directed to Al Hess, Oil and Gas EIS Project Leader, Los Padres National Forest, phone (805) 681–2794.

Dated: September 6, 1995.

David W. Dahl,

Forest Supervisor.

[FR Doc. 95–22919 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–11–M

Taneum/Peaches Road Access, Wenatchee National Forest, Kittitas County, Washington

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent.

SUMMARY: On May 19, 1994, a Notice of Intent to prepare an environmental impact statement (EIS) for the Taneum/Peaches road access project was published in the **Federal Register** (59 FR 26201). This notice listed the date of the availability of the draft EIS as January 31, 1995, with the final EIS scheduled to be completed by May 1, 1995. The revised date of availability of the draft EIS is December 1995 and the final EIS is May 1996.

FOR FURTHER INFORMATION CONTACT: Questions concerning this revision should be directed to Douglas Campbell, Lands Specialist, Cle Elum Ranger District, 803 West Second, Cle Elum, Washington 98922; phone (509) 674–4411.

Dated: September 6, 1995.

Sonny J. O'Neal,

Forest Supervisor.

[FR Doc. 95–22970 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–11–M

Delegation of Authority to Forest Supervisors, Intermountain Region

AGENCY: Forest Service, USDA.

ACTION: Notice of delegation of authority.

SUMMARY: The Intermountain Region of the Forest Service hereby gives notice of the delegation of authority by the Regional Forester to Forest Supervisors to perform certain transactions related to the granting and terminating of easements on National Forest System lands under authority of the Federal Land Policy and Management Act of October 21, 1976, and the National Forest Roads and Trails Act of October 13, 1964.

EFFECTIVE DATE: October 16, 1995.

FOR FURTHER INFORMATION CONTACT: Randall Karstaedt, Special Uses Officer, Intermountain Region, 324 25th Street, Ogden, UT 84401, (801) 625–5150.

SUPPLEMENTARY INFORMATION: Pursuant to 36 CFR 251.52 and the delegation of authority from the Chief of the Forest Service set forth in Forest Service Manual section 2732.04c and section 2733.04b, the Regional Forester of the Intermountain Region has delegated the authority to all Intermountain Region Forest Supervisors to 1) issue easements under authority of the Forest Road and Trail Act (FRTA) of October 12, 1964 (Pub. L. 88–657, 78 Stat. 1089, as amended) and to terminate such easements with the consent of the grantee, and 2) issue easements and reservations under authority of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (Pub. L. 94–579, 90 Stat. 2743, as amended) and to terminate such easements with the consent of the grantee or on the occurrence of a fixed or agreed upon condition, event, or time when the easement, by its terms, provides for such termination.

This delegation has been issued as a Regional Supplement to Forest Service Manual Chapter 2730, Road and Trail Rights-of-Way Grants, and Chapter 2704, Responsibility.

Jack A. Blackwell,

Deputy Regional Forester, Resources, Intermountain Region.

[FR Doc. 95–22937 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates.

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under section 353.22(a) (19 CFR 353.22(a)). We intend to issue the final results of these reviews not later than August 31, 1996.

	Period to be reviewed
Antidumping Duty Proceedings	
Belgium:	
Industrial Phosphoric Acid:	
A–423–602	
Societe Chimique Prayon-Rupel	08/01/94–07/31/95
Canada:	
Pure Magnesium:	
A–122–814	
Norsk Hydro Canada, Inc	08/01/94–07/31/95
Israel:	
Industrial Phosphoric Acid:	
A–508–604	
Haifa Chemicals, Ltd	08/01/94–07/31/95
Italy:	
Grain-Oriented Electrical Steel:	
A–475–811	
Acciai Speciali Terni S.p.A	08/01/94–07/31/95
Mexico:	
Gray Portland Cement and Clinker:	
A–201–802	
Cemex, S.A. de C.V	08/01/94–07/31/95
Russia:	
Titanium Sponge:	
A–821–803	
Berezniki Titanium-Magnesium Works (''Avisma'') Interlink Metals and Chemicals	08/01/94–07/31/95
The People's Republic of China:	
Sulfanilic Acid:	
A–570–815	
China National Chemicals I/E Corporation, Hebei Branch, China National Chemical Construction Corporation, Bejing Branch, China National Chemical Construction Corporation, Qingdao Branch, Sinochem Qingdao, Sinochem Shandong, Boading No. 3 Chemical Factory, Jinxing Chemical Factory, Zhenxing Chemical Factory, Mancheng Xinyu Chemical Factory, Shijiazhuang, PRC	08/01/94–07/31/95
Mancheng Xinyu Chemical Factory, Baoding, PRC, Mancheng Xinyu Chemical Factory, Bejing, PRC, Hainan Garden Trading Company, Yude Chemical Industry Company, Shunging Lile	08/01/94–07/31/95
All other exporters of sulfanilic from the PRC are conditionally covered by this review.	
Sebacic Acid: [1]	
A–570–825	
Sinochem Jiangsu I/E Corp., Tianjin Chemicals I/E Corp., Guangdong Chemicals I/E Corp., Sinochem Int'l Chemicals Co	07/13/94–06/30/95
All other exporters of sebacic acid from the PRC are conditionally covered by this review.	
Countervailing Duty Proceedings	
Brazil:	
Certain Cut-to-Length Carbon Steel Plate:	
C–351–818	
Companhia Siderurgica de Tubarao	01/01/94–12/31/94
Canada:	
Live Swine: [2]	
C–122–404	
Mayfair Colony, Genetiporc Inc., Niverville Hog and Poultry, National Pig Development (Canada) Co. Ltd., Cornelius Monden, Larry & Gloria McLeod, Rein Westerbaan, Henry Kottelenberg, Garry Van Loon, Warren & Richard Stein, Thames Bend Farms Ltd., Abe Stouffer, Bob Robson, Ed & Nancy DeGorter, Jim & Mary Field, Bill Collins, Ralph Henderson, Clare Martin, Ben & Helen Varekamp, Charlie Terpstra, Andreas & Michael Schertzer, Peter & Kate Bancroft, Jack Nethercott, Allan Faris, Murray Junker, Bob & Scott Robinson, Douglas McLeod, John Boehm, Dan Lester, Ross & Betty Small, Adrian P. Van Dyk, Henry DeWolde, Eric J. Davis, Fred Lee, John & Enid Gough, Henry Van Bilsen, Robin & Donna Carlisle, Ken & Dave Thompson, Lynn Sararus, John Peter Van Haren, Robert M. Matheson, Donald J. Dietrich, George Procter, John & Carrie Rutten, Kurt Keller, Lars & Olav Natvik, Wayne Fear, Richard Stroebel, Arnold Ypma, Jim Whitehouse, Matt Marui, Brian Vandenbroek, Jack & Theo Verburg, Jim F. Hunter, Wayne Brubacher, William Kuyvenhoven, Tim & Rosa Small, Joe Kolkman, Ian & Marlene Archibald, Larry J. Dawson, Brian Simpson, Adrian VanHaren, Ronald Davis, Rein Minnema, Carl & Charlotte Mueller, Henry E.M. Martin, Arkell Swine Research Station, Jim Long, Wood Lynn Farms International Inc., John McDonnell, Jim McDonnell, Timmerman Farms Ltd., Tom & John Archibald, Quality Swine Corporative of Ontario, Jim Bloxsidge, Astoria Swine, Fairholme Colony, Stonyhill 93 (Willow Creek Colony), Wapoka Creek, Pryme Pork Ltd., Members of the Canadian Pork Council	04/01/94–03/31/95
Pure Magnesium:	
C–122–815	
Norsk Hydro Canada Inc	01/01/94–12/31/94
Alloy Magnesium:	
C–122–815	
Norsk Hydro Canada Inc	01/01/94–12/31/94
Israel:	

	Period to be reviewed
Industrial Phosphoric Acid:	
C–508–605	
Rotem Amfert Negev Ltd, Haifa Chemicals Ltd	01/01/94–12/31/94
Malaysia:	
Extruded Rubber Thread:	
C–557–806	
Heveafil Sdn. Bhd., Filmax Sdn. Bhd., Rubberflex Snd. Bhd., Filati Lastex Elastofibre Sdn., Rubfil Sdn. Bhd	01/01/94–12/31/94
Mexico:	
Certain Cut-to-Length Carbon Steel Plate:	
C–201–810	
Altos Hornos de Mexico, S.A. de C.V	01/01/94–12/31/94
Sweden:	
Certain Cut-to-Length Carbon Steel Plate:	
C–401–804	
SSAB Svenskt Stal AB	01/01/94–12/31/94
Thailand:	
Certain Circular Welded Carbon Steel Pipes and Tubes:	
C–549–501	
Saha Thai Steel Pipe Co., Ltd	01/01/94–12/31/94

[1] The period of review shown in the August 16, 1995 (60 FR 42500) initiation notice covering sebacic acid from the PRC should have read as stated above.

[2] The Department has determined that it is not practicable to conduct company-specific reviews of the order on Live Swine from Canada because a large number of exporters and producers requested the review. Therefore, pursuant to section 777A(e)(2)(B) of the Tariff Act of 1930, as amended, the Department will conduct a country-wide review on the basis of aggregate data. We note the investigation and all prior reviews of this order have been conducted on an aggregate basis and that the companies requesting review, except for Pryme Pork Ltd., and the Government of Canada requested a review on a country-wide basis.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: September 13, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–23112 Filed 9–14–95; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Notice of Intent To Adjust the Boundary of the South Slough National Estuarine Research Reserve

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Public notice.

SUMMARY: Notice is hereby given that the Division of State Lands, of the State of Oregon, intends to make minor adjustments to the boundary of the South Slough National Estuarine Research (SSNERR) in Coos Bay, Oregon. The need for the boundary adjustments stems from the July, 1991 discovery that a landowner adjacent to the SSNERR had encroached on approximately three and one half acres owned by the Reserve. The landowner has agreed to transfer to SSNERR property adjacent to the Reserve. In exchange, the SSNERR will grant to the landowner the encroached-upon land. In addition, The Division of State Lands is also granting tidelands to the SSNERR to ensure that there is no net loss of property within the SSNERR, either in terms of market or ecological value of lands. These actions were designed to resolve the encroachment issue in a manner that will protect the natural integrity of the Reserve, while enabling the landowner to retain access to, and use of, the roads, structures, and utilities he developed on Reserve property.

The delineation of the property that will be removed from the boundary of the SSNERR and granted to the encroaching land owner is identified as follows:

Beginning at a ¾″ iron pipe which marks the center ¼ corner of Section 13, Township 26 South, Range 14 West of the Willamette Meridian, Coos County, Oregon:

Thence South 69°53′22″ East for a distance of 85.23 feet;

Thence South 02°25′33″ East for a distance of 498.92 feet;

Thence South 88°03′51″ East for a distance of 299.89 feet;

Thence North 24°46′16″ East for a distance of 351.55 feet;

Thence West for a distance of 360.17 feet;

Thence North for a distance of 218.7 feet to the North line of the Southeast ¼ of said Section 13;

Thence West along said North line for a distance of 188.0 feet back to the point of beginning. Said parcel containing 3.3 acres more or less.

The delineation of the tidelands proposed to be added to the SSNERR by the Division of State Lands is as follows:

All submerged lands in the South Slough arm of Coos Bay, Township 26 South, Range 14, West 14, Willamette Meridan, more particularly described as follows:

Beginning at a point which is the intersection of Township 26 South, Range 14 West, Sections 14, 15, and 23; thence East 1,283 feet to a point; thence North 2°, 36′ East, 1279.60 feet to the Southwest one-sixteen point on Section 14; thence East 1,313.36 feet to a meander corner of the mean high tide line of the South Slough arms of Coos Bay; thence South 73°34′48″ West 1,808.62 feet to the True Point of Beginning.

Thence South 73°34′48″ West, 250 feet more or less, thence North 16°25′12″ West, 696.96 feet more or less, thence North 73°34′48″ East 250 feet more or less; thence South 16°25′12″ East; 696.96 feet more or less to the True Point of Beginning, containing 4.0 acres more or less.

The delineation of the property added by the landowner who encroached into SSNERR in the upland portion of the SSNERR is as follows:

Beginning at ¾″ iron pipe which marks the center ¼ corner of Section 13, Township 26 South, Range 14 West of the Willamette Meridian, Coos County, Oregon:

Thence East along the North line of the Southeast ¼ of said Section 13 for a distance of 649.09 feet to the True Point of Beginning;

Thence continuing East along said North line for a distance of 60.66 feet;

Thence South for a distance of 218.7 feet;
Thence West for a distance of 161.58;
Thence North 24°46′16″ East for a distance of 240.86 feet back to the True Point of Beginning.

Any person wishing to comment on the proposed boundary change may forward written statements to the Oregon Division of State Lands, South Slough National Estuarine Research, P.O. Box 5417, Charleston, OR. 97420. Comments must be received by the Division of State Lands no later than close of business (30) thirty days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Nina Garfield, NOAA/NOS/OCRM/SRD, 1305 East-West Highway, SSMC4 12th Floor, Silver Spring, MD. 20910; Phone: (301) 713–3141, ext. 171.

Dated: September 8, 1995.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

(Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Estuarine Sanctuaries)

[FR Doc. 95–22999 Filed 9–14–95; 8:45 am]

BILLING CODE 3510–08–M

Patent and Trademark Office

[Docket No. 950829221–5221–01]

RIN 0651–XX03

Request for Comments Concerning the Right of Priority (35 U.S.C. 119) and Electronic Exchange of Priority Documents

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice; Request for Comments.

SUMMARY: The Patent and Trademark Office (PTO) requests written public comment on various aspects of existing statutory and regulatory requirements for obtaining the right of priority of an earlier filed foreign application. The PTO also requests written public comment on issues associated with the electronic exchange of priority documents between the PTO, the European Patent Office (EPO), and the Japanese Patent Office (JPO).

DATES: Written comments on the topics presented in the supplementary section of this notice, or any related topics, will be accepted by the PTO until November 13, 1995.

ADDRESSES: Those interested in presenting written comments on the topics presented in the supplementary information, or any related topics, may mail their comments to the Assistant Commissioner for Patents, Washington, D.C. 20231, marked to the attention of Box DAC. In addition, comments may also be sent by facsimile transmission to (703) 308–6916, with a confirmation copy mailed to the above address, or by electronic mail messages over the Internet to priority@uspto.gov.

FOR FURTHER INFORMATION CONTACT: Jeffrey V. Nase by telephone at (703) 305–9285, or by mail marked to the attention of Box DAC, addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION:

I. Issues for Public Comment

The PTO is inviting written public comments on the administration and relevance of the existing statutory and regulatory requirements for obtaining the right of priority of an earlier filed foreign application and/or issues associated with the electronic exchange of priority documents between the Trilateral Offices (PTO, EPO, and JPO). Questions included at the end of this section are intended to illustrate the types of issues upon which the PTO is particularly interested in obtaining public comment. This notice has been determined to be not significant for the purposes of Executive Order 12866.

A. The Requirement for a Certified Copy of the Foreign Application Unless Deemed Necessary

Currently, the Trilateral Offices are reconsidering the need that a certified copy of the foreign application be submitted in all cases. 35 U.S.C. 119 requires that a certified copy of a foreign application be submitted in all cases in order to obtain the right of priority. Specifically, 35 U.S.C. 119(b) requires that the applicant file a claim for the right of priority and a certified copy of the original foreign application before the grant of the patent, or at any time during the pendency of the application as required by the Commissioner, but not earlier than six months after the filing of the application in this country. The Commissioner may currently require a translation of the papers filed if not in the English language.

37 CFR 1.55, which implements 35 U.S.C. 119(b), requires that the claim for priority and the certified copy of the foreign application must be filed in all cases before the grant of the patent in order to be entitled to the right of priority, and requires a claim for priority or certified copy of the foreign application filed after payment of the issue fee to be accompanied by a petition (and fee under 37 CFR 1.17(i)) requesting entry. However, the certified copy of the foreign application may be required earlier during the pendency of the application in the case of an interference, when necessary to overcome the date of a reference relied upon by the examiner, or when specifically required by the examiner. If the certified copy of the foreign application is not in the English language, a translation will not be required except in the case of an interference, when necessary to overcome the date of a reference relied upon by the examiner, or when specifically required by the examiner.

Consequently, by statute and regulation, the certified copy of the foreign application must be filed in all cases during the pendency of the application even though it may be unnecessary to the examination of the application. Unless a substantive review of the certified copy of the foreign application, or a translation of such, is necessary to the examination of the application, *e.g.*, during an interference or when necessary to overcome an intervening reference, the claim to priority and the certified copy of the foreign application are merely reviewed to determine whether the certified copy of the foreign application corresponds in number, date, and country to the application identified in the oath or declaration and that there are no obvious formal defects. There is generally no examination of the certified copy of the foreign application to determine whether the applicant is entitled to the benefit of the foreign filing date on the basis of the disclosure of the document. Thus, an unnecessary burden is placed upon applicants to obtain certified copies of the priority documents from the appropriate office and then submit them to the PTO in instances in which the PTO does not substantively examine such documents, especially in view of the fact that such documents do not qualify as prior art in the United States. Further, an unnecessary burden is placed upon the PTO in the processing of such documents.

This right of priority originated in a multilateral treaty of 1883, *i.e.*, the Paris Convention for the Protection of Industrial Property (Paris Convention), to which the United States adhered in 1887. The Paris Convention, however, merely requires that a person who wishes to take advantage of a previous filing make a declaration indicating the date of such filing and the country in which it was filed. The Paris Convention permits, but does not require, the countries of the Union to require a certified copy of the foreign application of the application as

previously filed. Under the Paris Convention, the countries may also require that a translation accompany the certified copy of the foreign application. See Questions #1, 2, and 3.

B. Electronic Exchange of Priority Documents

The PTO also requests written public comment on issues associated with the electronic exchange of priority documents between the PTO, EPO, and JPO. Currently, the Trilateral Offices are considering the implementation of procedures that would allow for the direct exchange of priority documents in electronic form between the office of first filing and the offices of subsequent filings. See Question #4. The PTO is interested in how the public views such electronic exchanges of priority documents, including the evidentiary effect of an electronic document constituting the official PTO record of the priority document. See Questions #5 and 6.

It is anticipated that it will be some time before the PTO will have an electronic data base containing the content of applications-as-filed in a word-recognizable format, *e.g.*, applications captured by optical character recognition (OCR). As such, any electronic exchange, at least initially, would be in the form of digital images of the applications-as-filed.

It is contemplated that under a system authorizing the exchange of priority documents, an applicant would have to request that an office forward the priority document directly to another office in electronic form, rather than having the certified copy go to the applicant, who in turn would forward it to the other office. The PTO is also considering providing a return receipt to indicate to the applicant that the request to forward the priority document was received by the PTO and that the PTO has forwarded the priority document to the office(s) designated by the applicant.

The cost to the PTO of processing requests and forwarding priority documents to the designated office(s), and of generating and mailing return receipts, would be recovered through service fees. See Questions #7 and 8. Nevertheless, such a direct exchange of priority documents for a service fee should result in an overall reduction in costs and administrative work for applicants, as well as cost reductions in the conversion from paper to electronic form.

II. Questions

1. (a) Does the requirement that a certified copy of the foreign application be submitted in all cases before the grant of a patent in order to be entitled to the right of priority serve any useful purpose? If yes, please provide those useful purposes.

(b) Is your answer affected by the fact that such documents may qualify as novelty defeating prior art in other countries?

2. (a) Notwithstanding the existing requirements, when should an applicant be required to submit a certified copy of the foreign application?

(b) Would you continue to submit a certified copy of the foreign application even if not specifically required?

(c) Should any action taken by the U.S. Government be contingent on action in the other Trilateral countries?

3. When the foreign application is not in the English language and an English translation is deemed necessary, should both a certified copy of the foreign application and an English language translation accompanied by a verified statement that the translation is an accurate translation of the certified copy of the foreign application be required, or should only an English language translation of the foreign application accompanied by a verified statement that the translation is accurate be required?

4. What significant problems, either legal or technical, would need to be solved to permit the offices of subsequent filing to receive the priority documents directly from the office of first filing rather than from the applicant?

5. Should the PTO, EPO, and JPO electronically exchange priority documents at the request of applicant? Would most applicants take advantage of this service? What disadvantages, if any, are there in the electronic transmission of priority documents among the PTO, EPO, and JPO?

6. Will the filing of a priority document in electronic form by the office of first filing, rather than in paper form by the applicant, affect the legal admissibility of the priority document?

7. If there was a service fee for the direct exchange of priority documents among the PTO, EPO, and JPO, which was higher than the current fee charged for a certified copy of the application, would most applicants still take advantage of this service? At what fee amount would most applicants choose to request the direct exchange of priority documents?

8. If providing a return receipt resulted in an increase in the service fee for the direct exchange of priority documents among the PTO, EPO, and JPO, would a return receipt be desirable? Against the background that increasing the information provided on such a return receipt would increase the cost of generating such return receipt, and thus increase the service fee, what information should be included on the return receipt?

Dated: September 8, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–22858 Filed 9–14–95; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a distress marker light to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 16, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 2, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 F.R. 28781) of proposed addition to the Procurement List. Comments were received from two producers of the distress marker light, one of which is a current contractor with the Government for the light. The contractor stated that the light is a large percentage of its sales, and that losing these sales would have a severe impact on the company and its employees. The contractor claimed that addition of this light to the Procurement List would unreasonably foreclose the contractor from the Government market for strobe marker distress lights, as the Committee has already added the other version the Government buys to the Procurement List. The contractor asked that the Committee not add the light to the Procurement List at least until the current commercial procurement is completed, to allow the contractor to develop a commercial item which would replace the loss of Government sales of the light.

The figures the contractor initially provided to show how the addition would deprive it of a large part of its sales made the assumption that the contractor would receive the contract for the entire requirement for which the Government currently has a solicitation outstanding if the Committee were not to add the light to the Procurement List. The Committee does not consider this assumption to be realistic, because the contractor received less than half of the Government requirements under the most recent procurements, and the contractor has not received a substantial contract for this light since 1992, so it should not be unusually dependent on Government sales of the light.

The contractor subsequently provided other sales information, which indicated that, while the contractor's total sales are considerably less than the forecast the Committee used to estimate impact, the percentage represented by sales of the light to the Government is small enough that its loss is unlikely to have a severe adverse impact on the contractor. Additionally, the contracting activity which buys the light for the Government has indicated that it will complete its current buy before the addition of the light to the Procurement List becomes legally effective. Consequently, the contractor will receive the opportunity it seeks to sell the light to the Government long enough to develop its commercial item.

The other strobe marker distress light was added to the Procurement List in 1973. The commenting contractor was not the contractor for that light at the time; it did not even exist at the time. Consequently, it did not lose sales as a result of the Committee's action.

The other producer of the light is a new company which claimed that it was in line for a contract award for the light earlier this year when the contracting activity cancelled the solicitation, on the basis that the light had been added to the Procurement List, before the producer could obtain a certificate of competency from the Small Business Administration to qualify for the contract award. The producer also objected to the loss of the opportunity to recoup its investment in producing the light.

While the basis for the cancellation of the solicitation was erroneous, as the light was not then on the Procurement List, the contracting activity has informed the Committee that it has subsequently rescinded the cancellation. The contracting activity also informed the Committee that it found the producer nonresponsible, and the producer failed to apply for its certificate of competency within the required period, so it is not eligible for a contract award. These events occurred before the solicitation was erroneously cancelled. Accordingly, the producer's loss of the contract cannot be attributed to the Committee's action in adding the light to the Procurement List.

Similarly, the producer's loss of the opportunity to recoup its investment was caused by its failure to take an action needed to receive a contract award, not by the Committee's action. While the producer will lose further opportunities to recoup its investment once the light is on the Procurement List, it should be noted that it would risk losing these opportunities even if the light had not been added to the Procurement List because no one is guaranteed a contract under the competitive bidding system.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Light, Marker, Distress
6230–01–143–4778

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–22975 Filed 9–14–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List an animal trap to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 16, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 14, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 36266) of proposed addition to the Procurement List.

Comments were received from the current contractor in response to a Committee request for information. The contractor claimed a common-law patent right in the distinctive features of its trap and threatened to sue anyone who manufactures its trap without its permission.

It is the Committee's understanding that the patent laws of the United States do not recognize a common-law patent right. See 35 U.S.C. 102. The features the contractor claimed—a spring loaded door and wire trap walls—appear in similar traps made by at least two other commercial trap manufacturers. The nonprofit agency which will produce the trap based its design on a Government item description and examination of a trap which was not made by the contractor. Consequently, the Committee believes that the contractor's objections are without foundation, and will not impede the nonprofit agency in furnishing the trap to the Government.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for

procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Trap, Animal
3740–00–531–3905

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–22976 Filed 9–14–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities, military resale commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 16, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 21 and 28, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 37631 and 38794) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, military resale commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities, military resale commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities, military resale commodity and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities, military resale commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodities, military resale commodity and services are hereby added to the Procurement List:

Commodities

Compound, Cleaning and Degreasing
6850–01–383–3038
6850–01–383–3042
6850–01–383–3045
6850–01–383–3046
6850–01–383–3047
6850–01–383–3052
6850–01–383–3053
6850–01–383–3054
6850–01–383–3056
6850–01–383–3058
6850–01–383–3059
6850–01–383–3060

Mop, Sponge
7920–00–728–1167

Military Resale Commodity

Refill, Lint Roller
M.R. 864

Services

Administrative Services, St. Paul U.S. Army Engineer District, St. Paul, Minnesota

Administrative Services, Department of Veterans Affairs Medical Center, Mountain Home, Tennessee

Data Entry/Data Base Management, General Services Administration, Paints and Chemicals Commodity Center, Auburn, Washington

Janitorial/Custodial, Department of the Treasury, Birmingham Regional Financial Center (BRFC), Birmingham, Alabama

Janitorial/Custodial, U.S. Coast Guard Aviation Training Center, Mobile, Alabama

Janitorial/Custodial, Department of the Air Force, 440th Airlift Wing, 300 East College Avenue, Milwaukee, Wisconsin

Mailroom Operation, U.S. Army Reserve Command, Atlanta, Georgia

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–22973 Filed 9–14–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 16, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons

who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to the Procurement List for production by the nonprofit agency listed: Administrative Services, Naval Air Warfare Center Training Systems Division, 12350 Research Parkway, Orlando, Florida.

NPA: Goodwill Industries of Central Florida Orlando, Florida

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–22974 Filed 9–14–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 16, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 30, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 F.R. 34235) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Food Service, U.S. Coast Guard Support Center, Alameda, California

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–23003 Filed 9–14–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 27 September 1995.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: September 12, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22979 Filed 9–14–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 19 October 1995.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. II § 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: September 12, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22980 Filed 9–14–95; 8:45 am]

BILLING CODE 5000–04–-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Notice of Availability of Record of Decision for Direct Service Industrial Customer General (Integration of Resources) Transmission Agreement 15-Year Extension

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to extend the length of the Direct Service Industrial Customer General (Integration of Resources (IR)) Transmission Agreement an additional 15 years. The Business Plan Environmental Impact Statement (BP EIS) (DOE/EIS–0183) of June 1995 supports this decision and was previously provided.

In response to a need for sound policy to guide its business direction under changing market conditions, BPA explored six alternative plans of action in its BP EIS. In the subsequent BP EIS Record of Decision (August 15, 1995), the BPA Administrator selected the Market-Driven alternative as the best course of action. The EIS and ROD were also intended to guide BPA in a series of related decisions on specific issues and actions. The subject of this ROD is one of those actions.

Consistent with the Business Plan, the BP EIS, and the BP EIS ROD, BPA is offering to extend the Direct Service Industries' (DSIs) existing 5-year General Transmission Agreement (IR Agreement) for an additional 15 years. BPA has decided to make this offer in order to continue to provide open and equitable access to the DSIs, allow the DSIs to diversify their power supply to reduce risk, and because BPA recognizes that the DSIs likely have the ability to access the wholesale power market indirectly through their local utilities.

This decision, as well as others to follow, are tiered to the BP EIS ROD. The specific information on the IR Agreement extension and a summary of the environmental impacts associated with selecting this particular alternative are available upon request.

ADDRESSES: Copies of the ROD and BP EIS may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION, CONTACT: Allan F. Paschke—MPC, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, phone number 503–230–5850, fax number 503–230–7568.

PUBLIC AVAILABILITY: This ROD will be distributed to all interested and affected persons and agencies.

Issued in Portland, Oregon, on August 31, 1995.

Walter E. Pollock,

Acting Administrator.

[FR Doc. 95–22953 Filed 9–14–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER94–1099–005, et al.]

Eclipse Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 8, 1995.

Take notice that the following filings have been made with the Commission:

1. Eclipse Energy, Inc.

[Docket No. ER94–1099–005]

Take notice that on August 28, 1995, Eclipse Energy, Inc. tendered for filing certain information as required by the Commission's letter order dated June 15, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

2. Gulfstream Energy, LLC.

[Docket No. ER94–1597–003]

Take notice that on August 17, 1995, Gulfstream Energy, LLC (Gulfstream) filed certain information as required by the Commission's November 21, 1994 letter order in Docket No. ER94–1597–000. Copies of Gulfstream's informational filing are on file with the Commission and are available for public inspection.

3. Williams Energy Services Company

[Docket No. ER95–305–002]

Take notice that on August 23, 1995, Williams Energy Services Company (Williams Energy) filed certain information as required by the Commission's March 10, 1995 letter order in Docket No. ER95–305–000. Copies of Williams Energy's informational filing are on file with the Commission and are available for public inspection.

4. SouthEastern Energy Resources, Inc.

[Docket No. ER95–385–002]

Take notice that on August 21, 1995, SouthEastern Energy Resources, Inc. tendered for filing certain information as required by the Commission's letter order dated March 7, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

5. K N Marketing, Inc.

[Docket No. ER95–869–001]

Take notice that on August 1, 1995, K N Marketing, Inc. tendered for filing certain information as required by the Commission's letter order dated May 26, 1995 in Docket No. ER95–869–000. Copies of K N Marketing, Inc.'s informational filing are on file with the Commission and are available for public inspection.

6. Public Service Company of Oklahoma Southwestern Electric Power Company and West Texas Utilities Company

[Docket No. ER95–1076–001]

Take notice that on August 23, 1995, West Texas Utilities Company (WTU) tendered for filing a tariff sheet which was inadvertently omitted from its July 14, 1995 amended filing concerning its Coordination Sales Tariff (CST–1). The missing sheet contained no changes in tariff language.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Indiana Michigan Power Company

[Docket No. ER95–1590–000]

Take notice that on August 17, 1995, American Electric Power Service Corporation tendered for filing on behalf of the Indiana Michigan Power Company (Indiana Michigan) a proposed Addendum to Service Schedule D (AEP System Delivery of Third Party Purchases) to the Interconnection Agreement between Indiana Michigan and Commonwealth Edison Company (CE) dated August 1, 1991 (Indiana Michigan FERC Rate Schedule No. 78).

The Addendum is in the form of an agreement between Indiana Michigan and CE settling a complaint filed by CE in Docket No. EL95–4–000 on November 2, 1994. The parties to the agreement request an effective date of August 17, 1995.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Electric Company

[Docket No. ER95–1622–000]

Take notice that on August 24, 1995, Pennsylvania Electric Company tendered for filing Supplement No. 9 (Revised July 21, 1995) Exhibit A—Delivery Points to Pennsylvania Electric Company (Penelec) FERC Rate Schedule FERC No. 90.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Wickland Power Services

[Docket No. ER95–1623–000]

Take notice that on August 24, 1995, Wickland Power Services tendered for filing a letter requesting to become a member of the Western Systems Power Pool.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Central Hudson Gas and Electric Corporation

[Docket No. ER95–1627–000]

Take notice that on August 25, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and National Gas & Electric L.P. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Central Hudson Gas and Electric Corporation

[Docket No. ER95–1628–000]

Take notice that on August 25, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and Rainbow Energy Marketing. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Central Illinois Light Company

[Docket No. ER95–1629–000]

Take notice that on August 25, 1995, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, and Central Illinois Public Service Company, tendered for filing with the Commission an Index of Customers and four signed Service Agreements under the Coordination Sales Tariff approved on April 25, 1995.

Copies of the filing were served on the applicable customers and the Illinois Commerce Commission.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Indiana Gas and Electric Company

[Docket No. ER95–1636–000]

Take notice that on August 28, 1995, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing to a proposed Interchange Agreement with Intercoast Power Marketing Co. (IPM).

The proposed revised Interchange Agreement will provide for the purchase, sales, and transmission of capacity and energy by either party under the following Service Schedules: (a) SIGECO Power Sales, (b) IPM Power Sales, and (c) Transmission Service.

Waiver of the Commission's Notice Requirements is requested to allow for an effective date of August 25, 1995.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Southern Indiana Gas and Electric Company

[Docket No. ER95–1637–000]

Take notice that on August 28, 1995, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing to a proposed Interchange Agreement with Heartland Energy Services Inc. (Heartland).

The proposed revised Interchange Agreement will provide for the purchase, sale, and transmission of capacity and energy by either party under the following Service Schedules: (a) SIGECO Power Sales, (b) Heartland Power Sales, and (c) Transmission Service.

Waiver of the Commission's Notice Requirements is requested to allow for an effective date of August 25, 1995.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp

[Docket No. ER95–1661–000]

Take notice that on August 31, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Power Sales Agreement dated June 21, 1995 (Agreement) between PacifiCorp and Cheyenne Light, Fuel and Power Company (Cheyenne).

PacifiCorp requests that a waiver of prior notice be granted and that an effective date of January 1, 1997 be assigned to the agreement.

Copies of this filing were supplied to Cheyenne, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. New York State Electric & Gas Corporation

[Docket No. ER95–1678–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on

August 31, 1995, tendered for filing an amendment to the following rate schedules (the ''Rate Schedules''):

104—GPU Service Corporation
119—Consolidated Edison Company of New York, Inc.
120—Niagara Mohawk Power Corporation
122—Baltimore Gas & Electric Company
123—Allegheny Electric Cooperative, Inc.
124—Enron Power Marketing, Inc.
128—Catex Vitol Electric, Inc.
129—LG&E Power Marketing, Inc.
130—AES Power, Inc.
132—InterCoast Power Marketing Company
133—Louis Dreyfus Electric Power, Inc.
134—Citizens Power and Light Corporation
135—Vermont Public Power Supply Authority
136—Green Mountain Power Corporation
137—Electric Clearinghouse, Inc.
138—Burlington Electric Department
139—Atlantic Electric Company
140—Heartland Energy Service, Inc.
141—Rainbow Energy Marketing Corporation
142—CNG Power Services Corporation
143—Engelhard Power Marketing, Inc.
144—Central Hudson Gas & Electric Corporation
[1]—Rochester Gas and Electric Corporation

The amendment modifies the rate ceiling applicable to buy-sell transactions to allow NYSEG to charge mutually agreeable rates up to a ceiling rate that includes a transmission component based on NYSEG's embedded cost of transmission. The Rate Schedules allow NYSEG and the customers to enter into mutually agreeable capacity and/or energy transactions (''Transactions). The Amendment will not apply to any Transactions that commenced on or before August 31, 1995. The Amendment will not change the requirement that NYSEG and the Purchaser reach mutual agreement as to the rates and terms of each Transaction in advance of each Transaction.

NYSEG requests that the agreement become effective on September 1, 1995. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and each customer listed above.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. North Atlantic Energy Corporation

[Docket No. ER95–1679–000]

Pursuant to Section 205 of the Federal Power Act, North Atlantic Energy Corporation (North Atlantic) filed on August 31, 1995, proposed changes to charges for decommissioning Seabrook Unit 1 to be collected under North Atlantic Federal Energy Regulatory Commission Rate Schedule Nos. 1 and 3. These charges are recovered under a formula rate that is not changed by the filing. The proposed adjustment in charges is necessitated by a ruling of the New Hampshire Nuclear Decommissioning Finance Committee adjusting the funding requirements for decommissioning Seabrook Unit 1.

North Atlantic has requested an effective date of November 1, 1995 for the adjusted charges.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Washington Water Power Company

[Docket No. ER95–1681–000]

Take notice that on September 1, 1995, the Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission a Notice of Termination concerning Rate Schedule FERC N. 168 and Supplement No. 1 to Rate Schedule 168, a replacement energy sales agreement between WWP and the City of Seattle which was expired by its own terms effective June 30, 1995.

WWP requests that the requirement for 60 days notice between filing date and termination date be waived. If the 60 days notice is waived, there will be no effect upon purchases under other rate schedules.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Idaho Power Company

[Docket No. ER95–1682–000]

Take notice that on September 1, 1995, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission its draft Second Amendment to the Power Sales Agreement Between Idaho Power Company and the Cities of Azusa, Banning and Colton, California.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Delmarva Power & Light Company

[Docket No. ER95–1684–000]

Take notice that on September 1, 1995, Delmarva Power & Light Company (Delmarva) tendered for filing an agreement between Delmarva and the Delaware Municipal Electric Corporation (DEMEC) under which Delmarva offers to sell up to 20 MW to DEMEC each month that the Agreement is effective. DEMEC has the right to purchase all, some or none of the 20 MW subject to the condition that each kilowatt which DEMEC does determine to purchase shall be purchased under a 100% load factor basis. In addition, charges under the Agreement have an upper and a lower bound. The Agreement provides that the price shall not be less than Delmarva's forecasted system incremental cost to supply and shall not exceed 3.698 cents per kilowatt hour, which is derived from the Settlement in Docket Nos. ER93–96–000 and EL93–11–000, which was approved by the Commission on December 7, 1994.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Vastar Power Marketing, Inc.

[Docket No. ER95–1685–000]

Take notice that on September 1, 1995, Vastar Power Marketing, Inc. (Vastar) tendered for filing an application for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1. Vastar intends to engage in electric power and energy transactions as a marketer and a broker.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Otter Tail Power Company

[Docket No. ER95–1687–000]

Take notice that on September 5, 1995, Otter Tail Power Company (OTP) tendered for filing a Coordination Sales Tariff. The Tariff provides for the sales of Negotiated Capacity and/or Energy and General Purpose Energy. OTP states that sales under the Tariff will be made at negotiated prices no lower than system incremental energy costs and no higher than the Company's fully allocated cost of capacity plus 100% of incremental energy costs. OTP states service will be provided under the Tariff only to customers who sign Service Agreements.

OTP states that copies of this filing have been served on the Minnesota Public Utilities Commission, the North Dakota Public Service Commission and the South Dakota Public Service Commission.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Illinois Power Company

[Docket No. ER95–1688–000]

Take notice that on September 5, 1995, Illinois Power Company (IPC) tendered for filing an Interchange Agreement between IPC and Stand

[1] The rate schedule for the agreement with Rochester Gas and Electric Corporation has been submitted to the FERC, docket No. ER94–892–000, and is pending FERC's acceptance and designation of a schedule number.

Energy Corporation (SEC). IPC states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between IPC and SEC.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Central Hudson Gas and Electric Corporation

[Docket No. ER95–1689–000]

Take notice that Central Hudson Gas and Electric on September 5, 1995, tendered for filing a Service Agreement between CHG&E and Phibro Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (''Power Sales Tariff'') accepted by the Commission in docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Virginia Electric and Power Company

[Docket No. ER95–1690–000]

Take notice that on September 5, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Dayton Power and Light Company and Virginia Power, dated August 11, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Dayton Power and Light Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Ohio State Corporation Commission, Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. PECO Energy Company

[Docket No. ER95–1691–000]

Take notice that on September 5, 1995, PECO Energy Company (PECO) filed a Service Agreement dated August 31, 1995, with Engelhard Power Marketing, Inc. (Engelhard) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Engelhard as a customer under the Tariff.

PECO requests an effective date of August 31, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to Engelhard and to the Pennsylvania Public Utility Commission.

Comment date: September 22, 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. 95–22972 Filed 9–14–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–606–001]

Western Gas Interstate Co.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Seaboard Pipeline Project and Request for Comments on Environmental Issues

September 11, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Seaboard Pipeline Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Western Gas Interstate Company (Western) wants to install a new delivery point to transport up to 3,000 million British thermal units per day of natural gas to Seaboard Farms, Inc. in Texas County, Oklahoma. Western requests Commission authorization, in Docket No. CP95–606–000, to construct and operate the following facilities needed to transport those volumes:

- construct about 15.5 miles of 8-inch-diameter pipeline from the Buffalo Tap to Seaboard Farms;
- install a meter station consisting of a meter, filter, three regulators, and valves. This site would be a 20-foot by 80-foot-fenced area following construction; and
- remove 7 miles of an existing 4-inch-diameter pipeline which would be replaced by the proposed 8-inch-diameter pipeline.

The general location of the project facilities and specific locations for facilities on new sites are shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 136 acres of land. Following construction, about 47 acres would be maintained as new aboveground facility sites and right-of-way. The remaining 89 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents

[1] Western Gas Interstate Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts (if applicable) that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.[3]
- Vegetation and wildlife.
- Land use.
- Cultural resources.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

Due to limited information concerning the proposed project, we are unable to determine which environmental issues should be evaluated in the EA. Therefore, all of the general headings listed above will be evaluated.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426;
- Reference Docket No. CP95–606–000;
- Send a *copy* of your letter to: Ms. Amy Olson, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before October 11, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Olson at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding is October 10, 1995. Parties seeking to file interventions must show good cause, as required by section 385.214(b)(3). You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Amy Olson, EA Project Manager, at (202) 208–1199.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22971 Filed 9–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG94–4–004]

Alabama-Tennessee Natural Gas Co.; Filing

September 11, 1995.

Take notice that on August 31, 1995, Alabama-Tennessee Natural Gas Company (Alabama) filed revised standards of conduct in response to the Commission's August 2, 1995 order.[1]

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before September 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22930 Filed 9–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–734–000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

September 11, 1995.

Take notice that on September 6, 1995, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia, 25325–1273, filed in Docket No. CP95–734–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.211) for approval to construct and operate a new delivery point to Columbia Gas of Ohio, Inc. (COH), an affiliate, in Belmont County, Ohio for interruptible transportation to Wheeling Pittsburgh Steel Corporation Tin Mill, under the blanket certificate issued in Docket No. CP86–240–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia indicates that the quantity of natural gas it will deliver through the proposed delivery point is 720 Dth/day, and 155,000 Dth annually, respectively. Columbia further indicates that the new delivery point will provide interruptible service under Columbia's ITS Rate Schedule. Columbia states that the estimated cost to establish this point of delivery will be approximately $12,000 which will be reimbursed 100% by COH. Columbia further states that there is no impact on its existing design day and annual obligations to its customers as a result of the construction and operation of the new point of delivery.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and

[3] According to the applicant, the project will not affect any waters of the United States. We will report any potential impacts, or their absence, under this heading.

[1] 72 FERC ¶ 61,140 (1995).

Procedure (18 CFR 385.214), a motion to intervene 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 activities 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 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. 95–22932 Filed 9–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–746–000]

Transcontinental Gas Pipe Line Corp.; Request Under Blanket Authorization

September 11, 1995.

Take notice that on September 8, 1995, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP95–746–000 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) and Transco's blanket certificate issued in Docket No. CP82–426–000, for authorization to expand an existing delivery point to New Jersey Natural Gas Company (NJNG), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that NJNG is a transportation and storage customer of Transco under Transco's Rate Schedules IT, FT, SS–2 and X–288. Pursuant to NJNG's request, Transco proposes to expand the Morgan Meter Station, a delivery point to NJNG located on Transco's main line system in Middlesex County, New Jersey. This point of delivery is used by NJNG to receive gas into its distribution system. Transco states that the proposed expansion would be accomplished by Transco replacing two existing four-inch meter tubes with three new eight-inch meter tubes and replacing two existing two-inch regulators with three four-inch regulators at the existing station.

Transco states that it currently delivers up to 30,000 dekatherms of gas per day (dt/d) to NJNG at the Morgan Meter Station. As a result of the expansion proposed herein, the capacity of the Morgan Meter Station will be increased to 100,000 dt/d. Transco states that the addition deliveries to the Morgan Meter Station would be made on an interruptible basis. Transco states that it has sufficient system delivery flexibility to accomplish such additional deliveries without detriment or disadvantage to Transco's other customers.

Transco states that it is not proposing to alter the total volumes authorized for delivery to NJNG on a firm basis or to otherwise change in any way NJNG's firm capacity entitlement on Transco's system. Transco further states that the expansion of this delivery point will have no impact on Transco's peak day deliveries and little or no impact on Transco's annual deliveries and is not prohibited by Transco's FERC Gas Tariff.

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. 95–22933 Filed 9–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–733–000]

Williams Natural Gas Co.; Request Under Blanket Authorization

September 11, 1995.

Take notice that on September 5, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–733–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish a new delivery point, by reversing existing receipt facilities, under its blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to use an existing receipt point, located in Garfield County, Oklahoma, for the delivery of transportation natural gas to Trident NGL, Inc. (Trident), a subsidiary of NGC Corp. WNG states that the cost to reverse the existing facilities is estimated to be $2,000 and would be reimbursed by Trident. WNG mentions that the quantities of gas to be delivered are approximately 191,625 Dth per year with a maximum of 650 Dth per day. WNG asserts that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish this delivery without detriment or disadvantage to its other customers.

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. 95–22931 Filed 9–14–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5295–8]

Clean Water Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended transfer of confidential business information to contractors.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer to EPA contractors and subcontractors, technical and financial confidential business information (CBI) collected from several metals forming, finishing, and fabricating industries including the metal products and machinery manufacturing, maintenance and rebuilding industry. Transfer of the information will allow the contractors and subcontractors to assist EPA in

developing effluent limitations guidelines and standards under the Clean Water Act (CWA) for the metal products and machinery industry. The information being transferred was collected under the authority of Section 308 of the Clean Water Act. Interested persons may submit comments on this intended transfer of information to the address noted below.

DATES: Comments on the transfer of data are due September 25, 1995.

ADDRESSES: Comments may be sent to Mark Ingle, Engineering and Analysis Division (4303), Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mark Ingle at the above address or at (202) 260–7191.

SUPPLEMENTARY INFORMATION: EPA has previously transferred to its contractor Radian Corporation of Herndon, Virginia (and subcontractors) information, including confidential business information (CBI), concerning the metal products and machinery industry collected under the authority of the Clean Water Act, Section 308.

The information transferred included: Questionnaire data collected during a two phase survey of the metal products industry; the first phase consisted of the screener questionnaire or the Mini-Data Collection Portfolio (MDCP) which was conducted in 1990 (OMB No. 2040–0148); the second phase was a more detailed questionnaire or Data Collection Portfolio (DCP) that was sent in 1991 to a randomly selected sample identified through the responses to the (OMB No. 2040–0148). EPA also transferred site visit and field sampling data collected during 1990 through 1993. In addition, Radian has received similar records and data developed in support of the following effluent guidelines regulations:

- Porcelain Enameling (data collection 1977 through 1979),
- Coil Coating (data collection 1977 through 1979),
- Aluminum Forming (data collection 1978 through 1981),
- Battery Manufacturing (data collection 1978 through 1983),
- Copper Forming (data collection 1978 through 1979),
- Electroplating (data collection 1974 through 1979),
- Metal Finishing (data collection 1974 through 1979),
- Metal Molding and Casting (data collection 1977 through 1983),
- Nonferrous Metals Forming and Metal Powders (data collection 1983 through 1985),
- Nonferrous Metals Manufacturing, Phases I and II (data collection 1978 through 1985),
- Plastics Molding and Forming (data collection 1980 through 1987), and
- Hot Dip Coating Subcategory of the Iron and Steel regulation (data collection 1986).

Radian has also received files gathered during studies of the beryllium copper forming industry (data collection during 1986), the platemaking industry (data collection during 1984), and the printing and publishing industry (data collection 1977 through 1979). EPA determined that this transfer was necessary to enable the contractor and subcontractors to perform their work under EPA Contract No. 68–C4–0024 and related subcontracts by assisting EPA in developing effluent limitations guidelines and standards for the metal products and machinery industry. Notice to this effect was provided to the affected companies at the time the data was collected or through **Federal Register** notice.

Today, EPA is giving notice that it has entered into a new contract, Contract No. 68–C5–0005 with Radian Corporation of Herndon, VA and Radian Corp. has entered into additional contracts with its subcontractors: Westat, Inc. of Rockville, MD; CAI Engineering of Oakton, VA; GeoLogics Corp. of Bethesda, MD; TN Associates of Milwaukee, WI; Tetra Tech of Fairfax, VA; and VIGYAN Corp. of Vienna, VA. to develop effluent limitations guidelines and standards for the metal products and machinery phase II industry. The effective date of the new contract was June 5, 1995. Radian Corp. will provide technical support such as completion of the public docket for the proposed rulemaking and completion of the work on the draft proposed technical development document. The contractor shall also provide support on post proposal efforts, including assisting with public meetings, responding to comments, filling data gaps that arise through comments on the proposed rule, and assisting with the assembly of the rulemaking record for the final rule.

The subcontractors will assist the prime by providing specific expertise. Westat, Inc. will assist with any surveys that may be required in future work, data management and statistical analysis. CAI Engineering provides metal products industrial wastewater and hazardous waste engineering expertise, surface treatment process design and pollution prevention expertise, and wastewater treatment system design expertise. GeoLogics Corp. provides data entry and clerical services. TN Associates provides experience in the design and management of wastewater treatment systems. Tetra Tech provides capabilities in risk management and public outreach. VIGYAN Corp. provides services related to database development and management.

In accordance with 40 CFR part 2, subpart B, the previously collected information described above (including confidential business information) will be transferred to Radian Corp. EPA has determined that this transfer is necessary to enable the contractor to perform their work under EPA Contract No. 68–C5–0005.

The metal products and machinery manufacturing, rebuilding and maintenance industry financial and economic data that were collected through the DCP survey in 1991 (OMB No. 2040–0148) will be transferred to Abt Associates under Contract No. 68–C4–0060. In accordance with 40 CFR part 2, subpart B, the previously collected information described above (including confidential business information) will be transferred to ERG, Contract No. 68–C3–0302. ERG has subcontracted with Abt Associates to conduct the economic analysis for the metal products and machinery industry. EPA has determined that this transfer is necessary to enable the contractor to perform their work under EPA contract No. 68–C3–0302.

Anyone wishing to comment on the above matters must submit comments to the address given above by September 25, 1995.

Dated: September 6, 1995.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 95–22956 Filed 9–14–95; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5228–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 28, 1995 Through September 01, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–AFS–J65238–MT Rating EC2, Bull Sweats Vegetation Manipulation Project, Implementation, Helena National Forest, Helena Ranger District, Lewis and Clark Counties, MT.

SUMMARY: EPA expressed environmental concerns regarding potential air quality impacts of proposed prescribed burning, and believes additional information on air quality impacts, timber harvest prescriptions, and water quality/wetlands impacts are needed to fully assess and mitigate all potential impacts of the management actions.

ERP No. D–AFS–J65239–MT Rating EC2, South Fork Yaak Salvage Project, Implementation, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns about the existing condition, sensitivity to disturbance, and slow recovery of Fowler and Can Creeks, and potential air quality impacts of proposed activities. The EPA also believes additional information is needed to fully assess and mitigate all potential environmental impacts of the management actions.

ERP No. D–AFS–L65172–ID Rating EC2, Idaho Panhandle National Forests Noxious Weed Management Projects, Implementation, Bonners Ferry Ranger District, Boundary County, ID.

Summary: EPA expressed environmental concerns and believes that information is required to effectively address risks associated with the proposed herbicide treatments related to specific management objectives. Potential impacts to ground and surface water should be expanded.

ERP No. D–BLM–J01073–WY Rating EC2, Jackpot Underground Uranium Mine Project, Construction and Operation, Plan of Operation Approval, NPDES Permit and COE Section 404 Permit, Fremont and Sweetwater Counties, WY.

Summary: EPA expressed environmental concerns and believes that air dispersion modeling in a screening mode should be performed to estimate impacts to NAAQS. The final EIS should address procedures when PM–10 has been trigged and include a contingency plan for the permit.

ERP No. D–BLM–L65243–OR Rating EC2, Lake Abert Area Designation as an Area of Critical Environmental Concerns (ACEC), High Desert Management Framework Amendment Plan, Right-of-Way Grant and Drilling Permit, Valley Falls, Lake County, OR.

Summary: EPA expressed environmental concerns and recommends that a grazing-prohibition alternative be considered, and that potential noise impacts should be addressed in the final EIS.

ERP No. D–NOA–A29004–00 Rating LO, Programmatic EIS—Coastal Nonpoint Pollution Control Program, Implementation, Approval for 29 States and Territories Coastal Nonpoint Program.

Summary: EPA rated the draft EIS as ''LO'' (lack of objections). As a cooperating agency on the EIS EPA provided some suggestions to strengthen the document in providing a thorough explanation of the program and the problems it is designed to address.

ERP No. D–NPS–K65171–CA Rating EC2, Cabrillo National Monument, General Management Plan/Development Concept Plans, Implementation, San Diego County, CA.

Summary: EPA expressed environmental concerns in these the major areas: air quality, National Pollution Discharge Elimination System permitting, and Coastal Zone Management Act requirements. The draft EIS lacked discussion of air impacts and EPA provided extensive comments and guidance for conformity determinations and analyzing air impacts to be included in the final EIS.

ERP No. DR–DOE–L91009–WA Rating EC2, Yakima River Basin Fisheries Project, Updated and Additional Information, Construction, Operation and Maintenance, Funding, COE Section 10/404 Permits and NPDES Permit, Yakima Indian Nation, Yakima County, WA.

Summary: EPA expressed environmental concerns based on the potential impacts to fisheries resources and the need to ensure that the BPA and other responsible parties are evaluating opportunities to complement their respective management actions/objectives within the Yakima River Basin. EPA has requested additional information on fish habitat conditions, and clarification on the relationship of the proposed action with the Bureau of Reclamation's water enhancement project.

ERP No. DS–NPS–L65229–AK Rating EC2, Brooks River Area, Katmai National Park and Preserve Development Concept Plan, Updated Information Concerning a New Proposal Alternative for Beaver Pond Terrace, Implementation, AK.

Summary: EPA expressed environmental concerns about wetlands, water quality and mitigation.

Final EISs

ERP No. F–BLM–K60026–CA, Mesquite Regional Landfill Project, Implementation, Federal Land Exchange, Right-of-Way Approval, Conditional-Use-Permit and General Plan Amendment, Imperial County, CA.

Summary: The final EIS satisfactorily addressed issues raised in EPA's comments on the draft EIS. EPA believed it may be possible to further reduce air quality impacts by implementing EPA's proposed New Source Performance Standard for MSW landfills (56 FR 24476, May 30, 1991).

ERP No. F–NPS–D61036–DC, Rock Creek Park Tennis Center and Associated Recreation Fields, Implementation, Northwest Quadrant of Washington, DC.

Summary: EPA believes the documentation and range of alternatives discussed are sufficient and no further comments are warranted. EPA had no objections to the preferred alternative described in the FEIS.

ERP No. F–NPS–K61133–CA, Joshua Tree National Monument General Management Plan and Development Concept Plan, Implementation, Riverside and San Bernardino Counties, CA.

Summary: The final EIS has been responsive to concerns expressed in EPA's comments on the draft EIS.

ERP No. F–NPS–K61135–AZ, Grand Canyon National Park General Management Plan, Implementation, Coconino and Mohave Counties, AZ.

Summary: EPA had environmental concerns with the potential adverse impacts with road realignment on the east rim, development of area services on the south rim and compliance with drinking water standards.

ERP No. F–NPS–L61197–OR, Fort Clatsop National Memorial General Management and Development Concept Plans, Implementation, Astoria, Clatsop County, OR.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. EPA provided no formal written comments. EPA had no objection to the preferred alternative as described in the FEIS.

ERP No. F–USN–E11035–SC, Charleston Naval Base Disposal and Reuse, Implementation, Charleston and Dorchester Counties, SC.

Summary: EPA environmental concerns with the DEIS were addressed. However, EPA expressed environmental concerns with water quality and radiological issues in the FEIS.

ERP No. FS–AFS–J65183–UT, East Fork Blacks Fork Multiple Use Management Project, Implementation, Additional Information, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT.

Summary: EPA expressed lack of objections to the proposed action.

Regulations

ERP No. R–AFS–A65162–00, Forest Service Handbook for Review of FERC Hydropower Authorizations on National Forest Service Lands—RIN 0596–AA47.

Summary: EPA agrees that the USFS and FERC should streamline their process and interactions concerning hydropower projects, however it is critical that the USFS maintain sufficient, independent authority to ensure that its environmental responsibilities with regard to National Forest Lands are met.

Dated: September 12, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–23007 Filed 9–14–95; 8:45 am]

BILLING CODE 6560–50–U

[ER-FRL–5228–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed September 04, 1995 Through September 08, 1995, Pursuant to 40 CFR 1506.9.

EIS No. 950415, Final EIS, GSA, CA, Fresno—United States Courthouse, Site Selection and Construction, City of Fresno, Fresno County, CA, Due: October 16, 1995, Contact: Javad Soltani (415) 744–5255.

EIS No. 950416, Draft EIS, NPS, PA, Independence National Historical Park, General Management Plan, Implementation, Site Specific, Philadelphia County, PA, Due: November 20, 1995, Contact: Annmarie DiSerafino (215) 597–0060.

EIS No. 950417, Final EIS, GSA, AZ, Evo A. Deconcini Federal Building—United States Courthouse, Construction and Site Selection, Central Business Area (CBA), City of Tucson, Pima County, AZ, Due: October 16, 1995, Contact: Sheryll White (415) 744–5252.

EIS No. 950418, Final EIS, FHW, RI, Quonset Point/Davisville Industrial Park Highway Access Improvement, RI–4 Freeway between North Kingstown and East Greenwich, Funding, Kent and Washington Counties, RI, Due: October 20, 1995, Contact: Kenneth R. R. Sikora (401) 528–4551.

EIS No. 950419, Draft EIS, AFS, PA, Allegheny National Wild and Scenic River Management Plan, Implementation, Allegheny National Forest, Venango, Warren and Forest Counties, PA, Due: October 30, 1995, Contact: Donna McDonald (814) 723–5150.

EIS No. 950420, Draft EIS, NOA, HI, Hawaiian Islands Humpback Whales and Their Habitat National Marine Sanctuary Management Plan, Implementation, Honolulu, Kauai and Maui Counties, HI, Due: December 15, 1995, Contact: James P. Lawless (301) 713–3155.

EIS No. 950421, Draft EIS, USA, CA, Miramar Naval Air Station (NAS) Realignment or Conversion to Miramar Marine Corps Air Station, Implementation, San Diego, CA, Due: October 30, 1995, Contact: Ltc. George Martin (619) 537–6678.

Amended Notices

EIS No. 950331, Draft EIS, AFS, MT, Checkerboard Land Exchange, Plan of Approval and Implementation, Kootenai, Lolo and Flathead National Forest, Lincoln, Flathead and Sanders Counties, MT, Due: October 10, 1995, Contact: Ted Andersen (406) 293–6211.

Published FR 08–04–95—Review period extended.

EIS No. 950335, Draft EIS, AFS, AK, Lab Bay Project Area Timber Harvest, Implementation, COE Section 404, EPA NPDES and Coast Guard Bridge Permits Issuance, Thorne Bay Ranger District, Ketchikan Administrative Area, Tongass National Forest, Prince of Wales Island, AK, Due: September 30, 1995, Contact: Dave Arrasmith (907) 225–3101.

Published FR 08–04–95—Review period extended.

Dated: September 12, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 95–23006 Filed 9–14–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL 5296–3]

Underground Injection Control Program; Nonhazardous Waste Disposal Injection Restriction; Petition for Exemption—Class I Nonhazardous Waste Injection Air Products, Wichita, Kansas

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Air Products Manufacturing Corporation for their Class I Nonhazardous Waste injection well located in Wichita, Kansas. As required by title 40, Code of Federal Regulations part 148, the company has adequately demonstrated to the satisfaction of the United States Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of the restricted, formerly ignitable, greater than 10 percent high total organic carbon (TOC) constituents from the injection zone. This final decision allows the underground injection by Air Products of the specific restricted waste, identified in the petition, into the Class I waste injection well at the Wichita, Kansas facility, for as long as the basis for granting an approval of the petition remains valid, under provisions of title 40, Code of Federal Regulations part 124. A public notice was issued on July 10, 1995. A public comment period, requesting written comments ended on August 10, 1995, and further, a public hearing was held on August 24, 1995. No comments were received during the comment period. This decision constitutes final Agency action and there is no administrative appeal process that can be applied to a final petition decision.

EFFECTIVE DATE: This action is effective as of September 7, 1995.

ADDRESSES: Copies of the petition and all pertinent information relating thereto, including the Agency's response to comments, are on file at the following location: Environmental Protection Agency, Region 7, Water and Pesticides Division, Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas, 66101.

FOR FURTHER INFORMATION CONTACT: Ralph N. Langemeier, Chief, Drinking Water Branch, Environmental Protection Agency, Region 7. Telephone (913) 551–7032.

Dated: September 11, 1995.

Diane K. Callier,

Acting Regional Administrator.

[FR Doc. 95–22955 Filed 9–14–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217–011472–001
Title: KL/HMM Space Charter Agreement in the Far East-U.S. Pacific Northwest Trades
Parties: Hyundai Merchant Marine Co., Ltd. Kawasaki Kisen Kaisha, Ltd.
Synopsis: The proposed amendment extends the term of the Agreement until December 31, 1995. The parties have requested a shortened review period.

Agreement No.: 217–011512
Title: Hyundai/MSC Agreement
Parties: Hyundai Merchant Marine Co., Ltd. (''Hyundai'') Mediterranean Shipping Co., S.A. (''MSC'')
Synopsis: The proposed Agreement authorizes Hyundai to charter space on MSC's vessels in the trade between U.S. Atlantic and Gulf Coast ports and ports in North Europe.

Dated: September 11, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

FR Doc. 95–22911 Filed 9–14–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

David Crockett Jones, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 29, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. David Crockett Jones, Jr., Naples, Florida; to retain a total of 11.68 percent of the voting shares of South Florida Banking Corporation, Bonita Springs, Florida, and thereby indirectly acquire First National Bank of Florida, Bonita Springs, Florida.

2. Myer Feldman, Potomac, Maryland; to acquire an additional 86.55 percent, for a total of 86.80 percent of the voting shares of Totalbank Corporation of Florida, Miami, Florida, and thereby indirectly acquire Totalbank, Miami, Florida, and Trade National Bank, Miami, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Martin Alan Grusin (as Trustee of U.A.B. Holding Trust, Memphis, Tennessee), Memphis Tennessee; to retain a total of 100 percent of the voting shares of W.B.T. Holding Company, Memphis, Tennessee, and thereby indirectly acquire United American Bank, Memphis, Tennessee.

Board of Governors of the Federal Reserve System, September 11, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–22924 Filed 9–14–95; 8:45 am]

BILLING CODE 6210–01–F

SunTrust Banks, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 29, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., Atlanta, Georgia, and Trust Company of Georgia, Atlanta, Georgia; to acquire and Stephens Diversified Leasing, Inc., Reno, Nevada, and thereby engage in leasing personal or real property or acting as agent, broker, or adviser; and in making, acquiring, or servicing loans or other extensions of credit, pursuant to §§ 225.25(b)(5) and 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 11, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–22923 Filed 9–14–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

Policy on the Inclusion of Women and Racial and Ethnic Minorities in Externally Awarded Research

AGENCY: Centers for Disease Control and Prevention (CDC) and Agency for Toxic Substances and Disease Registry

(ATSDR), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces the CDC [1] policy on the inclusion of women and racial and ethnic minorities in externally awarded research. On April 10, 1995, CDC published a notice for comments (60 FR 18130) on the Policy on the Inclusion of Women and Minorities in Externally Awarded Research. During the 60 day public comment period that ended June 9, 1995, CDC received only a few minor comments. Therefore, after some small revisions, the notice is being re-published and will become policy as of October 1, 1995. This policy is intended to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC-supported studies involving human subjects, whenever feasible and appropriate. Furthermore, it is CDC policy to identify significant gaps in knowledge about health problems that affect women and racial and ethnic minority populations and to encourage studies which address these problems. (**Note:** This policy is consistent with requirements for CDC intra-agency research.)

EFFECTIVE DATE: Applicable for all CDC externally awarded research projects submitted in response to CDC Program Announcements (Requests for Assistance) and solicitations (Requests for Proposals) announced on or after October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Dixie E. Snider, Jr., M.D., M.P.H., telephone (404) 639–3701 or Barbara W. Kilbourne, R.N., M.P.H., telephone (404) 639–1242.

SUPPLEMENTARY INFORMATION:

CDC and ATSDR Policy on the Inclusion of Women and Racial and Ethnic Minorities in Externally Awarded Research

Table of Contents

I. Introduction

The Centers for Disease Control and Prevention (CDC) is committed to protecting the health of all people regardless of their sex, race, ethnicity, national origin, religion, sexual orientation, socioeconomic status, or other characteristics. To the extent that participation in research offers direct benefits to the participants, underrepresentation of certain population subgroups denies them the opportunity to benefit. Moreover, for purposes of generalizing study results, investigators must include the widest possible range of population groups.

A growing body of evidence indicates that the health conditions and needs of women are different from those of men. Some health conditions are unique to women and others are more prevalent in women. For some illnesses, there are marked distinctions, not only in onset and progression of disease, but also in the preventive, treatment and educational approaches necessary to combat them in women. Furthermore, initial entry into the health care system may be different for some subgroups of women, such as low-income and uninsured women. Lesbians may also enter the health care system differently because they may be less likely to access prevention services, like cancer screening, because they may not utilize family planning services. The Public Health Service Task Force on Women's Health Issues published a report in 1987 stating that it is becoming more important to note the environmental, economic, social, and demographic characteristics that influence a woman's health status. The Task Force focused on the direct and indirect effects these factors could have on the status of a woman's health and noted that when a woman is ''outside the normal range of societal expectations,'' that is, she is of a racial, ethnic or cultural minority or if she is physically or mentally disabled, her health status is potentially at greater risk. These basic observations are not always recognized or reflected in study protocols and proposals.

The disparity in health outcomes between majority and some racial and ethnic minority groups is now well documented. Although some minority populations, e.g., some Asian groups, have better overall health status than non-Hispanic whites, many racial and ethnic minority populations have dramatically shorter life expectancy, higher morbidity rates and inadequate access to quality health care. The Secretary for the Department of Health and Human Services' Task Force on Black and Minority Health issued a report in 1985 noting the underrepresentation of racial and ethnic minorities in research. This underrepresentation has resulted in significant gaps in knowledge about the health of racial and ethnic minority populations and their responses to interventions.

II. Definitions

A. Human Subjects

Under this policy, the definition of human subjects in title 45 CFR part 46, the Department of Health and Human Services regulations for the protection of human subjects, applies: ''Human subject means a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual or (2) identifiable private information.''

B. Research

Under this policy, the definition of research in title 45 CFR part 46, the Department of Health and Human Services regulations for the protection of human subjects, applies: ''Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.'' All proposed research involving human subjects and conducted using CDC funding will be evaluated for compliance with this policy, including those projects that are exempt from Institutional Review Board (IRB) review (as specified in title 45 CFR part 46). However, nothing in this policy is intended to require IRB review of protocols which otherwise would be exempt. This policy applies to all CDC externally awarded research regardless of the mechanism of financial support (e.g., grant, cooperative agreement, contract, purchase order, etc.). This policy does not apply to those projects in which the investigator has no control over the composition of the study population (e.g., cohort studies in which the population has been previously selected, or research to follow-up outbreak investigations.)

[1] References to CDC also apply to the Agency for Toxic Substances and Disease Registry (ATSDR).

C. Racial and Ethnic Categories

1. Minority Groups

This policy shall comply with the Office of Management and Budget (OMB) Directive No. 15, and any subsequent revisions to the Directive. OMB Directive No. 15 defines the minimum standard of basic racial and ethnic categories. Despite limitations (as outlined in the Public Health Reports ''Papers from the CDC/ATSDR Workshop on the Use of Race and Ethnicity in Public Health Surveillance''), these categories are useful because they allow comparisons among many national data bases, especially Bureau of the Census and national health data bases. Therefore, the racial and ethnic categories described below should be used as basic minimum guidance, cognizant of their limitations.

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 affiliation or community recognition.

Asian or Pacific Islander: A person having origins in any of the original peoples of 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.

Black, not of Hispanic Origin: A person having origins in any of the black racial groups of Africa.

Hispanic: A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

2. Majority Group

White, not of Hispanic Origin: A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

While investigators should focus primary attention on the above categories, CDC recognizes the diversity of the population. For example, Blacks describe themselves in several different ways, including African-American, Caribbean (Haitian, Jamaican, West Indian, Trinidadian), etc. Native Hawaiians have expressed the desire to be considered a separate racial/ethnic category exclusive of the current Asian/Pacific Islander designation. Therefore, investigators are encouraged to investigate national or geographic origin or other cultural factors (e.g., customs, beliefs, religious practices) in studies of race and ethnicity, and their relationship to health problems. Furthermore, since race, ethnicity, and cultural heritage may serve as markers for other important characteristics or conditions associated with a health problem or outcome, investigators should actively seek to identify these other characteristics or conditions.

III. Policy

Research Involving Human Subjects

Applicant institutions must ensure that women and racial and ethnic minority populations are appropriately represented in their proposals for research.

Women and members of racial and ethnic minority groups should be adequately represented in all CDC-supported studies involving human subjects, unless a clear and compelling rationale and justification establishes to the satisfaction of CDC that inclusion is inappropriate or clearly not feasible. Although this policy does not apply to studies when the investigator cannot control the race, ethnicity, and sex of subjects, women and racial and ethnic minority populations must not be routinely and/or arbitrarily excluded from such investigations.

In addition, women of childbearing potential should also not be routinely and/or arbitrarily excluded from participation even though there are ethical/risk issues to consider for inclusion and exclusion. Information on adverse differences in outcome or risk profiles for pregnant women may be reason for exclusion. Therefore, pregnancy status may need to be determined prior to enrollment for some studies and, if necessary, during an intervention to safeguard the participants' health.

IV. Guidance for Applicant Institution Investigators and Decision Makers in Complying with this Policy

A. General

In determining whether special efforts should be made to set specific enrollment goals for women and members of racial and ethnic minority groups, or whether to design special studies to specifically address health problems in such populations, principal investigators should consider the following points:

- Is the disease or condition under study unique to, or is it relatively rare in men, women or one or more racial and/or ethnic minority populations?
- What are the characteristics of the population to which the protocol results will be applied? Does it include both men and women? Does it include specific racial and ethnic minority populations?
- Are there scientific reasons to anticipate significant differences between men and women and among racial and ethnic minority populations with regard to the hypothesis under investigation?
- Are there study design or recruitment limitations in the protocol that could result, unnecessarily, in underrepresentation of one sex or certain racial and ethnic minority populations?
- Could such underrepresentation cause an adverse impact on the generalizability and application of results?
- Is the underrepresentation correctable?
- Does racial and ethnic characterization of study subjects serve a bona fide purpose or might it serve only to stigmatize a group?

Inclusion of women and/or racial and ethnic minority groups in research can be addressed either by including all appropriate groups in one single study or by conducting multiple studies. In general, protocols and proposals for support of studies involving human subjects should employ a design with sex and/or minority representation appropriate to the scientific objectives. It is not an automatic requirement that the study design provide sufficient statistical power to answer the questions posed for men and women and racial and ethnic groups separately; however, whenever there are scientific reasons to anticipate differences between men and women and/or racial and ethnic groups, with regard to the hypothesis under investigation, investigators should include an evaluation of these sex and minority group differences in the study proposal. If adequate inclusion of one sex and/or minority group is impossible or inappropriate with respect to the purpose of the proposed study, or if in the only study population available, there is a disproportionate representation of one sex or minority/majority group, the rationale for the study population must be well explained and justified. The cost of inclusion of women and/or racial and ethnic minority groups shall not be a permissible consideration for exclusion from a given study unless data regarding women and/or racial and ethnic minority groups have been or will be obtained through other means that provide data of comparable quality. Acceptable reasons for exclusion are as follows:

(1) Inclusion is inappropriate with respect to the health of the subjects;

(2) Inclusion is inappropriate with respect to the purpose of the study;

(3) Substantial scientific evidence indicates there is no significant difference between the effects that the

variables to be studied have on women and/or racial and ethnic minority groups;

(4) Substantial scientific data already exist on the effects that variables have on the excluded population;

(5) Inclusion is inappropriate under other circumstances as determined by CDC.

In each protocol or proposal, the composition and rationale for inclusion of the proposed study population must be described in terms of sex and racial and ethnic group. Sex and racial and ethnic characteristics, conditions, and other relevant issues should be addressed in developing a study design and sample size appropriate for the scientific objectives of the investigation. The proposal should contain a description of proposed outreach programs, if necessary, for recruiting women and racial and ethnic minorities as participants. Investigators must facilitate the informed consent process by promoting open and free communication with the study participants. Investigators must seek to understand cultural and linguistic variables inherent in the population to be enrolled, and procedures must be established to ensure appropriate translation of the consent document whenever necessary.

B. Studies of Public Health Interventions

Investigators must consider the following when planning an intervention trial or a clinical trial:

- If the data from prior studies strongly indicate the existence of significant differences of clinical or public health importance in intervention effect between the sexes or among racial and ethnic populations, the primary question(s) to be addressed by the scientific investigation and the design of that study must specifically accommodate the difference(s). For example, if men, women, and racial and ethnic minority groups are thought to respond differently to an intervention, then the study should be designed to answer separate primary questions that apply to men, women, and/or specific racial and ethnic groups with adequate sample size for each.
- If the data from prior studies strongly support no significant differences of clinical or public health importance in intervention effect between subgroups, then sex and race and ethnicity are not required as subject selection criteria; however, the inclusion of sex and racial and ethnic subgroups is still strongly encouraged.
- If the data from prior studies neither support nor negate the existence of significant differences of clinical or public health importance in intervention effect, then the study should include sufficient and appropriate male and female and racial and ethnic minority populations so that valid analysis of the intervention effect in each subgroup can be performed.
- If women of childbearing potential are to be included and if there is reason to suspect that adverse events may occur in pregnant women, pregnancy status should be determined prior to enrollment.

V. Implementation

A. Date of Implementation

This policy applies for all CDC externally awarded research projects submitted in response to CDC Program Announcements (Requests for Assistance) and solicitations (Requests for Proposals) announced on or after October 1, 1995.

B. Roles and Responsibilities

Certain individuals and groups have special roles and responsibilities with regard to the implementation of these guidelines.

1. Applicant Institution Investigators

Applicant institution investigators should assess the theoretical and/or scientific linkages between sex, race and ethnicity and their topic of study. Following this assessment, the applicant institution investigator will address the policy in each protocol, application and proposal, providing the required information on inclusion of women and minorities, and any required justifications for exclusions of any groups.

2. CDC Technical/Peer Review Groups

In conducting technical/peer review of contract, grant, or cooperative agreement applications for scientific and technical merit, CDC Center/Institute/Office (C/I/O) Directors will ensure that CDC technical/peer review groups, to the extent possible, include women and racial and ethnic minorities, and will do the following: *

- Evaluate the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.
- Evaluate the appropriateness of the proposed justification when representation is limited or absent.
- Determine whether the design of the study is adequate to measure differences when warranted.
- Evaluate the plans for recruitment and outreach for study participants including whether the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.
- Include these criteria as part of the technical assessment and assign a score.

3. CDC Center/Institute/Office Directors

CDC C/I/O Directors are responsible for ensuring that CDC externally awarded research involving human subjects meets the requirements of these guidelines. CDC C/I/O Directors will also inform externally awarded investigators concerning this policy and monitor its implementation during the development, review, award, and conduct of research.

4. CDC Institutional Review Boards (IRBs)

CDC IRBs are expected to consider whether CDC investigators have adequately addressed the inclusion of women and racial and ethnic minorities, in research protocols that require CDC IRB approval, as an additional criterion for IRB approval.

C. External Award Consideration

CDC project officers shall design their Requests for Contracts and Requests for Assistance in compliance with this policy. CDC C/I/O Directors shall ensure this policy is fully considered and implemented prior to the release of the Request for Contract and Request for Assistance to the CDC Procurement and Grants Office. CDC funding components will not award any grant, cooperative agreement, or contract for external research projects announced on or after October 1, 1995, and thereafter which does not comply with this policy.

D. Recruitment Outreach by Externally Awarded Investigators

Externally awarded investigators and their staff(s) are urged to develop appropriate and culturally sensitive outreach programs and activities commensurate with the goals of the research. The purpose should be to establish a relationship between the investigator(s), populations, and community(ies) of interest so that mutual benefit is achieved by all groups participating in the study. Investigators should document the process for establishing a partnership with the community(ies) and the mutual benefits of the study and ensure that any factors (e.g., educational level, nonproficiency in English, low socioeconomic status) are accounted for and handled appropriately. In addition, investigator(s) and staff should ensure that ethical concerns are clearly noted and enforced, such that there is minimal

* C/I/O Directors may waive this requirement if it is clearly inappropriate or clearly not feasible.

possibility of coercion or undue influence in the incentives or rewards offered in recruiting into or retaining participants in scientific studies.

E. Dissemination of Research Results

Externally awarded investigators are urged to make special efforts to disseminate relevant research results to the communities who participated in the studies and to the affected populations, especially racial and ethnic minority populations that may have cultural, language, and socioeconomic barriers to the easy receipt of such information.

VI. Evaluation

CDC Inclusion Review Committee Responsibility and Members

A CDC Inclusion Review Committee (IRC) with representatives from the CDC Office of the Associate Director for Science, the CDC Office of the Associate Director for Minority Health, and the CDC Office of the Associate Director for Women's Health will review any questions, issues, or comments pertaining to this policy and recommend necessary changes or modifications to the Director, CDC. This committee will meet regularly to review compliance with this policy and evaluate the impact of this policy on research activities at CDC. The CDC IRC may periodically conduct random audits of research protocols to assess compliance with this policy.

Dated: September 8, 1995.

Claire V. Broome,

Deputy Director, Centers for Disease Control and Prevention (CDC) and Deputy Administrator, Agency for Toxic Substances and Disease Registry (ATSDR).

[FR Doc. 95–22950 Filed 9–14–95; 8:45 am]

BILLING CODE 4163–18–P

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to Pub. L. 92–363, notice is hereby given of the meetings of the National Center for Research Resources (NCRR) for October 1995. These meetings will be open to the public as indicated below, to discuss program planning; program accomplishments; and special reports or other issues relating to committee business. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5146, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, (301) 435–0888, will provide summaries of meetings and rosters of committee members. Other information pertaining to the meetings can be obtained from the Executive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator listed below, in advance of the meeting.

Name of Committee: Comparative Medicine Review Committee.

Scientific Review Administrator: Dr. Raymond O'Neill, National Institutes of Health, 1 Rockledge Center, Room 6110, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0814.

Date of Meeting: October 22–24, 1995.

Place of Meeting: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007.

Closed: October 22, 6:30 p.m.–until recess.

Open: October 23, 8:30 a.m.–10:00 a.m.

Closed: October 23, 10:00 a.m.–until adjournment.

Name of Committee: General Clinical Research Centers Committee.

Scientific Review Administrator: Dr. Bela J. Gulyas, National Institutes of Health, 1 Rockledge Center, Room 6116, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0806.

Date of Meeting: October 18–19, 1995.

Place of Meeting: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: October 18, 8:00 a.m.–9:30 a.m.

Closed: October 18, 9:30 a.m.–until adjournment.

(Calalog of Federal Domestic Assistance Program No. 93.306, Laboratory Animal, and 93.333 Clinical Research, National Institutes of Health, HHS)

Dated: September 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22986 Filed 9–14–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIEHS, October 30–31, 1995, in Building 101, South Campus, Main Conference Facility, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public from approximately 8:45 a.m. to 4 p.m. on October 30, for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Molecular Biophysics. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6) of Title 5 U.S. Code and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 30 from approximately 4 p.m. to recess and on October 31 from 9 a.m. to adjournment, for the evaluation of the programs of the Laboratory of Molecular Biophysics, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Carl Barrett, Scientific Director, Division of Intramural Research, NIEHS, Research Triangle Park, N.C. 27709, telephone (919) 541–3205, will furnish rosters of committee members and program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dated: September 8, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22987 Filed 9–14–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Purpose: To review grant applications.

Committee Name: Genetic Basis of Disease Review Committee.

Date: November 6–7.

Time: 8:30 a.m.–5 p.m.

Place of Meeting: National Institutes of Health, 45 Center Drive, Natcher Building, Room F2, Bethesda, MD 20892.

Contact Person: Dr. Arthur Zachary, 45 Center Drive, Room 1AS–13, Bethesda, MD 20892.

Committee Name: National Institute of General Medical Sciences Special Emphasis Panel—Biotechnology, Chemistry/Biology Interface and Molecular Biophysics.

Date: November 9–10.

Time: November 9, 1 p.m.–8 p.m.; November 10, 8:30 a.m.–5 p.m.

Place: Holiday Inn Hotel, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Dr. Irene Glowinski, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–13J, Bethesda, MD 20892.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: September 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22988 Filed 9–14–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Deafness and Other Communication Disorders; Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD, on October 16 and 17, 1995. The meeting will be held in Conference Room H, the Natcher Conference Center, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 to 10:30 am on October 16 to present reports and discuss issues related to business of the Board. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Board of Scientific Counselors will be closed to the public from 10:45 am October 16 until adjournment at approximately 3:00 p.m. on October 17. The closed portion of the meeting will be for the review, discussion and evaluation of the program of the Voice and Speech Section of the Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and a roster of committee members may be obtained from James F. Battey, M.D., Ph.D., Executive Secretary of the Board of Scientific Counselors, NIDCD, 5 Research Ct., Room 2B–28, Rockville, Maryland 20850, (301) 402–2829.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Battey at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22989 Filed 9–11–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings that are being held to review grant applications:

Study section/contact person	September–November 1995 meetings	Time	Location
AIDS and Related Research Initial Review Group			
AIDS & Related Research 1, Dr. Sami Mayyasi, 301–435–1216.	Nov. 6–7	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 2, Dr. Gilbert Meier, 301–435–1219.	Nov. 10	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 3, Dr. Marcel Pons, 301–435–1217.	Oct. 26–27 ...	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 4, Dr. Mohindar Poonian, 301–435–1218.	Nov. 13–14 ..	8:30 a.m	Doubletree Hotel, Rockville, MD.
AIDS & Related Research 5, Dr. Mohindar Poonian, 301–435–1218.	Nov. 3	8:00 a.m	Doubletree Hotel, Rockville, MD.
AIDS & Related Research 6, Dr. Gilbert Meier, 301–435–1219.	Nov. 13	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 7, Dr. Gilbert Meier, 301–435–1219.	Nov. 17	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Biobehavioral and Social Sciences Initial Review Group			
Behavioral Medicine, Ms. Carol Campbell, 301–435–1257.	Oct. 18–20 ...	8:30 a.m	St. James Hotel, Washington, DC.
Bio-Psychology, Dr. A. Keith Murray, 301–435–1256 ...	Oct. 23–24 ...	9:00 a.m	The Georgetown Inn, Washington, DC.
Human Development & Aging–1, Dr. Teresa Levitin, 301–435–1259.	Oct. 26–27 ...	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging–2, Dr. Peggy McCardle, 301–435–1258.	Oct. 18–19 ...	8:30 a.m	Holiday Inn, Bethesda, MD.

Study section/contact person	September–November 1995 meetings	Time	Location
Human Development & Aging–3, Dr. Anita Miller Sostek, 301–435–1260.	Oct. 26–27 ...	9:00 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Social Sciences & Population, Dr. Robert Weller, 301–435–1261.	Oct. 12–13 ...	8:00 a.m	Washington Vista Hilton Hotel, Washington, DC.
Biochemical Sciences Initial Review Group			
Biochemistry, Dr. Chhanda Ganguly, 301–435–1739 ...	Oct. 18–20 ...	8:30 a.m	Holiday Inn, Silver Spring, MD.
Medical Biochemistry, Dr. Alexander Liacouras, 301–435–1740.	Oct. 16–17 ...	8:30 a.m	Hyatt Arlington, at Washington Key Bridge, Arlington, VA.
Pathobiochemistry, Dr. Zakir Bengali, 301–435–1742 ..	Oct. 12–13 ...	8:30 a.m	Holiday Inn, Georgetown, DC.
Physiological Chemistry, Dr. Jerry Critz, 301–435–1741.	Oct. 26–28 ...	8:30 a.m	Holiday Inn, Calverton, MD.
Biophysical and Chemical Sciences Initial Review Group			
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke, 301–435–1728.	Oct. 19–21 ...	9:00 a.m	Holiday Inn, Chevy Chase, MD.
Biophysical Chemistry, Dr. John Beisler, 301–435–1727.	Oct. 12–14 ...	8:30 a.m	Ramada Inn, Bethesda, MD.
Medicinal Chemistry, Dr. Ronald Dubois, 301–435–1722.	Oct. 11–13 ...	8:30 a.m	Holiday Inn, Bethesda, MD.
Metallobiochemistry, Dr. Edward Zapolski, 301–435–1725.	Oct. 26–28 ...	8:30 a.m	The Georgetown Inn, Washington, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, 301–435–1726.	Oct. 26–28 ...	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Physical Biochemistry, Dr. Gopa Rakhit, 301–435–1721.	Oct. 16–18 ...	8:30 a.m	Doubletree Hotel, Rockville, MD.
Cardiovascular Sciences Initial Review Group			
Cardiovascular, Dr. Gordon Johnson, 301–435–1212 ..	Oct. 11–13 ...	8:00 a.m	Doubletree Hotel, Rockville, MD.
Cardiovascular & Renal, Dr. Anthony Chung, 301–435–1213.	Oct. 16–17 ...	8:30 a.m	Mariott Hotel, Pooks Hill, Bethesda, MD.
Experimental Cardiovascular Sciences, Dr. Anshumali Chaudhardi, 301–435–1210.	Oct. 11–13 ...	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Hematology-1, Dr. Clark Lum, 301–435–1195	Oct. 19–21 ...	8:00 a.m	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Jerrold Fried, 301–435–1777	Oct. 18–20 ...	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Pharmacology, Dr. Joseph Kaiser, 301–435–1211	Oct. 18–19 ...	8:30 a.m	American Inn, Bethesda, MD.
Cell Development and Function Initial Review Group			
Biological Sciences-2, Dr. Camilla Day, 301–435–1024	Nov. 6–8	8:30 a.m	Holiday Inn, Governor's House, Washington, DC.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, 301–435–1023.	Oct. 12–13 ...	8:30 a.m	Sheraton Reston Hotel, Reston, VA.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, 301–435–1022.	Oct. 11–13 ...	8:30 a.m	Holiday Inn, Bethesda, MD.
Human Embryology & Development-2, Dr. Sherry Dupere, 301–435–1021.	Oct. 16–17 ...	8:00 a.m	Holiday Inn, Chevy Chase, MD.
International & Cooperative Projects, Dr. G.B. Warren, 301–435–1019.	Oct. 25–27 ...	8:00 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Molecular Biology, Dr. Robert Su, 301–435–1025	Oct. 12–14 ...	8:00 a.m	Holiday Inn, Georgetown, DC.
Molecular Cytology, Dr. Ramesh Nayak, 301–435–1026.	Oct. 11–12 ...	8:00 a.m	Holiday Inn, Bethesda, MD.
Endocrinology and Reproductive Sciences Initial Review Group			
Biochemical Endocrinology, Dr. Michael Knecht, 301–435–1046.	Oct. 11–13 ...	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Endocrinology, Dr. Syed Amir, 301–435–1043	Oct. 11–13 ...	8:30 a.m	Holiday Inn, Bethesda, MD.
Human Embryology & Development-1, Dr. Michael Knecht, 301–435–1046.	Oct. 19–20 ...	8:00 a.m	Doubletree Hotel, Rockville, MD.
Reproductive Biology, Dr. Dennis Leszczynski, 301–435–1044.	Oct. 16–17 ...	8:00 a.m	Ramada Inn, Rockville, MD.
Reproductive Endocrinology, Dr. Abubakar Shaikh, 301–435–1042.	Sept. 28–29 .	8:00 a.m	Holiday Inn, Bethesda, MD.

Study section/contact person	September–November 1995 meetings	Time	Location
Genetic Sciences Initial Review Group			
Biological Sciences-1, Dr. Nancy Pearson, 301–435–1047.	Nov. 6–8	8:30 a.m	The Georgetown Inn, Washington, DC.
Genetics, Dr. David Remondini, 301–435–1038	Oct. 12–14 ...	9:00 a.m	Holiday Inn, Bethesda, MD.
Genome, Dr. Cheryl Corsaro, 301–435–1045	Oct. 18–20 ...	9:00 a.m	The Georgetown Inn, Washington, DC.
Mammalian Genetics, Dr. Jerry Roberts, 301–435–1037.	Nov. 8–9	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Health Promotion and Disease Prevention Initial Review Group			
Epidemiology & Disease Control-1, Dr. Scott Osborne, 301–435–1782.	Oct. 11–13 ...	8:30 a.m	Marriott Residence Inn, Bethesda, MD.
Epidemiology & Disease Control-2, Dr. Jeanne Ketley, 301–435–1788.	Oct. 18–20 ...	8:30 a.m	Holiday Inn, Alexandria, VA.
Nursing Research, Dr. Gertrude McFarland, 301–435–1784.	Oct. 11–13 ...	8:00 a.m	Doubletree Hotel, Rockville, MD.
Toxicology-1, Dr. Jeanne Ketley, 301–435–1788	Oct. 25–27 ...	8:00 a.m	American Inn, Bethesda, MD.
Toxicology-2, Dr. Jeanne Ketley, 301–435–1788	Oct. 11–13 ...	8:00 a.m	American Inn, Bethesda, MD.
Immunological Sciences Initial Review Group			
Allergy & Immunology, Mr. Howard Berman, 301–435–1220.	Oct. 16–17 ...	8:30 a.m	Doubletree Hotel, Rockville, MD.
Experimental Immunology, Dr. Calbert Laing, 301–435–1221.	Oct. 23–24 ...	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Immunobiology, Dr. Betty Hayden, 301–435–1223	Oct. 18–20 ...	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Anita Corman Weinblatt, 301–435–1224.	Oct. 18–20 ...	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Immunology, Virology & Pathology, Dr. Lynwood Jones, 301–435–1153.	Oct. 18–20 ...	8:30 a.m	Holiday Inn, Georgetown, DC.
Infectious Diseases and Microbiology Initial Review Group			
Bacteriology & Mycology-1, Dr. Timothy Henry, 301–435–1147.	Oct. 19–20 ...	8:30 a.m	Marriott Residence Inn, Bethesda, MD.
Bacteriology & Mycology-2, Dr. William Branche, Jr., 301–435–1148.	Oct. 11–13 ...	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Experimental Virology, Dr. Garrett Keefer, 301–435–1152.	Oct. 16–18 ...	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Microbial Physiology & Genetics-1, Dr. Martin Slater, 301–435–1149.	Oct. 25–27 ...	8:30 a.m	Holiday Inn, Governor's House, Washington, DC.
Microbial Physiology & Genetics-2, Dr. Gerald Liddel, 301–435–1150.	Oct. 18–20 ...	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, 301–435–1146.	Oct. 12–13 ...	8:00 a.m	Holiday Inn, Bethesda, MD.
Virology, Dr. Rita Anand, 301–435–1151	Oct. 11–13 ...	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Musculoskeletal and Dental Sciences Initial Review Group			
General Medicine A–1, Dr. Harold Davidson, 301–435–1776.	Oct. 15–17 ...	7:30 p.m	Marriott Hotel, Pooks Hill, Bethesda, MD.
General Medicine B, Dr. Shirley Hilden, 301–435–1198	Oct. 9–11	8:00 a.m	Holiday Inn, Bethesda, MD.
Oral Biology & Medicine-1, Dr. Priscilla Chen, 301–435–1787.	Oct. 23–24 ...	8:30 a.m	Holiday Inn Old Town, Alexandria, VA.
Oral Biology & Medicine-2, Dr. Priscilla Chen, 301–435–1787.	Oct. 16–17 ...	8:30 a.m	Holiday Inn Old Town, Alexandria, VA.
Orthopedics & Musculoskeletal, Dr. Daniel McDonald, 301–435–1215.	Oct. 18–20 ...	8:00 a.m	Holiday Inn, Bethesda, MD.
Neurological Sciences Initial Review Group			
Neurological Sciences-1, Dr. Carl Banner, 301–435–1251.	Oct. 18–20 ...	8:30 a.m	Holiday Inn, Governor's House, Washington, DC.
Neurological Sciences-2, Dr. Stephen Gobel, 301–435–1250.	Oct. 10–12 ...	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Neurology A, Dr. Joe Marwah, 301–435–1253	Nov. 7–9	8:30 a.m	Empress Inn, LaJolla-San Diego, CA.
Neurology B–1, Dr. Lillian Pubols, 301–435–1255	Oct. 10–12 ...	8:30 a.m	Capitol Holiday Inn, Washington, DC.

Study section/contact person	September–November 1995 meetings	Time	Location
Neurology B-2, Dr. Herman Teitelbaum, 301–435–1254.	Oct. 24–26 ...	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Neurology C, Dr. Kenneth Newrock, 301–435–1252	Oct. 11–13 ...	8:30 a.m	Radisson Barcelo Hotel, Washington, DC.
Nutritional and Metabolic Sciences Initial Review Group			
General Medicine A–2, Dr. Mushtaq Khan, 301–435–1778.	Oct. 24–25 ...	8:30 a.m	NIH, Natcher Building, Conf. Ctr, Rm E1, Bethesda, MD.
Metabolism, Dr. Krish Krishnan, 301–435–1779	Oct. 24–25 ...	8:30 a.m	NIH, Natcher Building, Conf. Ctr, Rm G1&2, Bethesda, MD.
Nutrition, Dr. Sooja Kim, 301–435–1780	Oct. 24–25 ...	8:30 a.m	NIH, Natcher Building, Conf. Ctr, Rm E2, Bethesda, MD.
Oncological Sciences Initial Review Group			
Chemical Pathology, Dr. Edmund Copeland, 301–435–1715.	Oct. 25–27 ...	8:30 a.m	Holiday Inn, Bethesda, MD.
Experimental Therapeutics-1, Dr. Philip Perkins, 301–435–1718.	Oct. 11–13 ...	8:30 a.m	Hyatt Hotel, Arlington, VA.
Experimental Therapeutics-2, Dr. Marcia Litwack, 301–435–1719.	Nov. 1–3	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Metabolic Pathology, Dr. Marcelina Powers, 301–435–1720.	Oct. 17–19 ...	8:30 a.m	Ramada Inn, Bethesda, MD.
Pathology A, Dr. Larry Pinkus, 301–434–1214	Oct. 10–12 ...	7:00 p.m	Marriott Hotel, Pooks Hill, Bethesda, MD.
Pathology B, Dr. Martin Padarathsingh, 301–435–1717	Oct. 11–13 ...	8: a.m	Holiday Inn, Georgetown, DC.
Radiation, Dr. Paul Strudler, 301–435–1716	Oct. 16–18 ...	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Pathophsiological Sciences Initial Review Group			
Lung Biology & Pathology, Dr. Anne Clark, 301–435–1017.	Oct. 11–13 ...	8:00 a.m	Holday Inn, Chevey Chase, MD.
Physiology, Dr. Michael Lang, 301–435–1015	Oct. 11–13 ...	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Respiratory & Applied Physiology, Dr. Everett Sinnett, 301–435–1016.	Oct. 23–25 ...	8:30 a.m	Holiday Inn, Chevey Chase, MD.
Sensory Sciences Initial Review Group			
Hearing Research, Dr. Joseph Kimm, 301–435–1249 ..	Oct. 16–18 ...	8:30 a.m	The Grand Hotel, Washington, DC.
Sensory Disorders & Language, Dr. Jane Hu, 301–435–1245.	Oct. 16–18 ...	8:30 a.m	Capitol Holiday Inn, Washington, DC.
Visual Sciences A, Dr. Luigi Giacometti, 301–435–1246.	Oct. 25–27 ...	8:30 a.m	Doubletree Hotel, Rockville, MD.
Visual Sciences B, Dr. Leonard Jakubczak, 301–435–1247.	Oct. 11–13 ...	8:30 a.m	Radisson Hotel, Alexandria, VA.
Visual Sciences C, Dr. Carole Jelsema, 301–435–1248.	Oct. 10–11 ...	8:00 a.m	The Georgetown, Inn, Washington, DC.
Surgery, Radiology and Bioengineering Initial Review Group			
Diagnostic Radiology, Dr. Eileen Bradley, 301–435–1178.	Oct. 16–17 ...	8:00 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Suregery & Bioengineering, Dr. Paul Parakkal, 301–435–1172.	Sept. 29–30 .	8:00 a.m	Holiday Inn, Georgetown, DC.
Suregery, Anesthesiology & Trauma, Dr. Gerald Becker, 301–435–1750.	Oct. 19–20 ...	8:00 a.m	Holiday Inn, Bethesda, MD.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22991 Filed 9–14–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: September 28, 1995.

Time: 5:00 p.m.

Place: NIH, Rockledge II, Room 6170, Telephone Conference.

Contact Person: Dr. Dennis E. Leszczynski, Scientific Review Administrator, 6701 Rockledge Drive, Room 6170, Bethesda, MD 20892, (301) 435–1044.

Name of SEP: Biological and Physiological Sciences.

Date: September 29, 1995.

Time: 4:00 p.m.

Place: NIH, Rockledge II, Room 6170, Telephone Conference.

Contact Person: Dr. Dennis E. Leszczynski, Scientific Review Administrator, 6701 Rockledge Drive, Room 6170, Bethesda, MD 20892, (301) 435–1044.

Name of SEP: Clinical Sciences.

Date: October 5, 1995.

Time: 1:00 p.m.

Place: NIH, Rockledge II, Room 4128, Telephone Conference.

Contact Person: Dr. Anshumali Chaudhari, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, (301) 435–1210.

Name of SEP: Multidisciplinary Sciences.

Date: October 29–31, 1995.

Time: 6:00 p.m.

Place: New Haven, CT.

Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, (301) 435–1176.

Name of SEP: Multidisciplinary Sciences.

Date: October 29–30, 1995.

Time: 7:00 p.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, MD 20892, (301) 435–1171.

Name of SEP: Multidisciplinary Sciences.

Date: November 5–7, 1995.

Time: 7:00 p.m.

Place: Marriott LA Airport Hotel, Los Angeles, CA.

Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, MD 20892, (301) 435–1168.

Name of SEP: Multidisciplinary Sciences.

Date: November 8–10, 1995.

Time: 6:00 p.m.

Place: Sheraton Metrodome Hotel, Minneapolis, MN.

Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, MD 20892, (301) 435–1177.

Name of SEP: Multidisciplinary Sciences.

Date: November 15–17, 1995.

Time: 6:00 p.m.

Place: St. Louis, Missouri.

Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, MD 20892, (301) 435–1177.

Name of SEP: Multidisciplinary Sciences.

Date: November 19–21, 1995.

Time: 7:00 p.m.

Place: Woods Hole, Massachusetts.

Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Multidisciplinary Sciences.

Date: October 22–24, 1995.

Time: 7:00 p.m.

Place: La Guardia Marriott Hotel, New York, NY.

Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, Maryland 20892, (301) 435–1168.

Name of SEP: Multidisciplinary Sciences.

Date: October 30–November 1, 1995.

Time: 7:00 a.m.

Place: Bethesda Marriott Hotel, Bethesda, Maryland.

Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, Maryland 20892, (301) 435–1168.

Name of SEP: Multidisciplinary Sciences.

Date: November 5–7, 1995.

Time: 4:00 p.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

Name of SEP: Multidisciplinary Sciences.

Date: November 6–7, 1995.

Time: 8:00 a.m.

Place: Doubletree Hotel, Rockville, Maryland.

Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22990 Filed 9–14–95; 8:45 am]

BILLING CODE 4140–01–M

[Docket No.]

Prospective Grant of Exclusive License: Veterinary Vaccine and Therapeutic Uses of Bartonella Henselae (Formerly Rochalimaea Henselae) Organisms

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a worldwide, limited field of use, exclusive license to practice the inventions embodied in the patents and patent applications referred to below to Paravax, Inc., having a place of business in Fort Collins, Colorado. The patent rights in these inventions have been assigned to the government of the United States of America. The patents and patent applications to be licensed are: ''Methods and Compositions for Diagnosing Cat Scratch Disease and Bacillary Angiomatosis Caused by Rochalimaea henselae,'' U.S. Patent Application Serial No. 07/822,539 filed 17 Jan 92 (U.S. Patent No. 5,399,485 issued 21 Mar 95) and related cases, which include all continuation applications, divisional applications, continuation-in-part applications, and foreign counterpart applications.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the

requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Bartonella henselae (formerly *Rochalimaea henselae*) causes no currently known clinical disease in cats, but it has been identified as the cause of Cat Scratch Disease (CDS) in humans. Cats infected with *Bartonella henselae* have been identified as the source or reservoir of these infections in humans where a mild to severe lymphadenopathy can result. Further manifestations of *Bartonella henselae* may include Parinaud oculoglandular syndrome, prolonged fever associated with relapsing bacteremia, bacillary angiomatosis, and endocarditis and bacillary peliosis. The sick and elderly, especially immunocompromised susceptible to infection.

Centers for Disease Control and Prevention (CDC) scientists have discovered a method of diagnosing cat scratch disease and a method of diagnosing bacillary angiomatosis in a subject by detecting the presence of *Bartonella henselae* or an immunogenically specific determinant thereof in the subject, as well as vaccines comprising *Bartonella henselae* or fragments thereof.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments, and other materials relating to the contemplated license should be directed to: Carol C. Lavrich, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852. Telephone: (301) 496–7735, ext. 287; Facsimile: (301) 402–9220. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH on or before November 14, 1995, will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. A signed Confidential Disclosure Agreement will be required to receive a copy of any pending application.

Dated: August 23, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–22992 Filed 9–14–95; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–54]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brain Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable /available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366–4246; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real

Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (These are not toll–free numbers).

Dated: September 8, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 09/15/95

Suitable/To Be Excessed

Buildings (by State)

Massachusetts

Nahant Towers
Nahant Co: Essex MA
Landholding Agency: DOT
Property Number: 879530001
Status: Unutilized
Comment: 196 sq. ft., 8-story observation tower

Unsuitable Properties

Buildings (by State)

Bldg. 8
Rosenbank—Coast Guard Housing
Staten Island 10301–
Landholding Agency: DOT
Property Number: 879530009
Status: Unutilized
Reason: Secured Area

New York

Bldg. 7
Rosenbank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 879530010
Status: Unutilized
Reason: Secured Area, Extensive deterioration

North Carolina

Bldg. 168
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530015
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 959
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530016
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 977
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530017
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1056
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530018
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1739
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530019
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1741
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530020
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1990
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530021
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1991
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530022
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 914
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530023
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 981
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530024
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 986
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530025
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 987
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530026
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 988
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530027
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1652
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530028
Status: Excess
Reason: Other
Comment: Detached Latrine

[FR Doc. 95–22825 Filed 9–14–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–14015]

Alaska; Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Sealaska Corporation for approximately 664 acres. The lands involved are in the Tongass National Forest in southeast Alaska.

Copper River Meridian, Alaska

Lots 3, 4 and 5, U.S. Survey No. 2439.

T. 43 S., R. 60 E.,
Sec. 34.
T. 44 S., R. 60 E.,
Sec. 12.
T. 44 S., R. 61 E.,
Secs. 6 and 7.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Juneau Empire*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 16, 1995, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart

E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, Gulf Rim Adjudication.

[FR Doc. 95–22966 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–JA–P

[CO–934–03–1310–04]

Notice of Public Comment Period for the Southern Ute Oil and Gas Environmental Impact Statement

AGENCIES: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Bureau of Land Management (BLM) is proposing to prepare an Environmental Impact Statement (EIS) for oil and gas leasing and operations on Southern Ute Indian Tribal lands and to hold a public scoping meeting and comment period in accordance with the National Environmental Policy Act (NEPA) and Title 40 CFR Part 1500.

ADDRESSES: Mail all comments to the Area Manager, San Juan Resource Area, 701 Camino del Rio, Durango, Colorado 81301.

A mailing list for interested public and agencies is being maintained in the San Juan Resource Area office. The list will be used to provide information about opportunities for public input and for distribution of the draft and final EIS.

DATES: The scoping period opens September 26, 1995, and comments must be received by the close of business, October 26, 1995.

SUMMARY: In accordance with Section 102 of NEPA, an EIS for oil and gas leasing and operations on lands of the Southern Ute Indian Tribe will be prepared by the Southern Ute Indian Tribe (SUIT) Energy and Minerals Division (project lead), the U.S. Bureau of Land Management (lead federal agency), and the U.S. Bureau of Indian Affairs (BIA).

SUPPLEMENTARY INFORMATION: In accordance with Title 40, CFR, Part 1506.3(c), the SUIT, the BLM and the BIA are preparing the EIS for the purposes of evaluating impacts associated with federal approval of tribally issued oil and gas leases and approving exploration and production operations on lands subject to federal jurisdiction within the boundaries of the Southern Ute Indian Tribal lands.

Comments and concerns of the Southern Ute people, the public and interested federal, state, and local agencies will be solicited as part of the EIS scoping process. The 30-day scoping period will begin September 26, 1995, with a public meeting in Ignacio, Colorado, from 7 to 9 p.m. in Rolling Thunder Hall at the Southern Ute Casino. The comment period will be open for 30 days thereafter, through October 26, 1995.

Comments may be presented verbally at the meeting or by telephone to the contacts provided below. Comments may also be submitted in written form at the scoping meeting, to the contacts shown below, and by telefax.

Preliminary Issues

How best can oil and gas development revenues continue to be received and maximized for benefiting the Southern Ute Indian Tribe while at the same time protecting Tribal lands and the environment from injurious impacts.

Preliminary Alternatives

At least two alternatives present themselves before scoping takes place.

No-Action Alternative—Continuation of current oil and gas management actions and conditions of approval in line with the existing BIA Environmental Analysis (EA), BLM field and site development EAs, and existing policies and practices. This alternative would maintain the status quo and is used as the baseline for comparison of impacts from additional proposed actions,.

Enhanced Development—This alternative would modify existing development to allow for new injection technologies and down-spacing based on reasonably foreseeable development.

FOR FURTHER INFORMATION CONTACT:

Jim Rhett, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, Telephone: (303) 239–3752; Telefax: (303) 239–3799; TDD*: (303) 239–3933

Don Englishman, San Juan Resource Area, 701 Camino del Rio, Durango, Colorado 81301, Telephone: (970) 247–4082; Telefax: (970) 385–4818; TDD*: (970) 385–5121. *(Telephone Device for the Deaf)

Documents pertinent to this proposal may be examined at the San Juan Resource Area Office during the business hours from 7:45 a.m. to 4:30 p.m. MST, Monday through Friday.

Dated: September 5, 1995.

Donald R. Glaser,

State Director, Colorado.

[FR Doc. 95–22917 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–JB–M

Resource Advisory Councils, Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Councils—Notice of Meeting Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Department of the Interior, Bureau of Land Management (BLM), has established Resource Advisory Councils for the States of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming.

The Councils are: Alaska, Alaska Resource Advisory Council; Arizona, Arizona Resource Advisory Council; California, Bakersfield Resource Advisory Council, Susanville Resource Advisory Council, and Ukiah Resource Advisory Council; Colorado, Front Range Resource Advisory Council, Northwest Resource Advisory Council, and Southwest Resource Advisory Council; Idaho, Lower Snake River Resource Advisory Council, Upper Columbia-Salmon/Clearwater Resource Advisory Council, and Upper Snake River Resource Advisory Council; Montana/North and South Dakota, Butte Resource Advisory Council, Lewistown Resource Advisory Council, Miles City Resource Advisory Council, and Dakotas Resource Advisory Council; Nevada, Mojave-Southern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Sierra Front-Northwestern Great Basin Resource Advisory Council; New Mexico, New Mexico Resource Advisory Council; Oregon/Washington, John Day-Snake Resource Advisory Council, Southeast Oregon Resource Advisory Council, and Eastern Washington Resource Advisory Council; Utah, Utah Resource Advisory Council; and Wyoming, Wyoming Resource Advisory Council.

These Councils will provide representative counsel and advice to BLM on the planning and management of the public lands. Members of these Councils are appointed by the Secretary of the Interior.

Concurrent meetings of the Councils will be held on September 21–22, 1995. The agenda for each meeting includes Council orientation, prioritization of new business for consideration by each Council, election of Council officers and decisions on other operational issues, discussion of new business, and a meeting evaluation.

All meetings are open to the public. The public may present written

comments to any Council. Each Council meeting will also have time allocated for hearing public comments. The public comment period for each meeting is also listed below. Depending on the number of persons wishing to comment and the time available, the time for individual comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the External Affairs Office of the appropriate BLM State Office listed below. Seating at meetings will be on a first-come basis.

The times and locations of the meetings are as follows:

Alaska

Alaska Resource Advisory Council, Anchorage Hilton Hotel, 500 West 3rd Avenue, Anchorage, AK; 9/21 start time 8 a.m.; 9/22 start time 9 a.m.; public comments 9/22 at 1:30 p.m.

For additional information, contact the Alaska State Office, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513–7599, telephone 907–271–5555.

Arizona

Arizona Resource Advisory Council, National Training Center, 9828 North 31st Avenue, Phoenix, AZ; 9/21 start time 8 a.m.; 9/22 start time 8 a.m.; public comments 9/22 at 1 p.m.

For additional information, contact the Arizona State Office, 3707 North 7th Street, Phoenix, Arizona 85014–6563, telephone 602–650–0504.

California

Bakersfield District Resource Advisory Council, Holiday Inn Select, 801 Truxtun Avenue, Bakersfield, CA; 9/21 start time 8 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 1 p.m.

California Desert District Resource Advisory Council, BLM California Desert District Office, 6221 Box Springs Boulevard, Riverside, CA; 9/21 start time 8 a.m. (NOTE—this is a 1-day meeting); public comments 9/21 at 11:30 a.m.

Susanville District Resource Advisory Council, Lassen County Office of Education, 472–013 Johnstonville Road, Susanville, CA; 9/21 start time 8 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 1 p.m.

Ukiah District Resource Advisory Council, BLM Ukiah District Office, 2550 North State Street, Ukiah, CA; 9/21 start time 8 a.m.; 9/22 start time 8:30 a.m.; public comments 9/21 at 1 p.m.

For additional information, contact the California State Office, 2800 Cottage Way, E–2841, Sacramento, California 95825–1889, telephone 916–979–2835.

Colorado

Northwest Colorado Resource Advisory Council, Howard Johnson's 750 Horizon Drive, Grand Junction, CO; 9/21 start time 9 a.m.; 9/22 start time 8 a.m.; public comments 9/21 at 4 p.m., 9/22 at 2 p.m.

Southwest Colorado Resource Advisory Council, BLM Montrose District Office, 2465 South Townsend, Montrose, CO; 9/21 start time 9:30 a.m.; 9.22 start time 9 a.m.; public comments 9/21 at 3:30 p.m.

Front Range Resource Advisory Council, Pikes Peak Community College, Corporate Workforce and Economic Development Center, 100 W. Pikes Peak Avenue, Colorado Springs, CO; 9/21 start time 9 a.m.; 9/22 start time 8:30 a.m.; public comments 9/21 at 4 p.m.

For additional information, contact the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, telephone 303–239–3671.

Idaho

Lower Snake River Resource Advisory Council, 9/21 at Boise State University, Micron Technology Center, 1910 University Drive, Boise, ID, until the Noon break; beginning at 2 p.m., 9/21, and for the remainder of the meeting, the Council will convene at the National Interagency Fire Center, 3833 S. Development Avenue, Boise, ID; 9/21 start time 9 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 1 p.m.

Upper Columbia-Salmon/Clearwater Resource Advisory Council, 9/21 at Idaho Panhandle National Forest Supervisor's Office, 3815 Schreiber Way, Coeur d'Alene, ID, until the Noon break; beginning at 1 p.m., 9/21, and for the remainder of the meeting, the Council will convene at the BLM Coeur d'Alene District Office, 1808 N. Third Street, Coeur d'Alene, ID; 9/21 start time 8 a.m.; 9/22 start time 8 a.m.; public comment 9/22 at 10:30 a.m.

Upper Snake River Resource Advisory Council, BLM Idaho Falls District Office, 1405 Hollipark Drive, Idaho Falls, ID; 9/21 start time 9 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 2:15 p.m.

For additional information, contact the Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, telephone 208–384–3013.

Montana

Lewiston District Resource Advisory Council, Lewistown Elks Club, Country Club Road, Lewistown, MT; 9/21 start time 8 a.m.; 9/22 start time 8 a.m.; public comments 9/22 at 3 p.m.

Miles City District Resource Advisory Council, 9/21 at Miles Community College, 2600 Dickinson, Miles City, MT, until the Noon break; beginning after lunch 9/21 and for the remainder of the meeting, the Council will convene at the BLM Miles City District Office, Garryowen Road, west of Miles City, MT; 9/21 start time 9:30 a.m.; 9/22 start time 8 a.m.; public comments 9/22 at 2 p.m.

Butte District Resource Advisory Council, Montana Tech of the University of Montana, Big Butte/Highlands Rooms, Student Union Building, 1300 W. Park Street, Butte, MT; 9/21 start time 9 a.m.; 9/22 start time 9 a.m.; public comments 9/22 at 1 p.m.

For additional information, contact the Montana State Office, 222 N. 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800, telephone 406–255–2913.

North Dakota

Dakotas District Resource Advisory Council, 9/21 at Consolidated Telephone Cooperative, 507 South Main Street, Dickinson, ND, until the Noon break; beginning at 1:30 p.m., 9/21, and for the remainder of the meeting, the Council will convene at the Gate City Federal Savings Bank, 204 Sims Street, Dickinson, ND, 9/21 start time 8 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 2 p.m.

Nevada

Sierra front/Northwestern Great Basin Resource Advisory Council, BLM Nevada State Office, 850 Harvard Way, Reno, NV; 9/21 start time 8:30 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 2 p.m.

Mojave/Southern Great Basin Resource Advisory Council, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, NV; 9/21 start time 8:30 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 2 p.m.

For additional information, contact the Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520–0006, telephone 702–785–6586.

New Mexico

New Mexico Resource Advisory Council, USDA Resource Conservation Building, 6200 Jefferson Street, N.E., Albuquerque, NM; 9/21 start time 8:30 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 9:30 a.m.

For additional information, contact the New Mexico State Office, 1474 Rodeo Drive, P.O. Box 27115, Santa Fe,

New Mexico 87502–0115, telephone 505–438–7514.

Oregon

Eastern Washington Resource Advisory Council, Southeastern Oregon Resource Advisory Council, and John Day-Snake Resource Advisory Council, Eastern Oregon State College, 1410 L Avenue, LaGrande, OR; 9/21 start time 8 a.m.; 9/22 start time 8 a.m.; public comments 9/21 at 3:30 p.m.

For additional information, contact the Oregon State Office, 1515 S.W. 5th Avenue, P.O. Box 2965, Portland, Oregon 97208–2965, telephone 503–952–6031.

Utah

Utah Resource Advisory Council, Salt Lake Community College, Calvin Hampton Technology Building, Room 325, 4600 South Redwood Road, Salt Lake City, UT; 9/21 start time 9 a.m.; 9/22 start time 8 a.m.; public comments 9/22 at 11 a.m.

For additional information, contact the Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303, telephone 801–539–4021.

Wyoming

Wyoming Resource Advisory Council, Conference Complex of the Laramie County Community College, 1400 East College Drive, Cheyenne, WY; 9/21 start time 9 a.m. (NOTE—this is a 1-day meeting); public comments 9/21 at 4:30 p.m.

For additional information, contact the Wyoming State Office, 2515 Warren Avenue, Cheyenne Wyoming 82003, telephone 307–775–6011.

FOR FURTHER INFORMATION CONTACT: Chris Wood, Policy Analyst, Office of the Assistant Director for Resource Assessment and Planning, Bureau of Land Management, Room 5558, U.S. Department of the Interior, Washington, DC 20240, telephone (202) 208–7013, or Beverly Davis, Regulatory Management Team, Bureau of Land Management, Room 5617, U.S. Department of the Interior, Washington, DC 20240, telephone (202) 208–4864.

SUPPLEMENTARY INFORMATION: The purpose of the Councils is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands. The Councils' responsibilities include providing advice to BLM regarding the preparation, amendment, and implementation of land use plans; providing advice on long-range planning and establishing resource management priorities; and assisting the BLM to identify State or regional standards for ecological health and guidelines for grazing.

Council members represent various industries and interests concerned with the management, protection, and utilization of the public lands. These include (a) holders of Federal grazing permits and representatives of energy and mining development, the timber industry, rights-of-way interests, off-road vehicle use, and developed recreation; (b) representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups; and (c) representatives of State and local government, Native American tribes, academia involved in the natural sciences, and the public at large.

Membership includes individuals who have expertise, education, training, or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the respective Councils.

Dated signed: September 12, 1995.

Bruce Babbit,

Secretary of the Interior

[FR Doc. 95–229994 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–84–M

[NV–930–1430–01; N–42773]

Termination of Segregative Effect and Opening Order for Relinquishment of Airport Lease, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of Airport Lease N–42773 in its entirety, and opens the land to appropriation under the public land laws, including mineral leasing laws, material disposal laws, and general mining laws, subject to valid existing rights.

EFFECTIVE DATE: September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Bureau of Land Management, Winnemucca District Office, 705 E. 4th St., Winnemucca, NV 89445 (702) 623–1500.

SUPPLEMENTARY INFORMATION: On October 29, 1985, the public lands described below were segregated from all other forms of appropriation pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214) as amended by the Act of August 16, 1941 (55 Stat. 621).

Mount Diablo Meridian, Nevada

T. 44 N., R. 34 E.,

Sec. 18, E½W½.

The area described contains 20.66 acres more or less in Humboldt County.

On June 11, 1986, the subject lands were leased to the Humboldt Hunting Club in Kings River Valley for a period of 20 years. On March 28, 1994, the Humboldt Hunting Club submitted a notice of their intent to relinquish lease N–42773. On July 11, 1995 their relinquishment of Airport Lease N–42773, was accepted by the Bureau of Land Management. The segregation no longer serves any purpose.

At 7:30 a.m. on September 15, 1995 the above described land will become open to the operation of the general public land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, rules and regulations. The above described lands will become open to the mineral leasing laws, material disposal laws, and location under the United States mining laws. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 8, 1995.

Ron Wenker,

District Manager, Winnemucca.

[FR Doc. 95–22912 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–HC–P

[AZ–026–05–5440–10–A132; AZA–29170]

Realty Action; Noncompetitive Sale of Public Lands in Pima County, Arizona; Correction

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Correction.

SUMMARY: In notice document 95–21078 on page 44042 in the issue of Thursday, August 24, 1995, make the following addition. The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the effective date of segregation (August 24, 1995), whichever occurs first.

Dated: September 6, 1995.

David J. Miller,

Associate District Manager.

[FR Doc. 95–22914 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–32–P

(NM–010–1430–01; NMNM 93823)

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 2,937.67 acres of public and non-public lands in Taos and Rio Arriba Counties to protect the riparian, scenic, and recreational values of the Embudo Canyon ACEC. This notice closes the land for up to 2 years from surface entry and mining.

DATES: Comments and requests for a public meeting must be received by December 14, 1995.

ADDRESS: Comments and meeting requests should be sent to the Albuquerque District Manager, BLM, 435 Montano Road N.E., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Lora Yonemoto, BLM, Taos Resource Area Office, (505) 758–8851.

SUPPLEMENTARY INFORMATION: On August 17, 1995, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land and non-public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 22 N., R. 10 E.,
  Sec. 1, NE¼.
T. 22 N., R. 11 E.,
  Sec. 5, lots 2 to 4, inclusive, NW¼, and N½SW¼;
  Sec. 6, N½.
T. 23 N., R. 10 E.,
  Sec. 36, S½NE¼ and SE¼.
T. 23 N., R. 11 E.,
  Sec. 27, lots 7 and 8, and SW¼;
  Sec. 28, S½S½;
  Sec. 29, S½SE¼;
  Sec. 31, S½;
  Sec. 32;
  Sec. 33, N½ and NW¼SW¼;
  Sec. 34, lot 5 and NW¼.

The area described, including both public and nonpublic lands, aggregate 2,937.67 acres in Taos and Rio Arriba Counties.

The purpose of the proposed withdrawal is to protect the riparian, scenic, and recreational values of the Embudo Canyon Area of Critical Environmental Concern.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Albuquerque District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Albuquerque District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meetings.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: August 30, 1995.

Sue E. Richardson,

Acting District Manager.

[FR Doc. 95–22920 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–FB–P

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting Reclamation's clearance officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to Reclamation's clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1006–****), Washington, DC 20503, telephone 202–395–7340.

Title: Power Management Laboratory's Voluntary Customer Satisfaction Surveys: Implementation of Executive Order 12862.

OMB approval number: 1006–****.

Abstract: The Department of the Interior selected the Bureau of Reclamation to conduct a Power Management Laboratory, as a part of the National Performance Review, to provide ways to improve Reclamation's power program. One component will be voluntary customer satisfaction surveys conducted to obtain customer opinions, concerns, expectations, and evaluations specific to its power program.

Bureau form number: None.

Frequency: One time.

Description of respondents: Power Marketing Administrations (e.g., Bonneville Power Administration and Western Area Power Administration), preference power customers, environmental community, electric utility systems, reliability councils, project use power users, Federal and State agencies, and the general public.

Estimated completion time: 15 minutes.

Annual responses: 1,200.

Annual burden hours: 300.

Reclamation clearance officer: Marilyn Rehfeld, 303–236–0305, extension 459.

Dated: July 27, 1995.

Larry Schulz,

Acting Leader, Property and Office Services.

[FR Doc. 95–22913 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–94–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Cave Crayfish (Cambarus aculabrum) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Cave crayfish (*Cambarus aculabrum*). The cave crayfish is only known from two cave streams in Benton County, northwest Arkansas. One of the caves (Logan) is federally owned as part of the National Wildlife Refuge System while the other

cave (Bear Hollow) is privately owned. The surrounding watershed and recharge area of both caves is in private ownership. This species is listed as endangered without critical habitat. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 30, 1995, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Jacobson at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is *Cambarus aculabrum*. This cave crayfish inhabits streams and pools located in two Ozarkian solution channels (caves) in the Mississippian cherty-limestone Boone Formation of Benton county, Arkansas. Cave crayfish (troglobites) are highly specialized for living in stable cave environments with low light and low temperatures and as such are unable to cope with changes in their habitats that may be induced by human activities. The cave crayfish was listed as endangered in 1993 due to its limited distribution, with only two known populations containing a small number of individuals; its limited reproductive potential; the potential for take by humans; and threat of water quality degradation.

The objective of this proposed plan is reclassification of the cave crayfish to threatened status. Reclassification will be considered when the two known populations are self-sustaining and are protected to the degree that they are secure from present or foreseeable threats. Actions needed to reach this goal include: (1) protecting populations and habitat, (2) educating the public on sensitivity of groundwater and fauna to pollution, (3) monitoring populations and habitat, including water quality, (4) searching for additional populations, (5) studying species biology, and (6) monitoring and studying troglophilic competitors and predators (non-obligate cave inhabitants).

This Plan is being submitted for agency review. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 11, 1995.

Paul Hartfield,

Acting Field Supervisor.

[FR Doc. 95–22952 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–55–M

Notice to Extend the Public Comment Period for the Draft Environmental Impact Statement on the Proposed Water Rights Acquisition for Lahontan Valley Wetlands, Churchill County, Nevada

AGENCIES: U.S. Fish and Wildlife Service (lead agency); Nevada Division of Wildlife, U.S. Bureau of Reclamation, U.S. Bureau of Indian Affairs, U.S. Bureau of Land Management, U.S. Natural Resources Conservation Service, Naval Air Station—Fallon, Fallon Paiute-Shoshone Tribes, and Churchill County, Nevada (cooperators).

ACTION: Notice to extend the public comment period.

SUMMARY: This notice advises the public that the public comment period has been extended for an additional 30 days for the Draft Environmental Impact Statement (EIS) for Water Rights acquisition for Lahontan Valley Wetlands, Churchill County, Nevada.

DATES: Public comments on the Draft EIS are requested by October 20, 1995. This 30-day extension of the comment period provides the public a 90-day review period for the Draft EIS.

ADDRESSES: Written comments should be addressed to:

Project Leader, Stillwater National Wildlife Refuge, P.O. Box 1236, Fallon, NV 89407.

Copies of the Draft EIS may be inspected at the following locations:

Stillwater National Wildlife Refuge, 1000 Auction Road, Fallon, NV 89406

U.S. Fish and Wildlife Service, Refuge and Wildlife, 911 N.E. 11th Avenue, Portland, OR 97232

Churchill County Public Library, 553 South Maine St., Fallon, NV 89406

Nevada State Library and Archives, Reference Desk, 100 Stewart Street, Carson City, NV 89701

Reno Branch, Washoe County Public Library, 301 S. Center Street, Reno, NV 89501.

FOR FURTHER INFORMATION CONTACT:

Ron Anglin, Project Leader, or Gary Shellhorn, Stillwater National Wildlife Refuge, P.O. Box 1236, Fallon, NV 89407, (702) 423–5128.

Individuals desiring a copy of the draft EIS for review should immediately contact the above individuals. Copies have been sent to agencies and individuals who participated in the scoping process and to those people that requested to be added to the mailing list.

Dated: September 1, 1995.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 95–22456 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Santa Rosa Island Resources Management Plan; Channel Islands National Park, California; Intent to Prepare an Environmental Impact Statement

Summary: The National Park Service will prepare a Santa Rosa Island Resources Management Plan/ Environmental Impact Statement (SRI–RMP/EIS) for Santa Rosa Island, Channel Islands National Park, California and is initiating the scoping process for this project. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–190.

Background

This planning effort is intended to supplement and expand upon the parkwide Resources Management Plan, which was approved in 1994 and focused primarily on research, inventory/monitoring, and project needs. The primary objective of the current planning process is to prepare an RMP/EIS specific to Santa Rosa Island which analyzes and selects management actions to accomplish three primary objectives: (1) To conserve and restore rare plant and animal species, as well as the habitats upon which they depend, (2) to ensure that non-native plant species will not threaten restoration of rare species and their habitats, and (3) to ensure that management of non-native ungulates (e.g., cattle, deer, elk, horses) and island infrastructure (e.g., roads and culverts) will protect or recover riparian habitat and water quality sufficiently to ensure compliance with the Clean Water Act. In addition, since Santa Rosa Island has yet to be reviewed for suitability as wilderness (pursuant to the Wilderness Act and Public Law 96–199), all proposed management actions will be evaluated in terms of their impact on wilderness suitability.

Supplementary Information: Persons wishing to express concerns or provide information on the above management issues and proposed future management direction of Santa Rosa Island, Channel Islands National Park may address these to the Superintendent, Channel Islands National Park, 1901 Spinnaker, Ventura, California 93001. Public scoping sessions will be scheduled and additional information given via press release and notices distributed to area libraries. The first scoping session will be held in Fall, 1995 in Ventura, California. Questions or comments regarding this Notice of Intent or the final schedule and location of scoping sessions should be addressed to the Superintendent, either by mail or by telephone at 805/658–5700.

The responsible official is Stanley T. Albright, Field Director, Pacific West Area, National Park Service. The draft SRI–RMP/EIS is expected to be available for public review in Winter-Spring 1995–96.

Dated: September 1, 1995.

Stephen G. Crabtree,

Acting Field Director, Pacific West Area.

[FR Doc. 95–22941 Filed 9–15–95; 8:45 am]

BILLING CODE 4310–70–P

Record of Decision for the General Management Plan/Final Environmental Impact Statement, Lake Chelan National Recreation Area, Washington

ACTION: Ntoice of Approval of Record Decision.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality in 40 CFR 1505.2, the National Park Service has approved the Record of Decision for the General Management Plan/Final Environmental Impact Statement for Lake Chelan National Recreation Area, Washington. The National Park Service will implement the proposed action as described in the Final Impact Statement.

DATES: The Record of Decision was recommended by the Superintendent of North Cascades National Park Service Complex, concurred by the Deputy Field Director, Pacific West Area, and approved by the Field Director, Pacific West Area, on August 30, 1995.

ADDRESSES: Inquiries regarding the Record of Decision or the Environmental Impact Statement should be submitted to the Superintendent, North Cascades National Park Service Complex, 2105 Highway 20, Sedro Woolley, WA 98284–9314; telephone: (360) 856–5700.

SUPPLEMENTARY INFORMATION: The text of the Record of Decision follows: The Department of the Interior, National Park Service, has prepared this Record of Decision on the Final Environmental Impact Statement (EIS) for the General Management Plan for Lake Chelan National Recreation Area, Washington. This Record of Decision is a statement of the decision made, the background of the project, other alternatives considered, the basis for the decision, the environmentally preferable alternative, measures to minimize environmental harm, and public involvement in the decision making process.

Decision (Selected Action)

The National Park Service will implement the proposed action as described in the Final Environmental Impact Statement.

The National Park Service will manage visitor and resident use of the recreation area's resources in order to preserve the natural, scenic and cultural values of the area. The rustic setting of Lake Chelan National Recreation Area will be part of the transition from the downlake, primarily recreational and residential setting, to the wild and natural North Cascades National Park.

The National Park Service will not manipulate the Stehekin river or its tributaries except to protect public roads and bridges. Woody debris could be trimmed or turned in the lower 9 miles of the Stehekin River to allow safer recreational use of the river for rafting, kayaking, and canoeing if it did not alter the function or stability of woody debris accumulations and was permitted by the appropriate regulatory agency. The Park Service will not remove woody debris from the river system except to protect public roads and bridges. The Park Service will discourage private landowners from manipulating the Stehekin River or removing woody debris. The active sand, rock, and gravel borrow pit will be maintained at less than or equal to its current size; no new borrow pits will be opened, and abandoned borrow pits will be restored. Gravel will be sold to the public at fair market value, with restrictions.

Fire suppression, prescribed natural fire, management-ignited prescribed fire, and selective manual fuel reductions will be used to improve wildland fire protection for human life and property and to manage for late-succession stage in ponderosa pine/ Douglas fir forest. The practice of woodlot cutting for firewood will be phased out. When available, firewood will be provided from administrative sources, at fair market value.

The Golden West Lodge and the High Bridge Historic District will be rehabilitated and the Buckner homestead and orchard will be preserved. The airstrip will be operated under a special use permit with the Washington State Department of Transportation for private, noncommercial use. Some NPS and concession housing, maintenance, and related facilities will be consolidated beside the airstrip.

The Stehekin Valley road between the Landing and Harlequin Bridge will remain a two-lane paved road; from Harlequin Bridge to 9-Mile, it will become a single-lane, paved road with pullouts; from 9-Mile to High Bridge, a single-lane, gravel road; and from High Bridge to Cottonwood, a high-clearance, shuttle vehicle road. Unconstrained private vehicle use will end at High Bridge. Private vehicle use from High Bridge to Bridge Creek will be allowed, but traffic flow will be regulated. Public shuttle service will be provided from the Landing to Cottonwood. Only the public shuttle service, hikers, horses, and bicycles will be allowed from Bridge Creek to Cottonwood. Company Creek road will be maintained in its current alignment, and will be protected from river erosion at two locations. Stehekin Landing will be redesigned to improve visitor flow and parking, and to relocate lodging and other facilities away from geohazards. The current capacity of concession services for food and lodging will increase somewhat.

Land protection will emphasize high flood influence areas, wetlands, riparian areas, and high visual sensitivity areas.

Background of the Project

Preparation of the EIS was required by a consent decree entered in U.S. District Court, Western District of Washington, on April 22, 1991. The consent decree specified actions for resolving the dispute between the plaintiff, North Cascades Conservation Council, and defendants in the U.S. Department of the Interior. The consent decree resulted from a law suit filed by the North Cascades Conservation Council (Civil Case No. C–89–1342D). This Record of Decision is the last necessary action under the National Environmental Policy Act regulations regarding the consent decree.

Other Alternatives Considered

Four other alternatives to the selected action were considered. Under the no action alternative, the recreation area would be a rural resort community where resources are used, within limits, by an expanding residential presence. This alternative was the 1988 General Management Plan and supporting implementation plans.

Under alternative A, the area would be a wild, natural area where resources and natural processes would be largely undisturbed; natural forces would be allowed to slowly remove evidence of human occupation. The Stehekin River would not be manipulated, mining gravel would not be allowed, prescribed fire would be used to manage wildland fire risk, select cultural properties would be protected, the airstrip closed, and all roads restored to natural conditions as private property was acquired.

Under alternative B, the area would be a rural, woodland gateway to the North Cascades; use of resources by visitors and residents would be limited in order to preserve natural, scenic, and cultural values. Some river manipulation would be allowed, mining gravel would not be allowed, wildland fire protection and cultural resource management would be similar to the selected action, the airstrip closed, and roads would be similar in character to existing conditions.

Under alternative C, the area would be a retreat/refuge/resort where resources and natural processes are showcased for the enjoyment of visitors. All existing public and private improvements would be protected from river erosion, gravel mining would be maintained and expanded if necessary, wildland fire protection would be augmented using selective manual thinning, all cultural properties would be rehabilitated or preserved, the airstrip used for emergency landings only, and roads would be similar in character to existing conditions.

Basis for Decision

As presented in the final EIS, the National Park Service's management objectives are numerous. Twenty seven individual objectives are identified, from natural resource management to land use and development. After evaluation of public comments on the alternatives presented in the draft EIS, the selected action best balances the statutory mission of the National Park Service to provide long term resource preservation while allowing for appropriate levels of visitor use and appropriate means of visitor enjoyment. The selected action provides for projected growth in visitation through the year 2007, while complying with provisions of law under the Endangered Species Act, National Historic Preservation Act, and Wilderness Act; policies of the National Park Service; the recreation area's purpose based on its enabling legislation; constraints imposed on the area's management under the same legislation; and the protection of its significant resources.

Environmentally Preferable Alternative

A Record of Decision must identify the environmentally preferable alternative, which is that alternative which causes the least damage to the biological environment, and that best protects, preserves, and enhances resources. With its emphasis on preservation of the natural ecosystem of the valley, alternative A is the environmentally preferable alternative.

Measures to Minimize Environmental Harm

All practicable measures to avoid or minimize environmental impacts that could result from implementation of the selected action have been identified and incorporated into the selected action. These include protection of high flood influence areas, wetlands, riparian areas, and high visual sensitivity areas; protection of threatened, endangered and rare species; protection of properties eligible for listing on the National Register of Historic Places; and the restoration of wetlands, disturbed sites in the river corridor, abandoned gravel pits, woodlots, old fairways, and road segments. The NPS would not manipulate natural river dynamics except, under certain conditions, to protect roads and bridges.

Additional mitigating measures are identified in the implementation plans associated with the EIS. The implementation plans completed or amended in this EIS are the Sand, Rock, and Gravel Plan; Forest Fuel Reduction / Firewood Management Plan; Wilderness Management Plan; Transportation Plan; Stehekin Landing and Valley Development Concept Plans; and the Land Protection Plan. The environmental impacts of these plans were presented in the final EIS, by impact topic, on pages 274 through 315. Impacts from these plans are incorporated into the impact analysis sections for each of the 13 impact topics. A range of management options for each of the implementation plans was integrated into each of the five alternatives considered in the EIS.

Mitigating and monitoring measures in the implementation plan follow.

Sand, Rock, and Gravel Plan: mining will only occur at the Company Creek borrow pit; this pit will be reclaimed as new mining occurs; sand, rock, and gravel will be conserved and recycled whenever possible; except for emergencies, the use of sand, rock, and gravel from the Company Creek pit will be limited to 1400 cubic yards per year—1200 cubic yards for NPS use and 200 cubic yards for private use; material beyond this limit or for new construction will be imported; material will be used only for maintenance activities listed in the plan; the reclaimed portions of the pit will be topsoiled, fertilized, seeded, and planted with plant stocks indigenous to Stehekin; the working face of the pit will be temporarily covered with native grasses; the pit will be monitored before,

during, and after active mining operations to identify sensitive resources, to ensure that operations minimize impacts, and to see that reclamation goals are met; the Rainbow Creek gravel pit will be actively reclaimed including topographic restoration, surface erosion control, nonnative species control, soil building, revegetation, plant irrigation, and monitoring; continued natural recovery at all other abandoned pits will be monitored.

Forest Fuel Reduction/Firewood Management Plan: data from forest stand examinations in the forest fuel reduction areas, and in control plots, will be used as baseline information for monitoring forest changes through time; thirteen attributes, as identified in the plan, will be monitored using the NPS's Fire Monitoring Handbook in order to document the effects of manual thinning and firewood administration activities; except for two transitional woodcutter areas, no woodcutting or manual thinning will occur within any forest fuel reduction area until monitoring plots are established and measured; program effectiveness will be reviewed every five years; during woodcutting, soil compaction will be minimized by limiting skid trails, not allowing vehicle access by woodcutters, and hand raking tire/track ruts; stumps will be flush-cut and slash placed over them; the existing harvested woodlots, and associated access roads, will be rehabilitated; the Stehekin Landing, after mistletoe control and hazard fuel reduction work, will also be rehabilitated; as manual thinning is completed, old roads and log decks will be closed and rehabilitated including eight old road segments; revegetation will include mechanical ripping and recontouring soil, adding mulch, and scattering native plant seeds, litter, and coarse woody debris; if significant revegetation is not observed within five years, native seedlings may be planted.

Wilderness Management Plan: the maximum backcountry party size in the NRA is six pairs of eyes (human or stock) in crosscountry areas, and 12 pairs of eyes otherwise; the existing commercial stock user may exceed this limit at historic levels (up to 30 pairs of eyes, four to six times per year); no oversized parties are allowed at Juanita Lake camp (12 pairs of eyes maximum); open campfires and gathering firewood in subalpine zones (and some other sensitive areas) is prohibited; grazing in the NRA is permitted only at three areas currently used—Rainbow Meadow, Hidden Lake, and Juanita Lake basin; grazing is prohibited within 0.25 mile of Juanita Lake; all grazing will be regulated by monitoring soil moisture conditions, and will be restricted to the dry period of the summer which generally begins about July 15th; otherwise, only certified, weed-free, processed feed is allowed.

Transportation Plan: between Harlequin Bridge and 9-Mile, the road will be paved and reduced to a single-lane (12–14 feet wide) with pullouts; the sides of gravel roads that have become excessively wide will be rehabilitated; unconstrained private vehicle use will end at High Bridge; private vehicle use from High Bridge to Bridge Creek will be regulated by season an/or hour of day; only the public shuttle service, hikers, horses, and bicycles will be allowed to use the road from Bridge Creek to Cottonwood; the road from High Bridge to Cottonwood will be maintained to sustain heavy-duty, high-clearance shuttle vehicles; erosion control systems along the upper Company Creek road will be removed and replaced, designed to keep the road from eroding during frequently recurring flood events (i.e., 10- to 25-year recurrence interval), and will be made from rock, soil, and native vegetation; public roads will be protected in active river erosion zones only if (1) there are no feasible alternatives, (2) funds are available, (3) the actions will have less impacts than other alternatives, and (4) the action are permitted by county, state, and other federal agencies; snowmobile use will be limited to existing roads below High Bridge; the airstrip will be retained and operated under a special use permit for noncommercial public use on a ''use at your own risk'' basis; the Washington State Department of Transportation, Aeronautics Division (the Division) will keep the airstrip and approaches equipped and maintained in accordance with requirements for state-operated emergency airstrips; there will be no expansion of the permitted area beyond that identified in the current permit; camping will not be permitted within the permit area; the Division will be required to prepare a plan and conduct noxious weed control measures within the area under permit, as approved by the NPS; an annual maintenance and operating plan will be prepared by the Division and submitted for review and approval by the NPS.

Stehekin Landing and Valley Development Concept Plan: the ''outpost community'' image of the area will be encouraged using the Architectural Character Guidelines; the Golden West Lodge and High Bridge Historic District will be rehabilitated following the Secretary of the Interior Standards for the Treatment of Historic Properties; the Buckner homestead and orchard will be preserved, and items associated with the farming operation will be restored on a priority basis, if owned by the NPS; the genetic stock of the Buckner orchard will be maintained; the natural character of public lands within 200 feet of the lake and river shoreline will be restored; NPS structures will be removed from the shoreline, where appropriate, and no new NPS structures will be constructed on the shoreline; the ''fairways'' will be restored to natural conditions as appropriate; all abandoned vehicles will be removed from public lands; unnecessary powerlines will be removed and all others will be buried where appropriate, especially in areas with high visitor use; some campsites at Weaver Point Campground will be moved back from the shoreline; at the Landing, as the useful lives of existing structures are approached, new lodging facilities, grocery, and post office will be built away from geohazards, and existing facilities will be demolished and their sites restored; the current NPS headquarters building will be removed; the NPS will provide boat sewage disposal at no cost; visitors will be encouraged to use nonmotorized transportation through rental services.

Land Protection Plan: incompatible uses of private property are (1) any subdivision of land that was not in effect prior to this Record of Decision, except as permitted through the Chelan County Subdivision Regulations and as consistent with Chelan County health standards, (2) the siting or construction of any building in an identified high flood influence area, wetland, riparian area, or highly unstable area, e.g., slopes greater than 20%, where potential impacts cannot be confined to the specific private ownership, (3) any dredging or filing of Lake Chelan or the Stehekin River without full compliance with the U.S. Army Corps of Engineers permitting process and/or appropriate authorization from the state, (4) the cutting of timber for sale or transport outside the Stehekin valley, (5) the cutting of timber by any means other than selective tree harvesting except as required by Washington State Department of Natural Resources regulations, and (6) the mining of sand, rock, or gravel for sale or transport outside the Stehekin valley; the NPS will not site any new building or structure in (1) the 100-year floodplain, unless used for nonhuman occupancy and with conditions on specific uses or mitigation, (2) wetland soils, and those soils not conducive to building foundations, leachfield percolation, or

site drainage, (3) geohazard areas, (4) areas with slopes greater than 20% and (5) areas of high visual sensitivity, except where specific design mitigation can successfully be used; ensure that applicable laws and policies of the state of Washington are followed, including health and safety regulations and Washington Growth Management Act provisions; continue willing buyer/willing seller acquisitions for properties with areas that have a high priority for resource protection, or for which public needs have been identified; emphasize opportunities for easement purchases and other less-than-fee interests for resource protection and public use.

The conclusion on impacts to the northern spotted owl in the final EIS is modified by this Record of Decision. After formal consultation with the U.S. Fish and Wildlife Service (FWS), it is the biological opinion of the FWS that the impacts from the General Management Plan for Lake Chelan NRA are not likely to jeopardize the continued existence of the threatened northern spotted owl. Incidental take of one pair of spotted owls or resident single owl is anticipated. The FWS concurs with the NPS determinations that the General Management Plan for Lake Chelan NRA will have ''no effect'' on the bald eagle and peregrine falcon and will ''beneficially affect'' the gray wolf, and ''may affect,'' but will ''not likely'' ''adversely affect,'' the grizzly bear.

Public Involvement

Public comment has been requested, considered and incorporated into the planning process during four major planning stages, and has also been considered in numerous other ways. Initial public scoping meetings were held in June 1991, in Stehekin, Chelan and Seattle. Public comment was again requested on the primary data set used in planning in April 1933; in a preliminary alternatives document distributed in May 1993; and in public hearings on the draft EIS in October 1994. Additionally, four newsletters were distributed during the planning process, including an extensive data summary booklet. Consultation was also completed with the U.S. Fish and Wildlife Service, the Advisory Council on Historic Preservation, the Washington State Historic Preservation Office, and Native American tribes.

About 750 copies of the draft EIS were distributed. Written comments were accepted for 60 days, and over 1000 comment letters or testimonies were recorded. Responses to substantive comments on the draft EIS were published in Volume II of the final EIS, distributed in July 1995. All substantive comments were addressed by either providing clarification of information, modifying the test, or directly responding in the final EIS.

Dated: September 7, 1995.

Rory D. Westberg,

Acting Deputy Field Director, Pacific West Area, National Park Service.

[FR Doc. 95–23001 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

The following Notice was filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. The rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP–102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) MFA Incorporated.

(2) 615 Locust Street, Columbia, MO 65201.

(3) 615 Locust Street, Columbia, MO 65201.

(4) Ann Simpson, 615 Locust Street, Columbia, MO 65201.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23004 Filed 9–14–95; 8:45 am]

BILLING CODE 7035–10–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95–24]

Carmencita E. Gallosa, M.D.; Revocation of Registration

On March 7, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Carmencita E. Gallosa, M.D. (Respondent), of Paintsville, Kentucky. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration, AG9685162, under 21 U.S.C. 824(a) (3), (4) and (5) and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. On April 21, 1995, the Government filed a motion for summary disposition, alleging that Respondent was not authorized to handle controlled substances in the Commonwealth of Kentucky. On May 1, 1995, Respondent responded to the Government's motion, arguing that her medical license had only been temporarily suspended by the Board, and that any action by DEA should be delayed until the Board holds an evidentiary hearing regarding Respondent's medical license.

On May 10, 1995, in her opinion and recommended decision, the administrative law judge granted the Government's motion for summary disposition and recommended that Respondent's DEA Certificate of Registration be revoked and that any pending applications for registration be denied. On May 25, 1995, Respondent filed exceptions to the opinion and recommended decision of the administrative law judge. On June 12, 1994, the administrative law judge transmitted the record to the Deputy Administrator. The Deputy Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Government's motion for summary disposition alleged that Respondent is not authorized to handle controlled substances in Kentucky. The Government's motion was based on the Kentucky Board of Medical Licensure's January 19, 1995, Order of Temporary

Suspension of Respondent's medical license. The administrative law judge also found that Respondent's response to the Government's motion did not deny that her state license has been temporarily suspended. The administrative law judge therefore concurred with the Government's motion regarding Respondent's lack of state authorization to handle controlled substances in Kentucky.

The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

The administrative law judge properly granted the Government's motion for summary disposition. It is well-settled that when no question of fact is involved, or when the facts are agreed upon, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. *Philip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *Alfred Tennyson Smurthwaite, N.D.*, 43 FR 11873 (1978; *see also, NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *United States v. Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

In her exceptions to the opinion and recommended decision of the administrative law judge, the Respondent argued, *inter alia*, that: her state medical license had been temporarily suspended; DEA does not possess the authority to suspend or revoke Respondent's DEA registration pursuant to 21 U.S.C. 824(a)(3) under the circumstances of this case; and, the administrative law judge exceeded her authority by recommending revocation of Respondent's DEA registration without affording Respondent a hearing.

The Respondent acknowledged in her exceptions that she is temporarily suspended from the practice of medicine in the Commonwealth of Kentucky. The action taken by the Board in suspending Respondent's state license to practice medicine has rendered the Respondent without authorization to handle controlled substances in the jurisdiction in which she maintains her DEA registration. As outlined above, DEA cannot register the Respondent to handle controlled substances without such authority, and therefore, the administrative law judge's recommendations in this matter were appropriate. As a result, the Deputy Administrator finds that there is no need to address the remaining arguments as set forth in Respondent's exceptions.

Moreover, since Respondent is not currently authorized to handle controlled substances in the Commonwealth of Kentucky, it is not necessary to reach a conclusion regarding the other grounds for revocation alleged in the Order to Show Cause. The Deputy Administrator hereby adopts the opinion and recommended decision of the administrative law judge in its entirety.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AG9685162, previously issued to Carmencita E. Gallosa, M.D., be, and it hereby is, revoked, and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective October 16, 1995.

Dated: September 8, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–22921 Filed 9–14–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by

writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

Texas

Volume VI

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 8th Day of September 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–22751 Filed 9–14–95; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Pilgrim Nuclear Power Plant; Notice of Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request by Boston Edison Company (the licensee) to withdraw its November 22, 1995, application for an amendment to Facility Operating License No. DRP–35, for the operation of the Pilgrim Nuclear Power Station, located in Plymouth, Massachusetts. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on February 1, 1995, (95 FR 6297).

The purpose of the licensee's amendment request was to revise the Technical Specifications to increase the emergency diesel generator allowed out-of-service time from 72 hours to 7 days.

Subsequently, the licensee informed the staff that the amendment would be integrated with proposed changes to the Containment Cooling System and resubmitted at a later date. Thus, the amendment application is considered to be withdrawn by the licensee.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room located at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland, this 8th day of September 1995.

For the Nuclear Regulatory Commission.

Ronald B. Eaton,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22995 Filed 9–14–95; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2647, Reduction or Waiver of Complete Withdrawal Liability

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget extend approval, under the Paperwork Reduction Act, of the collection of information requirements (1212–0044) contained in its regulation on Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 2647). The effect of this notice is to advise the public of the PBGC's request.

DATES: Th PBGC is requesting that OMB complete action on the PBGC's request by September 29, 1995. Comments must be received by September 25, 1995.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between 9:00 a.m. and 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's regulation on Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 2647), which is promulgated pursuant to section 4207 of the Employee Retirement Income Security Act of 1974. Section 4208 authorizes the Pension Benefit Guaranty Corporation to promulgate rules for the reduction or elimination of an employer's complete withdrawal liability.

Under the regulation, a contributing employer can apply to a multiemployer plan for a determination that it has met the requirements for abatement of

complete withdrawal liability, and a multiemployer plan sponsor can apply to the PBGC for approval of individually-tailored plan rules for abatement of complete withdrawal liability. The PBGC uses information submitted to it to determine whether plan rules satisfy statutory standards.

The PBGC estimates that the total annual burden of the regulation is 125½ hours. Of this total, 125 hours represents 100 employer abatement applications and plan responses and one-half hour represents a submission to the PBGC by one plan sponsor.

Issued at Washington, DC., this 12th day of September, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–23000 Filed 9–14–95; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36207; File No. SR–CBOE–95–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Warrants Based on the CBOE Technology 50 Index

September 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 1, 1995, the Chicago Board Options Exchange, Inc. (''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 CBOE subsequently filed Amendment No. 1 to the proposed rule change on August 2, 1995,[2] Amendment No. 2 on August 3, 1995,[3] and Amendment No. 3 on August 29, 1995.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes list and trade warrants on the CBOE Technology 50 Index (''Tech 50 Index'' or ''Index''), which the Exchange represents is a broad-based 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 purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled index warrants based on the Tech 50 Index (''Index Warrants''). On August 29, 1995, the Commission approved the Exchange's proposal to amend its standards for the listing and trading of currency warrants and index warrants (''Generic Warrant Listing Standards'').[5] The Exchange states that the listing and trading of warrants based on the Tech 50 Index will comply in all respects with the Generic Warrant Listing Standards.

Index Design

The Exchange represents that the Tech 50 Index is a broad-based index comprised of stocks of 50 of the largest domestic technology companies, representing various industries within that general economic category. The Index was designed by and will be maintained by the CBOE. The Index is price-weighted and reflects changes in the prices of the component stocks relative to the Index base date, January 3, 1995, when the Index was set to an initial level of 200.00.

On August 15, 1995,[6] the 50 stocks in the Index ranged in market capitalization from a low of approximately $829.28 million to a high of approximately $82.47 billion. Total market capitalization for the Index on August 15, 1995, was approximately $578.53 billion. The highest weighted stock in the Index on that date accounted for 5.62% of the weight of the Index and the lowest weighted security in the Index accounted for 0.68% of the weight of the Index. In aggregate, the five highest weighted components on that date accounted for 21.45% of the weight of the Index. Currently, the Exchange represents that all of the component stocks are eligible for the listing of standardized options on the Exchange pursuant to CBOE Rule 5.3.

As of August 15, 1995, the Exchange represents that the industry breakdown for the Index, by weight, was as follows: (1) computer hardware—8.20%; (2) computer software—14.63%; (3) computers systems and services—11.12%; (4) integrated circuit components—10.43%; (5) semiconductors—12.66%; (6) precision instrumentation—3.15%; (7) medical technology—8.74%; (8) network and server systems—10.14%; (9) telecommunication components—12.62%; and (10) telecommunications—8.31%.[7]

Warrant Terms

Index Warrants will be direct obligations of the issuing entity and will be cash-settled in U.S. dollars. Upon exercise (or at the warrant expiration date in the case of warrants with European-style exercise), the holder of an Index Warrant structured as a ''put'' will receive payment in U.S. dollars to the extent that the value of the Index has declined below a pre-stated cash settlement value. Conversely, upon exercise (or at the warrant expiration date in the case of warrants with European-style exercise), the holder of an Index Warrant structures as a ''call'' will receive payment in U.S. dollars to the extent that the Index value has increased above a pre-stated cash settlement value. Index Warrants that are out-of-the-money at the time of expiration will expire worthless.

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] As a result of the Commission's approval of the Exchange's Generic Warrant Listing Standards (as defined herein), Amendment No. 1 has been rendered moot.

[3] In Amendment No. 2, as discussed herein, the CBOE amended certain of the objective standards set forth in the section of its proposal entitled ''Classification of the Index as Broad-Based.'' *See* Letter from Timothy Thompson, Senior Attorney, Legal Department, CBOE, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated August 3, 1995 (''Amendment No. 2'').

[4] In Amendment No. 3, as discussed herein, the Exchange amended the composition of the Index to, in the Exchange's opinion, provide better balance between the technology industry subsectors represented in the Index. *See* Letter from William Speth, Jr., Senior Research Analyst, Research Department, CBOE, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated August 29, 1995 (''Amendment No. 3'').

[5] *See* Securities Exchange Act Release No. 36169 (August 29, 1995).

[6] *See* Amendment No. 3, *supra* note 4.

[7] *Id.*

Maintenance of the Index

The Index will be maintained by the Exchange and will be reviewed monthly.[8] The CBOE may change the composition of the Index at any time to reflect changes affecting the components of the Index or the various technology industry subsectors represented in the Index. If it becomes necessary to remove a stock from the Index (*e.g.*, because of a takeover or merger), the CBOE will take into account the capitalization, liquidity, volatility, and name recognition of any proposed replacement security.[9]

The Exchange intends to maintain the Index with 50 components, however, the Exchange may increase the number of components in the Index by up to 33%, *i.e.*, 66 stocks.[10]

Calculation and Dissemination of the Value of the Index

The Index value will be calculated by the CBOE or its designee on a real-time bases using last-sale prices, and will be publicly disseminated [11] every 15 seconds. If a component stock is not currently being traded, the most recent price at which the stock traded will be used in the Index value calculation. The value of the Index as of the close of trading on July 17, 1995, was 335.10.

The Index is price-weighted and reflects changes in the prices of the component stocks relative to the base date of January 3, 1995, when the Index was set to an initial value of 200.00. Specifically, the Index value is calculated by adding the prices of the component stocks and then dividing this sum by the Index divisor.[12] The Index divisor is adjusted to reflect non-market changes in the prices of the component securities as well as changes in the composition of the Index. Changes that may result in divisor changes include, but are not limited to, stock splits and dividends (other than ordinary cash dividends),[13] spin-offs, certain rights issuances, and mergers and acquisitions.

Classification of the Index as Broad-Based [14]

The CBOE has designed the Index to meet certain objective criteria which it believes are appropriate to classify the Index as broad-based. To ensure that the Index remains representative of a broad spectrum of the various high technology industries and that stocks with low trading volumes are not included in the Index, the Exchange chose the current components and will maintain the Index according to the following guidelines: (1) Each underlying security selected for inclusion in the Index must have an average daily trading volume of at least 75,000 shares during the preceding six months; (2) each underlying security included in the Index must maintain an average daily trading volume of at least 50,000 shares during the preceding six months; [15] (3) no underlying security will represent more than 15% of the total weight of the Index; (4) the five most heavily weighted securities in the Index will not represent more than 40% of the total weight of the Index; (5) the Index will be comprised of at least ten technology industry subsectors representing a total of no less than 50 underlying securities; and (6) at least 75% of the total weight of the Index will be represented by underlying securities that are eligible for the listing of standardized options pursuant to CBOE Rule 5.3. The Exchange will conduct semi-annual reviews of the underlying securities included in the Index to assure that the Index continues to meet the standards set forth above. The Exchange represents that the above guidelines are similar to the requirements set forth in Interpretation .01 to Rule 7.3 of the Pacific Stock Exchange (''PSE'') regarding the designation of the PSE's High Technology Index as a broad-based index for purposes of the trading of standardized options.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general and with Section 6(b)(5) 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 with persons engaged in facilitating and clearing 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.

(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, 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

[8] These reviews are mainly for the purpose of determining whether to make composition changes to the Index. These monthly reviews generally are not for the purpose of applying the proposed objective standards for ensuring that the Index remains broad-based (*see* ''Classification of the Index as Broad-Based,'' *infra*). Telephone conversation among Timothy Thompson, Senior Attorney, Legal Department, CBOE, Eileen Smith, Director, Product Department, Research Department, CBOE, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on August 3, 1995 (''August 3 Conversation'').

[9] Whenever a new component is added to the Index, the CBOE will apply those objective standards proposed for ensuring that the Index remains broad-based (*see* ''Classification of the Index as Broad-Based,'' *infra*) that could be affected by the addition of a new component security to the Index. Telephone conversation between Timothy Thompson, Senior Attorney, Legal Department, CBOE, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on August 4, 1995 (''August 4 Conversation'').

[10] The Commission notes that the Exchange will be required to distribute a circular to members notifying them of any change in the components of the Index. Further, if the Exchange determines to maintain the Index with some number of components other than 50, the Exchange will be required to change the name of the Index. In such an event, the Exchange should immediately notify the Commission to determine whether a rule filing pursuant to Section 19(b) of the Act will be required.

[11] *See* August 3 Conversation, *supra* note 8.

[12] As of August 15, 1995, the share prices of the Index components ranged from a high of $158.13 to a low of $19.00. *See* Amendment No. 3, *supra* note 4.

[13] *See* August 3 Conversation, *supra* note 8.

[14] *See* Amendment No. 2, *supra* note 3.

[15] *See* August 4 Conversation, *supra* note 9.

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 CBOE. All submissions should refer to SR–CBOE–95–38 and should be submitted by October 6, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22965 Filed 9–14–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2810]

Florida; Declaration of Disaster Loan Area

Collier and Lee Counties and the contiguous Counties of Broward, Charlotte, Dade, Glades, Hendry, and Monroe in the State of Florida constitute a disaster area as a result of damages caused by Tropical Storm Jerry which occurred on August 24 and 25, 1995. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on November 3, 1995, and for economic injury until the close of business on June 3, 1996, at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

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 281011 and for economic injury the number is 863500.

[16] 17 CFR 200.30–3(a)(12) (1994)

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 1, 1995.'

John T. Spotila,

Acting Administrator.

[FR Doc. 95–22963 Filed 9–14–95; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2809]

North Carolina (and Contiguous Counties in South Carolina); Declaration of Disaster Loan Area

Mecklenburg, Orange, and Wake Counties and the contiguous Counties of Alamance, Cabarrus, Caswell, Chatham, Durham, Franklin, Gaston, Granville, Harnett, Iredell, Johnston, Lincoln, Nash, Person, and Union in the State of North Carolina, and Lancaster and York Counties in the State of South Carolina constitute a disaster area as a result of damages caused by Tropical Storm Jerry which occurred on August 26–28, 1995. Applications for loans for physical damages may be filed until the close of business on November 9, 1995 and for economic injury until the close of business on June 6, 1996 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

	Percent
The interest rates are:	
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 numbers assigned to this disaster for physical damage are 280911 for North Carolina and 280811 for South Carolina. For economic injury the numbers are 863400 for North Carolina and 863300 for South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 8, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–22961 Filed 9–14–95; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2806]

Ohio; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 25, 1995, I find that Champaign, Licking, Logan, Marion, Mercer, Miami, Scioto, and Shelby Counties in the State of Ohio constitute a disaster area due to damages by severe storms and flooding which occurred August 7–18, 1995. Applications for loans for physical damages may be filed until the close of business on October 24, 1995, and for loans for economic injury until the close of business on May 28,1996 at the address listed below:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Auglaize, Clark, Coshocton, Crawford, Darke, Delaware, Fairfield, Franklin, Hardin, Jackson, Knox, Lawrence, Madison, Montgomery, Morrow, Muskingum, Peerry, Pike, Union, Van Wert, and Wyandot Counties in Ohio; Adams and Jay Counties in Indiana; and Greenup and Lewis Counties in Kentucky.

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 organizaitons) 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 280606. For economic injury the numbers are 862900 for Ohio, 863000 for Indiana, and 863100 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 1, 1995.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 95–22962 Filed 9–14–95; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2808]

South Carolina (and Contiguous Counties in North Carolina); Declaration of Disaster Loan Area

Greenville County and the contiguous Counties of Abbeville, Anderson, Laurens, Pickens, and Spartanburg in the State of South Carolina, and Henderson, Polk, and Transylvania Counties in the State of North Carolina constitute a disaster area as a result of damages caused by Tropical Storm Jerry which occurred on August 26 and 27, 1995. Applications for loans for physical damages may be filed until the close of business on November 3, 1995, and for economic injury until the close of business on June 3, 1996, at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

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 numbers assigned to this disaster for physical damage are 280811 for South Carolina and 280911 for North Carolina. For economic injury the numbers are 863300 for South Carolina and 863400 for North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 1, 1995.

Katherin D. Kincaid,

Acting Administrator.

[FR Doc. 95–22959 Filed 9–14–95; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000121]

Conrad/Collins Capital, Ltd.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1995)) by Conrad/Collins Capital, Ltd., Plaza of the Americas, North Tower, 700 North Pearl, Suite 1910, Dallas, Texas 75201, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et seq.), and the rules and regulations promulgated thereunder.

The initial investors and their percentage of ownership of the Applicant are as follows:

	Percentage of ownership
General Partners:	
Conrad/Collins Capital Partners, Ltd., 700 North Pearl, Dallas, Texas 75201	4.8
Limited Partners:	
Douglas A. Smith, 700 North Pearl, Dallas, Texas 75201	38.0
Brian A. Harpster, 700 North Pearl, Dallas Texas 75201	28.6
Edwin W. Ross, 700 North Pearl, Dallas, Texas 75201	19.0
Two other individuals shareholders none of which own more than 10 percent	9.6

Conrad/Collins Capital, Ltd. will be managed by Conrad/Collins Capital Partners, Ltd. which is owned equally by:

	Percentage of ownership
General Partners:	
Barry B. Conrad, 700 North Pearl, Dallas, Texas 75201	50
Floyd W. Collins, 700 North Pearl, Dallas, Texas 75201	50

The applicant will begin operations with a capitalization of $10,500,000 and will be a source of equity capital and long term funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Dallas, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 8, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–22960 Filed 9–14–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Special Committee 165, Working Group 6, High Frequency Data Link (HFDL)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 165, Working Group 6 meeting to be held October 2–3, 1995, starting at 9:30 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Welcome and Introductions; (2) Remarks by the Chairman of Special Committee 165; (3) Remarks by the Chairman of Special Committee 165 Working Group 6; (4) Review of Papers (C/SOIT, AMCP/AHWG, etc.); (5) Feasibility Report Outline; (6) Economic and Institutional Issues; (7) Overnight Assignments; (8) Draft of Feasibility Report; (9) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 11, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–22996 Filed 9–14–95; 8:45 am]

BILLING CODE 4810–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 5, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0058
Form Number: ATF F 5120.25 and ATF F 5120.36
Type of Review: Revision
Title: Application to Establish and Operate Wine Premises
Description: ATF F 5120.25 is the form used to establish the qualifications of an applicant for a wine premises. The applicant certifies the intention to produce and/or store a specified amount of wine and takes certain precautions to protect it from unauthorized use. The bond form is used by the proprietor and a surety company as a contract to ensure the payment of the wine excise tax.
Respondents: Business or other for-profit
Estimated Number of Respondents: 1,720
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 810 hours

OMB Number: 1512–0144
Form Number: ATF F 2736 (5100.12) and ATF F 2737 (5110.67)
Type of Review: Revision
Title: Specific and Continuing Transportation Bond—Distilled Spirits and/or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six
Description: These bonds protect the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. The bonds identify the shipment, the parties, the date, and the amount of the bond.
Respondents: Business or other for-profit
Estimated Number of Respondents: 1
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1 hour

OMB Number: 1512–0341
Recordkeeping Requirement ID Number: ATF REC 5150/8
Type of Review: Extension
Title: Stills: Notices, Registration, and Records
Description: The information collection requirement is used to account for and regulate the distillation of spirits. As there could be a substantial tax revenue loss that would be incurred through the illegal distillation of spirits, the data collected identifies the manufacturers, vendors, and users of spirits as well as providing an accounting of skills and other apparatus.
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 10
Estimated Burden Hours Per Respondent/Recordkeeper:
1. Notice of Manufacture of Still—30 minutes
2. Notice of Set Up of Still—30 minutes
3. Registration; Notice of Change in Ownership or Location of a Registered Still or Distilling Apparatus—30 minutes

Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 21 hours

OMB Number: 1512–0353
Recordkeeping Requirement ID Number: ATF REC 5170/2
Type of Review: Extension
Title: Wholesale Dealers Records of Receipt of Alcoholic Beverages Disposition of Distilled Spirits, and Monthly Summary Report
Description: Accounting tool, audit trail, part of accounting process. Shows from whom purchased, to whom sold, and amount. When required, provides a monthly report of sales activities and on-hand inventories.
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 50
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours
Frequency of Response: Monthly
Estimated Total Reporting/Recordkeeping Burden: 1,200 hours

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–22925 Filed 9–14–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

September 8, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0030
Form Number: ATF F 4483–A (5300.11)
Type of Review: Extension
Title: Annual Firearms Manufacturing and Exportation Report
Description: ATF collects this data for the purpose of law enforcement, fitness qualification, Congressional inquiries, disclosure to the public in compliance with a court order, furnishing information to other Federal agencies, compliance inspections, and insuring that the requirements of the National Firearms Act (25 USC 5801–5872) are met.
Respondents: Business or other for-profit
Estimated Number of Respondents: 1,016
Estimated Burden Hours Per Respondent: 45 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 762 hours

OMB Number: 1512–0092
Form Number: ATF F 5110.31 (1648/1649/1650)
Type of Review: Revision
Title: Application for Certification/Exemption of Label/Bottle Approval

Under the Federal Alcohol Administration Act
Description: 26 U.S.C. 205(e) requires that persons who label alcoholic beverages obtain a certificate of label approval for labels used. Submission of these forms (ATF F 5110.31) allows ATF to ensure that labels used on alcoholic beverages contain all information required by regulations and do not contain prohibited, deceptive, misleading information.
Respondents: Business or other for-profit
Estimated Number of Respondents: 6,060
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 27,300 hours
OMB Number: 1512–0137
Form Number: ATF F 5150.22 and ATF 5150.25
Type of Review: Extension
Title: Application for an Industrial Alcohol Users Permit (5150.22); and Industrial Alcohol Bond (5150.25)
Description: ATF F 5150.22 is used to determine the eligibility of the applicant to engage in certain operations and the extent of the operations for the production and distribution of specially denatured spirits (alcohol/rum). This form identifies the location of the premises and establishes whether the premises will be in conformity with Federal laws and regulations. ATF F 5150.25 provides notification that sufficient bond coverage has been obtained prior to the issuance of a permit.
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 738
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 1,476 hours
OMB Number: 1512–0192
Recordkeeping Requirement ID Number: ATF REC 5110/01
Form Number: ATF F 5110.11
Type of Review: Extension
Title: Distilled Spirits Plants Warehousing Records and Reports
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis.
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 230
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours
Frequency of Response: Monthly
Estimated Total Reporting/ Recordkeeping Burden: 5,520 hours
OMB Number: 1512–0205
Recordkeeping Requirement ID Number: ATF REC 5110/01
Form Number: ATF F 5110.40
Type of Review: Extension
Title: Distilled Spirits Records (5110/01); and Monthly Report of Production Operations (5110.40)
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, plan efficient allocation of field resources, audit plant operations, and compile statistics for government economic analysis.
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 150
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours
Frequency of Response: Monthly
Estimated Total Reporting/ Recordkeeping Burden: 3,600 hours
OMB Number: 1512–0372
Recordkeeping Requirement ID Number: ATF REC 5400/2
Type of Review: Extension
Title: Records and Supporting Data: Daily Summaries, Records of Production, Storage, and Disposition, and Supporting Data by Licensed Explosives Manufacturers, and Manufacturers (LTD)
Description: These records, prepared by explosives manufacturers and explosives manufacturers (limited), provide ATF with the ability to trace explosives used in a crime.
Respondents: Business or other for-profit
Estimated Number of Recordkeepers: 1,053
Estimated Burden Hours Per Recordkeeper: 65 hours
Frequency of Response: Other
Estimated Total Recordkeeping Burden: 68,835 hours
OMB Number: 1512–0461
Recordkeeping Requirement ID Number: ATF REC 5110/11
Type of Review: Extension
Title: Marks, Brands, and Labels on Containers of Distilled Spirits, Industrial Alcohol, and Articles
Description: The markings and labeling of containers of spirits, industrial alcohol and articles by distilled spirits plants, industrial alcohol users and dealers, and liquor dealers, provide the data to identify, trace, and quantify actual spirits or spirits used in the production of articles.
Respondents: Business or other for-profit
Estimated Number of Recordkeepers: 10,213
Estimated Burden Hours Per Recordkeeper: 1 hour
Frequency of Response: Other
Estimated Total Recordkeeping Burden: 10,213 hours
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–22927 Filed 9–14–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

September 5, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0936
Form Number: IRS Form 8453
Type of Review: Revision
Title: U.S. Individual Income Tax Declaration for Electronic Filing
Description: This form is used to secure taxpayers signatures and declarations in conjunction with the Electronic Filing program. This form, together with the electronic transmission, will comprise the taxpayer's income tax return.
Respondents: Individuals or households
Estimated Number of Respondents: 12,300,000
Estimated Burden Hours Per Respondent: 15 minutes

Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 6,121,610 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–22928 Filed 9–14–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review.

September 7, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1397
Form Number: IRS Form 8453–OL
Type of Review: Revision
Title: U.S. Individual Income Tax Declaration for On-Line Service Electronic Filing
Description: This form will be used to secure taxpayers signatures and declarations in conjunction with the On-Line Electronic Filing program. This form, together with the electronic transmission, will comprises the taxpayer's return.
Respondents: Individuals or households
Estimated Number of Respondents: 50,000
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 12,500 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–22929 Filed 9–14–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

September 8, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0057
Form Number: None
Type of Review: Extension
Title: Annual Letter—Certification of Authority
Description: The letter is sent to insurance companies that provide surety bonds to protect the Federal government. These companies then provide information necessary for the renewal of their Treasury Certification and the determination of their underwriting limit. Summary information about the company is then published in Circular 570 for use by Federal bond approving officers.
Respondents: Business or other for-profit
Estimated Number of Respondents: 312
Estimated Burden Hours Per Response: 62 hours, 30 minutes
Frequency of Response: Quarterly
Estimated Total Reporting Burden: 19,500 hours
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–22926 Filed 9–14–95; 8:45 am]

BILLING CODE 4810–35–P

Office of Thrift Supervision

[No. 95–157]

Proposed Reduction of Data Collected on the Thrift Financial Report; Correction

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice; correction.

SUMMARY: In the notice document entitled ''Proposed Reduction of Data Collected on the Thrift Financial Report,'' beginning on page 44116 of the issue of August 24, 1995, on page 44118 in the second and third columns under the heading ''V. Paperwork Reduction Act,'' the notice incorrectly stated that a request for approval of an information collection contained in the notice had been submitted to the Office of Management and Budget (OMB) for their review under the Paperwork Reduction Act of 1980. The notice should not have contained that statement and the burden estimates that followed, but should have only stated that a request for approval of an information collection will be sent to OMB after the revisions to the Thrift Financial Report are complete.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552, (202) 906–7135.

Dated: September 11, 1995.

By the Office of Thrift Supervision.

Mary H. Gottlieb,

Federal Register Liaison Officer.

[FR Doc. 95–22939 Filed 9–14–95; 8:45 am]

BILLING CODE 6720–01–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 179

Friday, September 15, 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).

BROADCASTING BOARD OF GOVERNORS

DATE AND TIME: September 22, 1995; 10:00 a.m.

PLACE: Cohen Building, 330 Independence Avenue, SW., Suite 3300, Washington, DC 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to address internal procedural issues, as well as sensitive foreign policy and personnel issues relating to potential budgetary alternatives and deadlines set by the Congress. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel rules and practices of the BBG, the International Broadcasting Bureau, and USIA. (5 U.S.C. 552b.(c)(2))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Joshua Fouts at (202) 619–3375.

Dated: September 13, 1995.

David W. Burke,

Chairman.

[FR Doc. 95–23100 Filed 9–13–95; 2:50 pm]

BILLING CODE 6155–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on September 11, 1995 (60 FR 47203) of the special meeting of the Farm Credit Administration Board (Board) scheduled for September 12, 1995. This notice is to amend the agenda by adding an item to the open session of that meeting.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The agenda for September 12, 1995, is amended as follows:

Open Session

A. Approval of Minutes

B. FCSBA Quarterly Report

Dated: September 13, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–23122 Filed 9–13–95; 2:51 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, September 12, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Reports of the Office of Inspector General.

Matters relating to the Corporation's supervisory and corporate activities.

Recommendation regarding the leasing of office space.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Howe, Jr., seconded by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: September 12, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–23080 Filed 9–13–95; 12:13 pm]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 45774, September 1, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Tuesday, September 12, 1995.

CHANGES IN THE MEETING: The following topics were withdrawn from the open portion of the meeting:

- The portion of the dividends discussion on third quarter dividend requests.
- Membership regulation.
- Affordable Housing Program Advisory Councils.
- Review of the FHLBank of San Francisco's AHP/CIP Policy Changes.

Topic added to the open portion of the meeting:

- Federal Home Loan Bank of Des Moines Proposal to Certify Minnesota Chippewe–Tribal Housing Corporation as a Nonmember Mortgagee.

The Board determined that agency business requires its consideration of this matter on less than seven days notice to the public and that no earlier notice of this change in the subject matter of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–23056 Filed 9–13–95; 10:13 am]

BILLING CODE 6725–01–P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on

September 22, 1995. The meeting will commence at 9:00 a.m.

PLACE: Legal Services Corporation, 750 1st Street, N.E., 11th Floor, Board Room, Washington, D.C. 20002, (202) 332–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of May 12, 1995 Meeting.
3. Report On the Competition Initiative.
4. Report on Other Activities of the Offices of Program Support, and Program Evaluation, Analysis, and Review.
5. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: September 13, 1995.

Suzanne B. Glasou,

Senior Counsel.

[FR Doc. 95–23126 Filed 9–13–95; 2:52 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Finance Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Finance Committee will meet on September 22, 1995. The meeting will commence at 9:00 a.m.

PLACE: Legal Services Corporation, 750 1st Street, N.E., The Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of September 10, 1995 Meeting.
3. Consideration and Review of Budget and Expenses for the Period Ending August 31, 1995.
4. Consider and Act on Proposed Revisions to the Corporation's Fiscal Year 1995 Consolidated Operating Budget.
5. Consideration of Proposed Fiscal Year 1996 Consolidated Operating Budget.
6. Consideration of Proposed Fiscal Year 1997 Budget Mark.
7. Consider and Act on Proposed Audit Guide.
8. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: September 13, 1995.

Suzanne B. Glasow,

Senior Counsel.

[FR Doc. 95–23127 Filed 9–13–95; 2:52 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on September 22–23, 1995. The meeting will commence at 2:00 p.m. on September 22nd, and at 9:00 a.m. on September 23, 1995.

PLACE: Legal Services Corporation, 750 1st Street, N.E., Board Room, 11th Floor, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board may discuss matters related to internal operational and personnel matters. In addition, the Board may hear and consider the General Counsel's report on litigation in which the corporation is or may become a party. Finally, the Board may be briefed by the Inspector General on Office of the Inspector General Activities.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Section 552b(c) (2) and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5 (a) and (h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street N.E., Washington, D.C. 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda
2. Approval of Minutes of June 24–25, 1995 Meeting
3. Approval of Minutes of June 25, 1995 Executive Session
4. Chairman's and Members' Reports
5. President's Report on Status of Appropriations and Authorization Proceedings
6. Report and Discussion of Planning for the Future of Legal Services
7. Inspector General's Report
8. Consider and Act on Finance Committee Report
   a. Consider and Act on Proposed Revisions to Fiscal Year 1995 Consolidated Operating Budget
   b. Consider and Act on Proposed Fiscal Year 1996 Consolidated Operating Budget
   c. Consider and Act on Proposed Fiscal Year 1997 Budget Mark
   d. Consider and Act on Proposed Audit Guide
9. Consider and Act on Operations and Regulations Committee Report.
10. Consider and Act on Provision for the Delivery of Legal Services Committee Report.
11. Public Comment.

SATURDAY, SEPTEMBER 23, 1995

CLOSED SESSION:

12. Discussion of Issues Relating to Internal Operational and Personnel Matters
13. Briefing of Board by the Inspector General on Office of the Inspector General Activities
14. Consider and Act on the General Counsel's Report on Litigation

OPEN SESSION: (Resumed)

15. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: September 13, 1995.

Suzaune B. Glasou,

Senior Counsel.

[FR Doc. 95–23128 Filed 9–13–95; 2:52 pm]

BILLING CODE 7050–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: [60 FR 46689, September 7, 1995].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: September 7, 1995.

CHANGE IN THE MEETING: Cancellation.

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[1] Briefings do not constitute ''meetings'' as defined by the Government in the Sunshine Act. Notice of this briefing is being provided solely as a courtesy to the public.

The closed meeting scheduled for Friday, September 8, 1995, at 10:00 a.m., has been cancelled.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

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: September 8, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–23081 Filed 9–13–95; 12:46 pm]

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Federal Register

Friday
September 15, 1995

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 493

CLIA Program; Categorization and Certification Requirements for a New Subcategory of Moderate Complexity Testing; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 493

[HSQ–222–P]

RIN 0938–AG98

CLIA Program; Categorization and Certification Requirements for a New Subcategory of Moderate Complexity Testing

AGENCY: Health Care Financing Administration (HCFA) and Public Health Service (PHS), HHS.

ACTION: Proposed rule.

SUMMARY: In this proposed rule we are responding to some of the comments on categories of tests received in response to the rule published on February 28, 1992. To reduce the regulations burden on laboratories, we are proposing to revise our regulations to create a new subcategory of high quality moderate complexity procedures called accurate and precise technology (APT) tests.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 14, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Disease Control and Prevention, Public Health Service, Department of Health and Human Services, Attention: HSQ–222–P, 4770 Buford Highway, N.E., MSF11, Atlanta, Georgia 30341–3724.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 714–B, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HSQ–222–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rosemary Bakes-Martin (404) 488–7655, for questions regarding the APT requirements and criteria for APT categorization; and Judy Yost, (410) 786–3531, for certificate, fee, and inspection issues.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 353 of the Public Health Service Act (42 U.S.C. 263a), as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA), all laboratories that examine human specimens for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings, must meet certain requirements to perform the examination. In accordance with the law, regulations implementing CLIA that HHS published on February 28, 1992 (57 FR 7002) established laboratory requirements based on the complexity of the tests performed. There are currently three test categories: waived, moderate, and high complexity.

Following publication of the February 28, 1992 regulations, HHS established a Clinical Laboratory Improvement Advisory Committee (CLIAC) to advise and make recommendations on technical and scientific aspects of the regulations. The CLIAC is composed primarily of individuals involved in the provision of laboratory services, use of laboratory services, development of laboratory testing devices or methodologies, and others as approved by HHS. The CLIAC has four subcommittees: cytology; personnel; proficiency testing, quality control and quality assurance; and test categorization.

In response to publication of the February 28, 1992 regulations, we received approximately 16,000 letters from professional organizations and individuals providing around 71,000 comments.

In response to those comments, we have published three rules (in addition to this proposed rule). One of those rules responds to the comments received on the waived criteria, tests presently included in the waived category and those tests that commenters believed should be added. At our request, the CLIAC evaluated the waived category and suggested that the Centers for Disease Control and Prevention (CDC) clarify the criteria and develop a process for review of requests for waiver. We clarified the criteria for waiver and the process for requesting waived categorization and published the clarified criteria and process for requesting waiver in a proposed rule with comment on September 13, 1995 (60 FR 47534). (The other two rules appeared in the **Federal Register** on January 19, 1993 (58 FR 5215) and on April 24, 1995.

In this rule, in response to numerous comments regarding the test complexity model, we are proposing to establish a new subcategory of moderate complexity that would include high quality tests that would be subject to less stringent requirements. Establishment of this subcategory should encourage manufacturers to produce accurate, easy-to-use test systems for use by physicians and laboratories to improve test quality and enhance patient care.

II. Response to Comments Received to Previous CLIA Regulations

In this rule we address additional comments received in response to the establishment of the three testing categories. Below we have provided a general overview of the comments and our responses, followed by some additional specific comments concerning the categories of testing and our response to these comments, which includes the rationale used to develop the proposed accurate and precise technology (APT) subcategory.

Upon review of the comments, we believe that additional revision of the test categorization model is warranted. The revisions to the regulations proposed in this rule would address the commenters' concerns that many high quality tests are less complex than many of the tests currently categorized as moderate complexity, but they do not meet the criteria for waiver. The commenters feel and we agree that these tests should be subject to less stringent

requirements than those currently associated with moderate complexity tests.

In addition, we received numerous comments from professional organizations and individuals expressing concern about the burden associated with regulating laboratories based on test complexity and the criteria used to categorize tests as moderate or high complexity. Many commenters indicated that the special circumstances involved in physician offices, rural and public health clinics providing laboratory services should justify minimizing the regulatory burden on them. Some commenters believed that regulating laboratories on the basis of test complexity and the requirements applicable to moderate and high complexity tests would increase the cost of laboratory testing. Several commenters thought this regulatory burden would cause many laboratories to discontinue providing services, thereby limiting health care in underserved and rural areas. Some commenters recommended reducing some of the regulatory burden by creating a category of tests at a level between waived and moderate complexity. Other commenters suggested creating additional categories and provided examples for alternatives to the current test complexity model.

In response to these comments, the CDC developed a proposal to create a new subcategory of moderate complexity that would include simple, easy-to-use tests with proven accuracy and precision and therefore would require somewhat less stringent requirements than the requirements currently applicable to other moderate complexity tests.

During the development of the subcategory, we were especially cognizant of the concerns of the commenters who stated that there are many high quality, moderate complexity tests that might not qualify for waiver, but, on the other hand, should not be subject to the full range of requirements currently applicable to moderate complexity testing. We agree with the commenters that regulatory relief for high quality tests is appropriate. In order to justify less stringent application of the requirements, we are proposing that the tests meet rigid performance specifications and have demonstrated, through scientifically valid studies, a high level of accuracy and precision. Through this process, test systems would be evaluated to ensure they provide quality results and physicians and laboratories would have access to this categorization information to employ in test selection and determining types of laboratory services to provide.

We therefore designed a subcategory of moderate complexity testing that we proposed to call APT testing that would include high quality, less complex tests that would be unique in that the test system instructions would not only contain complete procedures for test performance, including instructions regarding the preanalytic, analytic and postanalytic phases of testing, but would also include protocols that would assist laboratories in meeting the CLIA requirements. We proposed that, in order to be considered for categorization in the APT subcategory, the producer or manufacturer of the test system would have to submit data demonstrating that the test system meets the criteria for APT categorization. In addition, the test system instructions would have to specify clearly what laboratories must do to be in compliance with the CLIA requirements. For APT testing, laboratories could rely on the manufacturer's or producer's test system instructions to meet the CLIA requirements. Since, for APT testing, compliance with the CLIA requirements would be based on laboratories following the test system instructions, we believe that random, rather than routine, inspections of laboratories having an APT certificate would be sufficient.

We discussed with the CLIAC the proposed criteria and requirements to be applicable to the new subcategory. The CLIAC supported the concept of the APT subcategory. However, the CLIAC expressed the view that the subcategory (as currently structured) would not provide the amount of regulatory relief desired by many commenters who requested revisions to the complexity model. We understand the CLIAC's concerns; however, we believe that it is essential that we reevaluate the complexity model to determine whether the regulations are effective in ensuring public access to quality laboratory services. When we established the CLIA requirements in 1992, we sought to devise a regulatory model based on the complexity of testing performed that would establish the minimum requirements necessary to ensure accurate testing. At this point, we believe there are many highly accurate, simple, easy-to-use test systems currently categorized as moderate complexity that could be eligible for less stringent requirements, and laboratories performing such testing should be provided financial and regulatory relief through a reduction in the CLIA requirements.

To obtain broad public review, we are publishing this proposed rule and encourage commenters to provide suggestions on how we might revise the CLIA requirements to ensure that they promote access to quality services and stimulate technological advances in testing. With respect to the provisions contained in this rule, we are seeking specific suggestions and recommendations concerning the criteria and process for categorizing tests in the APT subcategory, as well as comments on the appropriateness of the proposed requirements for APT testing.

III. Provisions of the Proposed Rule

Criteria for APT Categorization

In this rule, we are proposing to establish at 42 CFR 493.18 a new subcategory of moderate complexity testing designated as APT, and we are outlining the proposed criteria for determining which tests would be categorized as APT. The proposed criteria for inclusion in the APT subcategory are structurally similar to our proposed clarifications to the criteria for waived tests published on September 13, 1995.

For quantitative and qualitative tests, the similarities between the proposed criteria for APT categorization and the proposed clarifications to the criteria for waiver are as follows:

- Quantitative APT tests and quantitative waived tests would have to meet similar test characteristics and performance specifications by demonstrating, through scientifically valid studies, a high level of accuracy and precision.
- Qualitative APT tests would have to meet the same requirements for allowable error as we have proposed for qualitative waived tests.

The proposed criteria for inclusion in the APT subcategory would differ from the proposed criteria for waiver in that:

- Waived tests must be fail-safe with no operator intervention, whereas APT test protocols could allow some operator intervention to investigate questionable results and to resolve test system failures.
- Waived qualitative tests are limited to reagent impregnated devices (such as dipsticks), whereas qualitative APT tests would not be limited to any specific type of technology. [It is important to clarify what is meant by qualitative tests in this regulation. Qualitative tests are test methods that provide two categorical responses (e.g., positive/negative or presence/absence). For these types of tests, the concentration of the analyte is defined as being above or below a certain discrimination zone that

defines negativity or positivity.] On the other hand, test methods that give results by defining specific absorbance values at which tests will be considered positive are essentially quantitative tests in that they directly depend on defined concentrations of the analyte producing the discrete absorbance value. In this regulation, we are proposing to consider the latter as quantitative tests.

- Waived tests may use only direct unprocessed specimens, have direct readout of results and require no invasive troubleshooting or electronic or mechanical maintenance. However, APT tests could have simple noncalculated conversions and some troubleshooting and maintenance performed by the analyst.
- Instructions for performance of waived tests must be written at no higher than a seventh grade reading level and include a description of the analytic skills required to perform the test. APT test instructions would have no such requirements, since personnel performing APT testing would, at a minimum, have to have a high school diploma, or equivalent, and relevant training.
- Quantitative waived tests may have a certain amount of random error but they must be shown to be essentially free of systematic error, whereas quantitative APT tests would be allowed a minimal amount of error that may be either random or systematic, or both.

Review Process

Also at § 493.18, we are proposing the process for approving tests for the APT subcategory. We are proposing that requests for placement of tests in this subcategory be in conformance with the proposed submission process outlined in this regulation. The data submitted for evaluation would have to meet specific criteria related to operational characteristics, ease of use, and test performance. The test system's instructions will be reviewed by PHS to ensure that laboratories can rely on these instructions to assist them in meeting the regulations in subparts J, K and P when performing APT testing.

Submission Requirements

Under the proposed rule, the manufacturer or test system producer would have to determine which procedures in the preanalytic, analytic and postanalytic phases of testing are essential to ensure accurate test results. These procedures would be identified in the submission to PHS as mandatory procedures for the laboratory to follow. In addition, the manufacturer or test system producer would have to include protocols to assist laboratories in meeting the CLIA requirements. The test system instructions should remind laboratories to enroll in an HHS-approved proficiency testing program, if applicable.

Since many manufacturers are currently providing this type of assistance to laboratories, often in the form of complete protocols containing instructional materials that cover all aspects of the regulations and, in addition, examples of suggested forms to use to document monitoring activities, we believe that the APT subcategory merely strengthens and confirms that interaction between the producer of the test system and the laboratory user. Formalizing this relationship and making it uniform for all manufacturers and producers of these test systems should reduce the regulatory burden on laboratories, while providing an effective mechanism for laboratories to achieve regulatory compliance with the CLIA requirements.

We encourage individuals to submit their comments and suggestions on how we might improve the APT categorization criteria or process and revise the regulations to incorporate these changes. Following review of comments received in response to this notice, we will make the necessary revisions to the APT requirements, including the criteria for APT categorization and the process for reviewing requests for APT categorization of test systems.

After a final rule responding to the comments received to this proposed rule is published establishing the APT subcategory, requests for APT categorization may be submitted for review. Once a test system review has been completed, the manufacturer or producer would be notified of the APT categorization decision, whether denied or granted. APT categorization would be effective on the date of notification to the applicant. Any test categorized as APT also would be published in the **Federal Register** as a notice with an opportunity for public comment. (As with all comments received on test categorization, our responses to the comments received on APT categorization will be included in a subsequent **Federal Register** notice.) Once we receive comments on the **Federal Register** notice, we reserve the right to reevaluate and recategorize the test based upon those comments.

Administration

We are proposing to make conforming changes to subpart F (General Administration) to accommodate the addition of the new certificate for APT tests. Laboratories that qualify for a certificate of APT tests would have to pay a fee for the issuance of a certificate. Each laboratory would be assessed a fee representing the certificate fee and a fee for the costs of the random inspections. The certificate fee would be based on the fee schedule (which is based on the test volume and scope of specialties tested) in effect. This fee would represent the APT laboratory's share of the general cost to HHS of administering the laboratory certification program. This would include, but would not be limited to, the cost of issuing the certificate, the cost of collecting fees, the administrative costs of determining which tests would qualify for inclusion in the APT test category, and the administrative costs associated with processing and evaluating laboratory applications. The fee for random inspection would represent the cost to HHS of conducting random inspections of approximately five percent of the laboratories issued a certificate for APT tests to assess compliance with the applicable requirements of 42 CFR part 493. Random inspection costs would be shared by all laboratories issued a certificate for APT tests.

If, in the case of a laboratory subject to a random inspection, it is determined that a follow-up survey is necessary because of identified deficiencies, HHS would assess that laboratory an additional fee to cover the cost of the follow-up survey activities. The fee would be based on the actual resources and time necessary to perform the follow-up visits. Failure of a laboratory to pay any assessed costs would result in HHS revoking the laboratory's certificate.

Patient Test Management

We are proposing to add a new § 493.1102 to subpart J (patient test management) to include the new patient test management requirements that would be applicable to APT testing. These requirements would be less burdensome to the laboratory than the requirements currently applicable to other moderate complexity testing because the manufacturer's or producer's PHS-approved test system instructions would specify what laboratories must do to comply with the CLIA patient test management requirements. There would be two requirements in this new standard. The two requirements would be that the laboratory must: (a) have available and follow the patient test management procedures specified in the PHS-approved instructions; and (b) maintain records documenting compliance with

the patient test management requirements for two years.

Quality Control

In subpart K (quality control), we propose to recodify the current § 493.1204 as § 493.1206 and add a new § 493.1204 to accommodate the quality control provisions resulting from the proposed addition of the new subcategory of APT tests. Since the PHS-approved test system instructions for APT procedures would include instructions for meeting the CLIA requirements, the laboratory quality control requirements for APT testing would be less stringent than for other moderate complexity tests. We are proposing that, before reporting patient test results, laboratories, at a minimum, use the PHS-approved test system instructions for verifying the test system's performance specifications. The laboratory may include, as appropriate, expanded or additional protocols for verifying the test system's performance specifications. As with other procedures of moderate complexity, quality control activities for APT tests would have to be documented and the records retained for two years, except immunohematology records, which must be maintained for a period of no less than five years. We would stress that laboratories must not modify the test system's PHS-approved test performance instructions, since any modification would result in the test no longer being categorized as APT. Any modified procedure would become an uncategorized test and would be considered high complexity until categorized by PHS.

Personnel

The personnel requirements for APT testing would be located at § 493.1371 through § 493.1387. APT personnel requirements would be somewhat less stringent than for other moderate complexity testing because APT tests would have been reviewed to ensure that they meet the criteria for simple, reliable, accurate and precise tests. The personnel requirements for this subcategory would not include a technical consultant because manufacturers or producers of APT tests would develop maintenance protocols, calibration and control procedures, remedial action policies and criteria for reporting and interpreting test results, which would fulfill most of the technical consultant's responsibilities. The remaining technical consultant responsibilities (e.g., employee evaluations) would be performed by the laboratory director.

For APT tests, we would require laboratories to have a qualified director, clinical consultant and testing personnel. The qualifications required for director and clinical consultant would be the same as for moderate complexity testing, while the testing personnel training requirements would be modified slightly from the training required for other moderate complexity testing because the test system manufacturer or producer would be providing specific instructions on test system performance, including reagent stability and storage and quality control. The responsibility requirements for each level of personnel within the APT subcategory would be somewhat less stringent in accordance with the laboratory's reliance on the manufacturer or producer of the test system to provide detailed test instructions, protocols for meeting the regulatory requirements, performance specifications and information regarding test results and interpretation.

Quality Assurance

We are proposing to add a new § 493.1702 to the quality assurance requirements located in subpart P to include the proposed requirements applicable to APT testing. These requirements would be less burdensome than the requirements currently applicable to other moderate complexity testing, since the PHS-approved test system instructions would assist the laboratory in meeting the quality assurance requirements. Like § 493.1102 in subpart J (patient test management), there would be two requirements in § 493.1702. To meet the quality assurance requirements in subpart P, we are proposing that: (a) laboratories must have available and follow procedures specified in the test system's PHS-approved instructions to meet the quality assurance requirements; and (b) laboratories must document and maintain records of quality assurance activities for two years.

Inspections

We are proposing to establish a new § 493.1778 specifying that laboratories with a certificate for APT tests are subject to announced or unannounced inspections on a random basis to assess compliance with the applicable requirements of part 493, to evaluate compliance when indicated by unsuccessful participation in proficiency testing and complaints, and to collect information for determining the appropriateness of tests categorized as APT. We are proposing to require random, rather than routine, inspections for a laboratory having an APT certificate since the laboratory would be required only to follow the PHS-approved instructions to meet the CLIA requirements for APT testing. During a random inspection, as with any inspection of other test complexity categories, not all test systems would be reviewed. A few test systems would be randomly selected and assessed for compliance. We would also clarify in this section that if the same laboratory is performing provider-performed microscopy procedures, those tests may also be assessed for compliance with all applicable requirements specific to that subcategory of testing during the random inspection.

Additionally, we would revise the introductory paragraph to § 493.1777, which currently contains the condition concerning inspection of laboratories requesting or issued a certificate of compliance, to clarify the inspection requirements for a laboratory with a certificate of compliance when the laboratory also performs APT procedures. Specifically, for laboratories that perform APT procedures and have a certificate of compliance, APT procedures may be included in the sample of moderate complexity tests inspected during the laboratory's routine, biennial inspections.

Summary of Changes to the Regulations

We are proposing to add or change the following sections to incorporate requirements applicable to APT tests:

- Section 493.18, Accurate and precise technology (APT) tests.
- Section 493.21, Laboratories performing accurate and precise technology (APT) tests.
- Section 493.48, Requirements for a certificate for accurate and precise technology (APT) tests.
- Section 493.1102, Patient test management requirements for accurate and precise technology (APT) tests.
- In subpart K, we are proposing to add the new quality control requirements applicable to APT testing at § 493.1204 and move the facilities requirements (without change) currently located at § 493.1204 to a new § 493.1206.
- To subpart M, we are proposing to add nine new sections to include the personnel requirements for laboratories performing APT testing. At § 493.1371, we are proposing to add the condition requirements for director, and at §§ 493.1373 and 493.1375, respectively, we plan to include the qualification and responsibility requirements for director. The condition level requirements for clinical consultant would be located at § 493.1377, with clinical consultant qualifications to be specified under

§ 493.1379 and responsibilities to be included under § 493.1381. The testing personnel condition requirements would be at § 493.1383, with testing personnel qualifications at § 493.1385 and responsibilities to be included at § 493.1387.

- Section 493.1702, Quality assurance requirements for accurate and precise technology (APT) tests.
- Section 493.1778, Inspection of laboratories issued a certificate for accurate and precise technology (APT) tests.

We are proposing to make conforming technical changes to the following sections and headings: §§ 493.2; 493.3(a)(1); 493.5 (a)(2), (b) and (c)(4); 493.20 (a) and (b); 493.25(c); the headings for subpart C and 493.43; 493.43(a); 493.45 introductory paragraph and (a); 493.49; 493.51 heading, introductory paragraph and paragraphs (b) and (c) and new (d); 493.53(a); 493.602; 493.638 (a) and (b); 493.639(b); 493.643(a); 493.645 heading and new paragraph (c) and paragraph (d) (redesignated from paragraph (c)); subpart H; 493.803(a); 493.807 heading; subheading preceding 493.821; subpart I heading; subpart J heading; 493.1101 heading and introductory paragraph; subpart K heading; 493.1201 heading, revision to paragraph (a) and (b) and addition of new paragraph (c); 493.1202(c); 493.1203; part M heading; 493.1351; subpart P heading; 493.1777 introductory paragraph; 493.1814(b)(3); 493.1834 (b) and (f)(2)(iii); and 493.1836 (c)(2) and (c)(3); and 493.2001.

In addition, we are deleting the words ''of this part'' wherever they follow a specific section number in regulations text appearing in this **Federal Register** document to conform with rules of the Office of the Federal Register.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Collection of Information Requirements

The proposed rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

§ 493.18: This section outlines the criteria a manufacturer must follow in order to have its moderate complexity test categorized as an ''Accuracy and Precise Technology'' (APT) test. These include but are not limited to test system characteristics, instructions, field studies and evaluation of data.

§§ 493.43, 493.45, 493.48, 493.49, 493.51, 493.53: Sections 493.43 through 493.53 are currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. The information is gathered on form number HCFA-R–26. These sections outline the requirements for a laboratory to follow to submit application forms for CLIA certification. The requirements include laboratory notification to HHS of changes to the types of tests performed or changes in ownership, name location or director.

Section 493.48 is a new section added to reflect the addition of the new certificate category for laboratories performing tests categorized as accurate and precise technology testing (APT).

§§ 493.1101 and 493.1102: Sections 493.1101 through 493.1111 are currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. This section concerns patient test management for laboratories performing tests of moderate and high complexity that implement the CLIA statutory mandate for laboratories to meet requirements relating to the proper collection, transportation, and storage of specimens and the reporting of results. Section 493.1102 is a new section added to reflect the addition of the new subcategory for tests categorized as accurate and precise technology testing (APT).

§§ 493.1201, 493.1202 and 493.1204: Sections 493.1201 and 493.1202 are currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. These sections set forth the general quality control standards for monitoring and evaluating the quality of the testing process to assure accurate and reliable patient test results and reports as required under CLIA. Section 493.1204 is a new section required to reflect the addition of the new subcategory for accurate and precise technology testing (APT).

§ 493.1702: Sections 493.1701 through 493.1721 are currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. Section 493.1702 is a new section developed to address specific requirements that relate to quality assurance for a laboratory performing APT testing. Specifically it requires a laboratory to have available and follow the PHS-approved instructions and supplements (where appropriate) and maintain records documenting compliance for a 2-year period.

§§ 493.1777 and 493.1778: Sections 493.1725 through 493.1780 are currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. Section 493.1777 concerns the inspections of laboratories. The burden associated with inspections consists of retrieving the records and documentation requested by the inspector, participating in the entrance and exit interviews, responding to the statement of deficiencies that may result from the inspection and documenting any corrective actions taken that are appropriate to the plan of correction for the deficiencies cited. Section 493.1778 is a new section developed to address the inspection requirements as they apply to laboratories with an APT certificate. This section sets forth the policy of random inspections for laboratories with an APT certificate.

When OMB approves those provisions not currently approved we will publish a notice in the **Federal Register** to that affect.

Description of Respondents

§ 493.18: Small businesses or organizations, businesses or other for profit, non-profit institutions, who manufacture laboratory tests.

§§ 493.43, 493.45, 493.48, 493.49, 493.51, 493.53; 493.1101 and 493.1102; 493.1201, 493.1202 and 493.1204; 493.1702; 493.1777 and 493.1778: Small businesses or organizations, businesses or other for profit, non-profit institutions, state and local governments, federal agencies.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

CFR sections	Annual number of responses	Annual frequency	Average burden per response (hours)	Annual burden hours
493.18	50	1	336	16,800
493.43, 493.45, 493.48, 493.49, 493.51, 493.53	28,700	1	.25	7,175
493.1101, 493.1102	82,000	1	.5	41,000
493.1201, 493.1202 and 493.1204	82,000	1	12	984,000
493.1702	24,600(a)	1	42	1,033,200
493.1777 and 493.1778	1,230(a)	1	4	4,920

(a) Assuming 30% of 82,000 non-waived laboratories become APT.

The agency has submitted a copy of the proposed rule to OMB for its review of these information collections. Interested persons are invited to send comments regarding this burden estimate or any other aspect of these collections of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. Comments should be sent to HCFA, OFHR, MPAS, C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850 and to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

VI. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all laboratories and manufacturers of laboratory test systems are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would modify CLIA regulations published February 28, 1992 by establishing a new subcategory of moderate complexity testing, accurate and precise technology (APT) tests. There are approximately 157,000 entities enrolled under CLIA that could be affected by this rule; however, the significance of the effect would vary depending on the volume and complexity of tests performed. While we cannot estimate the number of entities that may make changes in their laboratory testing practices, we believe the modifications to the CLIA program would be beneficial to the affected entities and would be well received, since they are being proposed in response to comments requesting revisions to the test complexity categories.

In proposing this new subcategory, we acknowledge the unique aspects of the many tests with proven accuracy and precision that may not qualify for waiver, but should not be subject to all of the requirements applicable to moderate complexity testing, including routine inspection. To this end, this proposed rule would establish less stringent requirements, including less frequent (random) inspections and fewer personnel requirements, for laboratories providing tests categorized as APT. We expect no clinically meaningful decrease in test accuracy, or patient health, from this proposal. Furthermore, to the extent that it encourages cost-effective testing more than the present CLIA rules, and increases the amount of such testing in settings that might otherwise eschew testing, it is likely to improve patient health. In addition, this proposed rule would reduce the financial burden for some laboratories by enabling them to provide an expanded test menu without incurring the higher costs associated with a certificate of compliance.

The changes proposed in this regulation may affect a laboratory's test menu and choice of certificate. Laboratories holding a certificate of compliance that change to a certificate for APT would experience a decrease in compliance costs and the number of surveys, since APT laboratories would not be subject to routine inspections and the associated fees. The laboratories that would realize the greatest benefit from these savings would most likely be physician office laboratories and public health laboratories. Laboratories, specifically many physician offices and other limited service laboratories, expanding from a certificate of waiver or PPM to a certificate for APT would be able to enhance the range of laboratory services available to patients, while their costs (including certification fees and costs inherent in meeting applicable requirements such as personnel and quality control), would remain less than the costs of obtaining a certificate of compliance. The availability of a CLIA certificate that allows an expanded test menu at less cost also may encourage new entities to begin providing services, thereby increasing physician and patient access to health care, particularly in underserved and rural areas.

This proposed rule may affect some manufacturers of laboratory tests who would be required to submit specific information and data demonstrating that their test meets the criteria for APT categorization. We estimate that approximately 500 test systems may qualify for this subcategory. These test systems are predominantly small automated instruments or ''desktop'' analyzers. Manufacturers of any test system approved by PHS in the APT subcategory also must provide laboratories with complete instructions, which include protocols to assist laboratories in meeting the CLIA requirements. However, many manufacturers are currently providing this type of information and assistance to laboratories in the form of instructional materials and protocols. Because laboratories would not be required to develop their own operational policies and quality control protocols, a wider variety of laboratories might decide to offer APT testing.

Therefore, we anticipate that categorization as an APT test would result in increased sales and distribution for the manufacturers.

As indicated above, we believe that the creation of the subcategory of APT and subsequent decrease in the regulatory and financial burden for laboratories performing APT tests would benefit patients, laboratories, and manufacturers. However, we are unable to quantify these likely long run effects because they depend on market decisions, research results, and technological change that cannot be predicted.

Regardless, we believe that for the most part these effects would involve relatively small savings of a few hundred or a few thousand dollars a year for each laboratory, mainly due to reduced inspection fees or QC costs. In the aggregate these savings would be substantial, because they are shared by thousands of laboratories. However, few if any entities are likely to achieve very substantial savings.

This proposed rule would establish the process for categorizing moderate complexity tests into a new subcategory of moderate complexity testing and would also establish a new type of certificate. Proper realignment of the fee schedule, if necessary, would follow implementation of this rule.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. We do request comments, however, on possible improvements in these proposed regulations to achieve even greater savings to affected entities and will consider them carefully in formulating the final rule.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 493

Grant programs-health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR part 493 would be amended as set forth below:

PART 493—LABORATORY REQUIREMENTS

1. The authority citation continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12), 1861(s)(13), 1861(s)(14), 1861(s)(15), and 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), the sentence following 1395x(s)(11), 1395x(s)(12), 1395x(s)(13), 1395x(s)(14), 1395x(s)(15), and 1395x(s)(16)).

2. In Section 493.2, in the definition of ''CLIA certificate'' the introductory text is republished and paragraph (6) is added to read as follows:

§ 493.2 Definitions.

* * * * *

CLIA certificate means any of the following types of certificates issued by HCFA or its agent:

* * * * *

(6) *Certificate for accurate and precise technology (APT) tests* means a certificate issued or reissued before the expiration date, pending an appeal in accordance with § 493.48, to a laboratory that only performs tests approved by PHS as APT tests and, if desired, tests specified as PPM procedures, tests approved by PHS as waived tests, or both.

* * * * *

3. In § 493.3, the introductory text of paragraph (a) is republished and paragraph (a)(1) is revised to read as follows:

§ 493.3 Applicability.

(a) *Basic rule*. Except as specified in paragraph (b) of this section, a laboratory will be cited as out of compliance with section 353 of the Public Health Service Act unless it—

(1) Has a current, unrevoked or unsuspended certificate of waiver, a registration certificate, a certificate of compliance, certificate for PPM procedures, certificate for APT tests, or a certificate of accreditation issued by HHS applicable to the category of examinations or procedures performed by the laboratory; or

* * * * *

4. Section 493.5 is revised to read as follows:

§ 493.5 Categories of tests by complexity.

(a) Laboratory tests are categorized as one of the following types of tests:

(1) Waived tests.

(2) Tests of moderate complexity, including the subcategories of moderate complexity, which are limited to the following tests and procedures:

(i) PPM procedures.

(ii) APT tests.

(3) Tests of high complexity.

(b) A laboratory has the option of performing only waived tests, only tests of moderate complexity, only PPM procedures, only APT tests, only tests of high complexity, or any combination.

(c) Each laboratory must be either CLIA-exempt or possess one of the following certificates, as defined in this part:

(1) Registration certificate.

(2) Certificate of waiver.

(3) Certificate for PPM procedures.

(4) Certificate for APT tests.

(5) Certificate of compliance.

(6) Certificate of accreditation.

5. A new § 493.18 is added to read as follows:

§ 493.18 Accurate and precise technology (APT) tests.

(a) *Requirement.* To be included in the APT subcategory, the test system must be categorized as moderate complexity using the criteria in § 493.17 and it must meet the descriptive criteria specified in paragraph (b) of this section.

(b) *Criteria.* (1) For quantitative tests, methods must be easy to use, accurate, and precise as evidenced by the following items:

(i) Test systems that have the following characteristics:

(A) Are fully automated (no operator intervention during the analytic phase).

(B) Provide direct readout of results or simple noncalculated conversions.

(ii) Test system instructions that address the following items:

(A) Requirements for specimen collection, handling, storage and preservation.

(B) Reportable range for patient results.

(C) Reference range (normal values) and suggested panic values (values requiring immediate medical intervention).

(D) Units of measurement used for reporting patient results.

(E) Step-by-step protocols that include, as appropriate, the following items:

(*1*) Instrument or test system operation and test performance instructions.

(*2*) Test system maintenance procedures.

(*3*) Preparation and storage of reagents, calibrators, controls, or other materials used in testing.

(*4*) Control procedures including the type of materials, suggested concentrations, and frequency of assay.

(*5*) Calibration procedures including the number and type of materials and frequency of assay.

(*6*) Acceptable ranges for any control or calibration material included with the test system.

(*7*) Action to be taken when calibration or control results do not meet the acceptable range of values.

(*8*) Methods for converting test system values to reportable results.

(*9*) Description of course of action to be taken when the test system becomes inoperable.

(*10*) Any limitations to methodologies such as interfering substances.

(*11*) A written protocol for reporting patient test results.

(iii) Field studies that meet the following requirements:

(A) Demonstrate that the manufacturer's or producer's written instructions are the only protocols required to perform the test accurately and reliably.

(B) Demonstrate that individuals with no formal laboratory training can correctly perform the test.

(iv) Data from field studies that meet the following requirements:

(A) Are generated from protocols that address the points described in paragraph (b)(1)(iii) of this section.

(B) Are adequate to produce measures of performance that are both statistically valid and defensible (estimates must support valid confidence limits for all statistical parameters).

(C) Evaluate performance at all medical decision points and relevant upper and lower limits of the reportable range using at least three concentrations of the analyte being tested.

(D) Evaluate among-operator imprecision using test results of all study participants.

(E) Evaluate within-site imprecision using test results generated at each site by an adequate number of participants to produce measures of performance that are statistically valid and defensible. Testing must be performed at a minimum of three independent study sites.

(F) Evaluate among-site imprecision at an adequate number of sites to produce measures of performance that are statistically valid and defensible using results generated by study participants on aliquots of a single testing material.

(v) Method accuracy studies demonstrating little or no systematic error when—

(A) Using reference materials assayed by study participants that produce data that show there is little or no statistically significant difference between the test results and the value of the reference materials.

(B) Using patient samples instead of reference materials, demonstrating there is little or no introduction of error in patient test results due to the effects of the sample matrix.

(C) Adding or simulating common interfering substances known to affect the analyte in patient samples, demonstrating that there is little or no introduction of error due to the presence of these substances.

(vi) Demonstration that the total amount of error, which includes all components contributing to imprecision and inaccuracy as defined by studies described in paragraphs (b)(1)(iv)(D) through (b)(1)(iv)(F) and (b)(1)(v)(A) through (b)(1)(v)(C) of this section, is less than one fourth of the reference range for the analyte divided by the mean of the reference interval.

(2) For qualitative tests, methods must be easy to use, accurate, and precise as evidenced by the following items:

(i) Test systems that meet the following requirements:

(A) Contain steps that are limited in number and complexity, are self-contained and are packaged as a complete system.

(B) Have a qualitative endpoint that requires no interpretation beyond discerning agglutination patterns, color comparisons, or other easily interpreted reactions.

(ii) Test system instructions that address the following items:

(A) Requirements for specimen collection, handling, storage and preservation.

(B) Reportable range for patient results.

(C) Reference range (normal values).

(D) Step-by-step protocols that include, as appropriate, the following items:

(*1*) Test performance instructions.

(*2*) Preparation and storage of reagents, calibrators, controls, or other materials used in testing.

(*3*) Control procedures including the type of materials and frequency of assay.

(*4*) Calibration procedures including the number and type of materials and frequency of assay.

(*5*) Acceptable ranges for any control or calibration material included with the test system.

(*6*) Action to be taken when calibration or control results do not meet acceptable range of values.

(*7*) The correct interpretation of test reactions or endpoints.

(*8*) Description of course of action to be taken when test reactions or endpoints cannot be determined.

(*9*) Any limitations to methodologies.

(iii) Field studies that meet the following requirements:

(A) Demonstrate that the manufacturer's or producer's written instructions are the only protocols required to perform the test accurately and reliably.

(B) Demonstrate that individuals with no formal laboratory training can correctly perform the test.

(iv) Data from field studies that meet the following requirements:

(A) Are generated from protocols that address the points described in paragraph (b)(2)(iii) of this section.

(B) Are adequate to produce measures of performance that are both statistically valid and defensible.

(C) Confirm that study participants are able to read and interpret test endpoints with the same precision as laboratory professionals.

(D) Confirm that the performance of study participants is essentially the same as laboratory professionals when testing samples at or near the cutoff and at sufficient distance above and below the cutoff to confirm precision at all analytical decision points.

(E) Demonstrate minimal among-operator imprecision using results of all study participants.

(F) Demonstrate minimal within-site imprecision using test results generated at each site by an adequate number of participants to produce measures of performance that are statistically valid and defensible. Testing must be performed at a minimum of three independent study sites.

(G) Using results generated by study participants, demonstrate minimal among-site imprecision at an adequate number of sites to produce measures of performance that are statistically valid and defensible.

(v) Method accuracy studies demonstrating that there is no statistically significant difference between observed values and expected values at the cutoff point when—

(A) The test values are compared to a quantitative result such as the value of a reference material or the presence or absence of a particular biologic component;

(B) Confirming that there are no significant equivocal test results on either side of the cutoff;

(C) Comparing results between study participants and laboratory professionals on samples with values at the cutoff;

(D) The test is performed on patient samples instead of reference materials, confirming there is no introduction of error due to sample matrix; and

(E) Samples contain substances that commonly cause interference confirming there is no introduction of error because of these substances.

(c) *Provisions for inclusion of tests in the APT subcategory*—(1) *Process for requesting APT categorization.*

(i) Requests for APT categorization must be submitted to PHS.

(ii) PHS reviews requests for APT categorization that meet the criteria specified in paragraph (b) of this section and the submission requirements under paragraph (c)(2) of this section.

(iii) The CLIAC, as specified in subpart T of this part, conducts reviews upon the request of HHS and makes recommendations to HHS concerning APT test categorization.

(iv) Any change or modification to an APT test system by the manufacturer or producer that could affect the accuracy or reliability of that test must be resubmitted to PHS for evaluation and review. Until this review is completed and categorization status is determined, the modified test is considered uncategorized and, in accordance with § 493.17(c)(4), is considered high complexity.

(v) A request for reconsideration of a test denied APT categorization is accepted for review if the request is based on information not previously submitted.

(2) *Submission requirements.*

(i) Requests for APT categorization must meet the criteria described in paragraph (b) of this section. In the event that a request does not include complete information, the request is not reviewed and the manufacturer or producer of the test system is notified.

(ii) Data collection protocols and data submitted must be complete and data submitted must be statistically valid and meet the criteria described under paragraph (b) of this section.

(iii) Test system instructions must be complete and must include, as applicable, the items defined in paragraph (b)(1)(ii) of this section for quantitative tests and under paragraph (b)(2)(ii) of this section for qualitative tests. In addition, test system instructions must include the following statements:

(A) ''Any modification by the laboratory to the PHS-approved test system instructions will result in the test no longer meeting the requirements for APT categorization. Modified tests are considered high complexity and are subject to all applicable CLIA requirements contained in 42 CFR part 493.''

(B) ''The laboratory must notify the producer of this test system of any performance, perceived or validated, that does not meet the performance specifications as outlined in these instructions.'' The name, address and phone number(s) of the producer's contact person(s) must follow this statement.

(C) If applicable: ''Laboratories performing accurate and precise technology (APT) tests are subject to the proficiency testing (PT) requirements under 42 CFR part 493, subpart H of this part. The laboratory must enroll and successfully participate in an HHS-approved PT program.''

(iv) Patient test management protocols must be complete and include sufficient information to assist laboratories in meeting each of the requirements in subpart J of this part. These protocols must meet the following requirements:

(A) Clearly specify the instructions that must be followed by the laboratory to ensure proper specimen handling and accurate test result reporting and assist laboratories in meeting the requirements of subpart J of this part, including the following requirements listed in paragraphs (c)(2)(iv)(A)(*1*) through (c)(2)(iv)(A)(*4*) and (c)(2)(iv)(B) of this section, as applicable:

(*1*) Section 493.1103(a), procedures for specimen submission and handling, including protocols for preparation of patients, specimen collection, preservation, and conditions for specimen transport.

(*2*) Section 493.1105(f), any test requisition information that is relevant and necessary to a specific test to assure accurate testing and reporting of results.

(*3*) Sections 493.1107(c) and 493.1109(c), test records and test report information related to the criteria for specimen acceptability.

(*4*) Section 493.1109, test report information including the following information:

(*i*) Section 493.1109(d), pertinent ''reference'' or ''normal'' ranges.

(*ii*) Section 493.1109(f), any imminent life-threatening laboratory results or panic values.

(*iii*) Section 493.1109(g), the test methodology employed and any information that may affect the interpretation of test results.

(B) Provide information (for example, written instructions, instructional materials or samples of forms for documentation of activities performed) that laboratories may follow or supplement, in accordance with the test system's PHS-approved instructions, in meeting the requirements in subpart J of this part.

(v) Quality control instructions must include the following items:

(A) Protocols for documentation of all control and calibration results, any remedial action to be taken, and the appropriate record retention requirements as described at § 493.1221.

(B) Protocols for documentation of equipment maintenance performance and the appropriate record retention requirements as described at § 493.1221.

(C) Safety precaution instructions that cover any physical hazard or biohazardous material, including the proper handling and disposal of testing materials.

(D) Protocols for developing written procedures for the following activities:

(*1*) Determining specimen acceptability.

(*2*) Reporting patient test results, including suggested panic values, if applicable.

(*3*) The course of action to be taken in the event that a test system becomes inoperable.

(*4*) Referral of samples, as specified in § 493.1111, including procedures for specimen submission and handling as described in § 493.1103.

(E) Verification of method performance specifications and verification that the reference range is appropriate for the laboratory's patient population.

(vi) Quality assurance protocols must be complete and include sufficient information to assist laboratories in meeting each of the requirements in subpart P of this part. These protocols must meet the following requirements:

(A) Clearly specify the instructions that must be followed by the laboratory in establishing a comprehensive quality assurance program for monitoring and evaluating the overall quality of the total testing process (preanalytic, analytic, and postanalytic) and identifying and correcting problems based on the results of the evaluation to assure the accurate, reliable and prompt reporting of patient results and assist laboratories in meeting the requirements of subpart P of this part listed in paragraphs (c)(2)(vi)(A)(*1*) through (c)(2)(vi)(A)(*4*) and (c)(2)(vi)(B) of this section, and, as applicable, meet the requirements of the following sections:

(*1*) Section 493.1703, Patient test management assessment, including the following requirements:

(*i*) The criteria established for patient preparation, specimen collection, preservation and transportation.

(*ii*) The completeness and relevance of the information solicited on the laboratory's test requisition.

(*iii*) The use and appropriateness of the criteria established for specimen rejection.

(*iv*) The completeness, usefulness and accuracy of the test report information necessary for the interpretation or utilization of test results.

(*2*) Section 493.1705, Quality control assessment, including a mechanism to assess the effectiveness of the corrective actions taken in the following situations:

(*i*) Problems identified during the evaluation of calibration and control data for the test method.

(*ii*) Problems identified during the evaluation of patient test values for the purpose of ensuring the appropriateness of the reference range of the test method.

(*3*) Section 493.1709, Comparison of test results, including procedures for evaluating and defining the relationship between test results using different methodologies, instruments, or testing sites.

(*4*) Section 493.1711, Relationship of patient information to patient results, including procedures for identifying and evaluating patient test results that appear inconsistent with any relevant criteria specified in § 493.1711.

(B) Provide information (for example, written instructions, instructional materials, or samples of forms for documentation of activities performed) that laboratories may follow or supplement, in accordance with the test system's PHS-approved instructions, in meeting the requirements in subpart P of this part.

(3) *Notification of decision.*

(i) PHS determines whether a laboratory test meets the criteria listed under paragraph (b) of this section for an APT test.

(ii) PHS notifies the applicant of APT categorization, whether denied or granted.

(iii) APT categorization is effective as of the date of notification to the applicant.

(iv) PHS publishes additions and revisions periodically to tests categorized as APT in the **Federal Register** in a notice with opportunity for public comment. PHS reserves the right to reevaluate and recategorize a test based upon the comments it receives in response to the **Federal Register** notice.

6. In § 493.20, paragraphs (a) and (b) are revised to read as follows:

§ 493.20 Laboratories performing tests of moderate complexity.

(a) A laboratory may qualify for a certificate to perform tests of moderate complexity if it restricts its test performance to waived tests or examinations and one or more tests or examinations meeting criteria for tests of moderate complexity including the subcategories of PPM and APT tests.

(b) A laboratory that performs tests or examinations of moderate complexity must meet the applicable requirements in subpart C or subpart D, and subparts F, H, J, K, M, P, and Q of this part. Under a registration certificate or certificate of compliance, laboratories also performing PPM procedures and APT tests must meet the inspection requirements at § 493.1777.

* * * * *

7. A new § 493.21 is added to read as follows:

§ 493.21 Laboratories performing accurate and precise technology (APT) tests.

(a) A laboratory may qualify for a certificate to perform APT tests if it performs tests categorized by PHS as APT tests and no other procedures, except those specified as PPM procedures or those approved by PHS as waived tests.

(b) Laboratories performing APT tests must meet the following requirements:

(1) Follow each test system's PHS-approved instructions for performing the test; and

(2) Meet the applicable requirements in subpart C or subpart D of this part and subparts F, H, J, K, M, P, and Q of this part.

(c) If the laboratory also performs PPM procedures, the laboratory must meet the applicable requirements in subparts H, J, K, M, P, and Q of this part.

(d) If the laboratory also performs waived tests, the requirements of subparts H, J, K, M, and P of this part are not applicable for the waived tests. However, the laboratory must comply with the requirements in §§ 493.15(e) and 493.1775.

8. In § 493.25, paragraph (c) is revised to read as follows:

§ 493.25 Laboratories performing tests of high complexity.

* * * * *

(c) If the laboratory also performs tests of moderate complexity, the applicable requirements of subparts H, J, K, M, P and Q of this part must be met. Under a registration certificate or certificate of compliance, PPM procedures and APT tests must meet the inspection requirements at § 493.1777.

* * * * *

9. The heading of subpart C is revised to read as follows:

Subpart C—Registration Certificate, Certificate for Provider-Performed Microscopy Procedures, Certificate for Accurate and Precise Technology Tests, and Certificate of Compliance

10. In § 493.43, the section heading and paragraph (a) are revised to read as follows:

§ 493.43 Application for registration certificate, certificate for provider-performed microscopy (PPM) procedures, certificate for accurate and precise technology (APT) tests, and certificate of compliance.

(a) *Filing of application.* Except as specified in paragraph (b) of this section, all laboratories performing tests of moderate complexity (including the subcategories) or high complexity, or any combination of these tests, must file a separate application for each laboratory location.

* * * * *

11. In § 493.45, the introductory paragraph is revised, the introductory text of paragraph (a) is republished, and paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 493.45 Requirements for a registration certificate.

Laboratories performing only waived tests, PPM procedures, APT tests, or any combination of these tests, are not required to obtain a registration certificate.

(a) A registration certificate is required—(1) Initially for all laboratories performing test procedures of moderate complexity (other than the subcategories of APT tests and PPM procedures) or high complexity, or both;

(2) For all laboratories that have been issued a certificate of waiver, certificate for PPM procedures, or certificate for APT tests that intend to perform tests of moderate or high complexity, or both in addition to those tests listed in § 493.15(c) or specified as PPM procedures, or categorized as APT tests; and

* * * * *

12. A new § 493.48 is added to read as follows:

§ 493.48 Requirements for a certificate for accurate and precise technology (APT) tests.

(a) A certificate for APT tests is required for all laboratories that intend to perform only the following tests:

(1) Tests that have been categorized by PHS as APT tests.

(2) APT tests in addition to waived tests or PPM procedures.

(3) APT tests, waived tests and PPM procedures.

(b) HHS issues a certificate for APT tests if the laboratory meets the following requirements:

(1) Complies with the requirements of § 493.43 for applying for a certificate.

(2) Agrees to treat proficiency testing samples in the same manner as it treats patient specimens.

(3) Agrees to be inspected by HHS as specified in § 493.1778.

(4) Remits the fee for the certificate as specified in subpart F of this part.

(c) A laboratory issued a certificate for APT tests is subject to the following requirements:

(1) The notification requirements of § 493.51.

(2) The applicable requirements of this subpart and subparts H, J, K, M, P and Q of this part.

(d) A laboratory requesting a certificate for APT tests that also

performs PPM procedures is subject to the following requirements:

(1) Ensuring that PPM procedures are performed only by individuals meeting the personnel requirements of subpart M of this part.

(2) Undergoing random inspections as specified in § 493.1778.

(e) In accordance with subpart R of this part, HHS initiates suspension, limitation, or revocation of a laboratory's certificate for APT tests for failure to comply with the applicable requirements set forth in this subpart. HHS may also impose certain alternative sanctions. In addition, failure to meet the requirements of this subpart may result in suspension of all or part of payments under Medicare and Medicaid.

(f) A certificate for APT tests is valid for a period of no more than 2 years. A laboratory must follow the procedures established by HHS for renewal of this certificate.

13. Section 493.49 is amended by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 493.49 Requirements for a certificate of compliance.

A certificate of compliance may include any combination of tests categorized as high complexity or moderate complexity or listed in § 493.15(c) as waived tests. Moderate complexity tests may include those specified as PPM procedures or categorized as APT tests.

(a) HHS issues a certificate of compliance to a laboratory only if the laboratory meets the following requirements:

(1) Meets the requirements of §§ 493.43 and 493.45.

(2) Remits the certificate fee specified in subpart F of this part.

(3) Meets the applicable requirements of this subpart and subparts H, J, K, M, P, and Q of this part.

(b) A laboratory issued a certificate of compliance must meet the following requirements:

(1) Meets the notification requirements of § 493.51.

(2) Permits announced or unannounced inspections by HHS in accordance with subpart Q of this part for the following reasons:

(i) Routine determination of compliance with the applicable requirements of this part.

(ii) Evaluation of complaints.

(iii) Nonroutine survey of the laboratory when HHS has substantive reason to believe that tests are being performed, or the laboratory is being operated in a manner that constitutes an imminent and serious risk to human health.

(iv) Collection of information regarding the appropriateness of tests listed in § 493.15 or tests categorized as moderate complexity (including the subcategories) or high complexity.

* * * * *

14. Section 493.51 is revised to read as follows:

§ 493.51 Notification requirements for laboratories issued a certificate for accurate and precise technology (APT) tests or a certificate of compliance.

Laboratories issued a certificate for APT tests or a certificate of compliance must meet the following requirements:

(a) Notify HHS or its designee within 30 days of any change in any of the following items:

(1) Ownership.

(2) Name.

(3) Location.

(4) Director.

(5) Technical supervisor (laboratories performing high complexity testing only).

(b) Notify HHS no later than 6 months after performing any test or examination within a specialty or subspecialty area that is not included on the laboratory's certificate for APT tests or a certificate of compliance, so that compliance with requirements can be determined.

(c) Notify HHS no later than 6 months after any deletions or changes in test methodologies for any test or examination included in a specialty or subspecialty, or both, for which the laboratory has been issued a certificate for APT tests or a certificate of compliance.

(d) Notify HHS before performing and reporting results for tests not included under the certificate for APT tests (which are tests other than waived tests, PPM procedures, and APT tests) unless the laboratory has been issued a registration certificate as required in subpart C or subpart D of this part, as applicable.

15. Section 493.53 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 493.53 Notification requirements for laboratories issued a certificate for provider-performed microscopy (PPM) procedures.

Laboratories issued a certificate for PPM procedures must notify HHS or its designee in the following situations:

(a) Before performing and reporting results for any test of moderate complexity (including the subcategory of APT tests) or high complexity, or both, in addition to tests specified as PPM procedures, or any test or examination that is not specified under § 493.15(c) for which it does not have a registration certificate or certificate for APT technology tests as required in subpart C or subpart D, as applicable, of this part.

* * * * *

16. In § 493.638, introductory paragraph (a) is revised, paragraph (a)(4) is redesignated as (a)(5), new paragraph (a)(4) is added, and paragraph (b) is revised to read as follows:

§ 493.638 Certificate fees.

(a) *Basic rule.* Laboratories must pay a fee for the issuance of a registration certificate, certificate for PPM procedures, certificate of waiver, certificate for APT tests, certificate of accreditation, or a certificate of compliance, as applicable. Laboratories must also pay a fee to reapply for a certificate for PPM procedures, certificate of waiver, certificate for APT tests, certificate of accreditation, or a certificate of compliance. The total of fees collected by HHS under the laboratory program must be sufficient to cover the general costs of administering the laboratory certification program under section 353 of the PHS Act.

* * * * *

(4) For a certificate for APT tests, the costs include issuing the certificate, collecting the fees, determining if a certificate for APT tests should be issued, evaluating which test systems qualify for inclusion in the subcategory of APT tests, and other direct administrative costs.

(5) For a certificate of accreditation, the costs include issuing the certificate, collecting the fees, evaluating the programs of accrediting bodies, and other direct administrative costs.

(b) *Fee amount.* The fee amount is set annually by HHS on a calendar year basis and is based on the category of test complexity, or on the category of test complexity and schedules or ranges of annual laboratory test volume (excluding waived tests and tests performed for quality control, quality assurance, and proficiency testing purposes) and specialties tested, with the amounts of the fees in each schedule being a function of the costs for all aspects of general administration of CLIA as set forth in § 493.649 (b) and (c). This fee is assessed and payable at least biennially. The methodology used to determine the amount of the fee is found in § 493.649. The amount of the fee applicable to the issuance of the registration certificate or the issuance or renewal of the certificate for PPM procedures, certificate of waiver, certificate for APT tests, certificate of accreditation, or certificate of compliance is the amount in effect at

the time the application is received. Upon receipt of an application for a certificate, HHS or its designee notifies the laboratory of the amount of the required fee for the requested certificate.

17. In § 493.639, paragraphs (b) introductory text and (b)(1) are revised to read as follows:

§ 493.639 Fee for revised certificate.

* * * * *

(b) A laboratory must pay a fee to cover the cost of issuing a revised certificate in any of the circumstances specified in paragraphs (b)(1) and (b)(2) of this section.

(1) The fee for issuing an appropriate revised certificate is based on the cost of issuing the revised certificate to the laboratory as follows:

(i) If a laboratory with a certificate of waiver wishes to perform tests in addition to those listed in § 493.15(c) as waived tests, it must, as set forth in § 493.638, pay an additional fee for the appropriate certificate to cover the additional testing.

(ii) If a laboratory with a certificate for PPM procedures wishes to perform tests in addition to those specified as PPM procedures or listed in § 493.15(c) as waived tests, it must, as set forth in § 493.638, pay an additional fee for the appropriate certificate (registration or certificate for APT tests) to cover the additional testing.

(iii) If a laboratory with a certificate for APT tests wishes to perform tests in addition to those categorized as APT tests, specified as PPM procedures, or listed in § 493.15(c) as waived tests, it must, as set forth in § 493.638, pay an additional fee for a registration certificate to cover the additional testing.

* * * * *

18. In § 493.643, paragraph (a) is revised to read as follows:

§ 493.643 Fee for determination of program compliance.

(a) *Fee requirement.* In addition to the fee required under § 493.638, a laboratory subject to routine inspections must pay a fee to cover the cost of determining program compliance. Laboratories issued a certificate for PPM procedures, certificate of waiver, certificate for APT tests, or a certificate of accreditation are not subject to this fee for routine inspections.

* * * * *

19. In section 493.645, the heading is revised, paragraph (c) is redesignated as (d) and revised, and a new paragraph (c) is added:

§ 493.645 Additional fee(s) applicable to approved State laboratory programs and laboratories issued certain certificates.

* * * * *

(c) *Laboratories with a certificate for APT tests.*

(1) In addition to the certificate fee, a laboratory requesting a certificate for APT tests is also assessed a fee representing the cost to HHS of random inspections to determine compliance with CLIA requirements. All laboratories issued a certificate for APT tests will share in the cost of these inspections.

(2) If a laboratory issued a certificate for APT tests has been inspected and followup visits are necessary because of identified deficiencies, HHS assesses the laboratory a fee to cover the cost of these visits. The fee is based on the actual resources and time necessary to perform the follow up visits. HHS revokes the laboratory's certificate for APT tests for failure to pay the assessed fee.

(d) *Other fees.* If, in the case of a laboratory that has been issued a certificate of accreditation, certificate of waiver, certificate for PPM procedures, or certificate for APT tests, it is necessary to conduct a complaint investigation, impose sanctions, or conduct a hearing, HHS assesses that laboratory a fee to cover the cost of these activities. Costs are based on the actual resources and time necessary to perform the activities and are not assessed until after the laboratory concedes the existence of deficiencies or an ALJ rules in favor of HHS. HHS revokes the laboratory's certificate for failure to pay the assessed costs. If a complaint investigation results in the determination that a complaint is unsubstantiated, or if an HHS adverse action is overturned at the conclusion of the administrative appeals process, the costs of these activities are not imposed upon the laboratory.

20. The heading of subpart H is revised to read as follows:

Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate Complexity (Including the Subcategories), High Complexity, or any Combination of These Tests

21. Section 493.803(a) is revised to read as follows:

§ 493.803 Condition: Successful participation.

(a) Each laboratory performing tests of moderate complexity (including the subcategories) and/or high complexity must successfully participate in a proficiency testing program approved by HCFA, if applicable, as described in subpart I of this part for each specialty, subspecialty, and analyte or test in which the laboratory is certified under CLIA.

* * * * *

22. The heading of § 493.807 is revised to read as follows:

§ 493.807 Condition: Reinstatement of laboratories performing tests of moderate complexity (including the subcategories), high complexity, or any combination of these tests, after failure to participate successfully.

* * * * *

23. The undesignated center heading immediately preceding § 493.821 is revised to read as follows:

Proficiency Testing by Specialty and Subspecialty for Laboratories Performing Tests of Moderate Complexity (Including the Subcategories), High Complexity, or Any Combination of These Tests

24. The heading to subpart I is revised to read as follows:

Subpart I—Proficiency Testing Programs for Tests of Moderate Complexity (Including the Subcategories), High Complexity, or any Combination of These Tests

25. The heading to subpart J is revised to read as follows:

Subpart J—Patient Test Management for Moderate Complexity (Including the Subcategories), High Complexity, or any Combination of These Tests

26. Section 493.1101 is revised to read as follows:

§ 493.1101 Condition: Patient test management; moderate complexity (including the subcategories), high complexity testing, or any combination of these tests.

Each laboratory performing moderate complexity (including the subcategories) or high complexity testing, or any combination of these tests, must employ and maintain a system that provides for proper patient preparation; proper specimen collection, identification, preservation, transportation, and processing; and accurate result reporting. This system must assure optimum patient specimen integrity and positive identification throughout the preanalytic (pre-testing), analytic (testing), and postanalytic (post-testing) processes and must meet the standards as they apply to the testing performed.

27. A new § 493.1102 is added to read as follows:

§ 493.1102 Standard; Patient test management requirements for accurate and precise technology (APT) tests.

For each APT test performed, the laboratory must meet all applicable patient test management requirements specified in §§ 493.1103 through 493.1111. The laboratory meets these requirements by doing both of the following activities:

(a) Having available and following the test system's PHS-approved instructions and, as appropriate, any supplements to the procedures established by the laboratory in accordance with the test system's PHS-approved instructions.

(b) Maintaining all records documenting compliance with paragraph (a) of this section for 2 years.

28. The heading to subpart K is revised to read as follows:

Subpart K—Quality Control for Tests of Moderate Complexity (Including the Subcategories), High Complexity, or any Combination of These Tests

29. Section 493.1201 is amended by revising paragraph (a) introductory text and paragraph (b) and by adding paragraph (c) to read as follows:

§ 493.1201 Condition: General quality control; Moderate complexity (including the subcategories) or high complexity testing, or any combination of these tests.

(a) *General.* Subpart K of this part is divided into two sections, general quality control and quality control for specialties and subspecialties. The quality control requirements are specified in §§ 493.1201 through 493.1285 unless—

* * * * *

(b) *Applicability of subpart K to moderate complexity (excluding APT tests) and high complexity tests.* The laboratory must establish and follow written quality control procedures for monitoring and evaluating the quality of the analytical testing process of each method to assure the accuracy and reliability of patient test results and reports. The laboratory must meet the applicable general quality control standards in §§ 493.1202 through 493.1221, unless an alternative procedure specified in the manufacturer's protocol has been cleared by the Food and Drug Administration (FDA) as meeting certain CLIA requirements for quality control or HHS approves an equivalent procedure specified in appendix C of the State Operations Manual (HCFA Pub. 7). HCFA Pub. 7 is available from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, telephone number (703) 487–4630.

(c) *Applicability of subpart K to APT testing.* The laboratory must follow each test system's PHS-approved written instructions for monitoring and evaluating the quality of the analytical testing process to assure the accuracy and reliability of patient test results and reports. For each APT test, the laboratory must meet the quality control requirements of § 493.1204.

30. In § 493.1202, the introductory text of paragraph (c) is revised to read as follows:

§ 493.1202 Standard; Moderate or high complexity testing, or both: Effective from September 1, 1992 to September 1, 1996.

* * * * *

(c) For all other tests of moderate complexity, excluding the subcategory of APT testing, performed using an instrument, kit, or test system cleared by the FDA through premarket notification (510(k)) or the premarket approval (PMA) process for in-vitro diagnostic use, the laboratory must—

* * * * *

31. Section 493.1203 is amended by revising the introductory text to read as follows:

§ 493.1203 Standard; Moderate complexity (excluding accurate and precise technology (APT) tests) or high complexity testing or both: Effective September 1, 1996.

For each moderate complexity (excluding APT tests) or high complexity test performed, the laboratory is in compliance with this section if it—

* * * * *

§ 493.1204 [Redesignated as § 493.1206]

32. Section 493.1204 is redesignated as § 493.1206.

33. New § 493.1204 is added to read as follows:

§ 493.1204 Standard; Quality control requirements for accurate and precise technology (APT) tests.

For each APT test performed, the laboratory is in compliance with this subpart if it meets all applicable quality control requirements in this section. The laboratory must meet the following requirements:

(a) Have available and follow each test system's PHS-approved written instructions, which include the following protocols:

(1) Safety precautions.

(2) Protocols for instrument or test system operation and test performance, including maintenance and function checks.

(3) Calibration procedures.

(4) Quality control procedures defined by the manufacturer or producer of the test system, which include running at least two levels of control each day of testing to monitor all steps in the testing process, including the extraction phase if applicable, unless one of the following circumstances applies:

(i) The test system's PHS-approved instructions specify other than two levels of control.

(ii) The procedure cannot be controlled by conventional procedures and an alternative means of controlling the system has been approved by PHS.

(5) Remedial action procedures.

(b) Ensure that it meets the following requirements:

(1) It has available and follows written procedures, based on each test system's PHS-approved instructions, as applicable, for the following procedures:

(i) Determining specimen acceptability.

(ii) Reporting patient test results, including panic values (values requiring immediate medical intervention).

(iii) Course of action to be taken in the event that a test system becomes inoperable.

(iv) Referral of samples as specified in § 493.1111, including procedures for specimen submission and handling, as described in § 493.1103.

(2) The written procedures, whether provided by the manufacturer, the test system producer, or the laboratory, are approved, signed and dated by the current director of the laboratory.

(3) Any change to a procedure by the manufacturer or producer of a test system is approved by PHS and signed and dated by the laboratory director for use by laboratory personnel.

(4) Any change to a laboratory's protocol designed to meet the requirements is approved, signed and dated by the laboratory director.

(5) A copy of each procedure with the dates of initial use and discontinuance is retained for 2 years after a procedure has been discontinued.

(c) Before reporting patient results, using at least the test system's PHS-approved written instructions, verify that it can obtain performance specifications for accuracy, precision and reportable range of patient results that meet those established by the manufacturer or producer of the test system. The laboratory must also ensure that the laboratory's patient population is included in the reference range specified in the PHS-approved instructions.

(d) Document all remedial actions taken—

(1) In accordance with the test system's PHS-approved written instructions; and

(2) When errors in the reported patient test results are detected. In such a case, the laboratory must perform the following procedures:

(i) Promptly notify the authorized person ordering the test or individual using the test results of report errors.

(ii) Issue corrected reports promptly to the authorized person ordering the test or the individual using the test results.

(iii) Maintain exact duplicates of the original erroneous report as well as the corrected report for 2 years.

(e) Document and maintain records of all quality control activities specified in this section and retain records for at least 2 years or longer as specified by the manufacturer or producer of the test system in accordance with § 493.1221.

(f) Promptly report any inaccurate or imprecise method performance, whether perceived or validated, to the manufacturer or producer of the test system and, if the problem is not rectified, to PHS.

(g) Ensure that no modification is made in the test system's PHS-approved written instructions. Any changes made to the test system will result in the test system no longer meeting the requirements for categorization in the APT category. Modified tests are considered high complexity and are subject to the applicable CLIA quality control requirements contained in subpart K of this part, as well as all other applicable requirements for high complexity testing.

34. The heading to subpart M is revised to read as follows:

Subpart M—Personnel for Moderate Complexity (Including the Subcategories) and High Complexity Testing

35. Section 493.1351 is revised to read as follows:

§ 493.1351 General.

This subpart consists of the personnel requirements that must be met by laboratories performing moderate complexity testing, PPM procedures, APT tests, high complexity testing, or any combination of these tests.

36. Following § 493.1365, a new undesignated center heading and new §§ 493.1371 through 493.1387 are added to read as follows:

Laboratories Performing Accurate and Precise Technology (APT) Tests

Sec.

Laboratories Performing Accurate and Precise Technology (APT) Tests

§ 493.1371 Condition: Laboratories performing APT tests; Laboratory director.

The laboratory must have a director who meets the qualification requirements of § 493.1373 and provides overall management and direction in accordance with § 493.1375.

§ 493.1373 Standard; Laboratory director qualifications.

The laboratory director must be qualified to manage and direct the laboratory personnel and the performance of APT tests and must be eligible to be an operator of a laboratory within the requirements of subpart R of this part and meet the requirements of § 493.1405, which contain laboratory director qualifications for moderate complexity testing.

§ 493.1375 Standard; Laboratory director responsibilities.

The laboratory director is responsible for the overall operation and administration of the laboratory, including the employment of personnel who are competent to perform APT tests in accordance with each test system's PHS-approved instructions, and record and report test results promptly, accurately, and proficiently, and for assuring compliance with applicable regulations.

(a) The laboratory director, if qualified, may perform the duties of the clinical consultant and testing personnel or may delegate these responsibilities to personnel meeting the qualification requirements of §§ 493.1379 and 493.1385, respectively.

(b) The laboratory director must be accessible to the laboratory to provide onsite, telephone or electronic consultation as needed.

(c) No individual may direct more than five laboratories.

(d) The laboratory director must meet the following requirements:

(1) Ensure that testing systems selected for each of the tests performed in the laboratory are appropriate for the clinical use of the test results.

(2) Ensure that the physical plant and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards.

(3) Ensure that the following requirements are met:

(i) Before reporting patient results, using at least the test system's PHS-approved verification procedure, the laboratory can obtain or verify performance specifications for accuracy, precision and reportable range of patient results that meet those established by the manufacturer or producer of the test system and can ensure that the reference range specified by the manufacturer or producer of the test system is appropriate for the laboratory's patient populations.

(ii) Testing personnel are following test analyses and quality control procedures in accordance with each test system's PHS-approved instructions.

(4) Ensure that the laboratory is enrolled in an HHS-approved proficiency testing program for the

testing performed and that the laboratory meets the following requirements:

(i) The proficiency testing samples are tested as required under subpart H of this part.

(ii) The results are returned within the time frames established by the proficiency testing program.

(iii) All proficiency testing reports received are reviewed to evaluate the laboratory's performance and to identify any problems that require corrective action.

(iv) An approved corrective action plan is followed and documented when any proficiency testing results are found to be unacceptable or unsatisfactory.

(5) Ensure that a quality assurance program is established and maintained to assure the quality of laboratory services provided.

(6) Ensure that all necessary remedial actions are taken and documented and that patient results are reported only when the test system is functioning properly.

(7) Ensure that the producer or manufacturer of the test system is notified when the test system does not meet the performance specifications as outlined in the test system's PHS-approved instructions and, if the problem is not rectified, notify PHS.

(8) Ensure that reports of test results include pertinent information required for interpretation.

(9) Ensure that consultation is available to the laboratory's clients on matters relating to the results of APT tests reported and their interpretation concerning specific patient conditions, including any relevant information provided in the test system's PHS-approved instructions.

(10) Employ a sufficient number of testing personnel with the appropriate education and either experience or training to perform tests and report test results in accordance with the personnel responsibilities described in this subpart.

(11) Ensure that, before they test patient samples, testing personnel receive the appropriate training for the services offered and have demonstrated that they can perform all testing operations, in accordance with each test system's PHS-approved instructions, to provide and report accurate results.

(12) Ensure that policies and procedures are established for evaluating and documenting the performance of testing personnel responsible for APT testing to ensure that they are competent and maintain their competency to handle specimens, perform test procedures, report test results promptly and proficiently, and, whenever necessary, identify needs for remedial training or continuing education to improve testing skills. The director must ensure that evaluations are conducted at least semiannually during the first year the individual tests patient specimens and that, thereafter, the evaluations are performed at least annually unless test methodology or instrumentation changes, in which case, before reporting patient test results, the individual's performance must be reevaluated to include the use of the new test methodology or instrumentation. The evaluation of the competency of testing personnel must include at least one or more of the following, but is not limited to the following procedures:

(i) Direct observations of routine patient test performance, including patient preparation, if applicable, specimen handling, and testing.

(ii) Monitoring the recording and reporting of test results.

(iii) Review of work sheets, quality control records, proficiency testing results, and preventive maintenance records.

(iv) Assessment of test performance through testing previously analyzed specimens, internal blind testing samples, or external proficiency testing samples.

(13) Ensure that an approved procedure manual is available to all testing personnel.

(14) Specify, in writing, the responsibilities and duties of each person engaged in the performance of APT testing that identifies which examinations and procedures each individual is authorized to perform.

§ 493.1377 Condition: Laboratories performing APT testing; clinical consultant.

The laboratory must have a clinical consultant who meets the qualification requirements of § 493.1379 and provides clinical consultation in accordance with § 493.1381.

§ 493.1379 Standard; Clinical consultant qualifications.

The clinical consultant must be qualified to consult with and furnish opinions to the laboratory's clients concerning the diagnosis, treatment and management of patient care. The clinical consultant must meet the requirements of § 493.1417, Clinical consultant qualifications for moderate complexity testing.

§ 493.1381 Standard; Clinical consultant responsibilities.

The clinical consultant provides consultation regarding the appropriateness of the testing ordered and interpretation of test results. The clinical consultant must meet the following requirements:

(a) Be available to provide clinical consultation to the laboratory's clients.

(b) Be available to assist the laboratory's clients in ensuring that appropriate tests are ordered to meet the clinical expectations.

(c) Ensure that reports of test results include pertinent information required for specific patient interpretation.

(d) Ensure that consultation is available and communicated to the laboratory's clients on matters related to the results of APT tests reported and their interpretation concerning specific patient conditions, including any relevant information provided in the test system's PHS-approved instructions.

§ 493.1383 Condition: Laboratories performing APT testing; testing personnel.

The laboratory must have a sufficient number of individuals who meet the qualification requirements of § 493.1385 to perform the functions specified in § 493.1387 for the volume of tests performed.

§ 493.1385 Standard; Testing personnel qualifications.

Each individual performing APT testing must meet the following requirements:

(a) Possess a current license issued by the State in which the laboratory is located, if such licensing is required.

(b) Meet one of the following requirements:

(1) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located or have earned a doctoral, master's, or bachelor's degree in a chemical, physical, biological or clinical laboratory science or medical technology from an accredited institution.

(2) Have earned an associate degree in a chemical, physical, or biological science, or in medical laboratory technology from an accredited institution.

(3) Be a high school graduate or equivalent and have successfully completed an official U.S. military medical laboratory procedures course of at least 50 weeks duration and have held the military enlisted occupational specialty of Medical Laboratory Specialist (Laboratory Technician).

(4) (i) Have earned a high school diploma or equivalent; and

(ii) Have documentation of training appropriate for the APT testing performed before analyzing patient

specimens. This training must ensure that the individual has the following skills and knowledge:

(A) The skills required for proper specimen collection, including patient preparation (if applicable), labeling, handling, preservation, transportation and storage of specimens.

(B) The skills required for performing each test method and control procedure and for proper instrument use.

(C) The skills required for performing preventive maintenance, troubleshooting and calibration procedures related to each test performed.

(D) An awareness of the factors that influence test results.

§ 493.1387 Standard; Testing personnel responsibilities.

The testing personnel performing APT tests are responsible for specimen processing, test performance, and for reporting test results.

(a) Each individual performs only those APT tests that they are authorized by the laboratory director to perform.

(b) Each individual performing APT testing must meet the following requirements:

(1) Follow each test system's PHS-approved written instructions and, as applicable, the laboratory's written policies and procedures for specimen submission and handling and for reporting and maintaining records of patient test results.

(2) Maintain records that demonstrate that proficiency testing samples are tested in the same manner as patient samples.

(3) Adhere to each test system's PHS-approved written instructions for quality control procedures, including the documentation of all quality control activities, remedial actions, instrument and procedural calibrations, and maintenance performed.

(4) Be capable of identifying problems that may adversely affect test performance or reporting of test results and either must correct the problems or immediately notify the director.

(5) Notify the director of any test system performance that does not meet the performance specifications as outlined in the test system's PHS-approved instructions.

37. The heading to subpart P is revised to read as follows:

Subpart P—Quality Assurance for Moderate Complexity (Including the Subcategories), High Complexity Testing, or any Combination of These Tests

§ 493.1701 [Amended]

38. Section 493.1701 is amended by revising the word ''subcategory'' to read ''subcategories'' wherever it appears in the heading and text.

39. A new § 493.1702 is added to read as follows:

§ 493.1702 Standard; Quality Assurance for accurate and precise technology (APT) tests.

For each APT test performed, the laboratory must meet all applicable quality assurance requirements specified in §§ 493.1703 through 493.1721. The laboratory meets these requirements by doing both of the following activities:

(a) Having available and following the test system's PHS-approved instructions and, as appropriate, any supplements to the procedures established by the laboratory in accordance with the test system's PHS-approved instructions.

(b) Maintaining all records documenting compliance with paragraph (a) of this section for 2 years.

40. In § 493.1777 the introductory text is revised to read as follows:

§ 493.1777 Condition: Inspection of laboratories requesting or issued a certificate of compliance.

Laboratories requesting a certificate of compliance must permit an inspection to assess compliance with part 493 of this chapter. All testing conducted, including testing in the subcategories of APT tests or PPM procedures, may be included in the laboratory's routine or complaint inspection. APT tests and PPM procedures are assessed for compliance with only the applicable requirements specific to those subcategories of testing.

* * * * *

41. A new § 493.1778 is added to read as follows:

§ 493.1778 Condition: Inspection of laboratories issued a certificate for accurate and precise technology (APT) tests.

(a) HHS or its designee may conduct announced or unannounced inspections of any laboratory issued a certificate for APT tests at any time during its hours of operation for the following purposes:

(1) Assess compliance with the following circumstances, as applicable:

(i) On a random basis.

(ii) Following a laboratory's demonstration of unsuccessful participation in proficiency testing for analytes specified in subpart I of this part.

(iii) To evaluate complaints from the public.

(2) Determine whether testing is being performed or the laboratory is being operated in a manner that does not constitute an imminent and serious risk to public health.

(3) Collect information to determine the appropriateness of tests categorized as APT tests according to the criteria listed at § 493.18.

(4) Determine whether the laboratory is performing tests in addition to tests categorized as APT tests according to the criteria listed at § 493.18, specified as PPM procedures, or tests approved by PHS as waived tests that are not included on the laboratory's certificate.

(b) The laboratory may be required as part of this inspection to perform or authorize the following activities:

(1) Test samples (including proficiency testing samples) or perform procedures as HHS or its designee requires.

(2) Allow HHS or its designee to interview all employees of the laboratory concerning the laboratory's compliance with the applicable requirements as noted in paragraph (d) of this section.

(3) Permit employees to be observed performing tests (including proficiency testing specimens), data analysis and reporting.

(4) Permit HHS or its designee access to all areas of the facility, including the following areas:

(i) Specimen procurement and processing areas.

(ii) Storage facilities for specimens, reagents, supplies, records, and reports.

(iii) Testing and reporting areas.

(5) Provide copies to HHS or its designee of all records and data required under this part.

(c) The laboratory must have all records and data accessible and retrievable within a reasonable time frame during the inspection.

(d) Applicable requirements for the purpose of this section are located in subparts C, H, J, K, M, and P of this part and § 493.21.

(e) The laboratory must provide upon reasonable request all information and data needed by HHS or its designee to make a determination of compliance with the applicable requirements.

(f) HHS or its designee may reinspect a laboratory at any time necessary to assess the laboratory's compliance with the applicable requirements.

(g) Failure to permit an inspection under this section will result in the suspension of Medicare and Medicaid payments to the laboratory or

termination of the laboratory's participation in Medicare and Medicaid for payment, and suspension of, or action to revoke, the laboratory's CLIA certificate in accordance with subpart R of this part.

42. In § 493.1814, the text of the introductory text of paragraph (b) is republished and paragraph (b)(3) is revised to read as follows:

§ 493.1814 Action when deficiencies are at the condition level but do not pose immediate jeopardy.

* * * * *

(b) *Failure to correct condition level deficiencies.* If HCFA imposes alternative sanctions for condition level deficiencies that do not pose immediate jeopardy and the laboratory does not correct the condition level deficiencies within 12 months after the last day of inspection, HCFA—

* * * * *

(3) May impose (or continue, if already imposed) any alternative sanctions that do not pertain to Medicare payments. (Sanctions imposed under the authority of section 353 of the PHS Act may continue for more than 12 months from the last date of inspection, while a hearing on the proposed suspension, limitation, or revocation of the certificate of compliance, registration certificate, certificate of accreditation, certificate for APT tests, or certificate for PPM procedures is pending.)

* * * * *

43. In § 493.1834, the heading and introductory text of paragraph (f)(2) are republished and paragraphs (b) and (f)(2)(iii) are revised to read as follows:

§ 493.1834 Civil money penalty.

* * * * *

(b) *Scope.* This section sets forth the procedures that HCFA follows to impose a civil money penalty in lieu of, or in addition to, suspending, limiting, or revoking the certificate of compliance, registration certificate, certificate of accreditation, certificate for APT tests, or certificate for PPM procedures of a laboratory that is found to have condition level deficiencies.

* * * * *

(f) *Accrual and duration of penalty.*

* * *

(2) *Duration of penalty.* The civil money penalty continues to accrue until the earliest of the following occurs:

* * * * *

(iii) HCFA suspends, limits, or revokes the laboratory's certificate of compliance, registration certificate, certificate of accreditation, certificate for APT tests, or certificate for PPM procedures.

* * * * *

44. In § 493.1836, the heading of paragraph (c) is republished and paragraphs (c)(2) and (c)(3) are revised to read as follows:

§ 493.1836 State onsite monitoring.

* * * * *

(c) *Duration and sanction.* * * *

(2) If the laboratory does not correct all deficiencies within 12 months, and a revisit indicates that deficiencies remain, HCFA cancels the laboratory's approval for Medicare payment for its services and notifies the laboratory of its intent to suspend, limit, or revoke the laboratory's certificate of compliance, registration certificate, certificate of accreditation, certificate for APT tests, or certificate for PPM procedures.

(3) If the laboratory still does not correct its deficiencies, the Medicare sanction continues until the suspension, limitation, or revocation of the laboratory's certificate of compliance, registration certificate, certificate of accreditation, certificate for APT tests, or certificate for PPM procedures is effective.

45. In § 493.2001, the introductory text of paragraph (e) is republished and paragraph (e)(1) is revised to read as follows:

§ 493.2001 Establishment and function of the Clinical Laboratory Improvement Advisory Committee.

* * * * *

(e) The Clinical Laboratory Improvement Advisory Committee or subcommittee at the request of HHS will review and make recommendations concerning—

(1) Criteria for categorizing tests and examinations of moderate complexity (including the subcategories) and high complexity;

* * * * *

Authority: Sec. 353 of the Public Health Service Act (42 U.S.C. 263a)

Dated: May 25, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 26, 1995.

Philip R. Lee,

Assistant Secretary for Health.

Dated: June 5, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–22861 Filed 9–14–95; 8:45 am]

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Federal Register

Friday
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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 945

Hawaiian Islands Humpback Whale National Marine Sanctuary Regulations; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 945

[Docket No.: 950427120–5120–01]

RIN 0648–AH99

Hawaiian Islands Humpback Whale National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC)

ACTION: Proposed rule; summary of draft management plan; and Notice of public availability of draft management plan and draft environmental impact statement.

SUMMARY: NOAA, as required by section 2306 of the Hawaiian Islands National Marine Sanctuary Act (the ''HINMSA'' or ''Act''), is proposing a comprehensive management plan and implementing regulations for the Hawaiian Islands Humpback Whale National Marine Sanctuary (the ''HIHWNMS'' or ''Sanctuary''). The Sanctuary was designated by Congress in 1992. This document publishes the proposed Designation Document and regulations for the Sanctuary, and summarizes the proposed management plan. The proposed management plan details the proposed goals and objectives, management responsibilities, research and long-term monitoring activities, interpretive and educational programs, resource protection strategies, and enforcement for the Sanctuary. The proposed regulations would implement the comprehensive management plan and govern the conduct of activities consistent with the HINMSA and the National Marine Sanctuaries Act (''NMSA''), and the Designation Document for the Sanctuary. By this notice NOAA also announces the public availability of the draft environmental impact statement and management plan (DEIS/MP) for the Sanctuary.

The primary purposes of the proposed designation document, proposed regulations and proposed management plan are to protect humpback whales and their Sanctuary habitat; to educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment; to manage human uses of the Sanctuary consistent with the HINMSA and the NMSA; and to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

DATES: Comments are invited and will be considered if submitted in writing to the address below on or before December 14, 1995.

ADDRESSES: Comments should be submitted to the Chief, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC–4, 12th Floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Debra Malek, Regional Manager, Pacific Branch, Sanctuaries and Reserves Division, Silver Spring, Maryland, (301) 713–3141, or Allen Tom, On-site Project Specialist, Kihei, Maui, Hawaii, (808) 879–2818 (Maui), (808) 541–3184 (Oahu) or (800) 831–4888 (inter-island toll-free).

SUPPLEMENTARY INFORMATION:

I. Background

The establishment of a national marine sanctuary in the waters around Hawaii was first considered in 1977, when NOAA received the nomination for a proposed Humpback Whale National Marine Sanctuary in the waters between the islands of Maui, Molokai, Lanai, and Kahoolawe. Scientists and resource managers, at a workshop convened in December 1977, recommended that a marine sanctuary would be most beneficial for the long-term protection of the endangered humpback whale. Workshop participants concluded that a Sanctuary that encompassed the marine waters around the main Hawaiian islands would provide the greatest protection for humpback whales in the waters off Hawaii. The nomination was placed on NOAA's List of Recommended Areas in October 1979. In accordance with NOAA regulations, NOAA declared the site an ''active candidate'' for sanctuary designation in March 1982, and public workshops were conducted in Hawaii during April 1982. Both support for a sanctuary and concerns regarding possible regulation of fishing activities and vessel operation were voiced at these meetings. In early 1984, at the request of the State government, NOAA suspended further consideration of the site as a possible national marine sanctuary.

In October 1990 Congress directed NOAA to determine the feasibility of establishing a national marine sanctuary around Kahoolawe Island, the smallest of the eight main Hawaiian islands (Public Law No. 101–515). NOAA's 1992 report to Congress, ''Kahoolawe Island National Marine Sanctuary Feasibility Study'', found that although it does not appear that large numbers of humpback whales utilize Kahoolawe Island waters, other biological, cultural and historical resources adjacent to Kahoolawe Island merit further investigation as to their possible national significance. The study recommended that additional areas around the Hawaiian Islands be considered as possible components of a multiple-site, multiple-resource national marine sanctuary.

In 1992, Congress considered the reauthorization of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* (''MPRSA''; also cited as the National Marine Sanctuaries Act). During this time, the State of Hawaii presented testimony at reauthorization hearings citing the need and desirability of designating a Humpback Whale National Marine Sanctuary in the waters around Hawaii. Coupled with the Kahoolawe Feasibility Study, the State's testimony renewed Congressional interest in designation of a sanctuary.

On November 4, 1992, Pub. L. No. 102–587 (the Oceans Act), was signed into law. Subtitle A of Title II of the Oceans Act (the National Marine Sanctuaries Program Amendments Act) reauthorized and amended Title III of the MPRSA. Subtitle C of Title II of the Oceans Act, titled the Hawaiian Islands National Marine Sanctuary Act, designated the Hawaiian Islands Humpback Whale National Marine Sanctuary. The Act specifies a boundary for the Sanctuary subject to modification by the Secretary of Commerce (''Secretary'') as may be necessary to fulfill the purpose for which the Sanctuary was designated, and identifies waters around Kahoolawe Island for automatic designation as part of the Sanctuary on January 1, 1996, unless certified by the Secretary as being unsuitable for inclusion in the Sanctuary.

Section 2306 of the Act requires the Secretary to develop a comprehensive management plan and implementing regulations following the procedures of sections 303 and 304 of the NMSA (16 U.S.C. 1433 and 1434; these sections set forth designation standards and procedures for designating and implementing the designation of national marine sanctuaries). To meet these requirements, a series of scoping meetings were conducted in March 1993 on each of the main Hawaiian Islands, and in Washington, DC. During March 1994, additional public meetings were conducted on each of the main Hawaiian Islands to aid the

development of a draft management plan for the Sanctuary. On-site staff have also solicited information from Federal, State and county agencies and the public to assist in the development of the DEIS/MP. The DEIS/MP was jointly developed by SRD and the Hawaii Office of State Planning pursuant to a memorandum of agreement signed in June 1993.

The authority of the Secretary to designate national marine sanctuaries was delegated to the Under Secretary of Commerce for Oceans and Atmosphere by Department of Commerce, Organization Order 10–15, § 3.01(z) (Jan. 11, 1988). The authority to administer provisions of Title III of the MPRSA was delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83–38, Directive 05–50 (Sept. 21, 1983, as amended).

Comments are solicited from all interested persons on the proposed Designation Document, the proposed regulations, and the DEIS/MP for the Sanctuary. Comments are in particular invited on the Sanctuary boundary, the adequacy of the regulatory regime to protect humpback whales and their habitat, the research and education programs, the structure and role of the Sanctuary Advisory Council, and the process for identifying other marine resources and ecosystems for possible inclusion in the Sanctuary. After the comments received during the public comment period have been considered, a final environmental impact statement and management plan (FEIS/MP) will be prepared, and a notice of final rule implementing the Sanctuary designation will be published in the **Federal Register**. The Designation Document, management plan, and regulations will take effect and become final 45 days after the date of issuance of the comprehensive management plan and implementing regulations, unless the Governor of Hawaii certifies to the Secretary that the management plan, any implementing regulation, or any term of the plan or regulations is unacceptable. If the Governor makes such certification, the management plan, regulations, or term, respectively, will not take effect in the State waters within the Sanctuary boundary. (The Secretary may then terminate the entire designation for the Sanctuary if he considers that an objection by the Governor will prevent the HINMSA's goals and objectives from being fulfilled.) Upon the close of the 45-day period, a notice will be published in the **Federal Register** announcing the effective date of the implementing regulations.

II. Summary of Draft Environmental Impact Statement/Management Plan

The DEIS/MP for the Hawaiian Islands Humpback Whale National Marine Sanctuary sets forth the Sanctuary's location and provides background information on humpback whales and their habitat, other marine resources located in Hawaii, and human uses of the area. The DEIS/MP describes the proposed resource protection, research and long-term monitoring, education and interpretive programs, and details specific activities to be undertaken in each program. The DEIS/MP also includes a discussion, by program area, of agency roles and responsibilities and a description of Sanctuary administration, including the establishment of a Sanctuary Advisory Council. Major components of the Sanctuary management plan are summarized below.

Resource Protection

Unlike most other national marine sanctuaries, which are based on protecting and managing a marine ecosystem environment, the only resources proposed for protection and management under the Sanctuary regime are humpback whales and their habitat. Thus, the highest management priority for the Sanctuary is the long-term protection of the humpback whales and their habitat in Hawaii. In addition to the HINMSA, the humpback whale is specifically protected by two other Federal laws. The humpback whale is listed as an endangered species under the Endangered Species Act, as amended (''ESA''), 16 U.S.C. 1531 *et seq*., and is protected under the Marine Mammal Protection Act, as amended (''MMPA''), 16 U.S.C. 1361 et seq., both administered by NOAA's National Marine Fisheries Service (''NMFS''). As many of the activities affecting humpback whales and their habitat are presently regulated or governed by existing Federal, State and county authorities, the Sanctuary would primarily work with these authorities to ensure comprehensive, complementary, coordinated and more efficient management and protection of humpback whales and their habitat. The Sanctuary would also work with existing Federal and State enforcement entities to coordinate enforcement efforts, develop annual enforcement plans, and respond to public concerns.

The goals and objectives of the proposed Resource Protection Program are designed to reinforce, complement and coordinate existing management and regulatory efforts; fill gaps in existing authorities; enhance public participation and awareness in protecting humpback whales and their habitat; address some of the problems, objectives and policies identified in the Hawaii Ocean Resource Management Plan (1991), the NMFS Final Recovery Plan for the Humpback Whale (1991), and other programs, such as point and non-point source pollution control measures as they relate to the protection of the humpback whale's Hawaiian habitat. Because the only resources proposed for protection and management under the Sanctuary regime—humpback whales and their habitat—already are protected, directly and indirectly, by a number of other laws (*e.g.*, ESA, MMPA, Clean Water Act, Rivers and Harbors Act, and the Coastal Zone Management Act), the Sanctuary would seek to achieve these goals by working with existing authorities. The Sanctuary would reinforce existing management regimes without adding to current regulatory and administrative requirements.

To fulfill the statutory mandate of providing long-term protection for the population of humpback whales and their Sanctuary habitat, the proposed Resource Protection Program has the following objectives and strategies:

(1) Coordinate and complement policies and procedures among the agencies sharing regulatory responsibility for the protection and management of humpback whales and humpback whale habitat within the Sanctuary (Sanctuary habitat), primarily with NMFS, which administers the ESA and MMPA, and also with various State and county agencies of competent jurisdiction;

(2) Develop and issue Sanctuary regulations only as necessary to reinforce and complement existing efforts and fill gaps in existing authorities for the protection and management of humpback whales and their Sanctuary habitat;

(3) Complement coordination among appropriate Federal, State and county authorities to enhance enforcement of existing laws that fulfill Sanctuary goals;

(4) Encourage participation by interested agencies and the public in the development of procedures to address specific management concerns (*e.g.*, research, long-term monitoring, enforcement, education, and emergency-response programs);

(5) Promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives and other authorities in place that protect humpback whales and their Sanctuary habitat through education and interpretive programs stressing resource

sensitivity and wise use of the marine environment;

(6) Utilize research and monitoring results and other scientific data from resource management agencies and researchers to develop effective, comprehensive resource protection strategies and improve management decision-making; and

(7) Facilitate all public and private uses of the Sanctuary (including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes) consistent with the primary objective of protection of the humpback whales and their Sanctuary habitat.

Research and Long-Term Monitoring Program

Effective management of the Sanctuary's resources requires the development and implementation of a responsive Sanctuary research and long-term monitoring program. The primary goals of the proposed Research and Long-Term Monitoring Program are to improve our understanding of humpback whales and their habitat requirements; identify, address and resolve specific management concerns; establish a long-term ecological monitoring program with respect to humpback whales and their habitat; coordinate and facilitate information exchange among the various researchers and institutions, agencies, and the general public; and enhance the public's participation in resource stewardship. Other research priorities may result from the process to identify additional marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

The proposed Research and Long-Term Monitoring Program would be part of the overall effort to implement portions of the NMFS Final Recovery Plan for the Humpback Whale and other long-term protection plans for humpback whale habitat (e.g. Hawaii Ocean Resource Management Plan). The specific objectives for the proposed Sanctuary Research and Long-Term Monitoring Program are to:

(1) Improve the present understanding of humpback whales' vital life rates (age at sexual maturity, pregnancy rates, calving intervals, mortality and age-specific mortality), abundance, distribution, movement, behavior, and interrelationships with their Hawaiian habitat;

(2) Characterize the marine environment to establish baseline parameters for identifying, detecting and monitoring natural- and human-induced changes to humpback whales and their habitat, and to identify research needs and gaps;

(3) Establish a coordinating framework and procedures for identifying, selecting and sponsoring research projects to ensure that the research topics are responsive to management concerns and that research results contribute to improved management decision-making in the Sanctuary;

(4) Develop a long-term ecological monitoring program to detect and determine the cause or causes of future changes and trends in the vital parameters and the important habitat components of the humpback whale population that winters in the Hawaiian Islands;

(5) Develop a data and information management system for tracking and integrating new information into an evolving understanding of humpback whales and their habitat; and

(6) Encourage information exchange among all researchers, organizations and agencies undertaking humpback whale and habitat related research in the Sanctuary and elsewhere to promote more informed management and decision-making.

Education and Interpretation Program

The primary goals of the proposed Education and Interpretation Program are to improve public awareness and understanding of the humpback whale and its habitat; enhance knowledge of the Sanctuary's purposes, goals and resource protection strategies; facilitate responsible human uses within the Sanctuary consistent with the primary objective of protection of the humpback whale and its habitat; encourage public participation; and facilitate information exchange among the various environmental educators and interpreters, researchers, agencies, and the general public. Particular focus would be placed on projects which interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment.

On-site visitor programs would be instituted consisting of making available printed materials describing the Sanctuary for distribution at statewide government offices, marine recreation businesses, marinas, whalewatching vessels, humpback whale interpretive centers, libraries, schools, airports, harbors and other local establishments. A local Sanctuary headquarters would be established and the Sanctuary would also use other visitor and information centers throughout Hawaii to inform visitors about the Sanctuary, humpback whales and their habitat.

The specific objectives of the proposed Sanctuary Education and Interpretation Program are to:

(1) Enhance public awareness, understanding and appreciation of humpback whales and their habitat;

(2) Create public awareness of the National Marine Sanctuary Program, the Hawaiian Islands Humpback Whale National Marine Sanctuary, and other humpback whale conservation groups and organizations;

(3) Establish a coordinating framework and procedures for identifying, selecting and sponsoring education projects to ensure that the education topics are responsive to management concerns and that the education products contribute to greater understanding and appreciation of the Sanctuary, humpback whales and the broader Hawaiian Islands marine environment;

(4) Encourage information exchange among all persons, organizations and agencies undertaking environmental education and research activities in the Sanctuary;

(5) Establish a user-friendly Data/Information Center for the location of information and research results pertaining to Sanctuary resources and management information; and

(6) Establish cooperative education programs with native Hawaiian groups to educate people about native Hawaiian traditions, culture, uses and religion as they relate to Hawaii's unique marine environment.

Sanctuary Administration

The National Marine Sanctuary Program is administered by NOAA's Sanctuaries and Reserves Division (SRD). Depending on the resources available to the Sanctuary, staffing would include a Sanctuary manager, administrative assistant, research coordinator, education coordinator, and one or more enforcement/interpreter personnel. Staff would be distributed among the Sanctuary's main office, presently located in Kihei, Maui, other satellite offices located on other islands, or within other agencies. Arrangements may be made among various levels of government agencies and private sector organizations through cooperative agreements or memoranda of understanding to provide personnel and/or resources to carry out the duties associated with the research and education coordinator positions. SRD would coordinate its on-site activities through cooperative arrangements and/or specific memoranda of understanding with other Federal, State, and county agencies, and non-governmental organizations, as appropriate.

A Sanctuary Advisory Council (SAC) would be established pursuant to section 315 of the NMSA (16 U.S.C. 1445a) to enable agencies, interested groups, and individuals to provide advice and recommendations on the management of the Sanctuary. The SAC would consist of a balanced representation of those groups affected by Sanctuary designation, including Federal, State and county authorities, native Hawaiian groups, fishing interests, commercial whalewatching industry, boating industry, environmental interests, researchers, education groups, and members of the community. The SAC would act in an advisory capacity to the Sanctuary Manager and would be instrumental in helping produce annual operating plans and reports by identifying education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The SAC would also play an instrumental role in identifying marine resources and ecosystems of national significance for possible inclusion in the Sanctuary through a process outlined in Part 4(c) of the proposed management plan. The SAC would work in concert with the Manager by keeping her or him informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine programs and policies.

In order to function efficiently in an advisory capacity and incorporate the different concerns from all the main Hawaiian Islands, the SAC may appoint subcommittees or working groups that correspond to the main Sanctuary management areas of education, research, resource protection, regulations/enforcement, revenue enhancement, and others as necessary. Additional subcommittees or working groups may be formed to provide recommendations to the SAC on the identification and assessment of other marine resources and ecosystems of national significance for possible inclusion into the Sanctuary. To ensure county representation, the SAC would have one seat for each of the four counties (Kauai, Honolulu, Maui and Hawaii (Big Island)).

III. Proposed Designation Document

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities that will be subject to regulation by the Secretary to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. Thus the terms of designation serve as a constitution for the Sanctuary. In the case of this Congressionally designated Sanctuary, many of the terms of designation are contained in the Hawaiian Islands National Marine Sanctuary Act. The proposed Designation Document follows:

Proposed Designation Document for the Hawaiian Islands Humpback Whale National Marine Sanctuary

On November 4, 1992, President Bush signed into law the Hawaiian Islands National Marine Sanctuary Act (''HINMSA'' or ''Act''; Subtitle C of the Oceans Act of 1992, Pub. L. No. 102–587) which designated the Hawaiian Islands Humpback Whale National Marine Sanctuary (''HIHWNMS'' or ''Sanctuary'').

The purposes of the Sanctuary are to—

(1) Protect humpback whales and their Sanctuary habitat;

(2) Educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment;

(3) Manage human uses of the Sanctuary consistent with the designation and Title III of the Marine Protection, Research and Sanctuaries Act, as amended (''MPRSA''; also cited as the ''National Marine Sanctuaries Act'' or ''NMSA''), 16 U.S.C. 1431 *et seq.*; and

(4) Provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

Article I. Effect of Designation

Section 2306 of the HINMSA requires the Secretary to develop and issue a comprehensive management plan and implementing regulations to achieve the policy and purposes of the Act, consistent with the procedures of sections 303 and 304 of the NMSA. Section 304 of the NMSA also authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational and aesthetic resources and qualities of the Hawaiian Islands Humpback Whale National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists those activities that may be regulated on the effective date of the regulations, or at some later date in order to implement the Sanctuary designation.

Article II. Description of the Area

The HINMSA identified a Sanctuary boundary but authorized the Secretary to modify the boundary as necessary to fulfill the purposes of the designation. The Sanctuary boundary was modified by the Secretary to encompass the submerged lands and waters off the coast of the Hawaiian Islands extending seaward from the mean high-water line—

(1) To the 100-fathom (183 meter) isobath adjoining the islands of Maui, Molokai and Lanai, including Penguin Bank, but excluding the area within three nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island;

(2) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Nakalele Point, Maui, and southward;

(3) To the 100-fathom (183 meter) isobath around the Big Island (Hawaii);

(4) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Makahuena Point, Kauai; and

(5) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Ala Wai Canal eastward to Makapuu Point, Oahu.

Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

Hawaii (Big Island)

Hilo Harbor
Honokohau Boat Harbor
Kawaihae Boat Harbor and Small Boat Basin
Keauhou Bay

Kauai

Hanamaulu Bay
Nawiliwili Harbor

Lanai

Kaumalapau Harbor
Manele Harbor

Maui

Kahului Harbor
Lahaina Boat Harbor
Maalaea Boat Harbor

Molokai

Hale o Lono Harbor
Kaunakakai Harbor

As specified at sections 2305(b)(2) (A) and (B) of the HINMSA, on January, 1, 1996, the area of the marine environment within 3 nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island will become part of the Sanctuary, unless during the 3 month period immediately preceding January 1, 1996,

the Secretary certifies in writing to Congress that the area is not suitable for inclusion in the Sanctuary. After a certification of unsuitability is made, the Secretary shall annually make a finding concerning the suitability of the area for inclusion in the Sanctuary and submit to Congress a report on the finding and the reasons thereof. If the Secretary finds that the area is suitable for inclusion in the Sanctuary, the area is designated a part of the Sanctuary on the 30th day after such report is submitted.

The Precise Boundary of the Sanctuary is Set Forth at the End of This Designation Document

Article III. Characteristics of the Area That Give It Particular Value

The Hawaiian Islands comprise an archipelago which consists of eight major islands and 124 minor islands, with a total land area of 6,423 square miles, and a general coastline of 750 miles. The central North Pacific stock of endangered humpback whales, the largest of the three North Pacific stocks, estimated to be at approximately 10% of its pre-whaling abundance, uses the waters around the main Hawaiian Islands for reproductive activities including breeding, calving and nursing. The warm, calm waters around the main Hawaiian Islands provide protective environments required for such activities. Of the known wintering and summering areas in the North Pacific used by humpback whales, the waters around the main Hawaiian Islands maintain the largest seasonally-resident population; approximately 2,000 to 3,000 humpback whales use these waters. The proximity to shore helps support an active commercial whalewatch industry, which is supported annually by millions of visitors who either directly or indirectly enjoy the Sanctuary waters.

In sections 2302 (1) and (4) of the HINMSA, Congressional findings state that ''many of the diverse marine resources and ecosystems within the Western Pacific region are of national significance,'' and ''the marine environment adjacent to and between the Hawaiian Islands is a diverse and unique subtropical marine ecosystem.'' In addition, Congress found that that Sanctuary could be expanded to include other marine resources of national significance. The waters around the Hawaiian Islands contain 24 other species of cetaceans, the highly endangered Hawaiian monk seal, three species of sea turtles and many other marine species endemic to this environment. Coastal Hawaiian waters also support spectacular coral reef ecosystems which provide local people with an abundant source of fish and are a popular dive destination for visitors worldwide. These waters also contain a number of cultural/historical resources.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation. In order to implement the Sanctuary designation, the following activities are subject to regulation to the extent necessary and reasonable to ensure the protection and management of the characteristics and values of the Sanctuary described above; primarily the protection and management of humpback whales and their Sanctuary habitat. Regulation may include governing the method, location, and times of conducting the activity, and prohibition of the activity, after public notice and an opportunity to comment. If a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the procedures outlined in section 304(a) of the NMSA. Such activities are:

a. Approaching by any means a humpback whale in the Sanctuary, or causing another vessel, aircraft or other object to approach a humpback whale;

b. Flying over a humpback whale in the Sanctuary in any type of aircraft except when in any designated flight corridor for takeoff or landing from an airport or runway;

c. Discharging or depositing, from within or from beyond the boundary of the Sanctuary, any material or other matter that enters or could enter the Sanctuary, without, or not in compliance with, the terms or conditions of a required, valid Federal, State or county permit, license, lease or other authorization;

d. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary without, or not in compliance with, the terms or conditions of a required, valid Federal, State or county permit, license, lease or other authorization;

e. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of any humpback whale or humpback whale habitat;

f. Operating a vessel (*i.e.,* watercraft of any description) in the Sanctuary in a manner that may adversely impact any humpback whale or humpback whale habitat;

g. Possessing within the Sanctuary a humpback whale or part thereof regardless of where taken, removed, moved, caught, collected or harvested; and

h. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the HINMSA or NMSA or any regulation or permit issued under the HINMSA or NMSA.

Section 2. Emergencies. Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or minimize the imminent risk of such destruction, loss or injury, any activity, including those not listed in Section 1 of this Article, is subject to immediate temporary regulation, including prohibition. If such a situation arises, the Director of NOAA's Office of Ocean and Coastal Resource Management or his or her designee shall seek to notify and consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii.

Article V. Effect on Leases, Permits, Licenses, and Rights

Pursuant to section 304(c)(1) of the NMSA, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her designee, as a result of this designation, or as a result of any Sanctuary regulation, if such authorization or right was in existence on the effective date of Sanctuary designation (November 4, 1992).

Article VI. Alteration of This Designation

The terms of designation, as defined under section 304(a) of the NMSA, may be modified only by the procedures outlined in section 304(a), including public hearings, consultation with interested Federal, State, and county agencies, review by the appropriate Congressional committees, and the Governor of the State of Hawaii, and approval by the Secretary of Commerce, or his or her designee.

Appendix I—Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Coordinates

The boundary of the Hawaiian Islands Humpback Whale National Marine Sanctuary—

(Appendix I will set forth the precise boundary based on the comments received on the DEIS/MP)

End of Proposed Designation Document

IV. Summary of Proposed Regulations

The proposed regulations set forth the boundary of the Sanctuary and would augment existing authorities by prohibiting a relatively narrow range of activities that are conducted without, or not in compliance with required, valid authorizations from Federal, State, or local authorities of competent jurisdiction. The proposed regulations set forth the maximum per-day penalties for violating the National Marine Sanctuaries Act (NMSA), Hawaiian Islands National Marine Sanctuaries Act (HINMSA), or any Sanctuary regulation; identify the interagency cooperation requirements under the NMSA; and set forth procedures for administrative appeals.

The HIHWNMS is unlike most other national marine sanctuaries for a number of reasons. First, while most national marine sanctuaries are designated to protect ecosystem environments, the Congress designated the HIHWNMS primarily to protect the humpback whale and its habitat. These are the only resources proposed for protection and management under the Sanctuary regime. Second, the humpback whale is directly protected under two other Federal laws: the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, both administered by NOAA's NMFS.

The proposed regulations reflect the uniqueness of the Sanctuary. For example, with one exception (hindering law enforcement activities) the regulations would not place additional or independent substantive restrictions or prohibitions on activities conducted in the Sanctuary to those already in place under other regulatory authorities. Rather, to protect humpback whales and their Sanctuary habitat the proposed regulations essentially rely on and incorporate restrictions or prohibitions already in place under Federal, State, and county authorities that protect, directly and indirectly, humpback whales and humpback whale habitat within the Sanctuary. By essentially incorporating into the Sanctuary regulatory regime restrictions or prohibitions already existing under other authorities, these restrictions or prohibitions are strengthened because they could be enforced by Sanctuary personnel and would be subject to enforcement mechanisms and penalties of the NMSA. Moreover, monies collected as civil penalties under the NMSA would be available to manage and improve the Sanctuary.

The proposed regulations would prohibit the following activities also prohibited under the MMPA or ESA: approaching any humpback whale; operating an aircraft above a humpback whale; and taking or possessing any humpback whale. However, any of these activities could be conducted if permitted or authorized under the MMPA or ESA. Additionally, the proposed regulations would prohibit the following activities conducted without, or not in compliance with, a required Federal, State or county permit, license, lease or other authorization: discharging or depositing in the Sanctuary any material or other matter; discharging or depositing outside the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a humpback whale or habitat; and altering the seabed of the Sanctuary. It is important to note that these proposed regulations would prohibit these activities only if a permit, license, lease, or other authorization from a Federal, State, or county authority of competent jurisdiction is required to conduct them and they are conducted without, or not in compliance with, such authorization. The only independent prohibition proposed in the regulations is interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either the NMSA or HINMSA or any regulation issued under either of those Acts.

Also, unlike the regulations in effect for other sanctuaries, the proposed regulations do not contain any provision for the issuance of Sanctuary permits or authorizations to conduct an otherwise prohibited activity. Since the regulations essentially incorporate restrictions or prohibitions imposed by other existing authorities, the SRD will recognize permits or other authorizations issued by those authorities to conduct an otherwise prohibited activity. SRD will coordinate with NMFS on the issuance of permits or authorizations under the ESA and MMPA, and with other Federal, State and county agencies that issue permits or other authorizations for activities that could impact humpback whales, or humpback whale habitat within the Sanctuary. Such coordination should eliminate potentially duplicative administrative processes while still allowing the Sanctuary to fulfill its trustee responsibilities to protect and manage humpback whales and humpback whale Sanctuary habitat.

The proposed scheme of relying on, and coordinating with, other authorities is possible because the only resources proposed for protection and management under the Sanctuary regime are humpback whales and humpback whale Sanctuary habitat, and those resources already are protected, directly and indirectly, under other laws and regulations.

Specifically, the proposed regulations would add a new part 945 to Title 15, Code of Federal Regulations.

Proposed § 945.1 would set forth the purpose of the regulations which is to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary, consistent with the terms of that designation, by regulating a narrow range of activities in order to protect and manage the North Pacific population of humpback whales, and their wintering habitat in the Sanctuary.

Proposed § 945.2 and proposed Appendix 1 would set forth the boundary of the Sanctuary. Although not presently included in the Sanctuary boundary, pursuant to sections 2305(b)(2)(A) and (B) of the HINMSA, on January, 1, 1996, the area of the marine environment within 3 nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island will become part of the Sanctuary, unless during the 3 month period immediately preceding January 1, 1996, the Secretary certifies in writing to Congress that the area is not suitable for inclusion in the Sanctuary. After a certification of unsuitability is made, the Secretary must annually make a finding concerning the suitability of the area for inclusion in the Sanctuary and submit to Congress a report on the finding and the reasons thereof. If the Secretary finds that the area is suitable for inclusion in the Sanctuary, the area is designated a part of the Sanctuary 30 days after such report is submitted.

Proposed § 945.3 would define various terms used in the regulations. Other terms appearing in the proposed regulations are defined at 15 CFR 922.2 and/or in the Marine Protection, Research and Sanctuaries Act, as amended (33 U.S.C. 1401–1445, and 16 U.S.C. 1431–1445). ''Sanctuary resource'' would be defined as ''any humpback whale, or the humpback whale's habitat within the Sanctuary,'' because these are the only resources proposed for protection and management under the Sanctuary regime.

Proposed § 945.4 would allow all activities except those prohibited by § 945.5 to be undertaken subject to any emergency regulation promulgated pursuant to § 945.6, subject to the interagency cooperation provisions of section 304(d) of the NMSA, 16 U.S.C.

1434(d), subject to the liability established under section 312 of the NMSA, 16 U.S.C. 1443, and subject to all prohibitions, restrictions, and conditions validly imposed by any other authority of competent jurisdiction. Under proposed § 945.4, the regulatory prohibitions in § 945.5 expressly would not apply to military activities conducted by the United States Department of Defense, including combined military activities conducted by the Department of Defense and the military forces of a foreign nation, in existence on the effective date of the regulations as identified and listed in the Environmental Impact Statement/ Management Plan (EIS/MP) for the Sanctuary. Military activities proposed after the effective date of the regulations would be subject to the regulatory prohibitions unless they are not likely to destroy, cause the loss of, or injure any humpback whale or humpback whale habitat in the Sanctuary, or if after consultation under section 304(d) of the NMSA, the Director of NOAA's Office of Ocean and Coastal Resource Management (OCRM) or his or her designee expressly finds that the regulatory prohibitions do not apply to the military activity. Exemption from the regulatory prohibitions should not result in significant adverse impacts to humpback whales or their Sanctuary habitat. Department of Defense operating procedures require military activities to be conducted in a manner that avoids adverse impacts to humpback whales and requires compliance with applicable authorities already in place to protect humpback whales. Department of Defense military activities remain subject to the statutory requirements of the NMSA (*e.g.*, interagency cooperation provisions of section 304(d), and the liability established by section 312), any emergency regulations promulgated pursuant to § 945.6, and all other applicable laws (*e.g.*, ESA and MMPA).

Proposed § 945.5 would prohibit a relatively narrow range of activities and thus make it unlawful to conduct them. As discussed above, the Sanctuary is unlike most other national marine sanctuaries in that the only resources that would be protected and managed under the Sanctuary regime are humpback whales and their Sanctuary habitat and those resources are already protected under other laws. Therefore, unlike any other national marine sanctuary, the regulations, with the exception of a prohibition on hindering enforcement activities, would not place additional or independent substantive restrictions or prohibitions on activities conducted in the Sanctuary. Rather, the proposed regulations would essentially incorporate restrictions or prohibitions already in place under existing Federal, State, or county authorities, that protect, directly or indirectly, humpback whales and humpback whale habitat. Thus, the proposed regulations prohibit certain activities only if they are conducted without, or not in compliance with, a valid Federal, State or county permit, license, lease or other authorization required to conduct the activity. For example, if a person is discharging any material or matter into the Sanctuary without, or not in compliance with, a required National Pollutant Discharge Elimination System (NPDES) permit from the Hawaii Department of Health, that person will be in violation of the Sanctuary regulations. Similarly, if a person approaches a humpback whale in the Sanctuary in violation of the MMPA or ESA, that person will also be in violation of the Sanctuary regulations. Reinforcing existing restrictions provides additional protection for humpback whales, and humpback whale habitat in the Sanctuary necessary to achieve the purposes of the designation.

The prohibitions would be applied to foreign persons and foreign-flag vessels in accordance with recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

The first activity prohibited would be approaching, while in the Sanctuary, by any means, within 100 yards (90 m) of any humpback whale except as authorized under the MMPA and the ESA.

The second activity prohibited would be causing a vessel or other object to approach, while in the Sanctuary, within 100 yards (90 m) of a humpback whale except as authorized under the MMPA and the ESA.

The third activity prohibited would be operating any aircraft above the Sanctuary within 1,000 feet (300 m) of any humpback whale except when in any designated flight corridor for takeoff or landing from an airport or runway, or as authorized under the MMPA and the ESA.

The intent of the first three prohibitions is to extend protection to humpback whales from harassment or other disturbance from human approaches by strengthening existing protections under the MMPA and the ESA. These three prohibitions essentially already are in effect through regulations promulgated by the NMFS at 50 CFR 222.31(a) (1)–(3). As prohibitions under the Sanctuary regulations, they would be strengthened since they could be enforced by Sanctuary personnel and would be subject to enforcement mechanisms and civil penalties under the NMSA. Moreover, monies collected as civil penalties under the NMSA would be available to manage and improve the Sanctuary.

The fourth activity prohibited would be the taking of humpback whales in the Sanctuary, except as authorized under the MMPA and the ESA. As with the first three prohibitions, the intent of this prohibition also is to extend protection to humpback whales from taking, as defined by the ESA and MMPA, by reinforcing the protections afforded under these laws.

The fifth activity prohibited would be the possession within the Sanctuary of any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA (regardless of where taken, moved or removed from). This prohibition is designed to facilitate and supplement enforcement for violations of the MMPA, ESA and Sanctuary regulations.

The sixth activity prohibited would be discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures any humpback whale or humpback whale habitat; provided that such activity requires a Federal, State or county permit, license, lease or other authorization, and is conducted (i) without such permit license, lease or other authorization, or (ii) not in compliance with the terms and conditions of such permit, license, lease, or other authorization. Degradation of water quality, sediment quality, and modification of the seabed within the Sanctuary could adversely affect the humpback whale's habitat and, therefore, regulation of discharges and deposits and activities that alter the seabed is necessary. However, this prohibition recognizes that the humpback whale's Hawaiian habitat may not necessarily entail every aspect of the marine environment, and is, therefore, intended to enhance existing protections by supplementing enforcement authority and providing for the application of greater maximum civil penalties under the NMSA against illegal, and potentially harmful, discharge or deposit, or alteration of the seabed activities. Also, this provision does not prohibit or otherwise regulate discharge or deposit, or alteration of the seabed activities which do not require a

Federal, State or county permit, license, lease or other authorization. Rather, this prohibition only applies in instances when a person is conducting a particular activity without, or not in compliance with, a required Federal, State or county permit, license, lease or other authorization. This provision will help ensure that general water quality and seabed conditions in the Sanctuary will not degrade. As a result of the ongoing research and long-term monitoring program contained in the management plan for the Sanctuary, information will identify those specific features and qualities of the marine environment that are significant habitat components. Such information will aid the Sanctuary and other relevant Federal, State and county agencies in devising specific management techniques and, if necessary, additional regulations to further protect humpback whale habitat.

The seventh activity prohibited would be interference with, obstruction, delay or prevention of any investigation, search, seizure or disposition of seized property in connection with enforcement of the HINMSA or NMSA or any regulation issued under either of those Acts. The intent of this prohibition is to ensure the facilitation of Sanctuary enforcement activities, which enhance resource protection.

Proposed § 945.6 would authorize the immediate temporary regulation, including prohibition, of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to any humpback whale or humpback whale Sanctuary habitat, or minimize the imminent risk of such destruction, loss or injury. If such a situation arises, the Sanctuaries and Reserves Division would seek to notify and consult with potentially affected Federal agencies and the Governor of Hawaii prior to taking such action.

Proposed § 945.7 would set forth the maximum statutory civil penalty per day for violating the NMSA, HINMSA or any Sanctuary regulation at $100,000. Each day of a continuing violation would constitute a separate violation. This section would also establish the right of any person subject to a Sanctuary enforcement action to appeal pursuant to applicable procedures in 15 CFR Part 904.

Proposed § 945.8 would implement the consultation with NOAA requirements of section 304(d) of the NMSA, 16 U.S.C. 1434(d), for any proposed Federal agency action internal or external to the Sanctuary, including private activities authorized by licenses, leases, or permits, that is likely to destroy, cause the loss of, or injure any Sanctuary resource, in this case the humpback whale or its Sanctuary habitat. The Federal agency proposing the action would be required to determine whether the activity is likely to destroy, cause the loss of, or injure a humpback whale or humpback whale Sanctuary habitat at the earliest practicable time, but no later than 45 days before final approval of the action, unless a different schedule is agreed upon by the Federal agency and the Director of OCRM. However, should SRD obtain information that a Federal agency action is likely to destroy, cause the loss of, or injure any Sanctuary resource, SRD would notify the Federal agency in writing that it believes section 304(d) applies, and the reasons why. SRD and NMFS are developing a Memorandum of Understanding that will specify agency coordination and cooperation with respect to consultations required under section 304(d) of the NMSA and section 7 of the ESA for Federal activities that may affect humpback whales or their Sanctuary habitat. In essence, the MOU identifies the NMFS as the lead contact agency for consultations pertaining to humpback whales or their habitat.

Proposed § 945.9 repeats the provisions in section 312 of the NMSA that any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, plus interest. Any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury. Person, includes any private person or entity, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

V. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 2306 of the HINMSA requires the development of a comprehensive management plan and implementing regulations to achieve the policy and purposes of the Sanctuary. To meet the requirements of section 2306, the comprehensive management plan and implementing regulations must be developed in accordance with sections 303 and 304 of the NMSA. Section 304 of the NMSA requires, on the same day as this notice is published, the submission of documents to the appropriate Senate and House Committees, which contain, among other things, the proposed regulations, a draft management plan detailing the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the area, and a draft environmental impact statement. In accordance with section 304(a)(1), the required documents are being submitted to the specified Congressional Committees.

Executive Order 12866: Regulatory Impact

This action has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The regulations proposed in this notice would allow all activities to be conducted in the Sanctuary other than a relatively narrow range of prohibited activities. The prohibitions primarily reinforce existing authorities and do not place additional substantive restrictions on any person. For this reason, the proposed regulations, in total, if adopted in final form as proposed, are not expected to have a significant economic impact on a substantial number of small entities, and the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act of 1980

This rule does not contain collection of information requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act (Pub. L. No. 96–511).

Executive Order 12612

A Federalism Assessment (FA) was prepared for the draft management plan and proposed implementing regulations. The FA concluded that all were fully consistent with the principles, criteria, and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685, Oct. 26, 1987). Copies of the FA are available upon request from the Office of Ocean and Coastal Resource Management at the address listed above.

National Environmental Policy Act

In accordance with section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)) and the provisions of the National

Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(a)), a DEIS has been prepared for the proposed implementation of the designation and the proposed regulations. As required by section 304(a)(2) of the NMSA, the DEIS includes the resource assessment report required by section 303(b)(3) of the NMSA (16 U.S.C. 1433(b)(3)), maps depicting the proposed boundary of the designated area, and the existing and potential uses and resources of the area. Copies of the DEIS are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

Executive Order 12630

This proposed rule, if issued in final form as proposed, would not have any takings implications within the meaning of Executive Order 12630 because it would not appear to have an effect on private property sufficiently severe as to effectively deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation.

List of Subjects in 15 CFR Part 945

Administrative practices and procedure, Coastal zone, Education, Environmental Protection, Marine resources, Natural Resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: September 6, 1995.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR chapter IX is proposed to be amended as follows.

A new part 945 is added to subchapter B to read as follows:

PART 945—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY

Sec.

Appendix I to Part 945—Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Coordinates

Authority: Title II, subtitle C, Pub. L. 102–587, 106 Stat. 5055–5059 (16 U.S.C. 1431 *et seq.*).

§ 945.1 Purpose.

(a) The purpose of the regulations in this Part is to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary was designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area. The regulations are intended to supplement and complement existing regulatory authorities; to facilitate to the extent compatible with the primary objective of protecting the humpback whale and its habitat, all public and private uses of the Sanctuary, including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes, as well as education, research, recreation, commercial and military activities; to reduce conflicts between compatible uses; to maintain, restore, and enhance the humpback whale and its habitat; to contribute to the maintenance of natural assemblages of humpback whales for future generations; to provide a place for humpback whales that are dependent on their Hawaiian Islands wintering habitat for reproductive activities, including breeding, calving, and nursing, and for the long-term survival of their species; and to achieve the other purposes and policies of the Hawaiian Island National Marine Sanctuary Act and National Marine Sanctuaries Act.

(b) These regulations may be modified to fulfill the Secretary's responsibilities for the Sanctuary, including the provision of additional protections for humpback whales and their habitat, if reasonably necessary, and the conservation and management of other marine resources, qualities and ecosystems of the Sanctuary determined to be of national significance. The Secretary shall consult with the Governor of the State of Hawaii on any modification to the regulations contained in this part. For any modification of the regulations contained in this part that would constitute a change in a term of the designation, as contained in the Designation Document for the Sanctuary, the Secretary shall follow the applicable requirements of sections 303 and 304 of the NMSA, and sections 2305 and 2306 of the HINMSA.

§ 945.2 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the mean high-water line:

(1) To the 100-fathom (183 meter) isobath adjoining the islands of Maui, Molokai and Lanai, including Penguin Bank, but excluding the area within three nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island;

(2) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Nakalele Point, Maui, and southward;

(3) To the 100-fathom (183 meter) isobath around the Big Island (Hawaii);

(4) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Makahuena Point, Kauai; and

(5) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point and from the Ala Wai Canal eastward to Makapuu Point, Oahu.

(b)(1) Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

Hawaii (Big Island)

Hilo Harbor
Honokohau Boat Harbor
Kawaihae Boat Harbor and Small Boat Basin
Keauhou Bay

Kauai

Hanamaulu Bay
Nawiliwili Harbor

Lanai

Kaumalapau Harbor
Manele Harbor

Maui

Kahului Harbor
Lahaina Boat Harbor
Maalaea Boat Harbor

Molokai

Hale o Lono Harbor
Kaunakakai Harbor

(2) The precise boundary of the Sanctuary appears in Appendix I of this Part.

§ 945.3 Definitions.

(a)(1) *Acts* means the Hawaiian Islands National Marine Sanctuary Act (HINMSA; sections 2301–2307 of Pub. L. 102–587), and the National Marine Sanctuaries Act (NMSA; also known as Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 16 U.S.C. 1431 *et seq.*).

(2) *Adverse impact* means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

(3) *Alteration of the seabed* means drilling into, dredging, or otherwise altering a natural physical characteristic of the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

(4) *Director* means the Director of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

(5) *Habitat* means those areas that provide space for individual and population growth and normal behavior of humpback whales, and include sites used for reproductive activities, including breeding, calving and nursing.

(6) *Injure* means to change adversely, either in the long or short term, a chemical, biological, or physical attribute of, or the viability of. To ''injure'' therefore includes, but is not limited to, to cause the loss of and to destroy.

(7) *Military activities* means those military activities conducted by or under the auspices of the Department of Defense and any combined military activities carried out by the Department of Defense and the military forces of a foreign nation.

(8) *Person* means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency, or instrumentality of the Federal Government or of any State, regional, or local unit of government, or of any foreign government.

(9) *Sanctuary* means the Hawaiian Islands Humpback Whale National Marine Sanctuary.

(10) *Sanctuary resource* means any humpback whale, or the humpback whale's habitat within the Sanctuary.

(11) *Take* or *taking* a humpback whale means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct. The term includes, but is not limited to, any of the following activities: collecting any dead or injured humpback whale, or any part thereof; restraining or detaining any humpback whale, or any part thereof, no matter how temporarily; tagging any humpback whale; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any humpback whale.

(12) *Vessel* means a watercraft of any description, including, but not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes used while maneuvering on the water, capable of being used as a means of transportation in/on the waters of the Sanctuary.

(b) Other terms appearing in the regulations in this Part are defined at 15 CFR 922.2, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

§ 945.4 Allowed Activities.

(a) All activities except those prohibited by § 945.5 may be undertaken in the Sanctuary subject to any emergency regulations promulgated pursuant to § 945.6, subject to the interagency cooperation provisions of section 304(d) of the NMSA (16 U.S.C. 1434(d)) and § 945.8 of this Part, and subject to the liability established by section 312 of the NMSA and § 945.9 of this Part. All activities are also subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State or county authority of competent jurisdiction.

(b) Included as activities allowed under the first sentence of paragraph (a) of this section are all classes of military activities, internal or external to the Sanctuary, that are being or have been conducted before the effective date of these regulations, as identified in the FEIS. Paragraphs (a) (1) through (6) of § 945.5 do not apply to these classes of activities, nor are these activities subject to further consultation under section 304(d) of the NMSA.

(c) Military activities proposed after the effective date of these regulations are also included as allowed activities under the first sentence of paragraph (a). Paragraphs (a) (1) through (6) of § 945.5 apply to these classes of activities unless—

(1) They are not subject to consultation under section 304(d) of the NMSA and § 945.8 of this Part, or

(2) Upon consultation under section 304(d) of the NMSA and § 945.8 of this Part, NOAA's findings and recommendations include a statement that paragraphs (a) (1) through (6) of § 945.5 do not apply to the activity.

(d) If an activity described in paragraphs (b) or (c)(2) of this section is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA and § 945.8 of this Part, or if the modified activity is likely to destroy, cause the loss of, or injure any Sanctuary resource not considered in a previous consultation under section 304(d) of the NMSA and § 945.8 of this Part, the modified activity will be treated as a new activity under paragraph (c) of this section.

(e) If a proposed military activity subject to section 304(d) of the NMSA and § 945.8 of this Part is necessary to respond to an emergency situation and the Secretary of Defense determines in writing that failure to undertake the proposed activity during the period of consultation would impair the national defense, the Secretary of the military department concerned may request the Director or designee that the activity proceed during consultation. If the Director or designee denies such a request, the Secretary of the military department concerned may decide to proceed with the activity. In such case, the Secretary of the military department concerned shall provide the Director or designee with a written statement describing the effects of the activity on Sanctuary resources once the activity is completed.

§ 945.5 Prohibited activities.

(a) The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted.

(1) Approaching, within the Sanctuary, by any means, within 100 yards of any humpback whale except as authorized under the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.*;

(2) Causing a vessel or other object to approach, within the Sanctuary, within 100 yards of any humpback whale except as authorized under the MMPA and the ESA;

(3) Operating any aircraft above the Sanctuary within 1,000 feet of any humpback whale except when in any designated flight corridor for takeoff or landing from an airport or runway or as authorized under the MMPA and the ESA;

(4) Taking any humpback whale in the Sanctuary except as authorized under the MMPA and the ESA;

(5) Possessing within the Sanctuary (regardless of where taken) any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA;

(6) Discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a humpback whale or humpback whale habitat; provided that such activity requires a Federal, State or county permit, license, lease or other

authorization, and is conducted (i) without such permit, license, lease or other authorization, or (ii) not in compliance with the terms and conditions of such permit, license, lease, or other authorization.

(7) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either of the Acts or any regulations issued under either of the Acts.

(b) The regulations in this Part shall be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions and other international agreements to which the United States is a party.

§ 945.6 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Before issuance of such regulations the Director or designee shall consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii.

§ 945.7 Penalties; appeals.

(a) Pursuant to section 307 of the NMSA, each violation of either of the Acts, or any regulation in this Part is subject to a civil penalty of not more than $100,000. Each such violation is subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing the administrative proceedings for assessment of civil penalties for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR Part 904.

(c) A person subject to an action taken for enforcement reasons for violation of these regulations or either of the Acts may appeal pursuant to the applicable procedures in 15 CFR Part 904.

§ 945.8 Interagency Cooperation.

Under section 304(d) of the NMSA, federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Director or designee. The federal agency proposing an action shall determine whether the activity is likely to destroy, cause the loss of, or injure a Sanctuary resource. To the extent practicable, consultation procedures under section 304(d) of the NMSA may be consolidated with interagency cooperation procedures required by other statutes, such as the ESA. The Director or designee will attempt to provide coordinated review and analysis of all environmental requirements.

§ 945.9 Response costs and damages.

Under section 312 of the NMSA, 16 U.S.C. 1443, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages (plus interest) resulting from such destruction, loss, or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.

Appendix I to Part 945—Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Coordinates

[**Note:** Appendix I will set forth the precise boundary coordinates based on the comments received on the DEIS/MP.]

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Friday
September 15, 1995

Part IV

The President

Proclamation 6822—National Farm Safety and Health Week, 1995

Federal Register
Vol. 60, No. 179
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Presidential Documents

Title 3—

The President

Proclamation 6822 of September 13, 1995

National Farm Safety and Health Week, 1995

By the President of the United States of America

A Proclamation

America's agricultural productivity is a gift to our Nation and to people everywhere. Using innovative techniques and the latest technology, our farmers, ranchers, and agricultural workers provide enough food and fiber to satisfy our needs and those of millions of people around the globe. However, we too often forget that farming can be a difficult and dangerous profession.

Agricultural workers are exposed daily to the risks associated with operating powerful machinery, managing livestock, working and travelling in adverse weather conditions, and performing countless other demanding tasks, often miles away from emergency medical care. Sadly, children and young people on our farms and ranches are particularly vulnerable to these hazards and more.

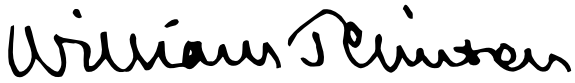
The simplest safety tool we have at hand is education. By word and by example, we must teach each new generation of Americans about the critical importance of knowledge, caution, and vigilance in farming and ranching activities. Wearing protective clothing and gear, learning the safety features that manufacturers build into equipment, and staying alert to possible dangers when working with livestock, chemicals, machinery, and vehicles—all of these measures can help to ensure longer, healthier lives for America's agricultural workers.

As important as education is to the safety and well-being of our agricultural workers, we must remember that quality health care is just as critical. We must strengthen our resolve to provide the citizens of our rural areas with high-quality, affordable, and accessible health care if we are truly to meet their needs.

By setting aside a special week each year to focus on the need for improved safety and health in our Nation's agricultural industry, we demonstrate to all of our agricultural workers that we value their lives and livelihood, that we appreciate their unsurpassed productivity, and that we honor their determined spirit.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 17 through September 23, 1995, as ''National Farm Safety and Health Week.'' I call upon government agencies, businesses, and professional associations that serve our agricultural sector to strengthen efforts to promote safety and health measures among our Nation's farm and ranch workers. I ask these workers to take advantage of educational programs and technical innovations that can help them to avoid injury and illness. Finally, I call upon the citizens of our Nation to reflect on the bounty we enjoy thanks to the labor of agricultural workers across the land. Join me in renewing our commitment to make their health and safety a national priority.

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



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