9–20–95
Vol. 60 No. 182
Pages 48623–48862

Federal Register

Wednesday
September 20, 1995

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 35

RIN 3150–AF10

Medical Administration of Radiation and Radioactive Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to clarify that the medical administration of radiation or radioactive materials to any individual, even an individual not supposed to receive a medical administration, is regulated by the NRC's provisions governing the medical use of byproduct material rather than by the dose limits in the NRC's regulations concerning standards for protection against radiation. The rule does not represent a change in policy, but is necessary to indicate clearly that this is the NRC's policy and to clarify the relationship of NRC's regulations.

DATES: Effective date: October 20, 1995.

ADDRESSES: Examine comments received at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Stephen A. McGuire, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6204.

SUPPLEMENTARY INFORMATION:

I. Background

Radioactive materials are administered in the practice of medicine to roughly 8 to 9 million patients per year for the diagnosis or treatment of disease. Occasionally, a radioactive material is administered to an individual for whom it is not intended.

The misadministration of radiopharmaceuticals is dealt with in NRC regulations in 10 CFR Part 35, ''Medical Use of Byproduct Material.'' As defined in § 35.2, misadministrations include administrations of licensed radioactive material to the wrong individual in excess of certain specified quantities (''30 microcuries of either sodium iodide I–125 or I–131'') or doses (''5 rems effective dose equivalent or 50 rems dose equivalent to any individual organ''). The practical effect of the definition of a misadministration is that some diagnostic administrations of radiopharmaceuticals to individuals for whom they were not intended are not misadministrations as defined in § 35.2 because the specified quantities or doses are not exceeded, and therefore part 35 does not require notification of the NRC or the individual.

Separate from the requirements for misadministrations, § 20.1301(a)(1) contains a dose limit for members of the public of 0.1 rem (1 millisievert). However, the scope of Part 20 in § 20.1002 states that, ''The limits in this part do not apply to doses due * * * to exposure of patients to radiation for the purpose of medical diagnosis or therapy * * *''

A question arose about the applicability of those words in a particular case in which an individual mistakenly received an administration of a diagnostic radiopharmaceutical because of an error on the part of the physician requesting the test. In that particular case, the dose to the individual receiving the administration was below the threshold for reporting of the misadministration, but above the 0.1-rem (1-millisievert) dose limit in § 20.1301(a)(1) for a member of the public. The question that arose was whether § 20.1301(a)(1) had been violated or did the words in the scope of Part 20 exclude this event from being subject to the dose limits in Part 20. In other words, does the exclusion from the Part 20 dose limits exclude any medical administration to any individual, even an individual not supposed to receive an administration?

This same issue was raised in a Petition for Rulemaking (PRM–35–11) filed by the American Medical Association (59 FR 37950; July 26, 1994). That petition requested, in part, that Part 20 specifically exclude all medical administrations.

Because of these concerns, the Commission proposed an amendment to 10 CFR Part 20 to clarify the regulations (60 FR 4872, January 25, 1995). The proposed rule explained that the Commission believed that, in general, the administration of radiopharmaceuticals should be regulated by Part 35 rather than by Part 20. The medical administration of radioactive materials is a special use of radioactive materials that is best dealt with by specific regulations covering those administrations. In particular, the Commission believed that an administration to any individual is and should be subject to the regulations in Part 35. That was the Commission's intent when the current misadministration requirements were adopted in the final rule, ''Quality Management Programs and Misadministrations,'' (56 FR 34104; July 25, 1991). Further explanation of the Commission's rationale is contained in the Federal Register notice for the proposed rule (60 FR 4872; January 25, 1995).

II. Comments on the Proposed Rule and Petition for Rulemaking PRM–35–11

Four comment letters were received on the proposed rule, three from Agreement States and one from a medical health physicist. All supported the proposed rule. Three comment letters were received on PRM–35–11. Each of the letters supported the petition.

The Federal Register notice on the proposed rule specifically asked for comment on whether to adopt a requirement to inform an individual of the error in the case of administration of a radiopharmaceutical to the wrong individual, but in a quantity below the misadministration threshold. Section 35.33 generally requires notification of the individual in the case of a misadministration. However, if the dose or the amount is less than the misadministration threshold, § 35.33 does not require that the individual who received an administration of a radiopharmaceutical by error be notified of the error. The NRC's Advisory Committee on Medical Uses of Isotopes (ACMUI), an advisory committee on rulemakings and other initiatives related to the medical use of byproduct materials, has assured the NRC that standard medical practice is that a

physician who becomes aware that a medical procedure has been performed on the wrong individual should, and almost always would, notify the individual of the mistake.

Two comments addressed this question. One, from an employee at a medical facility, favored an NRC regulation requiring notification of the individual regardless of the dose because sometimes an attempt might be made to keep this information from the individual. The other, from an Agreement State, opposed such a requirement because it would be inconsistent with the NRC's medical policy statement, ''The NRC will minimize intrusion into medical judgements affecting patients and into other areas traditionally considered to be a part of the practice of medicine.'' The NRC has decided to retain the notification requirements that it established in the misadministration rulemaking and thus not amend the notification requirements. Therefore, the NRC will require notification only for the more serious errors. Notification requirements for less serious errors are left to the medical profession and to State and local regulations. The NRC sees no need to interject itself into medical judgements or to override State and local regulations for the less serious errors.

III. Summary of the Changes

Neither the comments received nor any other information available to the Commission give any reasons for not adopting the amendments substantially as proposed, which would regulate administrations to individuals under Part 35 and not Part 20. Therefore, the NRC is adopting the amendments as described below.

To clarify the meaning and intent of Part 20, the NRC is amending the scope of Part 20, the definitions of public dose and occupational dose, and the wording in § 20.1301(a)(1) on public dose limit to clarify that the dose limit for individual members of the public does not apply to dose contributions from any medical administration the individual has received. Thus, the medical administration of radioactive materials or radiation to any individual, even to an individual not supposed to receive an administration, is not subject to the public dose limit in § 20.1301(a)(1), but is within the scope of Part 35.

The changes in Part 20 replace the word ''patient'' with the word ''individual.'' The word ''patient'' has sometimes been taken to mean only the individual intended to receive the administration. At other times, the view has been that anyone who receives a medical procedure is a ''patient.'' Replacing ''patient'' with ''individual'' clarifies that the statement refers to anyone receiving a medical administration.

In § 20.1002, the phrase ''for the purpose of medical diagnosis and therapy'' is replaced by the phrase ''any medical administration the individual has received.'' The existing wording raised the question of whether an administration was within the scope of Part 20 if the administration had no valid medical purpose. The new wording makes it clear that regardless of the purpose or lack of purpose, dose to an individual from any medical administration the individual has received is not within the scope of Part 20, but is within the scope of Part 35.

For the sake of consistency and clarity, the same words are used in § 20.1002, ''Scope,'' in § 20.1003, ''Definitions,'' (in the definitions of both public dose and occupational dose), and in § 20.1301, ''Dose limits for individual members of the public.'' Also for consistency and clarity, the exclusion of dose from background radiation and from voluntary participation in medical research programs that are now included in §§ 20.1002 and 20.1003 are added to § 20.1301(a).

A proposed rule published on June 15, 1994 (59 FR 30724), which deals with criteria for the release of individuals administered radioactive material, would also amend § 20.1301(a)(1). When that amendment of § 20.1301(a)(1) is published in final form, the wording on what is excluded from the dose limit will be inserted in §§ 20.1002 and 20.1003 (in the definitions of public dose and occupational dose) so that the same parallelism will exist throughout Part 20.

In Part 35, for consistency in terminology between parts, the phrase ''patient or human research subject'' in the definition of misadministration in § 35.2, ''Definitions,'' and in the misadministration reporting requirements in § 35.33, ''Notifications, reports, and records of misadministrations,'' is replaced by the word ''individual.'' Note that § 35.33(a)(3) also requires the licensee to notify the referring physician of a misadministration. If a misadministration occurs because the material was administered to the wrong individual, there may be no referring physician. If there is no referring physician, the licensee is relieved of the responsibility of notifying the referring physician, but must comply with all other requirements of § 35.33.

The changes made by these amendments have the effect of granting the request in PRM–35–11 that Part 20 specifically exclude all medical administrations.

IV. Consistency With the 1979 Medical Policy Statement

On February 9, 1979 (44 FR 8242), the NRC published a ''Statement of General Policy on the Regulation of the Medical Uses of Radioisotopes.'' The first statement of the policy states, ''The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.'' The rule is consistent with this statement because it continues to provide for administrations of radioactive materials to be regulated under 10 CFR Part 35. The rule further clarifies that additional regulations are not considered necessary.

The second statement of the policy states, ''The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.'' The rule is consistent with the statement because it clarifies that existing requirements concerning misadministrations continue to be concentrated on administrations having the greatest risk significance.

The third statement of the policy states, ''The NRC will minimize intrusion into medical judgements affecting patients and into other areas traditionally considered to be a part of the practice of medicine.'' The rule is consistent with this statement because it limits its specific regulatory requirements for notification to the most serious errors in administration and minimizes requirements on errors in administrations that have less risk significance.

Thus, the rule is considered to be consistent with the 1979 medical policy statement.

V. Coordination With the Advisory Committee on Medical Uses of Isotopes

The subject of this final rule was discussed with the NRC's Advisory Committee on Medical Uses of Isotopes (ACMUI) on May 11, 1995. The ACMUI is an advisory body established to advise the NRC staff on matters that involve the administration of radioactive material and radiation from radioactive material. The ACMUI agreed that medical administrations, including those to an individual not supposed to receive an administration, should be regulated by Part 35 rather than by Part 20. The ACMUI stated that notification

of an individual of an error in administration below the misadministration threshold is the current medical practice and should not be regulated. A transcript of the meeting is available for examination at the NRC Public Document Room, 2120 L St., NW. (Lower Level), Washington, DC.

VI. Coordination With and Issue of Compatibility for Agreement States

This rulemaking was discussed with representatives of Agreement States at a meeting in Portland, ME, on October 24, 1994. The States were polled on how they regulated an administration to the wrong individual, and it was found that they appear to regulate such administrations consistent with this rule. Two States commented on the rule, and both fully supported the rule.

The NRC believes that the modification of Part 20 should be a Division 1 matter of compatibility consistent with past practice of requiring basic definitions to be essentially identical for effective communication of basic radiation concepts. One Agreement State commenting on the compatibility issue supported a Division 1 level. Another Agreement State supported Division 1 compatibility ''*provided* that Division 1 compatibility means the intent, but not the language must be identical.''

VII. Finding of No Significant Environmental Impact

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

The NRC prepared an environmental assessment for the proposed rule, which was contained within the Federal Register notice for that rule. That assessment continues to stand for the final rule.

VIII. Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0014 and 3150–0010.

IX. Regulatory Analysis

The regulatory analysis prepared for the proposed rule and published as part of the Federal Register notice on the proposed rule is still valid for this final rule.

X. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that this rule will not have a significant economic impact on a substantial number of small entities. The impact of the revised regulation will not be significant because the amendment represents a continuation of current practice and merely clarifies existing requirements.

XI. Backfit Analysis

The NRC has determined that the backfit rule, § 50.109, does not apply to this rule and; therefore, that a backfit analysis is not required for this rule, because these amendments do not involve any provisions which impose backfits as defined in § 50.109(a)(1).

XII. List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recording requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and Recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Parts 20 and 35.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

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

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. Section 20.1002 is revised to read as follows:

§ 20.1002 Scope.

The regulations in this part apply to persons licensed by the Commission to receive, possess, use, transfer, or dispose of byproduct, source, or special nuclear material or to operate a production or utilization facility under Parts 30 through 36, 39, 40, 50, 60, 61, 70, or 72 of this chapter, and in accordance with 10 CFR 76.60 to persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter. The limits in this part do not apply to doses due to background radiation, due to any medical administration the individual has received, or due to voluntary participation in medical research programs.

3. In § 20.1003, the definitions of occupational dose and public dose are revised to read as follows:

§ 20.1003 Definitions.

* * * * *

Occupational dose means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation and/or radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from voluntary participation in medical research programs, or as a member of the public.

* * * * *

Public dose means the dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of the licensee. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, or from voluntary participation in medical research programs.

* * * * *

4. In § 20.1301, paragraph (a)(1) is revised to read as follows:

§ 20.1301 Dose limits for individual members of the public.

(a) * * *

(1) The total effective dose equivalent to individual members of the public from the licensed operation does not exceed 0.1 rem (1 millisievert) in a year, exclusive of the dose contributions from background radiation, any medical administration the individual has received, voluntary participation in

medical research programs, and the licensee's disposal of radioactive material into sanitary sewerage in accordance with § 20.2003.

* * * * *

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

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

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 35.2 [Amended]

6. In § 35.2, the definition for *misadministration* is amended in paragraphs (1)(i), (2)(i), (3)(i), (4)(i), (5)(i), (6)(i), and (6)(ii) by removing the term ''patient or human research subject'' and inserting the word ''individual.''

7. In § 35.33, paragraphs (a)(2), (a)(3), (a)(4), (b), and (c) are revised to read as follows:

§ 35.33 Notifications, reports, and records of misadministrations.

(a) * * *

(2) The licensee shall submit a written report to the appropriate NRC Regional Office listed in 10 CFR 30.6 within 15 days after discovery of the misadministration. The written report must include the licensee's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the individual who received the misadministration; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not; and if there was notification, what information was provided. The report must not contain the individual's name or any other information that could lead to identification of the individual. To meet the requirements of this section, the notification of the individual receiving the misadministration may be made instead to that individual's responsible relative or guardian, when appropriate.

(3) The licensee shall notify the referring physician and also notify the individual receiving the misadministration of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he will inform the individual or that, based on medical judgement, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the individual receiving the misadministration cannot be reached within 24 hours, the licensee shall notify the individual as soon as possible thereafter. The licensee may not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the misadministration, because of any delay in notification.

(4) If the individual was notified, the licensee shall also furnish, within 15 days after discovery of the misadministration, a written report to the individual by sending either:

(i) A copy of the report that was submitted to the NRC; or

(ii) A brief description of both the event and the consequences as they may affect the individual, provided a statement is included that the report submitted to the NRC can be obtained from the licensee.

(b) Each licensee shall retain a record of each misadministration for 5 years. The record must contain the names of all individuals involved (including the prescribing physician, allied health personnel, the individual who received the misadministration, and that individual's referring physician, if applicable), the individual's social security number or other identification number if one has been assigned, a brief description of the misadministration, why it occurred, the effect on the individual, improvements needed to prevent recurrence, and the actions taken to prevent recurrence.

(c) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, to individuals receiving misadministrations, or to that individual's responsible relatives or guardians.

Dated at Rockville, Maryland, this 14th day of September, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–23288 Filed 9–19–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–148–AD; Amendment 39–9364; AD 95–19–03]

Airworthiness Directives; Aerospatiale Model ATR 42–300 and 42–320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and -320 series airplanes. This action requires modification of the electrical wire bundle associated with the smoke detection system. This amendment is prompted by a report of a short circuit in this electrical wire bundle, which was caused by chafing of the wire against a smoke detection pipe. The actions specified in this AD are intended to prevent such chafing, which could result in short circuits of the electrical wire bundle and a potential fire hazard.

DATES: Effective October 5, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 5, 1995.

Comments for inclusion in the Rules Docket must be received on or before November 20, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile

(DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–300 and –320 series airplanes. The DGAC advises that there has been a report of a short circuit of the electrical wire bundle between frames 16 and 21 on an in-service airplane equipped with an interior modified for a container cargo compartment. The crew reported that there was an electrical smoke warning indication, which was associated with multiple system failure indications and the popping of circuit breakers. The short circuit was caused by chafing of the 1M wire bundle against a smoke detection pipe. This condition, if not corrected, could result in a fire.

Aerospatiale has issued Service Bulletin ATR42–25–0094, dated June 23, 1995, which describes procedures for modifying the smoke detection system. The modification consists of (1) replacing the smoke detection pipe in the forward cargo compartment at Frame 16, and (2) installing spacers between the electrical wire bundle (route 1M) and the smoke detection pipe from Frame 16 to Frame 21. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 95–103–059(B), dated May 24, 1995, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent chafing in the electrical wire bundle associated with the smoke detection system. This AD requires modification of the smoke detection system by replacing the smoke detection pipe in the forward cargo compartment, and installing spacers between the electrical wire bundle and the smoke detection pipe. The actions are required to be accomplished in accordance with the service bulletin described previously.

None of the Model ATR42–300 or –320 series airplanes affected by this action is on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 4 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts would be provided by the manufacturer at no charge to operators. Based on these figures, the total cost impact of this AD would be $240 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–148–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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–19–03 Aerospatiale: Amendment 39–9364. Docket 95–NM–148–AD.

Applicability: Model ATR42–300 and –320 series airplanes; as listed and described in Aerospatiale Service Bulletin ATR42–25–0094, dated June 23, 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 chafing of the wire bundle associated with the smoke detection system, which could result in short circuits in the electrical wire bundle and a potential fire hazard, accomplish the following:

(a) Within 2,400 flight hours or 12 months after the effective date of this AD, whichever occurs later, modify the smoke detection system in accordance with Aerospatiale Service Bulletin ATR42–25–0094, dated June 23, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

(d) The modification shall be done in accordance with Aerospatiale Service Bulletin ATR42–25–0094, dated June 23, 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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 5, 1995.

Issued in Renton, Washington, on September 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22458 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–15–AD; Amendment 39–9377; AD 95–19–15]

Airworthiness Directives; American General Aircraft Corporation Models AA–5, AA–5A, AA–5B, and AG–5B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to American General Aircraft Corporation (American General) Models AA–5, AA–5A, AA–5B, and AG–5B airplanes. This action requires inspecting the wing attach shoulder bolts for fretting, scoring, wear, or enlarged or elongated mounting holes (known as damage from hereon), and replacing any damaged parts and repairing any damaged areas; and inspecting the wing spar at the center spar clearance gap for excessive clearance, and shimming the spar if excessive clearance is found. The actions specified by this AD are intended to prevent wing attach shoulder bolt failure, which, if not detected and corrected, could lead to structural damage to the wing/fuselage to the point of failure.

DATES: Effective November 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Fletch Air, Inc., 9000 Randolph Street, Houston, Texas 77061; telephone (713) 649–8700 or (800) 329–4647; facsimile (713) 643–0070. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ozzie Lopez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7359; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain American General Models AA–5, AA–5A, AA–5B, and AG–5B airplanes was published in the Federal Register on September 28, 1994 (59 FR 49359). The action proposed to require inspecting the wing attach shoulder bolts for fretting, scoring, wear, or enlarged or elongated mounting holes (known as damage from hereon), and replacing any damaged parts and repairing any damaged areas; inspecting the wing spar at the center spar clearance gap for excessive clearance, and shimming the spar if excessive clearance is found; and reporting to the FAA the results of the inspections. Accomplishment of the proposed inspections would be in accordance with American General Critical Service Bulletin SB–185, dated July 6, 1994. Accomplishment of the proposed possible repairs, replacements, and excessive clearance shimming would be in accordance with the applicable maintenance manual.

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

The commenter states that the NPRM calls out an incorrect part number (901044–3 and 901044–2) for serial numbers AA–5–0001 through AA–5–0714 of the AA–5 series airplanes. The commenter suggests that the AD be changed to reflect wing attach bolt, part number 901044–1, for the referenced airplanes. The FAA concurs and has incorporated reference to wing attach bolt, part number 901044–1, into the applicable portion of the AD.

The commenter also explains that serial numbers AA–5–0001 through AA–5–0714 of the AA–5 series airplanes have a 38-gallon gas tank capacity, which is smaller than the 52-gallon capacity of the rest of the fleet. The commenter recommends that this action not affect these airplanes because the bolts are subjected to different loads. The FAA concurs that these earlier models of the AA–5 series airplanes contain smaller fuel tanks and that the airplanes incur different loads than the rest of the fleet. However, failure of these bolts is also attributable to excessive wing spar to center spar

clearance. This excessive clearance could occur through failure to check and shim to the proper clearance after a major wing repair. In fact, since issuing the NPRM, the FAA has received a report from Outlaw Aviation in Clarksville, Tennessee, that details nine airplanes (out of a total of 11 inspected) having excessive wing spar to center spar clearance. Each of these nine airplanes had wing replacement accomplished at American General. No changes to the AD have been made as a result of this comment; however, the FAA has removed the reporting requirement from the AD since the above-referenced report confirms the FAA's belief that the affected airplanes could have excessive wing spar to center spar clearance.

No comments were received on the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the incorporation of the wing attach bolt part number, the removal of the reporting requirement, and minor editorial corrections. The FAA has determined that this part number incorporation, reporting requirement removal, and the minor editorial corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 3,700 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 10 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,220,000 ($600 per airplane × 3,700 airplanes). This figure is based on the assumption that no affected airplane owner/operator has accomplished the proposed inspection, and does not take into account the cost for replacing any damaged bolts. The FAA has no way of determining the number of bolts that may need to be replaced based on the results of the inspections.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 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:

95–19–15 American General Aircraft Corporation: Amendment 39–9377; Docket No. 94–CE–15–AD.

Applicability: Models AA–5, AA–5A, AA–5B, and AG–5B airplanes (all serial numbers), certificated in any category.

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 (d) 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 within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent wing attach shoulder bolt failure, which, if not detected and corrected, could lead to structural damage of the wing/fuselage to the point of failure, accomplish the following:

(a) Inspect the wing attach shoulder bolts (4), part numbers as specified in paragraphs (a)(1) and (a)(2) below, for fretting, scoring, wear, or enlarged or elongated mounting holes (known as damage from hereon) in accordance with the procedures included in the *INSPECTION* section of American General Critical Service Bulletin SB–185, dated July 6, 1994. Prior to further flight, replace any damaged parts with new or serviceable parts and repair any damaged areas in accordance with the applicable maintenance manual.

(1) The wing attach shoulder bolt part number for serial numbers AA–5–0001 through AA–5–0714 of the AA–5 series airplanes is 901044–1.

(2) The wing attach shoulder bolt part numbers for all serial numbers of the AA–5 series airplanes, except for serial numbers AA–5–0001 through AA–5–0714, is either 901044–3 or 901044–2.

(b) Inspect the wing spar at the center spar clearance gap for excessive clearance in accordance with the procedures included in the *INSPECTION* section of American General Critical Service Bulletin SB–185, dated July 6, 1994. If any gap exceeds .016-inch, prior to further flight, shim the spar to reduce the gap to a level not to exceed .008 inches in accordance with the instructions in the applicable maintenance manual.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(e) The inspection required by this AD shall be done in accordance with American General Critical Service Bulletin SB–185, dated July 6, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fletch Air, Inc., 9000 Randolph Street, Houston, Texas 77061. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment (39–9377) becomes effective on November 17, 1995.

Issued in Kansas City, Missouri, on September 13, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–23219 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–35–AD; Amendment 39–9370; AD 95–19–08]

Airworthiness Directives; Boeing Model 727–100 and –200 Series Airplanes Equipped With an Engine Nose Cowl for Engine Numbers 1 and 3, Installed in Accordance With Supplemental Type Certificate (STC) SA4363NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727–100 and –200 series airplanes, that requires replacing the attaching nutplates on certain engine nose cowls with washers and self-locking nuts. This amendment is prompted by reports indicating that nose cowls separated (or nearly separated) from the engines of certain airplanes following failure of the engine fan blade and subsequent vibration of the engine, which caused loosening of the attach bolts on the nose cowl of the engine. The actions specified by this AD are intended to prevent the attach bolts from becoming loose, which could result in subsequent separation of the nose cowl from the engine.

DATES: Effective October 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from VALSAN Partnership Ltd., Aviation Products Management, Product Support Office, 39450 Third Street East, suite 121, Palmdale, California 93550. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: 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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727–100 and –200 series airplanes was published in the Federal Register on May 3, 1995 (60 FR 21774). That action proposed to require replacing the attaching nutplates on certain engine nose cowls with washers and selflocking nuts.

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

One commenter supports the proposed rule.

One commenter requests that the subject title of the proposed rule be revised to indicate that the specific nose cowls affected are those for the No. 1 and No. 3 engines. The FAA concurs. The FAA has revised the final rule as requested by the commenter, and has added this information to the applicability of the AD.

The same commenter requests that paragraph (b) of the proposed rule be revised to specify that the part numbers listed for the nose cowl are VALSAN part numbers. The FAA concurs and has revised the final rule accordingly.

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

There are approximately 22 Model 727–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 19 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost for required parts will be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,840, or $360 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–19–08 Boeing: Amendment 39–9370. Docket 95–NM–35–AD.

Applicability: Model 727–100 and -200 series airplanes equipped with an engine nose cowl for engine numbers 1 and 3, installed in accordance with Supplemental Type Certificate (STC) SA4363NM, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the attach bolts on the nose cowl of the engine from becoming loose, and subsequent separation of the nose cowl from the engine, accomplish the following:

(a) Within 12 months after the effective date of this AD, replace the attaching nutplates of the No. 1 and No. 3 engine nose cowls with washers and self-locking nuts in accordance with VALSAN B727–RE Service Bulletin 71–006, Revision 1, dated March 3, 1995.

(b) As of the effective date of this AD, no person shall install a nose cowl having VALSAN part number 259–0002–501 or 259–0002–503 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(e) The replacement shall be done in accordance with VALSAN B727–RE Service Bulletin 71–006, Revision 1, dated March 3, 1995, which contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	March 3, 1995.
2–9 .	Original	February 3, 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 VALSAN Partnership Ltd., Aviation Products Management, Product Support Office, 39450 Third Street East, suite 121, Palmdale, California 93550. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 20, 1995.

Issued in Renton, Washington, on September 7, 1995.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22716 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–131–AD; Amendment 39–9375; AD 95–19–13]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A airplanes, that requires repetitive inspections for cracking of fuselage frame 29, and repair, if necessary. This amendment is prompted by testing that revealed fatigue cracking in the web and inboard flange of frame 29. The actions specified by this AD are intended to prevent reduced structural integrity of the fuselage due to fatigue cracking in frame 29.

DATES: Effective October 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Avro International Aerospace, Inc., 22111 Pacific Blvd., Sterling, Virginia 20166. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, 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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A airplanes was published in the Federal Register on April 20, 1995 (60 FR 19693). That action proposed to require repetitive visual inspections to detect cracking of the fuselage at frame 29, and repair, if necessary.

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

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 43 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $23,220, or $540 per airplane, per inspection cycle.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–19–13 British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft, Limited): Amendment 39–9375. Docket 94–NM–131–AD.

Applicability: All Model BAe 146–100A, –200A, and –3300A 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 (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage of the airplane due to fatigue cracking in frame 29, accomplish the following:

(a) Perform a detailed visual inspection for cracking of frame 29 between stringers 12 and 18 on the left and right side of the fuselage, in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 53–130, dated May 10, 1994. If the polymer coating on frame 29 prevents a detailed visual inspection, perform a surface eddy current inspection for cracking in accordance with the service bulletin. Perform the inspections at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For Model BAe 146–100A airplanes: Perform the inspection within 6 months after the effective date of this AD, or prior to the accumulation of 30,000 total landings, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 6,000 landings.

(2) For Model BAe 146–200A airplanes, and for Model BAe 146–300A airplanes other than those airplanes identified in paragraph (a)(3) of this AD: Perform the inspection within 6 months after the effective date of this AD, or prior to the accumulation of 24,000 total landings, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 6,000 landings.

(3) For Model BAe 146–300A airplanes having serial numbers E3207, E3212, E3214, E3216, E3218, E3219, and E3222: Perform the inspection within 6 months after the effective date of this AD, or prior to the accumulation of 13,000 total landings, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(b) If any cracking is found during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) Accomplishment of the modification of each affected bolt position in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 53–130, dated May 10, 1994, prior to the embodiment times shown in Table 'A' of that service bulletin, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Note 2: Repair Instruction Leaflet (RIL) HC536H9159 provides detailed instructions for modification of all bolt positions in the affected areas of frame 29.

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

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

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

(f) The inspections and modification shall be done in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 53–130, dated May 10, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avro International Aerospace, Inc., 22111 Pacific Blvd., Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 20, 1995.

Issued in Renton, Washington, on September 7, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22855 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–129–AD; Amendment 39–9367; AD 95–19–05]

Airworthiness Directives; British Aerospace Model BAe 146–100A and –200A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–100A and –200A airplanes, that requires modification of the glareshield and certain electrical equipment of the airplane. This amendment is prompted by a report indicating that, if the lift spoilers fail to deploy on landing, the flight crew may not receive any indication that this situation exists. The actions specified by this AD are intended to ensure that the flight crew is advised when the lift spoilers fail to deploy on landing; such failure could result in the airplane overrunning the end of the runway during landing.

DATES: Effective October 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Avro International Aerospace, Inc., 22111 Pacific Blvd., Sterling, Virginia 20166. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer,

Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A and –200A airplanes was published in the Federal Register on May 18, 1995 (60 FR 26702). That action proposed to require modification of the glareshield and certain electrical equipment of the airplane.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 38 airplanes of U.S. registry will be affected by this AD, that it will take approximately 21 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $6,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $275,880, or $7,260 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–19–05 British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Amendment 39–9367. Docket 94–NM–129–AD.

Applicability: Model BAe 146–100A and –200A airplanes; as listed in British Aerospace Service Bulletin SB.27–70–00913A&B, Revision 7, dated March 21, 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 ensure that the flight crew is advised when the lift spoilers fail to deploy on landing, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the glareshield and certain electrical equipment of the airplane by installing an amber warning light in the glareshield that will illuminate if the lift spoilers fail to deploy on landing; perform a test of the glareshield warning light; and perform a lift spoiler inhibit and fault monitoring operational test; in accordance with British Aerospace Service Bulletin SB.27–70–00913A&B, Revision 7, dated March 21, 1994.

(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.

(d) The modification shall be done in accordance with British Aerospace Service Bulletin SB.27–70–00913A&B, Revision 7, dated March 21, 1994, which contains the specified effective pages:

Page No.	Revision level shown on page	Date shown on page
4–14, 16–34, 37–40,45.	4	None.
41–44	5	None.
2, 3	6	None.
1, 15, 35–36 ...	7	March 21, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AVRO International Aerospace, Inc., 22111 Pacific Blvd., Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 20, 1995.

Issued in Renton, Washington, on September 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22590 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–111–AD; Amendment 39–9373; AD 95–19–11]

Airworthiness Directives; British Aerospace Model Viscount 744, 745D, and 810 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model Viscount 744, 745D, and 810 airplanes, that requires inspections to detect cracking of certain fittings of the tailplane spar, and replacement of the fittings with serviceable parts, if necessary. This amendment is prompted by reports of fatigue cracking of certain fittings in the tailplane spar. The actions specified by this AD are intended to prevent such cracking, which could result in structural degradation of the attachment of the horizontal stabilizer to the fuselage.

DATES: Effective October 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft Ltd., Engineering Support Manager, Military Business Unit, Chadderton Works, Greengate, Middleton, Manchester M24 1SA, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model Viscount 744, 745D, and 810 airplanes was published in the Federal Register on May 1, 1995 (60 FR 21056). That action proposed to require repetitive high frequency eddy current inspections to detect cracking of certain fittings of the tailplane spar, and replacement of the fittings with serviceable parts, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,960, or $240 per airplane.

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

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–19–11 British Aerospace Regional Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited, Vickers-Armstrongs Aircraft Limited): Amendment 39–9373. Docket 94–NM–111–AD.

Applicability: All Model Viscount 744, 745D, and 810 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 (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural degradation of the attachment of the horizontal stabilizer to the fuselage, accomplish the following:

(a) For Model Viscount 744 and 745D airplanes: Within 3,000 landings or 3 years after the effective date of this AD, whichever occurs first, perform a high frequency eddy current (HFEC) inspection to detect cracking of the bolt holes on the top fittings of the root joint of the tailplane spar, in accordance with British Aerospace Alert Preliminary Technical Leaflet (PTL) 264, Issue 3, dated September 1, 1992. Repeat the inspection thereafter at intervals not to exceed 3,000 landings or 3 years, whichever occurs first.

(b) For Model Viscount 810 airplanes: Within 1,000 landings or 1 year after the effective date of this AD, whichever occurs first, perform an HFEC inspection to detect cracking of the bolt holes on the top fittings of the root joint of the tailplane spar, in accordance with British Aerospace Alert PTL 127, Issue 3, dated June 1, 1992. Repeat the inspection thereafter at intervals not to exceed 3,000 landings or 3 years, whichever occurs first.

(c) If any cracking is found during the inspections required by paragraph (a) or (b) of this AD, prior to further flight, replace the cracked fitting with a serviceable part, in accordance with British Aerospace Alert PTL 264, Issue 3, dated September 1, 1992 (for Model 744 and 745D airplanes), or Alert PTL 127, Issue 3, dated June 1, 1992 (for Model 810 airplanes); as applicable.

(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, 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.

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

(f) The inspection and replacement shall be done in accordance with British Aerospace Alert Preliminary Technical Leaflet (PTL) 264, Issue 3, dated September 1, 1992; or British Aerospace Alert PTL 127, Issue 3, dated June 1, 1992; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft Ltd., Engineering Support Manager, Military Business Unit, Chadderton Works, Greengate, Middleton, Manchester M24 1SA, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 20, 1995.

Issued in Renton, Washington, on September 7, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22856 Filed 9–19 –95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–184–AD; Amendment 39–9374; AD 95–19–12]

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, that requires various repetitive inspections to detect cracks in certain panels of the lower skin of the wing, and in certain fixed ribs of the leading edge of the wing. This amendment also requires repair or replacement of cracked parts, which would terminate certain repetitive inspections. This amendment is prompted by reports of cracking in certain panels of the lower skin of the wing, and in certain fixed ribs of the leading edge of the wing due to fatigue-related stress. The actions specified by this AD are intended to ensure the structural integrity of the wing by detecting fatigue-related cracking in a timely manner in the panels of the lower skin of the wing or in the fixed ribs of the leading edge of the wing.

DATES: Effective October 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes was published in the Federal Register on June 9, 1995 (60 FR 30474). That action proposed to require various repetitive inspections to detect cracks in panel number 1 at rib 6 and in panel number 2 at rib 10 of the lower skin of the wing, in the rebate radius of panel number 2 at the joint between panels 1 and 2 of the lower skin of the wing, and in the top and bottom flanges of fixed ribs 6, 10, and 14 of the leading edge of the wing. That action also proposed to require repair or replacement of cracked parts, which constitutes terminating action for certain repetitive inspection requirements.

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

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $26,040, or $840 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–19–12 British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39–9374. Docket 94–NM–184–AD.

Applicability: All Model BAC 1–11 200 and 400 series 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 (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure the structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings or within 1,500 landings after the effective date of this AD, whichever occurs later, perform a close visual and dye penetrant inspection to detect cracks in panel number 1 at rib 6 and in panel number 2 at rib 10 of the lower skin of the wing, in accordance with British Aerospace Alert Service Bulletin 57–A-PM5992, Issue 1, dated October 14, 1992.

(1) If no crack is detected, repeat the inspections thereafter at intervals not to exceed 8,000 landings.

(2) If any crack is detected at rib 6, prior to further flight, repair panel number 1 in accordance with the alert service bulletin. Accomplishment of this repair constitutes terminating action for the repetitive inspections of panel number 1 as required by this paragraph.

(3) If any crack is detected at rib 10, prior to further flight, repair panel number 2 in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) Prior to the accumulation of 30,000 total landings or within 1,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the rebate radius of panel number 2 at the joint between panels 1 and 2 of the lower skin of the wing, in accordance with British Aerospace Alert Service Bulletin 57–A-PM5992, Issue 1, dated October 14, 1992.

(1) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(2) If any crack is detected, prior to further flight, repair panel number 2 in accordance with the alert service bulletin. Accomplishment of this repair constitutes terminating action for the repetitive inspections of panel number 2 as required by this paragraph.

(c) Prior to the accumulation of 30,000 total landings or within 1,500 landings after the effective date of this AD, whichever occurs later, perform a close visual inspection to detect cracks in the top and bottom flanges of fixed ribs 6, 10, and 14 of the leading edge of the wing, in accordance with British Aerospace Alert Service Bulletin 57–A-PM5992, Issue 1, dated October 14, 1992.

(1) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(2) If any crack is detected, prior to further flight, replace the cracked rib with a new rib, in accordance with the alert service bulletin. Prior to the accumulation of 30,000 total landings on the newly installed rib, perform a close visual inspection to detect cracks on the newly installed rib in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(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, 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.

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

(f) The inspections, certain repairs, and replacement shall be done in accordance with British Aerospace Alert Service Bulletin 57–A-PM5992, Issue 1, dated October 14, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 20, 1995.

Issued in Renton, Washington, on September 7, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22857 Filed 9–19 –95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–214–AD; Amendment 39–9363; AD 95–19–02]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires replacement of the flight control lock (FCL) handle and switch with a modified unit. This amendment is prompted by a report of sudden engagement of the FCL system during approach for landing. The actions specified by this AD are intended to prevent inadvertent engagement of the FCL system during flight and subsequent reduced controllability of the airplane.

DATE: Effective October 20,1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the Federal Register on December 27, 1994 (59 FR 66494). That action proposed to require replacement of the flight control lock (FCL) handle and switch with a modified unit.

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

One commenter supports the proposed rule.

One commenter requests that the compliance time of one year be extended to a calendar date of September 1997. The commenter explains that 10 work hours are necessary to accomplish the required replacement, and that this figure is considerably more than that estimated in the proposal. Therefore, in order to accomplish the modification on its affected fleet within the proposed compliance time, the commenter indicates that it would be required to special schedule the replacement. The commenter adds that such special scheduling would be disruptive to its operating schedule and would result in additional expense over that estimated in the economic impact information specified in the proposal. The commenter states that extending the compliance time to September 1997 would allow it to accomplish the modification during scheduled maintenance visits.

The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required replacement within an interval of time that parallels regularly scheduled maintenance for the majority of affected operators. The FAA finds that a compliance time of one year, as proposed, should provide ample time for the replacement to be accomplished during scheduled maintenance intervals. Further, the FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required replacement without compromising safety. While the commenter cites the number of work hours as its primary reason that special scheduling would be necessary, the commenter provides no data demonstrating that extending the compliance time would not compromise safety, nor does the commenter suggest any alternative actions to ensure safe operation in the interim. In addition, the FAA based its work hour estimate on the service bulletin option not to remove the FCL handle assembly from the pedestal when performing the replacement. The FAA would consider a request for an adjustment of the compliance time, however, in accordance with the provisions of paragraph (b) of this AD, provided that adequate justification is presented to support such a request.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 75 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $88,500, or $1,180 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–19–02 Fokker: Amendment 39–9363. Docket 94–NM–214–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11419 inclusive, certificated in any category.

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

(a) Within one year after the effective date of this AD, remove the existing flight control lock (FCL) handle and switch and replace it with a modified FCL handle and switch, in accordance with Fokker Service Bulletin SBF100–27–051, Revision 1, dated May 6, 1994.

(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.

(d) The replacement shall be done in accordance with Fokker Service Bulletin SBF100–27–051, Revision 1, dated May 6, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 20,1995.

Issued in Renton, Washington, on September 1, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22303 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–139–AD; Amendment 39–9376; AD 95–19–14]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model ATP airplanes, that requires modification of certain doors. This amendment is prompted by a report that an operator was unable to unlock a Type I passenger door due to migration of a shootbolt bush. The actions specified by this AD are intended to prevent such migration, which could jam the Type I passenger door, and subsequently could delay or impede the evacuation of passengers during an emergency.

DATES: Effective October 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes was published in the Federal Register on June 6, 1995 (60 FR 29800). That action proposed to require modification of the Type I passenger doors and aft baggage door.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 35 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of the required parts will be nominal. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,000, or $2,100 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–19–14 Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited): Amendment 39–9376. Docket 94–NM–139–AD.

Applicability: Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) 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 migration of a shootbolt bush, which could jam the Type I passenger door, and subsequently could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 1,500 hours time-in-service after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, modify the Type I passenger doors and aft baggage door, in accordance with Jetstream Service Bulletin ATP–52–26–10350B, dated June 29, 1994.

(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.

(d) The modification shall be done in accordance with Jetstream Service Bulletin ATP–52–26–10350B, dated June 29, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 20, 1995.

Issued in Renton, Washington, on September 7, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22854 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–144–AD; Amendment 39–9371; AD 95–19–05]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes. This action requires an inspection to detect damage, burn marks, or discoloration at certain electrical plugs and receptacles of the sidewall lighting in the passenger cabin, and correction of discrepancies. This action also requires modification of the electrical connectors, which would terminate the inspection requirement. This amendment is prompted by reports of failures of the electrical connectors in the sidewall fluorescent lighting, which resulted in smoke or lighting interruption in the passenger cabin. The actions specified in this AD are intended to prevent failures of the electrical connectors, which could result in poor socket/pin contact, excessive heat, electrical arcing, and subsequently, connector burn through and smoke in the passenger cabin.

DATES: Effective October 5, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 5, 1995.

Comments for inclusion in the Rules Docket must be received on or before November 20, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5344; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On April 5, 1995, the FAA issued AD 95–08–04, amendment 39–9193 (60 FR 19348, April 18, 1995), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, to require a visual inspection to detect damage, burn marks, or black or brown discoloration at certain electrical plugs and receptacles of the sidewall lighting in the passenger cabin. The amendment also requires modification of the electrical connectors of the sidewall lighting in the passenger cabin, which would constitute terminating action for the inspection requirement. That action was prompted by reports of failures of the electrical connectors in the sidewall fluorescent lighting, which resulted in smoke or lighting interruption in the passenger cabin. The requirements of that AD are intended to prevent failures of the electrical connectors, which could result in poor socket/pin contact, excessive heat, electrical arcing, and subsequently, connector burn through and smoke in the passenger cabin.

Since the issuance of AD 95–08–04, the FAA has reviewed and approved Revision 1 of McDonnell Douglas MD–80 Service Bulletin 33–99, dated February 23, 1995. The inspection, replacement, and modification procedures described in this revision are identical to those described in the original version, which was referenced in AD 95–08–04 as the appropriate source of service information. (This revision also contains certain minor editorial changes.) Additionally, this effectivity listing in this revision is expanded to include ten additional airplanes: those having serial numbers 49614, 49626 through 49632 inclusive, 496368, and 49707. The FAA has determined that these additional airplanes are subject to the addressed unsafe condition.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failures of the electrical connectors, which could result in poor socket/pin contact, excessive heat, electrical arcing, and subsequently, connector burn through and smoke in the passenger cabin. This AD requires a visual inspection to detect damage, burn marks, or black or brown discoloration at certain electrical plugs and receptacles of the sidewall lighting in the passenger cabin. The AD also requires modification of the electrical

connectors of the sidewall lighting in the passenger cabin, which would constitute terminating action for the inspection requirement. The actions are required to be accomplished in accordance with the service bulletin described previously. This AD varies from the service bulletin in that it only applies to Model DC–9–80 series airplanes and Model MD–88 airplanes having serial numbers 49614, 49626 through 49632 inclusive, 49668, and 49707.

None of the Model DC–9–80 series airplanes and Model MD–88 airplanes affected by this action is on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 75 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts will cost approximately $1,870 per airplane. Based on these figures, the total cost impact of this AD would be $6,370 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–144–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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–19–09 McDonnell Douglas: Amendment 39–9371. Docket 95–NM–144–AD.

Applicability: Model DC–9–80 series airplanes and Model MD–88 airplanes having serial numbers 49614, 49626 through 49632 inclusive, 49668, and 49707; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent poor socket/pin contact, excessive heat, electrical arcing, and subsequently, connector burn through and smoke in the passenger cabin, accomplish the following:

(a) Within 18 months after the effective date of this AD, perform a visual inspection to detect damage, burn marks, or black or brown discoloration caused by electrical arcing at electrical plugs, having part number (P/N) MS3126F–15P, and receptacles, having P/N MS3124E–15S, of the sidewall lighting in the passenger cabin, in accordance with McDonnell Douglas MD–80 Service Bulletin 33–99, Revision 1, dated February 23, 1995.

(1) If no discrepancies are found, no further action is required by this paragraph.

(2) If any discrepancy is found, prior to further flight, replace the damaged connectors, pins, sockets, or wire with new parts, in accordance with the service bulletin.

(b) Within 18 months after the effective date of this AD, modify the electrical connectors of the sidewall lighting in the passenger cabin, in accordance with McDonnell Douglas MD–80 Service Bulletin 33–99, Revision 1, dated February 23, 1995. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, 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.

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

(e) The inspection, replacement, and modification shall be done in accordance with McDonnell Douglas MD–80 Service Bulletin 33–99, Revision 1, dated February 23, 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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 5, 1995.

Issued in Renton, Washington, on September 7, 1995.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22714 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–ANM–49]

Realignment of Jet Route J–15

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will realign Jet Route J–15 to include the Twin Falls, ID, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility. This action will enhance traffic flow and reduce controller workload on a frequently used high altitude route.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On November 16, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign Jet Route J–15 to include the Twin Falls, ID, VORTAC (59 FR 59181).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations realigns Jet Route J–15 to include the Twin Falls, ID, VORTAC. This will enhance traffic flow and reduce controller workload on a frequently used high altitude route.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–15 [Revised]

From Humble, TX, via INT Humble 269° and Junction, TX, 112° radials; Junction; Wink, TX; Chisum, NM; Corona, NM; Albuquerque, NM; Farmington, NM; Grand Junction, CO; Salt Lake City, UT; Twin Falls, ID; Boise, ID; Kimberly, OR; INT Kimberly 288° and Battle Ground, WA, 136° radials; to Battle Ground.

* * * * *

Issued in Washington, DC, on September 12, 1995.

Reginald C. Matthews,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–23341 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 94–AAL–1]

Extension of Jet Route J–179 and Establishment of Jet Route J–510; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters Jet Route J–179 between the Middleton Island, AK, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the Sparrevohn, AK, VOR/DME and from the St. Mary's, AK, Nondirectional Radio Beacon (NDB) to the Emmonak, AK, VOR/DME. Also, this rule establishes Jet Route J–510 between the Galena, AK, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility to the Emmonak, AK, VOR/DME. This action will enhance navigation for aircraft flying from the continental United States and aircraft departing from Anchorage International Airport. This action will also reduce pilot and air traffic controller workload.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On March 16, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter Jet Route J–179 and establish Jet Route J–510 (59 FR 12209).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters Jet Route J–179 by extending J–179 from the Middleton Island, AK, VOR/DME to the Emmonak, AK, VOR/DME, and establishes Jet Route J–510 from the Galena, AK, VORTAC to the Emmonak, AK, VOR/DME. This action will enhance navigation for aircraft flying from the continental United States and aircraft departing from Anchorage International Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–179 [Revised]

From Middleton Island, AK; Kenai, AK; Sparrevohn, AK; Aniak, AK, NDB; St. Mary's, AK, NDB; to Emmonak, AK.

* * * * *

J–510 [New]

From Galena, AK; Unalakleet, AK; to Emmonak, AK.

* * * * *

Issued in Washington, DC, on September 12, 1995.

Reginald C. Matthews,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–23342 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 95–ANM–2]

Realignment of VOR Federal Airway V–86; Montana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will extend Federal Airway V–86 from Coppertown, MT, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the Missoula, MT, VOR/DME. This action will improve the efficiency of air traffic operations between Coppertown, MT, VOR/DME and Missoula, MT, VOR/DME facilities, and will reduce pilot/controller workload.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On June 1, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend Federal Airway V–86 from Coppertown, MT, VOR/DME to the Missoula, MT, VOR/DME (60 FR 28551).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations extends Federal Airway V–86 from the Coppertown, MT, VOR/DME to the Missoula, MT, VOR/DME facility. The extension of V–86 will improve the efficiency of air traffic operations between the Coppertown, MT, VOR/DME and Missoula, MT, VOR/DME facilities, and will reduce pilot/controller workload.

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

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–86 [Revised]

From Missoula, MT; Coppertown, MT; Whitehall, MT; Bozeman, MT; INT Bozeman 128° and Livingston, MT, 261° radials; Livingston; 11 miles, 25 miles, 85 MSL, Billings, MT; 32 miles, 35 miles, 75 MSL; Sheridan, WY; 20 miles, 45 miles, 70 MSL, 63 miles, 80 MSL, to Rapid City. SD.

* * * * *

Issued in Washington, DC, on September 12, 1995.

Reginald C. Matthews,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–23343 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 91

[Docket No. 26834; Special Federal Aviation Regulation (SFAR) No. 65–1]

RIN 2120–AF85

Prohibition Against Certain Flights Between the United States and Libya

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule replaces the flight prohibition implemented by the FAA in SFAR 65, which became effective on April 20, 1992, and expired on April 16, 1993. This action prohibits the takeoff from landing in, or overflight of the territory of the United States by an aircraft on a flight to or from the territory of Libya. This action further prohibits the landing in, takeoff from, or overflight of the territory of the United States by any aircraft on a flight from or to any intermediate destination, if the flight's origin or ultimate destination is Libya. Exceptions are made for particular flights approved by the United States Government in consultation with the UN Security Council committee established under Security Council Resolution 748 (1992) and for certain emergency operations. This action is necessary to implement Executive Orders 12543 (1986) and 12801 (1992) and Resolution 748 mandating an embargo of air traffic with Libya.

DATES: The removal of SFAR 65 and the addition of SFAR 65–1 are effective on September 20, 1995. SFAR 65–1 shall remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Mark W. Bury, International Affairs and Legal Policy Staff, AGC–7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–3515.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Public Inquiry Center, APA–230, 800 Independence Avenue S.W., Washington, DC 20591, or by calling 202–267–3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of the Advisory Circular No. 11–2A, which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and the safety of U.S.-registered aircraft and U.S. operators throughout the world. Section 40101(d)(1) of Title 49, United States Code, requires the Administrator of the FAA to consider the regulation of air commerce in a manner that best promotes safety and fulfills the requirements of national security as being in the public interest. In addition, 49 U.S.C. 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the United States Government under an international agreement.

One such international agreement is the Charter of the United Nations (the Charter) (59 Stat. 1031; 3 Bevans 1153 (1945)). Under Article 25 of the Charter, ''the members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.'' Article 48(1) of the Charter further provides, in pertinent part, that ''[t]he action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all members of the United Nations * * *.''

On March 31, 1992, acting under Chapter VII of the Charter, the Security Council adopted Resolution 748, mandating an embargo of certain air traffic with Libya. Paragraph 4(a) of Resolution 748 requires all states to deny permission to any aircraft to take off from, land in, or overfly their territory if the aircraft is destined to land in or has taken off from the territory of Libya. An exception to this prohibition is made for flights that have been approved on the grounds of urgent humanitarian need by the Security Council committee established by paragraph 9 of Resolution 748. The terms of Resolution 748 were reaffirmed by the Security Council in Resolution 883 (1993).

The United States Government has taken several actions to restrict air transportation between the United States and Libya. On January 7, 1986, the President issued Executive Order 12543, which prohibits ''[a]ny transaction by a United States person relating to transportation to or from Libya * * * or the sale in the United States by any person holding authority under the Federal Aviation act of any transportation by air which includes any stop in Libya.'' On January 30, 1986, the Secretary of Transportation implemented Executive Order 12543 by issuing Order 86–2–23, which amended all Department of Transportation (DOT) certificates issued under section 401 of the Federal Aviation Act, all permits issued under section 402 of the Act, and all exemptions from sections 401 and 402 accordingly.

In response to UN Resolution 748, the President issued Executive Order 12801 on April 15, 1992. Section 1 of Executive order 12801 prohibits:

> the granting of permission to any aircraft to take off from, land in, or overfly the United States, if the aircraft, as part of the same part of the same flight or a continuation of that flight, is destined to land in or has taken off from the territory of Libya * * *.

Executive Order 12801 cited the President's authority under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C.

1601 *et seq.*), section 1114 of the Federal Aviation Act of 1958, as amended (formerly codified at 49 U.S.C. app. 1514, now recodified at 49 U.S.C. 40106), section 301 of Title 3, United States Code (3 U.S.C. 301), and section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c). In particular, the United Nations Participation Act provides that:

> Notwithstanding the provisions of any other law, whenever the United States is called upon by the (UN) Security Council to apply measures which said Council has decided * * * are to be employed to give effect to its decisions under the (United Nations) Charter, the President may, to the extent necessary to apply such measures,through any agency which he may designate, and under such orders, rules, or regulations as may be prescribed by him, investigate, regulate, or prohibit, in whole or in part, economic relations of rail, sea, [and] air * * * between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof * * *.

In support of Executive Order 12801, the FAA adopted SFAR 65 on April 16, 1992. SFAR 65 prohibited the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight to or from the territory of the Libya. SFAR 65 also prohibited the landing in, takeoff from, or overflight of the territory of the United States by any aircraft on a flight from or to any intermediate destination, if the flight is destined to land in or take off from the Libya. SFAR 65 expired on April 16, 1993.

Copies of UN Security Council Resolution 748, Executive Orders 12543 and 12801, and DOT Order 86–2–23, all of which remain in effect, have been placed in the docket for this rulemaking.

Prohibition Against Certain Flights Between the United States and Libya

On the basis of the above, and in support of the Executive Order of the President of the United States, I find that immediate action by the FAA is required to implement Executive Orders 12543 and 12801 and to meet the obligations of the United States under international law as evidenced by U.N. security Council Resolution No. 748. Accordingly, I am ordering a prohibition on the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight that has Libya as its origin or ultimate destination. Operations approved by the United States Government in consultation with the UN Security Council committee established under Resolution 748 and certain emergency operations shall be excepted from this prohibition. For the reasons stated above, I also find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon publication. I also find that this action is fully consistent with my obligations under section 49 U.S.C. 40105(b)(1)(A) to act consistently with the obligations of the United States under international agreements.

The rule contains no expiration date, and will be terminated as soon as the underlying legal requirements leading to its adoption are removed.

Regulatory Evaluation

The potential cost of this regulation is limited to the net revenue of commercial flights between the United States and Libya. However, revenue flights to Libya are currently prohibited by DOT Order 86–2–23. Accordingly, this action will impose no additional burden on those operators.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

International Trade Impact Assessment

DOT Order 86–2–23 prohibits U.S. and foreign air carriers from engaging in the sale of air transportation to or from Libya. This SFAR does not impose any restrictions on commercial carriers beyond those imposed by the DOT Order. Therefore, the SFAR will not create a competitive advantage or disadvantage for foreign companies in the sale of aviation products or services in the United States, nor for domestic firms in the sale of aviation products or services in foreign countries.

Federalism Determination

The amendment set forth 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 (52 FR 4168; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this action is not a ''significant regulatory action'' under Executive Order 12866. This action is not considered a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Libya are already prohibited by DOT Order 86–2–23, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Airports, Air traffic control, Aviation safety, Freight, Libya.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

> Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

Part 9 SFAR 65 [Removed]

2. SFAR 65, which expired April 16, 1993, is removed.

Part 91 SFAR 65–1 [Added]

3. Special Federal Aviation Regulation (SFAR) No. 65–1 is added to read as follows:

Special Federal Aviation Regulation No. 65–1—Prohibition Against Certain Flights Between the United States and Libya

1. Applicability. This Special Federal Aviation Regulation (SFAR) No. 65–1 applies to all aircraft operations originating from, landing in, or overflying the territory of the United States.

2. Special flight restrictions. Except as provided in paragraphs 3 and 4 of this SFAR No. 65–1—

(a) No person shall operate an aircraft on a flight to any point in Libya, or to any intermediate point on a flight where the ultimate destination is any point in Libya or that includes a landing at any point in Libya in its intended itinerary, from any point in the United States;

(b) No person shall operate an aircraft on a flight to any point in the United States from any point in Libya, or from any intermediate point on a flight where the origin is in Libya, or from any point on a flight which includes a departure from any point in Libya in its intended itinerary; or

(c) No person shall operate an aircraft over the territory of the United States if that aircraft's flight itinerary includes any landing at or departure from any point in Libya.

3. Permitted operations. This SFAR shall not prohibit the flight operations between the

United States and Libya described in section 2 of this SFAR by an aircraft authorized to conduct such operations by the United States Government in consultation with the committee established by UN Security Council Resolution 748 (1992), as affirmed by UN Security Council Resolution 883 (1993).

4. Emergency situations. In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR 121.557, 121.559, or 135.19, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations or the aircraft involved in the deviation, including a description of the deviation and the reasons therefor.

5. Duration. This SFAR No. 65–1 shall remain in effect until further notice.

Issued in Washington, DC on September 13, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–23346 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 24, 123, 134, 162, 174, 177, 178, 181 and 191

[T.D. 95–68]

RIN 1515–AB33

North American Free Trade Agreement

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the document published in the Federal Register that adopts as a final rule, with some changes, interim amendments to the Customs Regulations to implement the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement (NAFTA) and the North American Free Trade Agreement Implementation Act. The correction concerns the discussion of a comment in the Background portion of the document regarding the calculation of NAFTA drawback.

EFFECTIVE DATE: This correction is effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: William Rosoff, Entry Rulings Branch (202–482–7040).

SUPPLEMENTARY INFORMATION:

Background

On September 6, 1995, Customs published in the Federal Register (60 FR 46334) T.D. 95–68 to adopt as a final rule, with some changes, interim amendments to the Customs Regulations implementing the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement (NAFTA) and the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057. These final NAFTA implementing regulations take effect on October 1, 1995.

The **SUPPLEMENTARY INFORMATION** portion of T.D. 95–68 included a detailed discussion of the public comments submitted to Customs on the interim NAFTA implementing regulations. One such comment concerned interim § 181.44(b) and stated, with reference to a specific example, that the regulation was unclear as to the calculation of NAFTA drawback (that is, with regard to how the required duty comparison is to be made) when two or more components are used in the process of manufacture. The Customs response to this comment included a general statement of the principle to be applied and also stated that a new paragraph (b) was being added to § 181.44 to set forth the relative value calculation and individual comparison principle.

On further review of the response to the submitted comment, Customs has determined that the response neither specifically addressed the example provided in the comment nor adequately expressed the principle reflected in the new paragraph (b) text. This document corrects the Customs response in question accordingly.

Correction of Publication

In the document published in the Federal Register as T.D. 95–68 on September 6, 1995 (60 FR 46334), on page 46339, under the heading ''Section 181.44(b)'', the paragraph beginning at the bottom of the first column and ending at the top of the second column before the example is corrected to read as follows:

Customs response: With respect to the duty comparison referred to in the comment, the comparison should be made between the total duty paid on all imported materials or component parts and the duty paid on the finished article exported to Canada or Mexico: In the example cited by the commenter, the total duty of $6.00 paid on the two imported parts would be compared to the $5.00 in Canadian or Mexican duty paid on the exported finished article, resulting in $5.00 in drawback. Where multiple finished articles are produced from one imported component or material, relative value will be used to determine how the comparison is to be made between the duty paid on the imported component or material and the duty paid on each individual exported finished article. Section 181.44, as set forth below, has been modified by redesignating paragraphs (b)–(e) as (c)–(f) and adding a new paragraph (b) which sets forth the relative value calculation and individual comparison principle and includes the following example to illustrate the rule where multiple articles are produced from one component or material:

Dated: September 14, 1995.

Harvey B. Fox,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 95–23269 Filed 9–19–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 88F–0303]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of the following additives as components of coatings that contact food: meta-xylylenediamine (1,3-benzenedimethanamine), para-xylylenediamine (1,4-benzenedimethanamine), 3-diethylaminopropylamine, benzyl alcohol, salicylic acid, N-*beta*-(aminoethyl)-*gamma*-aminopropyltrimethoxysilane, and castor oil, hydrogenated polymer with ethylenediamine, 12-hydroxyoctadecanoic acid, and sebacic acid. This action responds to a petition filed by Sigma Coatings.

DATES: Effective September 20, 1995;written objections and requests for a hearing by October 20, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of November 17, 1988 (53 FR 46505), FDA announced that a food additive petition (FAP 8B4067) had been filed by Sigma Coatings, Harvey, LA 70059. The petition proposed that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of the following additives as components of coatings that contact food: 1,3-benzenedimethanamine, 1,4-benzenedimethanamine, 3-diethylaminopropylamine, benzyl alcohol, salicylic acid, N-*beta*-(aminoethyl)-*gamma*-aminopropyltrimethoxysilane, and castor oil, hydrogenated polymer with ethylenediamine, 12-hydroxyoctadecanoic acid, and sebacic acid.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed uses for the additives in resinous and polymeric coatings in contact with foods are safe and that the regulations in § 175.300 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 20, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

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

2. Section 175.300 is amended in paragraph (b)(3)(viii)(*b*) and in paragraph (b)(3)(xxxiii) by alphabetically adding the following new items to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(viii) * * *

(*b*) Catalysts and cross-linking agents for epoxy resins:

* * * * *

N-*Beta*-(aminoethyl)-*gamma*-aminopropyltrimethoxysilane (CAS Reg. No. 1760–24–3), for use only in coatings at a level not to exceed 1.3 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, and III, under conditions of use C, D, E, or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E or F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

Benzyl alcohol (CAS Reg. No. 100–51–6), for use only in coatings at a level not to exceed 4 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, and III, under conditions of use C, D, E, or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E or F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

* * * * *

3-Diethylaminopropylamine (CAS Reg. No. 104–78–9), for use in coatings at a level not to exceed 6 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, and III, under conditions of use C, D, E, or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E or F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

* * * * *

Salicylic acid (CAS Reg. No. 69–72–7), for use only in coatings at a level not to exceed 0.35 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, and III, under conditions of use C, D, E, or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E or F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

* * * * *

Meta-Xylylenediamine (1,3-benzenedimethanamine, CAS Reg. No. 1477–55–0), for use only in coatings at a level not to exceed 3 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, and III, under conditions of use C, D, E or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E or F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

Para-Xylylenediamine (1,4 benzenedimethanamine, CAS Reg. No. 539–48–0), for use only in coatings at a level not to exceed 0.6 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, III, under conditions of use C, D, E, or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E and F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

* * * * *

(xxxiii) * * *

* * * * *

Castor oil, hydrogenated polymer with ethylenediamine, 12-hydroxyoctadecanoic acid and sebacic acid (CAS Reg. No. 68604–06–8). The condensation product formed by the reaction of hydrogenated castor oil with polyamide derived from ethylenediamine, sebacic acid and 12-hydroxystearic acid, for use only in coatings at a level not to exceed 3.2 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, and III, under conditions of use C, D, E, or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E or F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

* * * * *

Dated: September 6, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–23244 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 177

[Docket No. 92F–0237]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,1′-sulfonylbis[4-chlorobenzene] polymer with 4,4′-(1-methylethylidene)bis[phenol] (maximum 8 percent) and 4,4′-sulfonylbis[phenol] (minimum 92 percent) as repeat-use articles or components of repeat-use articles that contact food. This action is in response to a petition filed by BASF Corp.

DATES: Effective September 20, 1995; written objections and requests for a hearing by October 20, 1995. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication listed in § 177.2440, effective September 20, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 8, 1992 (57 FR 30224), FDA announced that a food additive petition (FAP 1B4263) had been filed by BASF Corp., 1609 Biddle Ave., Wyandotte, MI 48192–3799. The petition proposed to amend the food additive regulations in § 177.2440 *Polyethersulfone resins* (21 CFR 177.2440) to provide for the safe use of 1,1′-sulfonylbis[4-chlorobenzene] polymer with 4,4′-(1-methylethylidene)bis[phenol] (maximum 8 percent) and 4,4′-sulfonylbis[phenol] (minimum 92 percent) as repeat-use articles or components of repeat-use articles that contact food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe and that § 177.2440 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety

and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 20, 1995, file with the Dockets Management Branch (address above) written objection thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

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

2. Section 177.2440 is amended by revising paragraphs (a) and (b) to read as follows:

§ 177.2440 Polyethersulfone resins.

* * * * *

(a) For the purpose of this section, polyethersulfone resins are:

(1) Poly(oxy-*p*-phenylenesulfonyl-*p*-phenylene) resins (CAS Reg. No. 25667–42–9), which have a minimum number average molecular weight of 16,000.

(2) 1,1′-sulfonylbis[4-chlorobenzene] polymer with 4,4′-(1-methylethylidene)bis[phenol] (maximum 8 percent) and 4,4′-sulfonylbis[phenol] (minimum 92 percent) (CAS Reg. No. 88285–91–0), which have a minimum number average molecular weight of 26,000.

(3) In paragraphs (a)(1) and (a)(2) of this section, the minimum number average molecular weight is determined by reduced viscosity in dimethyl formamide in accordance with ASTM method D2857–70 (Reapproved 1977), ''Standard Test Method for Dilute Solution Viscosity of Polymers,'' which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, 1110 Vermont Ave. NW., suite 1200, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(b) The basic resins identified in paragraphs (a)(1) and (a)(2) of this section may contain optional adjuvant substances described in § 174.5(d) of this chapter and the following:

List of substances	Limitations
Diphenylsulfone	Not to exceed 0.2 percent as residual solvent in the finished basic resin described in paragraph (a)(1) of this section.
Dimethyl sulfoxide .	Not to exceed 0.01 percent as residual solvent in the finished basic resin described in paragraph (a)(1) of this section.
N-methyl-2-pyrrolidone.	Not to exceed 0.01 percent as residual solvent in the finished basic resin described in paragraph (a)(2) of this section.

* * * * *

Dated: September 6, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–23248 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin Meglumine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Fort Dodge Laboratories. The ANADA provides for intravenous or intramuscular use of flunixin meglumine injection for alleviation of inflammation and pain associated with musculoskeletal disorders and visceral pain associated with colic in horses.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, 800 Fifth St. NW., P.O. Box 518, Fort Dodge, IA 50501, filed ANADA 200–142, which provides for intravenous or intramuscular use of flunixin meglumine injection for alleviation of inflammation and pain associated with musculoskeletal disorders and visceral pain associated with colic in horses.

ANADA 200–142 for Fort Dodge's flunixin meglumine injection is approved as a generic copy of Banamine® (flunixin meglumine) Injection in Schering-Plough's NADA 101–479. The ANADA is approved as of August 18, 1995, and the regulations are amended in 21 CFR 522.970(b) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.970 is amended by revising paragraph (b) to read as follows:

§ 522.970 Flunixin meglumine solution.

* * * * *

(b) *Sponsors.* See Nos. 000061 and 000856 in § 510.600(c) of this chapter.

* * * * *

Dated: September 5, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–23245 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Pharmaceutical, Inc. The ANADA provides for intravenous use of oxytetracycline hydrochloride injection in cattle for treatment of certain diseases caused by pathogens sensitive to oxytetracycline.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center For Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Phoenix Pharmaceutical, Inc., 4621 Easton Rd., P.O. Box 6457 Farleigh Station, St. Joseph, MO 64506–0457, filed ANADA 200–068, which provides for intravenous use of oxytetracycline hydrochloride injection in cattle for the treatment of bacterial pneumonia and shipping fever complex associated with *Pasteurella* spp., bacterial enteritis (scours) caused by *Escherichia coli*, necrotic pododermatitis (foot rot) and calf diphtheria caused by *Spherophorus necrophorus*, wooden tongue caused by *Actinobacillu lignieresii*, wound infection and traumatic injury caused by oxytetracycline susceptible strains of streptococcal and staphylococcal bacteria.

Phoenix Pharmaceutical, Inc.'s, ANADA 200–068 for oxytetracycline hydrochloride injection is approved as a generic copy of Fermenta's NADA 108–963 for Medamycin®-100. The ANADA is approved as of July 31, 1995, and the regulations are amended in 21 CFR 522.1662a(h) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of

safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1662a is amended by revising paragraph (h)(2) to read as follows:

§ 522.1662a Oxytetracycline hydrochloride injection.

* * * * *

(h) * * *

(2) *Sponsors*. See 054273 in § 510.600(c) of this chapter for use of 50 and 100 milligrams/milliliter solution, and see No. 057319 in § 510.600(c) for use of 100 milligrams/milliliter solution.

* * * * *

Dated: September 1, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–23250 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Cyclosporine Ophthalmic Ointment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for use of cyclosporine ophthalmic ointment for treatment of chronic keratoconjunctivitis sicca in dogs.

EFFECTIVE DATE: October 20, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., P.O. Box 529, Galloping Hill Rd., Kenilworth, NJ 07033, filed NADA 141–052, which provides for use of Optimmune® (0.2 percent cyclosporine, USP) Ophthalmic Ointment for treatment of chronic keratoconjunctivitis sicca in dogs. The drug product is available on a prescription basis. The NADA is approved as of August 2, 1995, and the regulations are amended in part 524 (21 CFR part 524) by adding new § 524.575 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning August 2, 1995, because no active ingredient (including any ester or salt of the active ingredient) of the drug has been approved in any other application under section 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 524.575 is added to read as follows:

§ 524.575 Cyclosporine ophthalmic ointment.

(a) *Specifications*. Each gram of ointment contains 2 milligrams of cyclosporine.

(b) *Sponsor*. See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount*. Apply a 1/4-inch strip of ointment to the affected eye(s) every 12 hours.

(2) *Indications for use*. For treatment of chronic keratoconjunctivitis sicca in dogs.

(3) *Limitations*. Place ointment directly on cornea or into the conjunctival sac. Safety of use in puppies, pregnant or breeding animals has not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 1, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–23247 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Department of the Army Reg. 340-21]

Department of the Army Privacy Program

AGENCY: Department of the Army, DoD.

ACTION: Final Rule.

SUMMARY: The Department of the Army is revising an existing exemption rule. The exemption rule is for the system of records notice identified as A0381–100bDAMI, entitled Technical Surveillance Index.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538–6856 or DSN 879–6856.

SUPPLEMENTARY INFORMATION: *Executive Order 12866.* The Director, Administration and Management, Office of the Secretary of Defense has determined that this 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 entitlement, grants, user fees, or loan programs or the right 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 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.

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, the Department of the Army revises 32 CFR part 505 as follows:

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93–597, 88 Stat. 1896 (5 U.S.C. 552a)

2. Section 505.5(e), paragraph ag. is revised as follows:

* * * * *

(e) * * *

ag. *System identifier and name:* A0381-l00bDAMI, Technical Surveillance Index.

(1) *Exemption.* This system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(5), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

(2) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2) or (k)(5).

(3) *Reasons.* From subsection (c)(3) because disclosing the identities of agencies to which information from this system has been released could inform the subject of an investigation of an actual or potential criminal violation or intelligence operation; of the existence of that investigation or operation; of the nature and scope of the information and evidence obtained as to his/her activities or of the identify of confidential sources, witnesses, and intelligence or law enforcement personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, intelligence or law enforcement personnel, and their families; lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified and sensitive sources and operational methods and could constitute an unwarranted invasion of the personal privacy of others.

From subsection (d)(1) through (d)(5) because granting access to records in this system of records could inform the subject of an investigation of an actual or potential criminal violation; of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his/her activities; or of the identity of confidential sources, witnesses and intelligence or law enforcement personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, intelligence or law enforcement personnel and their families; lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, sensitive sources and operational methods and could constitute an unwarranted invasion of the personal privacy of others.

From subsection (e)(1) because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation or operation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation or operation, the investigator may obtain information which is incidental to the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation or operation, the investigator may obtain information concerning violation of laws other than those which are within the scope of his/her jurisdiction. In the interest of effective intelligence operations and law enforcement, criminal law enforcement investigators and military intelligence agents should retain this information, since it can aid in establishing patterns of criminal or intelligence activity and can provide valuable leads for other law enforcement or intelligence agencies.

From subsections (e)(4)(G) and (e)(4)(H) because this system of records is being exempt from subsections (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that this system of records will be exempt from subsections (d)(1) through (d)(5) of the Act. Although the system would be exempt from these requirements, the Deputy Chief of Staff for Intelligence and the U.S. Army Criminal Investigations Command have published information concerning its notification, access, and contest procedures for their respective areas because, under certain circumstances, the Deputy Chief of Staff for Intelligence or the U.S. Army Criminal Investigations Command could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

From subsection (e)(4)(I) because it is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses and to avoid the disclosure of investigative techniques and procedures. Although the system will be exempt from this requirement, the Deputy Chief of Staff for Intelligence and the U.S. Army Criminal Investigations Command have

published such a notice in broad, generic terms.

* * * * *

Dated: September 13, 1995.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–23238 Filed 9–19–95; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY89–1–7168; FRL–5297–6]

Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky: Correction to the Boundary of the Kentucky Portion of the Louisville Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is correcting the boundaries of the Kentucky portion of the Louisville moderate ozone (O_3) nonattainment area, pursuant to Section 110(k)(6) of the Clean Air Act (the Act). The boundary of the Louisville moderate O_3 nonattainment area (nonattainment area) is being revised to include additional sources that contribute to violation of the O_3 National Ambient Air Quality Standard (NAAQS).

EFFECTIVE DATE: This final rule will be effective October 5, 1995.

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

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

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, x4207.

SUPPLEMENTARY INFORMATION: On November 6, 1991 (56 FR 56694), EPA designated portions of Oldham and Bullitt Counties as moderate O_3 nonattainment. Sections 107(d)(4)(A)(i) and (ii) of the 1990 Clean Air Act Amendments (CAAA) set out the general process by which areas were to be designated for O_3 attainment/nonattainment immediately after enactment of the CAAA. Under the CAAA, preenactment O_3 and carbon monoxide (CO) nonattainment areas were classified on the date of enactment according to the severity of their problem. Within 120 days of enactment of the CAAA, the Governor of each state was required to submit a list of areas within the state, designating each area as attainment, nonattainment, or unclassifiable (120-day letter). Within 60 days of submitting the state lists, EPA was required to notify states of any potential modifications to the state's recommendations and encourage states to comment within 20 days to EPA's proposal. EPA was required to promulgate the lists, including boundary modifications, within 240 days of enactment.

On March 14, 1991, the Commonwealth of Kentucky (the Cabinet) submitted a list of ozone nonattainment, attainment and unclassifiable areas and boundaries. The Cabinet proposed that Jefferson County be the only Kentucky county in the Louisville nonattainment area. EPA gave 60 day notification to the Cabinet on May 13, 1991, that it intended to modify the proposed designation list. Pursuant to section 107(d)(1)(i) of the CAAA, EPA indicated that it intended to include Bullitt and Oldham Counties in the Louisville nonattainment area due to monitored violations of the NAAQS for O_3 in these counties.

On June 3, 1991, the cabinet formally disagreed with EPA's decision to include Bullitt and Oldham Counties in the Louisville nonattainment area. EPA and the Cabinet subsequently agreed to include the portions of Bullitt and Oldham Counties that contained the monitors that recorded the O_3 NAAQS violations and the sources whose emissions contributed to the O_3 NAAQS violations. Partial boundaries were developed and EPA published the nonattainment designation for the Louisville area on November 6, 1991 (FR 56 56694). Natural boundaries, roads, powerlines, etc., were used to detail the nonattainment area. When these boundaries were developed, sources on one side of the street or intersection were included in the nonattainment area while sources on the other side inadvertently were not. As a result, not all sources contributing to the violation of the O_3 NAAQS in Louisville were included in the nonattainment area, and inequitable economic impacts have been placed upon small competing businesses. This has affected the well being of some small businesses and it has undermined the effectiveness of the plan to attain the standard in the Louisville nonattainment area.

Final Action

In the Federal Register of November 6, 1991 (56 FR 56694), EPA issued a final rule promulgating the designations, boundaries, and classifications of O_3 nonattainment areas (and for nonattainment areas for other pollutants not addressed in this action). Pursuant to section 110(k)(6) of the CAAA, EPA is correcting the boundary of the Kentucky portion of the Louisville moderate O_3 nonattainment area to extend the nonattainment area 750 ft. outward from the center of a road or intersection.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 20, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).)

The OMB has exempted this 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.

This correction under Section 110(k)(6) of the Act simply imposes previously existing requirements on a few small entities which were inadvertently left out of the designated nonattainment area. Therefore, I certify that this action does not have a significant impact on a substantial number of small entities.

Unfunded Mandates

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

EPA has determined that this action does include a mandate. However, the estimated cost is less than $100 million to State, local, or tribal governments in the aggregate or to the private sector.

In accordance with CAAA sections 107(d)(2)(B) and 110(k)(6), this action is a final rule and is not subject to the notice and comment provisions of sections 553 through 557 of Title 5.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Ozone, Intergovernmental relations.

Dated: September 12, 1995.

Carol M. Browner,

Administrator.

Part 81 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In section 81.318, the ozone table is amended by revising the entries for ''Bullitt County (part)'' and ''Oldham County (part)'' under the ''Louisville Area'' to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY-OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type*
* * * *	*	*		*
Bullitt County (part): The area boundary is as follows: Beginning at the intersection of Ky 1020 and the Jefferson-Bullitt County Line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County Line; proceeding south on county road 567 to the junction with Ky 1116 (also known as Zoneton Road); proceeding to the south on Ky 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets Ky 44 at Stallings Cemetery; proceeding west along Ky 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of Ky 480; proceeding west on Ky 480 to the junction with Ky 2237; proceeding south on Ky 2237 to the junction with Ky 61 and proceeding north on Ky 61 to the junction with Ky 1494; proceeding south on Ky 1494 to the junction with the perimeter of the Fort Knox Military Reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to Ky 44; proceeding a very short distance west on Ky 44 to a junction with Ky 2723; proceeding north on Ky 2723 to the junction of Chillicoop Road; proceeding northeast on Chillicoop Road to the junction of KY 2673; proceeding north on KY 2673 to the junction of KY 1020; proceeding north on KY 1020 to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection.	.....	Non-attainment ...	.....	Moderate.

KENTUCKY-OZONE—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type*
Jefferson County	.....	Non-attainment ...	.....	Moderate
Oldham County (part): The area boundary is as follows: Beginning at the intersection of the Oldham-Jefferson County Line with the southbound lane of Intestate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of Ky 329 and the southbound lane of Interstate 71; proceeding to the northwest on Ky 329 to the intersection of Zaring Road an Ky 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road to the junction of Ky 393 and Cedar Point Road; proceeding to the south-southeast on Ky 393 to the junction of (the access road on the north side of Reformatory Lake and the Reformatory); proceeding to the east-northeast on the access road to the junction with Dawkins Lane and the access road; proceeding to follow an electric power line east-northeast across from the junction of county road 746 and Dawkins Lane to the east-northeast across Ky 53 on to the La Grange Water Filtration Plant; proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on Ky 146; proceeding along the power line south across Ky 146 and the Seaboard System Railroad track to adjoin the incorporated city limits of La Grange; then proceeding east then south along the La Grange city limits to a point abutting the north side of Ky 712; proceeding east-southeast on Ky 712 to the junction of Massie School Road and Ky 712; proceeding to the south-southwest on Massie School Road to the intersection of Massie School Road and Zale Smith Road; proceeding northeast on Zale Smith Road to the junction of KY 53 and Zale Smith Road; proceeding on Ky 53 to the north-northwest to the junction of New Moody Lane and Ky 53; proceeding on New Moody Lane to the south-southwest until meeting the city limits of La Grange; then briefly proceeding north following the La Grange city limits to the intersection of the northbound lane of Interstate 71 and the La Grange city limits; proceeding southwest on the north-bound lane of Interstate 71 until inter-secting with the North Fork of Currys Fork; proceeding south-southwest beyond the con-fluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; proceeding northwest along the Oldham-Jefferson County Line to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection.	.....	Non-attainment ...	.....	Moderate.
*	*	*	*	*	*	*

(1) This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 95–23320 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 0E3858/R2171; FRL–4977–7]

RIN 2070–AB78

Cinnamaldehyde; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a pesticide tolerance for residues of the fungicidal pest control agent Cinnamaldehyde in or on all raw agricultural commodities. The Interregional Research Project No. 4 (IR-4) requested this tolerance exemption on behalf of Monterey Laboratories and pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA). This regulation eliminates the need to establish a maximum permissible level for residues of cinnamaldehyde.

DATES: This regulation becomes effective September 20, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0E3858/R2171], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. 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 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 Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

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 [0E3858/R2171]. 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: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location and telephone number: CS1, 5th floor, 2800 Crystal Drive, Crystal City, VA 22202, (703)-308-8733; e-mail: bacchus.shanus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 26, 1995 (60 FR 38331), EPA issued a notice of PP OE3858 from IR-4, New Jersey, 08903, proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(d), to exempt from the requirement of a tolerance the residues of cinnamaldehyde, a pest control agent, in or on all raw agricultural commodities when used to control certain fungal pest species.

There were no comments received in response to the notice of filing. The data submitted in the petition and all other relevant material have been evaluated and are summarized below.

Cinnamaldehyde (cinnamic aldehyde) is the main component in cassia oil as well as cinnamon bark oil and is used in flavoring compounds to impart a cinnamon flavor. Considerable safety data exist from the food and flavoring industry, which use food-grade cinnamaldehyde in nonalcoholic beverages, ice cream, candy, baked goods, chewing gum, condiments, and meats at levels ranging from 9 parts per million (ppm) to 4,900 ppm. Cinnamaldehyde is Generally Recognized As Safe (GRAS) by the Flavoring Extract Manufacturers' Association and is approved for food use (21 CFR 182.60) by the Food and Drug Administration. Cinnamon oil, which contains 70% to 90% cinnamaldehyde, is also classified as GRAS and, like cinnamaldehyde, is used in the food and flavoring industry.

Toxicology Assessment

The toxicological data provided in support of the exemption from the requirement of a tolerance include the following: two acute dermal toxicity studies and published data/information for acute oral toxicity, eye irritation, dermal irritation, and dermal sensitization. The registrant has requested waivers for the remaining acute mammalian toxicology requirements (Series 152B) as outlined in 40 CFR 158.690.

Acute Oral Toxicity in Rats, Guideline 152B-10. The published information submitted was used to establish an acute oral LD_{50} of 1.15 g/kg (guinea pig), 2.25 g/kg or 3.35 g/kg (rat). *Classification:* Acceptable. Toxicity Category III.

Acute Dermal Toxicity in Rats, Guideline No. 152B-11. Two acute dermal toxicity studies were submitted. From these studies, the LD_{50}, was determined to be greater than 1.2 g/kg. This LD_{50} value corresponds to the dermal LD_{50} value of 1.31 g/kg (rabbit) provided in the material safety data (MSDS) sheet submitted by the registrant. *Classification:* Acceptable. Toxicity Category II.

Primary Eye Irritation, Guideline No. 152B-13. Exposure of human test subjects for 48 hours to a solution of 8% active ingredient demonstrated that it is an eye irritant. Although no corneal involvement was observed in this study, no information was provided as to the time for the eye irritation to clear. *Classification:* Acceptable. Toxicity Category II.

Primary Dermal Irritation, Guideline 152B-14. No primary dermal irritation was observed in human subjects exposed for 48 hours to a solution containing 3% active ingredient, while severe primary dermal irritation was observed in human subjects after exposure to 8% active ingredient. *Classification:* Acceptable. Dermal irritant.

Dermal Sensitization, Guideline 152B-15. Cinnamaldehyde was considered a sensitizer based on published results of the dermal effects of a 2% active ingredient on guinea pigs. *Classification:* Acceptable. Strong sensitizer.

Other Toxicology Data: Reference Dose (RfD) and maximum permissible intake (MPI) considerations are not relevant to this petition because of the low toxicity of the pesticide as reported in the data submitted.

Residue Chemistry Data

Residue chemistry data are necessary only if the submitted toxicology studies indicate that additional Tier II or III toxicology data would be required as specified in 40 CFR 158.165(e). The submitted toxicology data for this use indicate that the product is of low mammalian toxicity via the oral route. Therefore, neither Tier II or III toxicology data nor residue chemistry data were required for this registration action.

The toxicological data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from cinnamaldehyde when applied as a pesticide to mushrooms because of its low toxicity profile and the long history of use of both the active and inert ingredients in the food and flavoring industry.

Based on the information cited above, the Agency concludes that the establishment of a tolerance for the active ingredient, antifungal agent cinnamaldehyde, is not necessary to protect the public health. Therefore, 40 CFR part 180 is amended as set forth below.

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 request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or 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 (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 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 such issues, 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 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 [0E3858/R2171] (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 0E3858/R2171], 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 all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, 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. 96-365, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 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: September 11, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

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 § 180.1156, to read as follows:

§ 180.1156 Cinnamaledhyde; exemption from the requirement of a tolerance.

Cinnamaldehyde is exempted from the requirement of a tolerance when used as a plant pesticide on soil casing for mushrooms.

[FR Doc. 95–23317 Filed 9–19–95; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 4F4368/R2166; FRL–4974–1]

RIN 2070–AB78

Fliocladium Virens Isolate GL-21; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of the microbial pesticide *Gliocladium virens* GL-21 in or on terrestrial food crops grown outdoors. W.R. Grace & Co. requested this tolerance exemption pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective September 20,1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4368/R2166], 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 Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing request 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 4F4368/R2166]. 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: Denise Greenway, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: CS51L6, CS #1, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of September 28, 1994 (59 FR 49397), which announced that W.R. Grace & Co., 7379 Route 32, Columbia, MD 21044, had submitted pesticide petition (PP) 4F4368 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), establish an exemption from the requirement of a tolerance for residues of *Gliocladium*

virens GL-21 on terrestrial food crops grown outdoors. An error in the September 24, 1994 notice of filing is corrected to specify that the area of title 40 of the Code of Federal Regulations (CFR) to be amended is 40 CFR 180.1100, not 40 CFR 180.1001.

There were no comments received in response to the notice of filing.

In the Federal Register of December 6, 1990 (55 FR 50325), EPA established an exemption from the requirement of a tolerance for residues of the biofungicide *Gliocladium virens* GL-21 in or on all raw agricultural commodities when used as a fungicide for inoculation of plant growth media in greenhouses in accordance with good agricultural practices.

W.R. Grace & Co. has subsequently proposed to include use of *Gliocladium virens* GL-21 on terrestrial food crops grown outdoors. Like the greenhouse treatment use for which an exemption from tolerance now exists (40 CFR 180.1100), *Gliocladium virens* GL-21 blended with the soil will control damping-off diseases, particularly those caused by *Pythium* and *Rhizoctonia* on terrestrial food crops grown outdoors. The Agency has determined that this use presents no new hazard issues and that the following submitted data can support the registration for use on terrestrial food crops grown outdoors:

Gliocladium virens GL-21 is a naturally occurring, ubiquitous soil fungus found throughout the United States in various soil types. *Gliocladium virens* GL-21 is demonstrated to be nonpathogenic and noninfective to mammalian species as determined by the toxicological data below. Inoculation of soil with spores of *Gliocladium virens* GL-21 at the dosage levels provides a sufficiently high population to control plant pathogenic fungi of economic importance. The organism is not persistent at the inoculated high concentrations and falls off to background levels over a period of a few weeks. No indications of toxicity have been reported in workers following 1 to 2 years of working with the organism.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of tolerance include an acute oral toxicity/pathogenicity study, an acute pulmonary toxicity/pathogencity study, and an acute intravenous toxicity/pathogenicity study. All studies were conducted with the rat as the test animal. A review of these studies indicated that the organism was not acutely toxic, infective, or pathogenic to test animals when administered via the oral, pulmonary, or intravenous route. Primary eye irritation and acute dermal toxicity studies were also considered in support of the exemption from the requirement of a tolerance. A review of the acute dermal study indicated that the organism was not toxic to rabbits. No reports of hypersensitivity have been recorded from personnel working with this organism. The toxicity data provided are sufficient to show that there are no foreseeable health hazards to humans or domestic animals likely to arise from the use of this organism on terrestrial food crops grown outdoors.

Residue chemistry data were not required; such data are necessary only if the submitted toxicity studies indicate that additional Tier II or Tier III toxicology data are needed. These additional data were not needed. Therefore, no residue data are required in order to establish an exemption from the requirement of a tolerance for the biological pesticide *Gliocladium virens* GL-21 in or on terrestrial food crops grown outdoors.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition. Enforcement actions based on the level of residue found in a commodity are not expected because of the low toxicity. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request.

The Agency hereby amends the current tolerance exemption (40 CFR 180.1100) by expanding it to include the proposed use on terrestrial food crops grown outdoors.

Gliocladium virens GL-21 is considered useful for the purposes for which the exemption from the requirement of tolerance is sought. Based on the information considered, the Agency concludes that the establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from requirement of a tolerance is established as set forth below.

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 request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or 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 the relief sought (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 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 such issues, 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 possiblity 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 4F4368/R2166] (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 4F4368/R2166], 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 interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in 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 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 exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 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 23, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 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. Section 180.1100 is revised to read as follows:

§ 180.1100 Gliocladium virens GL-21; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biofungicide *Gliocladium virens* GL-21 in or on all raw agricultural commodities when used either as a fungicide for inoculation of plant growth media in greenhouses or on terrestrial food crops grown outdoors in accordance with good agricultural practices.

[FR Doc. 95–23318 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 3F2792/R2164; FRL–4973–4]

RIN 2070–AB78

Pendimethalin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the combined residues of the herbicide pendimethalin (*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzeneamine) and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol in or on the raw agricultural commodities pea pods, shelled peas, pea vines, and peas plus pods each at 0.1 part per million (ppm). The American Cyanamid Co. requested this regulation in a petition submitted under the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective September 20, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F2792/R2164], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests 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 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 Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

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 3F2792/R2164]. 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: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 26, 1995 (60 FR 38295), EPA issued a proposed rule that gave notice that American Cyanamid Co. had submitted pesticide petition (PP) 3F2792 to EPA requesting that the Administrator, pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, amend 40 CFR 180.361 by establishing a tolerance for the combined residues of the herbicide pendimethalin in or on the raw agricultural commodities pea pods, shell peas, pea vines, and peas plus pods each at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

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 request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or 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 (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 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 such issues, 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 3F2792/R2164] (including any 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 3F2792/R2164], 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 interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in 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 exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 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 30, 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 § 180.361, paragraph (a) is amended in the table therein by adding and alphabetically inserting the following commodity, to read as follows:

§ 180.361 Pendimethalin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Peas (except field peas)	0.1
* * * * *	

* * * * *

[FR Doc. 95–22871 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 716

[OPPTS–84030; FRL–4960–7]

Health and Safety Data Reporting Period Terminations

AGENCY: Environmental Protection Agency

ACTION: Final rule.

SUMMARY: EPA is terminating the reporting periods for 234 chemical substances by amending the sunset dates on the list of substances, mixtures, and categories in the Toxic Substances Control Act (TSCA) section 8(d) model Health and Safety Data Reporting rule. Pursuant to 40 CFR 716.65, EPA has reviewed all of the substances listed in § 716.120 and determined that at this time the Agency no longer needs continuing health and safety data reporting on these 234 chemical substances. For these chemicals, reporting under the section 8(d) model rule is no longer required except for those studies which were initiated before the end of the reporting period or were ongoing at the end of the reporting period. Persons who believe that EPA

should not terminate the reporting requirements for these substances on the section 8(d) model rule may notify EPA and provide their reasons.

DATES: This rule becomes effective on December 19, 1995. Written comments should be received by October 20, 1995.

ADDRESSES: All comments should include the docket control number OPPTS–84030 and should be sent in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. NE–G99, Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–84030. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 8(d) of the Toxic Substances Control Act (TSCA), EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR part 716). The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking.

By adding a substance to part 716, EPA triggers the section 8(d) model rule's reporting requirements. Past, current, and prospective manufacturers, importers, and processors of the listed substance are required to submit certain information at the time the substance is listed. Further submissions are required of those who later initiate a study of the listed substance or who later propose to manufacture, import, or process the listed substance up to 10 years from the effective date of the rule. The only reporting requirement unaffected by the sunset provision found at § 716.65(a) applies to those manufacturers, importers, and processors who initiate a study on a listed substance before the reporting period terminates. These studies must be submitted upon their completion regardless of the completion date (§ 716.65(c)). For chemicals that have reached their sunset date, reporting under the section 8(d) model rule is no longer required except for those studies which were initiated before the end of the sunset period or were ongoing at the end of the sunset period.

In addition to the 10–year sunset provision to prevent unnecessary reporting burdens, EPA has instituted a biennial review process to identify and terminate the reporting periods for those substances for which the Agency does not currently need continued health and safety data reporting (40 CFR 716.65(b)). Pursuant to this process, the EPA Office of Pollution Prevention and Toxics requested from other EPA offices and certain other Federal agencies all reasonable justifications for retaining each substance or mixture from the list at § 716.120. As a result, EPA has determined that the Agency's health and safety data needs no longer justify continued health and safety data reporting for 234 chemical substances presently listed in the section 8(d) model rule. Amending the reporting sunset date for a substance listed in § 716.120(a) and (d) to reflect the effective date of this rule terminates the reporting period for the substance. This action eliminates the potential reporting burdens for prospective manufacturers, importers, and processors of the substance, and removes the requirement that current manufacturers, importers, and processors of the substance must notify EPA whenever they initiate a study of the substance. However, any manufacturer, importer, or processor who initiates a study on the substance before its removal from the 8(d) list must notify EPA of the study's initiation and submit the study upon its completion regardless of the completion date (§ 716.65(c)). For the foregoing reason, EPA is amending the reporting sunset dates for the substances rather than removing all reference to the substances.

Authority for this action is stated in § 716.65 of the section 8(d) model rule. This section directs the EPA Office of Pollution Prevention and Toxics to conduct a biennial review of all the chemical substances and mixtures listed in § 716.120, and to request from other EPA offices and certain Federal agencies all reasonable justifications for retaining each substance or mixture on, or removing each substance or mixture from, the § 716.120 list. EPA is issuing this action without prior proposal in accordance with 40 CFR 716.65(b). This final rule terminates the reporting periods for 234 substances on the § 716.120 list 90 days following publication of this rule in the Federal Register. Persons are invited to comment on the determinations presented in this document. Written comments must be received by October 20, 1995. If a reasonable justification is received for requiring continued health and safety data reporting for any of these 234 substances on the section 8(d) model rule, EPA will, by notice published in the Federal Register, withdraw the sunset date amendment for the substance from the final rule prior to the final rule's effective date.

II. Amendments to 40 CFR 716.120

In order to affect the termination of health and safety data reporting on the chemical substances and categories for which there exists no justification for continuing reporting, § 716.120 will be amended. Sunset dates for 234 chemical substances will be amended to reflect the effective date of this rule. As previously stated, once a sunset date is reached, the reporting period for the chemical substance is terminated except as provided in § 716.65(c). A listing of the chemical substances subject to sunset date amendments are listed in the regulatory text.

III. Rulemaking Record

EPA has established a public record for this rulemaking (docket control number OPPTS–84030). This record includes basic information considered by the Agency in developing this rule. EPA will supplement the rulemaking record with additional information as it is received. The record now includes the following:

1. Section 8(d) model Health and Safety Rule Data Reporting Rule (51 FR 32720, September 15, 1986).

2. EPA memoranda to program offices requesting comments on substances listed in 40 CFR 716.120.

3. Comments from program offices and other Federal agencies.

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 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

IV. Regulatory Requirements

The Office of Management and Budget (OMB) has exempted this action from OMB review under Executive Order 12866 (58 FR 51735, October 4, 1993). The section 8(d) rule does not impose any Federal mandate on any State, local, or tribal governments or on the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this action will not have a significant economic impact on a significant number of small entities.

In addition, the information collection requirements related to the section 8(d) rule have already been approved by OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* under OMB control number 2070–0004. For the 234 chemical substances in this final rule, the reporting requirements under the section 8(d) rule will no longer apply, except for in those circumstances where a study has been initiated before or was ongoing at the end of the sunset period. In these cases, the reporting requirement continues until the studies are submitted to EPA upon their completion. This action does not include any burdens requiring additional OMB approval.

List of Subjects in 40 CFR Part 716

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: August 30, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 716 is amended to read as follows:

PART 716—[AMENDED]

1. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. Section 716.120 is amended by revising 234 entries in paragraph (a) and revising entries under the categories in paragraph (d) to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

CAS No.	Substance	Special exemptions	Effective date	Sunset date
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68-12-2	Dimethyl formamide-Formamide, N,N-dimethyl-		4/13/89	12/19/95
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74-95-3	Methane, dibromo-		6/1/87	12/19/95
74-97-5	Methane, bromochloro-		6/1/87	12/19/95
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75-04-7	Ethanamine		6/1/87	12/19/95
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75-27-4	Methane, bromodichloro-		6/1/87	12/19/95
75-29-6	Propane, 2-chloro-		6/1/87	12/19/95
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75-37-6	1,1-Difluoroethane-Ethane, 1,1-difluoro-		4/13/89	12/19/95
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75-43-4	Dichloromonofluoromethane-Methane, dichlorofluoro-		4/13/89	12/19/95
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75-52-5	Nitromethane-Methane, nitro-		4/13/89	12/19/95
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75-68-3	1-Chloro-1,1-difluoroethane-Ethane, 1-chloro-1,1-difluoro		4/13/89	12/19/95
75-86-5	Propanenitrile, 2-hydroxy-2-methyl-		3/7/86	12/19/95

CAS No.	Substance	Special exemptions	Effective date	Sunset date
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76-13-1	1,1,2-Trichloro-1,2,2-trifluoroethane-Ethane, 1,1,2-trichloro-1,2,2-trifluoro-1		4/13/89	12/19/95
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78-88-6	1-Propene, 2,3-dichloro-		6/1/87	12/19/95
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78-97-7	Propanenitrile, 2-hydroxy-		6/1/87	12/19/95
78-99-9	Propane, 1,1-dichloro-		3/7/86	12/19/95
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79-24-3	Nitroethane-Ethane, nitro-		4/13/89	12/19/95
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80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl		3/7/86	12/19/95
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88-04-0	p-Chloro-m-xylenol-Phenol, 4-chloro-3,5-dimethyl-		4/13/89	12/19/95
90-30-2	N-Phenyl-1-naphthylamine		9/30/91	12/19/95
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91-08-7	Benzene, 1,3-diisocyanato-2-methyl-		6/1/87	12/19/95
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92-69-3	[1,1'-Biphenyl]-4-ol		6/1/87	12/19/95
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95-14-7	1,2,3-Benzotriazole-1H-Benzotriazole		4/13/89	12/19/95
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95-53-4	Benzenamine, 2-methyl-		3/7/86	12/19/95
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96-29-7	2-Butanone, oxime		12/15/86	12/19/95
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97-18-7	Phenol, 2,2'-thiobis[4,6-dichloro-		6/1/87	12/19/95
97-23-4	Phenol, 2,2'-methylenebis[4-chloro-		6/1/87	12/19/95
97-88-1	Butyl methacrylate-2-Propenoic acid, 2-methyl-,butyl ester		4/13/89	12/19/95
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98-06-6	Benzene, (1,1-dimethylethyl)-		6/1/87	12/19/95
98-09-9	Benzenesulfonyl chloride		3/7/86	12/19/95
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98-73-7	p-tert-Butylbenzoic acid-Benzoic acid, 4-(1,1-dimethylethyl)-		6/25/86	12/19/95
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102-71-6	Triethanolamine-Ethanol, 2,2',2''-nitrilotris-		4/13/89	12/19/95
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104-51-8	Benzene, butyl-		6/1/87	12/19/95
104-76-7	1-Hexanol, 2-ethyl-		6/1/87	12/19/95
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106-43-4	Benzene, 1-chloro-4-methyl-		6/1/87	12/19/95

CAS No.	Substance	Special exemptions	Effective date	Sunset date
	* * * *	* *	*	
107-10-8	1-Propanamine		3/7/86	12/19/95
107-19-7	2-Propyn-1-ol		3/7/86	12/19/95
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108-60-1	Propane, 2,2'-oxybis[1-chloro-		6/1/87	12/19/95
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108-86-1	Benzene, bromo-		6/1/87	12/19/95
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108-95-5	Thiophenol		1/26/94	12/19/95
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109-77-3	Propanedinitrile		3/7/86	12/19/95
109-87-5	Methane, Dimethoxy-		6/1/87	12/19/95
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110-75-8	Ethene, (2-chloroethoxy)-		3/7/86	12/19/95
110-82-7	Cyclohexane		12/19/85	12/19/95
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111-69-3	Hexanedinitrile		6/1/87	12/19/95
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111-77-3	Diethylene glycol monomethyl ether-Ethanol, 2-(2-methoxyethoxy)-		4/13/89	12/19/95
111-90-0	Diethylene glycol monoethyl ether-Ethanol, 2-(2-ethoxyethoxy)-		4/13/89	12/19/95
111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-		3/7/86	12/19/95
111-92-2	1-Butanamine, N-butyl-		6/1/87	12/19/95
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120-32-1	2-Benzyl-4-chlorophenol-Phenol, 4-chloro-2-chlorophenol(phenyl methyl)-		4/13/89	12/19/95
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122-09-8	Benzeneethanamine, alpha,alpha-dimethyl-		3/7/86	12/19/95
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123-72-8	Butanal		12/16/88	12/19/95
124-16-3	1-Butoxyethoxy-2-propanol-2-Propanol, 1-(2-butoxyethoxy)-		4/13/89	12/19/95
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131-17-9	Diallyl phthalate-1,2-Benzenedicarboxylic acid, di-2-propenyl ester		4/13/89	12/19/95
135-98-8	Benzene, (1-methylpropyl)-		6/1/87	12/19/95
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137-26-8	Thioperoxydicarbonic diamide, tetramethyl-		6/1/87	12/19/95
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142-28-9	Propane, 1,3,-dichloro-		3/7/86	12/19/95
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143-33-9	Sodium cyanide		10/29/90	12/19/95

CAS No.	Substance	Special exemptions	Effective date	Sunset date
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357-57-3	Strychnidin-10-one, 2,3-dimethoxy-		3/7/86	12/19/95
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506-96-7	Acetyl bromide		6/1/87	12/19/95
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530-50-7	Hydrazine, 1,1-diphenyl-		6/1/87	12/19/95
534-07-6	2-Propanone, 1,3-dichloro-		6/1/87	12/19/95
540-54-5	Propane, 1-chloro-		6/1/87	12/19/95
540-84-1	Pentane, 2,2,4-trimethyl-		6/1/87	12/19/95
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591-08-2	Acetamide, N-(aminothioxomethyl)-		3/7/86	12/19/95
594-20-7	Propane, 2,2-dichloro-		3/7/86	12/19/95
598-21-0	Acetyl bromide, bromo-		6/1/87	12/19/95
598-31-2	2-Propanone, 1-bromo-		3/7/86	12/19/95
616-23-9	1-Propanol, 2,3-dichloro-		3/7/86	12/19/95
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630-20-6	Ethane, 1,1,1,2-tetrachloro-		6/1/87	12/19/95
632-79-1	Tetrabromophthalic anhydride		1/11/90	12/19/95
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692-42-2	Arsine, diethyl-		3/7/86	12/19/95
696-28-6	Arsonous dichloride, phenyl-		3/7/86	12/19/95
757-58-4	Tetraphosphoric acid, hexaethyl ester		3/7/86	12/19/95
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812-03-3	Propane, 1,1,1,2-tetrachloro-		6/1/87	12/19/95
822-06-0	Hexane, 1,6-diisocyanato-		6/1/87	12/19/95
828-00-2	1,3-Dioxan-4-ol, 2,6-dimethyl-, acetate		6/1/87	12/19/95
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1070-78-6	Propane, 1,1,1,3-tetrachloro-		6/1/87	12/19/95
1300-71-6	Phenol, dimethyl-		6/1/87	12/19/95
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1649-08-7	Ethane, 1,2-dichloro-1,1-difluoro		10/15/90	12/19/95
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1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-		3/7/87	12/19/95
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2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-		3/7/86	12/19/95
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2861-02-1	2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-, disodium salt		12/21/87	12/19/95
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3173-72-6	Naphthalene, 1,5,-diisocyanato-		6/1/87	12/19/95
3194-55-6	Hexabromocyclododecane		1/11/90	12/19/95
3288-58-2	Phosphorodithioic acid, O,O-diethyl-S-methyl ester		3/7/86	12/19/95
3296-90-0	1,3-Propanediol, 2,2-bis(bromomethyl)-		6/1/87	12/19/95
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4170-30-3	2-Butenal		3/7/86	12/19/95

CAS No.	Substance	Special exemptions	Effective date	Sunset date
	* * * *	* *	*	
5131-66-8	1-Butoxy-2-propanol-2-Propanol, 1-butoxy-		4/13/89	12/19/95
5344-82-1	Thiourea, (2-chlorophenyl)-		3/7/86	12/19/95
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6424-85-7	2-Anthracenesulfonic acid, 4-[[4-(acetylamino)phenyl]amino]- 1-amino-9,10-dihydro-9,10-dioxo-, monosodium salt		12/21/87	12/19/95
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9016-87-9	Isocyanic acid, polymethylenepolyphenylene ester		6/1/87	12/19/95
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10436-39-2	1-Propene, 1,1,2,3-tetrachloro-		6/1/87	12/19/95
12001-85-3	Naphthenic acids, zinc salts		6/1/87	12/19/95
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13674-87-8	2-Propanol, 1,3-dichloro-, phosphate (3:1)		12/16/88	12/19/95
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17418-58-5	9,10-Anthracenedione, 1-amino-4-hydroxy-2-phenoxy-		12/21/87	12/19/95
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25498-49-1	Tripropylene glycol monomethyl ether-Propanol, [2-(2-methoxy methylethoxy)methylethoxy]-		4/13/89	12/19/95
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25550-98-5	Phosphorous acid, diisodecyl phenyl ester		12/19/85	12/19/95
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26952-23-8	1-Propene, dichloro-		6/1/87	12/19/95
29385-43-1	Tolyl triazole-1H-Benzotriazole, methyl-		4/13/89	12/19/95
32588-76-4	Ethylene Bis-(tetrabromophthalimide)		1/11/90	12/19/95
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41291-34-3	Ethylene(5,6-dibromonorbornane-2,3-dicarboximide)		1/11/90	12/19/95
52907-07-0	Ethylene bis(5,6-dibromonorbornane-2,3-dicarboximide		1/26/94	12/19/95
57137-10-7	Tribrominated polystyrene		1/11/90	12/19/95
61262-53-1	Ethylene bis(pentabromophenoxide)		1/11/90	12/19/95
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68122-86-1	Imidazolium compounds, 4,5-dihydro-1-methyl-2-nortallow alkyl-1-(2-tallow amidoethyl), methyl sulfates		6/20/88	12/19/95
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68410-69-5	Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl) methylammonio]ethyl]-w-hydroxy,- N,N'-ditallow acyl derivatives, methyl sulfates (salts)		6/20/88	12/19/95
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Category	CAS No (exemptions for category)	Special Exempions	Effective Date	Sunset Date
Aldehydes:				
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Benzaldehyde, 4-butyl-	1200-14-2		9/30/91	12/19/95
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Benzaldehyde, 2,4-dihydroxy-	95-01-2		9/30/91	12/19/95
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Benzaldehyde, (dimethylamino)-	28602-27-9		9/30/91	12/19/95
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Benzaldehyde, 4-ethoxy-	10031-82-0		9/30/91	12/19/95
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Benzaldehyde, 4-hydroxy-	123-08-0		9/30/91	12/19/95
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Benzaldehyde, 2-hydroxy-5-nitro-	97-51-8		9/30/91	12/19/95
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Benzaldehyde, 2-methoxy-	135-02-4		9/30/91	12/19/95
Benzaldehyde, methyl-	1334-78-7		9/30/91	12/19/95
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Benzaldehyde, 2-nitro-	552-89-6		9/30/91	12/19/95
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Benzaldehyde, 4-(trifluoromethyl)-	455-19-6		9/30/91	12/19/95
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Benzeneacetaldehyde, alpha-methyl-	93-53-8		9/30/91	12/19/95
Benzeneacetaldehyde, 4-methyl-	104-09-6		9/30/91	12/19/95
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1,3-Benzodioxole-5-carboxaldehyde, 7-methoxy-	5780-07-4		9/30/91	12/19/95
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3-Cyclohexene-1-carboxaldehyde, 4-(4-methyl-3-pentenyl)-	37677-14-8		9/30/91	12/19/95
3-Cyclohexene-1-carboxaldehyde, 2,4,6-trimethyl-	1423-46-7		9/30/91	12/19/95
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5-Heptenal, 2,6-dimethyl-	106-72-9		9/30/91	12/19/95
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Hexanal, 3,5,5-trimethyl-	5435-64-3		9/30/91	12/19/95
2-Hexenal	505-57-7		9/30/91	12/19/95
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1-Naphthalene carboxaldehyde	66-77-3		9/30/91	12/19/95
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2,6-Octadienal, 3,7-dimethyl-, (E)	141-27-5		9/30/91	12/19/95
2,6-Octadienal, 3,7-dimethyl-, (Z)	106-26-3		9/30/91	12/19/95

Category	CAS No (exemptions for category)	Special Exempions	Effective Date	Sunset Date
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Octanal, 3,7-dimethyl-	5988-91-0		9/30/91	12/19/95
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6-Octenal, 3,7-dimethyl-, (S)-	5949-05-3		9/30/91	12/19/95
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2-Propenal, 2-methyl-	78-85-3		9/30/91	12/19/95
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2-Pyridinecarboxaldehyde	1121-60-4		9/30/91	12/19/95
2-Thiophene carboxaldehyde	98-03-3		9/30/91	12/19/95
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9-Undecenal	143-14-6		9/30/91	12/19/95
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Alkyl, Chloro-, and Hydroxymethyl Diaryl Ethers:				
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Benzenemethanol, 3-phenoxy-, acetate	50789-44-1		4/12/93	12/19/95
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Benzene, 1,1'-oxybis[dodecyl-	69834-19-1		4/12/93	12/19/95
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Benzene, 1,1'-oxybis[(1,1,3,3-tetramethylbutyl)-	61702-88-3		4/12/93	12/19/95
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1,4-Diphenoxybenzene	3061-36-7		4/12/93	12/19/95
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Alkyl Phosphates:				
Ethanol, 2-butoxy-, phosphate (3:1)	78-51-3		10/29/90	12/19/95
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Phosphoric acid, bis(2-ethylhexyl) ester	298-07-7		10/29/90	12/19/95
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Phosphoric acid, triethyl ester	78-40-0		10/29/90	12/19/95
Phosphoric acid, tris(2-ethylhexyl) ester	78-42-2		10/29/90	12/19/95
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Brominated flame retardants:				
Alkanes, C10-18, bromochloro-	68955-41-9		10/29/90	12/19/95
Benzamide, 3,5-dibromo-N-(4-bromophenyl)-2-hydroxy-	87-10-5		10/29/90	12/19/95
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Benzene, pentabromomethyl-	87-83-2		10/29/90	12/19/95
Cyclohexane, 1,2,3,4,5-pentabromo-6-chloro-	87-84-3		10/29/90	12/19/95
Cyclohexane, tetrabromodichloro-	30554-72-4		10/29/90	12/19/95
Cyclohexane, tribromotrichloro-	30554-73-5		10/29/90	12/19/95

Category	CAS No (exemptions for category)	Special Exempions	Effective Date	Sunset Date
Ethanol, 2,2'-((1-methylethylidene)bis ((2,6-dibromo-4,1-phenylene)oxy)) bis-	4162-45-2		10/29/90	12/19/95
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Phenol, 2,4-dibromo-	615-58-7		10/29/90	12/19/95
Phenol, 2,4(or 2,6)-dibromo-,homopolymer	69882-11-7		10/29/90	12/19/95
1-Propanol, 2,3-dibromo-	96-13-9		10/29/90	12/19/95
1-Propanol, 2,2-dimethyl-,tribromo deriv	36483-57-5		10/29/90	12/19/95
2-Propenoic acid,(1-methylethylidene)bis (2,6-dibromo-4,1-phenylene) ester	55205-38-4		10/29/90	12/19/95
Chloroalkyl phosphates:				
2,2-Bis(chloromethyl)-1,3-propanediyltetrakis(2-chloroethyl) phosphate	38051-10-4		6/14/93	12/19/95
2-Chloro-1-methylethylbis(2-chloropropyl) phosphate-	76649-15-5		6/14/93	12/19/95
1,2-Ethanediyl tetrakis(2-chloro-1-methylethylene) phosphate	34621-99-3		6/14/93	12/19/95
Oxydi-2,1-ethanediyltetrakis(2-choloroethyl) phosphate	53461-82-8		6/14/93	12/19/95
Cyanoacrylates:				
2-Propenoic acid, 2-cyano-, methyl ester	137-05-3		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, isobutyl ester	1069-55-2		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-3,3-diphenyl-, 2-ethylhexyl ester	6197-30-4		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, butyl ester	6606-65-1		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, ethyl ester	7085-85-0		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, 2-propenyl ester	7324-02-9		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, 1-methylethyl ester	10586-17-1		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, ethoxy ethyl ester	21982-43-4		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, 2,2,2-trifluoromethyl ester	23023-91-8		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, 2-methoxyethyl ester	27816-23-5		1/26/94	12/19/95
Ethanaminium, 2-[[2-cyano-3-[4-(diethylamino)phenyl]-1-oxo-2-propenyl]oxy]-N,N,N-trimethyl-, chloride	64992-16-1		1/26/94	12/19/95
IRIS Chemicals:				
3,4-Dimethylphenol	95-65-8		9/30/91	12/19/95
2,4-Dinitrophenol	51-28-5		9/30/91	12/19/95
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Isocyanates:				
Ethane, isocyanato-	109-90-0		10/29/90	12/19/95
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Methane, isocyanato-	624-83-9		10/29/90	12/19/95
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2-Propenoic acid, 2-methyl-, 2-isocyanatoethyl ester	30674-80-7		10/29/90	12/19/95

Category	CAS No (exemptions for category)	Special Exempions	Effective Date	Sunset Date
* * *	*	* * *	*	
Methyl ethylene glycol ethers and esters:				
Ethylene glycol monomethy ether acrylate	3121-61-7		1/26/94	12/19/95
Tetraethylene glycol monomethyl ether	23783-42-8		1/26/94	12/19/95
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Propylene glycol ethers and esters:				
Dipropylene glycol	110-96-5		1/26/94	12/19/95
Dipropylene glycol butyl ether	29911-28-2		1/26/94	12/19/95
Dipropylene glycol monomethyl ether acetate	88917-22-0		1/26/94	12/19/95
1-(2-Methoxy-1-methylethoxy)-2-propanol	20324-32-7		1/26/94	12/19/95
Methoxy-1-propanol	28677-93-2		1/26/94	12/19/95
1-Phenoxy-2-propanol	770-35-4		1/26/94	12/19/95
Propylene glycol monobutyl ether	29387-86-8		1/26/94	12/19/95
Propylene glycol monomethyl ether acetate	108-65-6		1/26/94	12/19/95
Propylene glycol mono-tert-butyl ether	57018-52-7		1/26/94	12/19/95
Tripropylene glycol diacrylate	42978-66-5		1/26/94	12/19/95
Tripropylene glycol methyl ether	20324-33-8		1/26/94	12/19/95
* * *	*	* * *	*	
Substantially produced chemicals in need of subchronic tests:				
Acetoacetanilide	102-01-2		9/30/91	12/19/95
* * *	*	* * *	*	
7-Amino-4-hydroxy-2-naphthalenesulfonic acid	87-02-5		9/30/91	12/19/95
Ammonium carbamate	1111-78-0		9/30/91	12/19/95
1,3-Benzenedisulfonic acid	98-48-6		9/30/91	12/19/95
Bis(2-ethylhexyl)-2-butenedioate	142-16-5		9/30/91	12/19/95
Bromamine acid	116-81-4		9/30/91	12/19/95
Butyric anhydride	106-31-0		9/30/91	12/19/95
* * *	*	* * *	*	
1,2-Dichlorobutane	616-21-7		9/30/91	12/19/95
3,4-Dichlorobutene	760-23-6		9/30/91	12/19/95
* * *	*	* * *	*	
2-Ethylanthraquinone	84-51-5		9/30/91	12/19/95
* * *	*	* * *	*	
3-Hydroxy-2-naphthoic acid	92-70-6		9/30/91	12/19/95
Isobutyl acrylate	106-63-8		9/30/91	12/19/95
Isophthaloyl chloride	9-63-8		9/30/91	12/19/95
* * *	*	* * *	*	
2-(4-Morpholinyldithio)-benzothiazole	95-32-9		9/30/91	12/19/95
* * *	*	* * *	*	
1-Naphthol	90-15-3		9/30/91	12/19/95
* * *	*	* * *	*	
2,4-Pentanedione	123-54-6		9/30/91	12/19/95
Perfluoro-N-hexane	355-42-0		9/30/91	12/19/95

Category	CAS No (exemptions for category)	Special Exempions	Effective Date	Sunset Date
Perfluorotributylamine	311-89-7		9/30/91	12/19/95
Propanoic anhydride	123-62-6		9/30/91	12/19/95
Quinacridone	1047-16-1		9/30/91	12/19/95
Terephthaloyl chloride	100-20-9		9/30/91	
* * *	*	* *	*	
Triethylene glycol bis(2-ethylhexanoate)	94-28-0		9/30/91	12/19/95
Sulphones:				
2-Amino-4-[(2-hydroxyethyl) sulfonyl]phenol	17601-96-6		9/30/91	12/19/95
2-Amino-4-(methylsulfonyl)phenol	98-30-6		9/30/91	12/19/95
2-[(6-Amino-2-naphthalenyl) sulfonyl]ethanol	52218-35-6		9/30/91	12/19/95
2-[(3-Aminophenyl)sulfonyl]ethanol	5246-57-1		9/30/91	12/19/95
Bisphenol S	80-09-1		9/30/91	12/19/95
3-(Decyloxy)tetrahydrothiophene 1,1-dioxide	18760-44-6		9/30/91	12/19/95
4,4'-Diaminodiphenyl sulfone	80-08-0		9/30/91	12/19/95
4-[4-[(2,6-Dichloro-4-nitrophenyl)azo]phenyl] thiomorpholine, 11,1-dioxide	17741-62-7		9/30/91	12/19/95
1-(Diiodomethyl)sulfonyl-4-methyl benzene	20018-09-1		9/30/91	12/19/95
Dimethylsulfone	67-71-0		9/30/91	12/19/95
Diphenylsulfone	127-63-9		9/30/91	12/19/95
3-[N-Ethyl-4-[[6-(methylsulfonyl)-2-benzothiazolyl]azo]-m-toluidino]propionitrile	16588-67-3		9/30/91	12/19/95
1,1'-[Methylenebis(sulfonyl)]bis-2-chloroethane	41123-59-5		9/30/91	12/19/95
2,2'-[Methylenebis(sulfonyl)]bisethanol	41123-69-7		9/30/91	12/19/95
1,1'-[Methylenebis(sulfonyl)]bisethene	3278-22-6		9/30/91	12/19/95
6-Methylsulfonyl)-2-benzothiazolamine	17557-67-4		9/30/91	12/19/95
2-[(3-Nitrophenyl)sulfonyl]ethanol	41687-30-3		9/30/91	12/19/95
1,1'-[Oxybis(methylenesulfonyl)]bis-2-chloroethane	53061-10-2		9/30/91	12/19/95
2,2'-[Oxybis(methylenesulfonyl)] bisethanol	36724-43-3		9/30/91	12/19/95
1,1'-[Oxybis(methylenesulfonyl)] bisethene	26750-50-5		9/30/91	12/19/95
4-[[4-(Phenylmethoxy)phenyl]sulfonyl] phenol	63134-33-8		9/30/91	12/19/95
4-Phenylthiomorpholine, 1,1-dioxide	17688-68-5		9/30/91	12/19/95
Sulfolane	126-33-0		9/30/91	12/19/95
3-Sulfolene	77-79-2		9/30/91	12/19/95
Sulfonyl bis(4-chlorobenzene)	80-07-9		9/30/91	12/19/95
2,2'-Sulfonyl bisethanol	2580-77-0		9/30/91	12/19/95

[FR Doc. 95–23315 Filed 9–19–95; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–273]

Organization and Delegation of Powers and Duties Delegations of Authority to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) hereby delegates to the Maritime Administrator authority to carry out the Merchant Marine Decorations and Medals Act of 1988, Pub. L. 100–324 (46 App. U.S.C. 2001 et seq.). The act authorizes the Secretary to award decorations and medals of appropriate design (including ribbons, ribbon bars, emblems, rosettes, miniature facsimiles, plaques, citations, or other suitable devices or insignia) for individual acts or service in the United States merchant marine. This amendment revises language in subparagraph 1.66(k) to cite the current statutory authority.

EFFECTIVE DATE: This rule becomes effective September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia Thomas, Maritime Industry Analyst, Office of Maritime Labor, Training, and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street SW, Washington, DC 20590, (202) 366–5755, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (C–50), Department of Transportation, Room 10424, 400 Seventh Street SW, Washington, DC 20590, (202) 366–9306.

SUPPLEMENTARY INFORMATION: The Maritime Administration (MARAD) has been delegated authority to carry out the Merchant Marine Medals Act of 1956 (46 App. U.S.C. 249 *et seq.*) since enactment. Delegation is through the Secretary of Transportation at 49 CFR 1.66(k). The 1956 act was repealed by the Merchant Marine Decorations and Medals Act of 1988, Pub. L. 100–324, (46 App. U.S.C. 2001 *et seq.*). The act authorizes the Secretary to award decorations and medals of appropriate design (including ribbons, ribbon bars, emblems, rosettes, miniature facsimiles, plaques, citations, or other suitable devices or insignia) for individual acts or service in the United States merchant marine. This amendment revises language in subparagraph 1.66(k) to cite the current statutory authority. Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary, and the rule may become effective in fewer than 30 days after publication in the Federal Register.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub.L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

§ 1.66 [Amended]

2. Section 1.66 is amended by revising paragraph (k) to read as follows:

* * * * *

(k) Carry out the Merchant Marine Decorations and Medals Act of 1988 (46 App. U.S.C. 2001 et seq.);

* * * * *

Issued at Washington, DC this 7th day of September, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–23253 Filed 9–19–95; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 091495A]

Pacific Halibut Fisheries; Area 2A Non-treaty Commercial Fishery Reopening

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock.

EFFECTIVE DATE: Area 2A non-treaty commercial fishery reopening 8 a.m. through 6 p.m., local time, September 12, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the Federal Register to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Halibut Landing Report Number 14

Area 2A Non-treaty Commercial Fishery To Reopen

The August 29 fishing period in Area 2A resulted in a catch of 20,000 lb (9.07 metric tons (mt)). The revised total commercial catch from Area 2A to date is 93,000 lb (42.18 mt), leaving approximately 12,000 lb (5.44 mt) to be taken.

Area 2A will reopen on September 12 for 10 hours from 8:00 a.m. to 6:00 p.m. local time. The fishery is restricted to waters that are south of Point Chehalis, WA (46°53’18’’ N. lat.) under regulations promulgated by NMFS. Fishing period limits as indicated in the following table will be in effect for this opening.

Vessel class		Fishing period limit (lb)	
Length	Letter	Dressed, head-on	Dressed, head-off [1]
0–25	A	225	200
26–30	B	225	200
31–35	C	225	200
36–40	D	530	465
41–45	E	570	500
46–50	F	675	595
51–55	G	755	665
56+	H	1,135	1,000

[1] Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each halibut license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight, although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Dated: September 14, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–23348 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–22–W

50 CFR Part 661

[Docket No. 950426116-5116-01; I.D. 090895B]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California; Closures From U.S.-Canadian Border to Carroll Island, WA, and from Leadbetter Point, WA to Cape Falcon, OR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closures.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from the U.S.-Canadian border to Carroll Island, WA, was closed at 12 midnight, September 3, 1995, and the recreational salmon fishery in the area from Leadbetter Point, WA, to Cape Falcon, OR, was closed at 12 midnight, September 5, 1995. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial quota of 25,000 coho salmon and the recreational quota of 37,500 coho salmon for the respective areas have been reached. This action is necessary to conform to the preseason announcement of the 1995 management measures and is intended to ensure conservation of coho salmon.

DATES: Closure from the U.S.-Canadian border to Carroll Island, WA, effective at 2400 hours local time, September 3, 1995, until the effective date of the 1996 management measures, as published in the Federal Register. Closure from Leadbetter Point, WA, to Cape Falcon, OR, effective at 2400 hours local time, September 5, 1995, until the effective date of the 1996 management measures, as published in the Federal Register. Comments will be accepted through October 5, 1995.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the office of the Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: Under regulations at 50 CFR 661.21(a)(1), NMFS will close the commercial or recreational fishery, or both, for ocean salmon when the quota has been projected to have been reached.

In the annual management measures for ocean salmon fisheries (60 FR 21746, May 3, 1995), NMFS announced that the 1995 commercial fishery in the area between the U.S.-Canadian border and Carroll Island, WA, would open on August 5 and fishing would follow a cycle of 4 days open and 3 days closed. The fishery would close the earliest of September 15, attainment of the adjusted 25,000 coho salmon quota (60 FR 40302, August 8, 1995), or attainment of the 160,000 pink salmon guideline.

The best available information on August 31 indicated that commercial catches in this area totaled 21,358 coho salmon through the most recent opening on August 26-29. Based on the most recent catch and effort levels, commercial fishing could take place for an additional 2 days without exceeding the coho salmon quota. The next scheduled opening for this fishery was on September 2. Therefore, NMFS determined to close the commercial fishery for all salmon from the U.S.-Canadian border to Carroll Island, WA, for the remainder of the season at 12 midnight, September 3.

In the annual management measures for ocean salmon fisheries, NMFS also announced that the 1995 recreational fishery in the area between Leadbetter Point, WA, and Cape Falcon, OR, would open on July 24 and close the earlier of September 28 or attainment of the adjusted 37,500 coho salmon quota (60 FR 21746, May 3, 1995; revised at 60 FR 40302, August 8, 1995).

The best available information on August 31 indicated that recreational catches in this area totaled 26,450 coho salmon through August 27. Based on estimated catch and effort levels, 36,150 coho salmon were projected to be caught through September 4, leaving 1,350 coho salmon of the quota unharvested. This amount of fish was determined to provide an additional day of harvest. Therefore, NMFS determined to close the recreational fishery for all salmon from Leadbetter Point, WA, to Cape Falcon, OR, at midnight, September 5.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fish and Wildlife, and the Oregon Department of Fish and Wildlife regarding these closures. The States of Washington and Oregon will manage the commercial and recreational fisheries in State waters adjacent to these areas of the exclusive economic zone in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice was given to fishermen of the commercial closure prior to 2400

hours local time, September 3, 1995, and of the recreational closure prior to 2400 hours local time, September 5, 1995, by telephone hotline number (206) 526-6667 and (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to conserve coho salmon, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 12, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–23258 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 182
Wednesday, September 20, 1995

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

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–027–FOR]

Texas Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas permanent regulatory program (hereinafter the ''Texas program'') under the Office of Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Texas Coal Mining Regulations pertaining to identification of interests and compliance information and Commission of Texas (Commission) review of outstanding permits and revisions to the Texas Surface Coal Mining and Reclamation Act pertaining to rulemaking and permitting and suspension or rescission of improvidently issued permits. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations and SMCRA.

DATES: Written comments must be received by 4 p.m., c.d.t., October 20, 1995. If requested, a public hearing on the proposed amendment will be held on October 16, 1995. Requests to speak at the hearing must be received by 4 p.m., c.d.t., on October 5, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Tim L. Dieringer, Acting Director, Tulsa Field Office, at the address listed below.

Copies of the Texas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Tim L. Dieringer, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Mr. Tim L. Dieringer, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, Federal Register (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated August 30, 1995 (Administrative Record No. TX–595), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to the required program amendments codified at 30 CFR 943.16(r), (t), and (u) [59 FR 13200, March 21, 1994, and 60 FR 15675, March 27, 1995]. The provisions of the Texas Coal Mining Regulations (TCMR) at 16 Texas Administrative Code (TAC) 11.221 and of the Texas Surface Coal Mining and Reclamation Act (TSCMRA) that Texas proposes to amend are:

1. TCMR 778.116(m), Identification of Interests and Compliance Information

Texas proposes to revise and delete existing language and add new language which requires a permit application to include information on all outstanding violation notices, not just those for unabated cessation orders and unabated air and water quality violation notices, received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or by any person who is deemed or presumed to own or control the applicant under Texas' definition of ''owned or controlled'' and ''owns or controls'' at § 701.008. Texas is also incorporating an ownership and control provision which requires the applicant to certify that each unabated violation notice issued under the Texas program or a Federal or state program is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation.

2. TCMR 788.225(g)(1), Commission Review of Outstanding Permits

Texas proposes to require that the Commission's findings pertaining to a permittee's challenge to the Commission's decision to suspend or rescind an improvidently issued permit be consistent with the provisions of the Federal regulations at 30 CFR 773.25.

3. Article 5920–11, TSCMRA, Section 6(b), Rulemaking and Permitting Pursuant to the Administrative Procedure Act

Texas proposes to amend section 6(b) of TSCMRA by deleting the language ''and Texas Register Act, as amended'' and adding the following new language.

(b) * * * Act (Chapter 2001, Government Code).

The Administrative Procedure Act does not apply to actions by the Commission to suspend or rescind an improvidently issued permit as authorized by Section 21a of this Act, except that a permittee who is the subject of a suspension or rescission notice issued by the Commission under Section 21a of this Act may file an appeal for administrative review of the notice as provided by Commission rules, and such review shall be governed by the Administrative Procedure Act.

4. Article 5920–11, TSMCRA, Section 21(c), Reporting Notices of Violations in Permit Applications

Texas proposes to revise the existing language of the first sentence of section 21(c) by adding the requirement that applicants report notices of violations of SMCRA; by adding the word ''other'' after the word ''any'' in the phrase ''and

any law, rule, or regulation of the United States''; by deleting the words ''within the state'' from the phrase ''in connection with any surface coal mining operation within the state during the three-year period''; by deleting the words ''shall include in'' from the phrase ''shall include in the schedule''; and by adding the words shown in italics to the revised phrase ''the schedule shall indicate the final resolution of *any such* notice of violation.'' Texas proposes to add new language requiring that the schedule include notices of violations of Federal regulations or Federal or state programs adopted under SMCRA. Texas is, also, revising the existing second sentence by deleting the phrase ''or that the notice of violation is being contested by the applicant'' and adding the phrase ''or other laws referred to in this subsection'' after the phrases ''with a demonstrated pattern of willful violations of this Act'' and ''with such resulting irreparable damage to the environment as to indicate an intent not to comply with this Act.''

5. Article 5920–11, TSMCRA, Section 21a, Suspension or Rescission of Improvidently Issued Permits

Texas proposes to add a new section which authorizes the Commission to adopt and enforce rules relating to suspension or rescission of improvidently issued permits that are consistent with and no less effective than Federal regulations adopted under SMCRA.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t., on October 5, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 13, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–23267 Filed 9–19–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 943

[SPATS No. TX–026–FOR]

Texas Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas regulatory program (hereinafter the ''Texas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a revision to the Texas rule pertaining to preparation and certification of cross sections, maps, and plans required for surface mining permit applications. The amendment is intended to provide an additional safeguard and improve operational efficiency.

DATES: Written comments must be received by 4 p.m., c.d.t., October 20, 1995. If requested, a public hearing on the proposed amendment will be held on October 16, 1995. Requests to speak at the hearing must be received by 4 p.m., c.d.t., on October 5, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Tim L. Dieringer, Acting Director, Tulsa Field Office, at the address listed below.

Copies of the Texas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Tim L. Dieringer, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma, 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas, 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT:

Mr. Tim L. Dieringer, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, Federal Register (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated August 31, 1995 (Administrative Record No. TX–596), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. The provision of Texas Coal Mining Regulations (TCMR) at 16 Texas Administrative Code (TAC) 11.221 that Texas proposes to amend is TCMR 779.137(l), cross sections, maps, and plans.

Specifically, Texas proposes to revise TCMR 779.137(l) to allow professional biologists to certify, as appropriate, cross sections, maps, and plans included in a surface mining permit application.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t., on October 5, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30

U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–23266 Filed 9–19–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 950

Wyoming Abandoned Mine Land Reclamation (AMLR) Plan

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the Wyoming AMLR plan (hereinafter, the ''Wyoming plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information for Wyoming's proposed statute pertains to the amount of a lien placed on private lands upon the completion of reclamation operations. The amendment is intended to clarify ambiguities and improve operational efficiency.

DATES: Written comments must be received by 4 p.m., m.d.t., October 5, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Wyoming plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, Wyoming 82601–1918.

Stan Barnard, Acting AML Administrator, Department of Environmental Quality, Abandoned Mine Land Division, Herschler Building, Third Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002.

Telephone: (307) 777–6145.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Plan

On February 14, 1983, the Secretary of the Interior approved the Wyoming plan. Information pertaining to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings, the disposition of comments, and the approval of the Wyoming plan can be found in the February 14, 1983, Federal Register (48 FR 6536). Subsequent actions concerning Wyoming's plan and plan amendments can be found at 30 CFR 950.30 and 950.35.

II. Proposed Amendment

By letter dated April 21, 1995, Wyoming submitted a proposed amendment to its plan pursuant to SMCRA (administrative record No. WY–AML–18–8). Wyoming submitted the proposed amendment at its own initiative. The provisions of the Wyoming plan that the State proposed to revise were:

Wyoming Statute (W.S.) 35–11–1206 (a) and (b), liens for reclamation on private lands, and W.S.35–11–1209, contractor eligibility.

OSM announced receipt of the proposed amendment in the May 18, 1995, Federal Register (60 FR 26704), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. WY–AML–18–9). The public comment period ended on June 19, 1995.

During its review of the amendment, OSM identified concerns relating to the provisions of W.S.35–11–1206(a) that limit the amount of any lien to the cost of reclamation work or to the amount determined by the appraisal to be the increase in the fair market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal or noncoal mining practices, whichever is less. OSM also identified concerns relating to the provisions of W.S.35–11–1206(b) that provide that the amount reported to be the increase in the value of the land, but not exceeding the cost of the reclamation work, shall constitute the amount of the lien. OSM notified Wyoming of the concerns by letter dated August 8, 1995 (administrative record No. WY–AML–18–16).

Wyoming responded in a letter dated August 29, 1995, by submitting additional explanatory information concerning W.S. 35–11–1206 (a) and (b) and the inclusion of the cost of reclamation in determining the amount of the lien to be placed on reclaimed lands (administrative record No. WY–AML–18–17). In its response, Wyoming stated that when proposed W.S. 35–11–1206 was presented to the Wyoming legislature, there was considerable debate on it with regard to a potential governmental takings if the property owner had to pay a lien amount that

was more than the cost to perform the reclamation work. Debate focused on who would pay for costs associated with potential lawsuits should a lien be placed for more than the reclamation cost, and whether the reclamation would be authorized by a property owner if the lien for the reclamation exceeded the actual cost of the reclamation. Wyoming further stated that over 25,000 acres have been reclaimed since the start of the Wyoming AMLR program and that there had never been an instance where the cost of reclamation was less than the increase in property value.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Wyoming plan amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 884.14 and 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Wyoming plan.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''DATES'' or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et. seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 950

Abandoned mine land reclamation program, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 7, 1995.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–23268 Filed 9–19–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5300–1]

40 CFR Parts 64 and 70

Compliance Assurance Monitoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting; notice of document availability.

SUMMARY: On October 22, 1993, the EPA published a notice of proposed rulemaking (58 FR 54648) that contained proposed rules to govern a new enhanced monitoring program under section 114(a)(3) and related provisions of the Clean Air Act. In light of the President's concerns regarding flexibility and cost-effectiveness, the EPA believes that it may be inappropriate to take final action on the rule as proposed and has proceeded to develop an alternative approach to meet the statutory requirement of section 114(a)(3), as well as the periodic monitoring requirements under section 503(b) of the Clean Air Act; this approach is called compliance assurance monitoring or CAM.

The EPA is planning to propose regulations on compliance assurance monitoring in December 1995. These regulations will impose new monitoring requirements on major stationary sources of air pollution. Notice is hereby given that the EPA will hold a public meeting on September 22, 1995 to provide the stakeholders potentially affected by these regulations with an opportunity to discuss the issues raised by the regulations in advance of the EPA's formal proposal. This notice also announces the public availability of a draft regulatory package for review in advance of the public meeting. In addition, the Agency will accept written comments on the draft package provided that comments are received by September 22, 1995.

DATES: *Meeting:* The public meeting will be held on September 22, 1995 from 8:30 a.m. to 4:30 p.m. at the address set forth below. *Comments:* Written comments may be submitted to the docket at the address provided below until September 22, 1995. *Document Availability:* The draft regulatory package will be available in early September 1995 at the address provided below.

ADDRESSES: *Meeting Location:* The public meeting will be held at the Sheraton Inn—University Center, 2800 Middleton Avenue, Durham, North Carolina 27705, telephone (919) 383–8575. Participants wishing to arrange for overnight accommodations should advise the hotel that they are attending the EPA CAM meeting. To assist the EPA in planning the public meeting, persons interested in attending should contact Ms. Andrea Lewis, Public Meeting Coordinator, at (804) 979–3700, telefax (804) 296–2860, Perrin Quarles Associates, Inc., 501 Faulconer Drive, Suite 2–D, Charlottesville, Virginia

22903, to give their name and affiliation. *Docket:* Supporting information related to this rulemaking, including the draft regulatory package, is contained in Docket No. A–91–52. This docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m. Monday through Friday, excluding government holidays, and is located at: EPA Air Docket (LE–131), Room M–1500, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying. *Comments:* Comments must be mailed (in duplicate) to the docket at the address provided above. All comments should be marked to the attention of Docket No. A–91–52. *Document Availability:* A copy of the draft regulatory package will be located in the docket at the address provided above, and will also be available via the Emission Measurement Technical Information Center Computer Bulletin Board of the EPA's Technology Transfer Network at (919) 541–5742, Internet address TELNET ttnbbs.rtpnc.epa.gov, 24 hours a day, 7 days a week (except 8 a.m.–12 a.m. EST). Contact the system operator at (919) 541–5384 if you have any questions concerning access to the Technology Transfer Network.

FOR FURTHER INFORMATION CONTACT: Robin Segall, Office of Air Quality Planning and Standards, (919) 541–0893.

SUPPLEMENTARY INFORMATION: On May 1, 1995, the EPA received a 60-day extension of the court-ordered deadline in *Sierra Club v. Browner,* No. 93–0564 NHJ (D.D.C.) for final promulgation of enhanced monitoring rules in order for the Agency to reassess the approach it has developed and to consider other, alternative approaches. During this 60-day period, the EPA held an initial stakeholders' meeting and worked with representatives of industry, State and local agencies, and environmental groups to formulate a new approach to accomplish the substantive goals of the periodic monitoring requirements, as well as the enhanced monitoring requirements of the Clean Air Act, in a cost-effective manner. On June 30, 1995, the EPA received a further extension of the court-ordered deadline until July 1, 1996, in order to propose and, as appropriate, promulgate rules embodying the new approach to enhanced and periodic monitoring, referred to as compliance assurance monitoring or CAM.

The CAM approach has been developed in consideration of the President's regulatory reform efforts to design performance-based environmental programs that provide industry with the flexibility to comply in cost-effective ways, while requiring accountability for achieving results. It focuses on enhancing and supplementing current operation and maintenance (O&M) monitoring requirements. The compliance assurance monitoring approach would require that a source owner document operation and maintenance of a control device or process operation in accordance with established, reliable operating and maintenance practices and implement any necessary corrective action to ensure that emissions have been reduced. The Agency has combined the enhanced and periodic monitoring requirements of Titles V and VII of the Clean Air Act Amendments of 1990 in the draft CAM rule so that all compliance-related monitoring requirements would be integrated in one set of requirements. The CAM approach also addresses the requirements for compliance certifications under Titles V and VII of the Clean Air Act Amendments of 1990. Under the draft CAM proposal, the owner or operator would certify compliance with (1) the emission limitation or standard based on the results of applying the determining and certifying compliance with that emission limitation or standard, and (2) the associated monitoring, reporting, and record keeping requirements in the permit that provide an assurance of ongoing compliance with the emission limitation or standard.

The Agency has now drafted a regulatory proposal package for CAM and will make it available to the public on or before September 1, 1995 (see *''Document Availability''* above). Following release of this draft, the Agency will hold a public meeting, as described above, to review the major elements of the draft regulatory package and to solicit opinions and suggestions from the stakeholders' on the draft document. The meeting will include a number of representative stakeholders that will sit at the main meeting table by invitation; they will include industry, State and local agencies, and environmental organizations. Additional seating is available by contacting the Public Meeting Coordinator listed in the **ADDRESSES** section above. It is important to note that the Agency will be seeking the opinions of the individuals/organizations present and *not* consensus.

Dated: August 28, 1995.

Peter R. Westlin,

Designated Federal Official.

[FR Doc. 95–23431 Filed 9–18–95; 1:41 pm]

BILLING CODE 6560–50–P

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40 CFR Part 170

[OPP–250109; FRL–4974–2]

Notification to the Secretary of Agriculture of Proposed Regulations on Worker Protection Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture two proposed regulations under section 25(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The first proposed rule would revise the Worker Protection Standard (WPS) to allow the substitution of an alternate language for the Spanish portion of the warning sign and to allow the use of smaller warning signs in keeping with the nature of the agricultural operation. The second proposed rule would modify the requirements that decontamination supplies be provided to agricultural workers. The modifications would add flexibility and promote the use of less toxic pesticides, while ensuring that worker risks are not increased. This action is required by FIFRA section 25(a)(2)(A).

FOR FURTHER INFORMATION CONTACT: By mail: For the decontamination proposal Joshua First and for the sign proposal John MacDonald, Certification, Training and Occupational Safety Branch (7506C), Field Operation Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–7437 and 703–305–7370, respectively, e-mail: first.joshua@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA requires that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days before signing it for publication in the Federal Register. If within 30 days after receiving it, the Secretary comments on the proposed regulation in writing, the Administrator shall issue for publication in the Federal Register,

with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the regulation for publication in the Federal Register anytime thereafter. As required by FIFRA section 25(a)(3), a copy of the proposed regulations have been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

List of Subjects in Part 170

Environmental protection, Intergovernmental relations, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136 et seq.

Dated: September 1, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–23202 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 3F4258/P630; FRL–4973–8]

RIN 2070–AC18

Avermectin B_1 and Its Delta-8,9-Isomer; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodity bell peppers. Merck Research Laboratories requested the proposed regulation to establish a maximum permissible level for residues of the insecticide pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

DATES: Comments, identified by the document control number [PP 3F4258/P630], must be received on or before October 20, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 3F4258/P630]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On August 17, 1993, Merck Research Laboratories, Inc., submitted a pesticide petition (PP 3F4258) requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodity (RAC) group, fruiting vegetables (tomatoes, peppers, and eggplants) at 0.01 part per million (ppm). On August 9, 1994, Merck requested that the pesticide petition be amended by withdrawing group tolerances and proposing tolerances for bell peppers only at 0.01 ppm., since EPA had concluded there was insufficient data to establish the crop group tolerance and insufficient data to establish a tolerance on all varieties of peppers except for bell peppers.

The data submitted in support of the tolerance and other relevant material have been reviewed. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of the tolerance are discussed in detail in related documents published in the Federal Registers of May 31, 1989 (54 FR 23209, cottonseed) and August 2, 1989 (54 FR 31836, citrus).

The Agency used a two-generation rat reproduction study with an uncertainty factor of 300 to establish a Reference Dose (RfD). The 300-fold uncertainty factor was utilized for (1) inter- and intra-species differences, (2) the extremely serious nature (pup death) observed in the reproduction study, (3) maternal toxicity (lethality) no-observable-effect level (NOEL) (0.05 mg/kg/day), and (4) cleft palate in the mouse developmental toxicity study with isomer (NOEL = 0.06 mg/kg/day). Thus, based on a NOEL of 0.12 mg/kg/day from the two-generation rat reproduction and an uncertainty factor of 300, the RfD is 0.0004 mg/kg/body weight(bwt)/day.

A chronic dietary exposure/risk assessment has been performed for avermectin B_1 using the above RfD. Available information on anticipated residues and 100% crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on the tolerance level residues. The ARC for established tolerances and the current action is estimated at 0.000022 mg/kg/bwt/day and utilizes 5.4 percent of the RfD for the U.S. population. For nonnursing infants less than 1-year-old (the subgroup population with the highest exposure level) the ARC for established tolerances and the current action is estimated at 0.000072 mg/kg bwt/day and utilizes 17.9% of the RfD. Generally speaking, the Agency has no cause for concern if the anticipated residue contribution for all published and proposed tolerances is less than the RfD.

Because of the developmental effects seen in animal studies, the Agency used the mouse teratology study (with a NOEL of 0.06 mg/kg/day for developmental toxicity for the delta-8,9 isomer) to assess acute dietary exposure and determine a margin of exposure (MOE) for the overall U.S. population

and certain subgroups. Since the toxicological end point pertains to developmental toxicity, the population group of interest for this analysis is women aged 13 and above, the subgroup which most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOEL to the exposure. For this analysis, the Agency calculated the MOE for the high-end exposures for women ages 13 and above. The MOE is 120. Generally speaking, MOEs greater than 100 for developmental toxicity do not raise concerns.

The metabolism of the chemical in plants and animals for the use is adequately understood. Secondary residues occurring in livestock and their byproducts are not expected since there are no known animal feed stock uses for bell peppers. Adequate analytical methodology (HPLC-Fluorescence Methods) is available for enforcement purposes. Prior to publication in the Pesticide Analytical Manual, Vol II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

The tolerances established by amending 40 CFR part 180 will be adequate to cover residues in or on bell peppers. There are currently no actions pending against the continued registration of this chemical. Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3F4258/P630]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 3F4258/P630] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

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

Pursuant to the terms of this Executive Order, 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 exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 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 28, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. By amending § 180.449 in paragraph (b) in the table therein, by adding and alphabetically inserting an entry for bell pepper, to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Peppers, bell	0.01
* * * * *	

[FR Doc. 95–22869 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5299–4]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: The Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Arkansas City Dump Site from the National Priorities List (NPL): Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region VII announces its intent to delete the Arkansas City Dump Site from the NPL and requests public comment on this action. The NPL constitutes 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 of 1980 (CERCLA), as amended. This action, to delete the site from the NPL, is proposed because the EPA has completed the Superfund remedial action at this site.

DATES: Comments concerning this action may be submitted by October 20, 1995.

ADDRESSES: Comments to be considered by EPA in this decision should be mailed to: David V. Crawford, Remedial Project Manager, Superfund Division, U.S. Environmental Protection Agency/ Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: David Crawford at (913) 551–7702.

SUPPLEMENTARY INFORMATION: Comprehensive information on this site is available for public review in the Docket prepared by EPA, which contains the documents and information EPA reviewed in the decision to delete this site from the NPL. The Docket is available for public review during normal business hours at the EPA Region VII Docket Room at the above address and at the Public Library, 125 East Fifth Avenue, Arkansas City, Kansas 67005. To obtain copies of documents in the Docket or in the EPA Administrative Record or for additional information, contact: David V. Crawford, Remedial Project Manager, Superfund Division, U.S. Environmental Protection Agency/Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion
V. Bibliography

Section I is an introduction providing background information about this site. Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures for deleting sites from the NPL. Section IV discusses how the site meets the NPL deletion criteria. Section V lists references and sources of information.

I. Introduction

The Environmental Protection Agency (EPA) Region VII announces its intent to delete the Arkansas City Dump Site in Arkansas City, Kansas from the National Priorities List (NPL), which constitutes Appendix B of the NCP, and requests comments on this action.

The EPA identifies sites which may 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 financed by the Hazardous Substances Superfund Response Trust Fund or by responsible parties. Pursuant to the NCP at 40 CFR 300.425(e)(3), any site deleted from the NPL remains eligible for Fund-financed actions if conditions at the site ever warrant.

The EPA will accept comments concerning the proposal to delete the Arkansas City Dump Site from the NPL for thirty (30) calendar days after publication of this notice in the Federal Register.

II. NPL Deletion Criteria

The NCP established the criteria that the Agency uses to delete sites from the NPL. In accordance with the NCP at 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup is appropriate; or

(iii) Based upon a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health, welfare or the environment, and, therefore, remedial measures are not required.

In addition to the above, for all remedial actions which result in hazardous substances, pollutants or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, EPA will reassess the continued adequacy and protectiveness of the remedial actions periodically, and no less than once every five years. The EPA expects to conduct five-year reviews on the remedial action completed on the Arkansas City Dump Site even after this site has been deleted from the NPL.

III. Deletion Procedures

In the NPL rule-making published on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice of comment procedures following for adding sites to the NPL should also be used before sites are deleted. The NCP, at 40 CFR 300.425(e)(4) and (5) directs that the same Federal Register notice procedures for placing sites on the NCP will be used for deleting sites from the NPL.

This Federal Register notice is EPA's notice of its intent to delete the Arkansas City Dump Site from the NPL. The EPA will accept comments from the public on this proposal for a period of thirty (30) calendar days beginning today, the date of this notice in the Federal Register. The EPA will address all significant comments received on this proposal in a Responsiveness Summary, which EPA will place in the Docket on this decision. After considering these comments, if EPA decides to proceed with the deletion of the Arkansas City Dump Site from the NPL, EPA will publish another notice in the Federal Register recording this decision.

IV. Basis for Intended Site Deletion

The EPA has completed a final remedy remedial action at this site. The remedial action was implemented by EPA using the Hazardous Substances Response Trust Fund, because financially viable and liable potentially responsible parties could not be identified.

The remedial action consisted of treating the acidic sludges with cement kiln dust and lime to eliminate the acidity of the sludge. All acidic sludge above the water table was treated, capped on the site, and seeded with vegetation to minimize erosion. The site was then posted with warning no-trespassing signs.

The EPA also completed the first year of operation and maintenance (O&M) for the remedial action in November 1993. The O&M then became the responsibility of the State of Kansas.

The EPA, in consultation with the State of Kansas, has determined that a final remedy has been successfully completed by EPA at this site. In consultation with the State of Kansas, EPA has further determined that these remedial actions continue to be protective of public health, welfare and the environment, thereby satisfying Deletion Criteria ''ii'' above.

V. Bibliography

Remedial Investigation/Feasibility Study Reports, Kansas Department of Health and Environment.

U.S. EPA Operable Unit Record of Decision, September 29, 1988.

U.S. EPA Explanation of Significant Difference, May 25, 1990.

U.S. EPA Proposed Plan, August 1989.

U.S. EPA Final Record of Decision, September 19, 1989.

Community Relations Plan, May 22, 1981.

Fluor Daniel, Inc. (EPA contractor) Final Report, Remedial Action Implementation, Arkansas City Dump Site, February 1994.

U.S. EPA Superfund Site Closeout Report, August 1995.

Superfund State Contract, September 6, 1991.

Dated: August 31, 1995.

Gale Hutton,

Acting Regional Administrator.

[FR Doc. 95–23319 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–103; RM–8659]

Radio Broadcasting Services; Wyeville, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed by Josephine Miracle proposing the allotment of Channel 267A to Wyeville, Wisconsin. *See* 60 FR 35548, July 10, 1995. Josephine Miracle withdrew her petition in accordance with Section 1.420(j) of the Commission's Rules and no other interest has been expressed for a channel in Wyeville. It is the Commission's general policy to refrain from making a new allotment to a community absent an expression of interest. Since there is no interest here, we will dismiss Josephine Miracle's petition. With this action, this proceeding is terminated.

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. 95–103, adopted September 7, 1995, and released September 14, 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.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–23290 Filed 9–19–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition To List the Riverside Cuckoo Bee as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day petition finding to list the Riverside cuckoo bee (Holcopasites ruthae) as endangered under the Endangered Species Act of 1973, as amended (Act). The Service finds that substantial information has not been presented to indicate the requested action may be warranted. Information is lacking to adequately identify the status and distribution of the Riverside cuckoo bee.

DATES: The finding in this notice was made on September 11, 1995. Comments and materials regarding this petition finding may be submitted to the Field Supervisor at the address listed below until further notice.

ADDRESSES: Information, comments, or questions regarding this petition finding should be submitted to the Field Supervisor, Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. The petition, the Service's finding, and additional information are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Nagano, Fish and Wildlife Biologist, at the above address (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition.

On April 14, 1992, the Service received a petition dated April 13, 1992, from Dr. K.W. Cooper of the University of California at Riverside, California. The petitioner requested that the Service list the Riverside cuckoo bee (*Holcopasites ruthae*) as an endangered species. The petition was clearly identified as such and contained the name, signature, and address of the petitioner. A letter acknowledging receipt of the petition by the Service was sent to the petitioner on May 15, 1992. On April 16, 1992, Dr. Cooper submitted a second letter requesting the Service list the Riverside cuckoo bee under an emergency basis.

The Service's finding is based on information contained in the petition, the literature provided by the petitioner, and information available in the Service's files. All documents are on file in the Carlsbad Field Office (See **ADDRESSES** section).

The Riverside cuckoo bee is associated with coastal sage scrub containing brittle bush (*Encelia farinosa*) within a relatively small area of northwestern Riverside County, California (Visscher *et al.* 1992). Its known distribution extends from the City of Riverside east to near Calimesa and south to the Lake Perris Recreation Area. This species is a solitary cleptoparasite (an organism that feeds on food stored for the host larvae). The only known host of the Riverside cuckoo bee is the dagger andrenid bee (*Calliopsis pugionis*) (Visscher *et al.* 1992; Cooper 1993), which is endemic to Los Angeles, Riverside, and San

Diego Counties in southwestern California (Shinn 1967; Krombein 1979).

The petitioner stated that the Riverside cuckoo bee merited protection under the Act because it was imperiled by the proposed construction of a U.S. Department of Agriculture soil laboratory. At that time the proposed laboratory site contained the only known population of the species. A survey was subsequently conducted in April and May 1992 to find the Riverside cuckoo bee in portions of westernmost Riverside County and a few adjacent portions of San Bernardino County (Visscher *et al.* 1992). The survey was designed to cover areas of habitat similar to the coastal sage scrub where the Riverside cuckoo bee was originally discovered at the proposed laboratory site. The 1992 survey found the Riverside cuckoo bee at 7 of 84 sites (8 percent) containing potential habitat. The dagger andrenid bee was located at 19 of the 84 sites (23 percent). Construction of the soil laboratory was completed in 1994 (G. Ballmer pers. comm. to C. Nagano, March 28, 1995).

The ecology and distribution of cleptoparasitic anthrophorid bees are poorly known (R.R. Snelling, Natural History Museum of Los Angeles County, pers. comm. to C. Nagano February 9, 1995; G. Eickwort, University of Arizona, *in litt.* June 12, 1992). Bees of the genus *Holcopasites* are extremely cryptic in their ecology and behavior. These small bees are usually collected when they are either searching for mates or for suitable hosts at the host colonies. They are highly alert and extremely fast fliers that are unlikely to be observed or captured during entomological studies of a ''casual'' nature.

Although other cleptoparasitic anthrophorid bees are known to use more than one bee species as hosts (R.R. Snelling, pers. comm. to. C.D. Nagano, April 27, 1995), ecological studies have not been conducted to determine if the Riverside cuckoo bee utilizes other andrenid bees of the genus *Calliopsis.* Given the ecology and biology of the Riverside cuckoo bee, surveying for the dagger andrenid bee is the most appropriate method of ascertaining the distribution of the petitioned species. Surveys of this nature or specific surveys for the Riverside cuckoo bee throughout the entire range of the dagger andrenid bee or other suitable host species have not been completed (Ballmer *ibid;* Snelling pers. comm. to C. D. Nagano, February 9, 1995; Visscher *et al.* 1992). Although other invertebrate groups are well known, such as butterflies and tiger beetles, there are few specialists working on cleptoparasitic bees and their hosts.

The Service has carefully reviewed the petition. On the basis of the best scientific and commercial information currently available, the Service has determined that the petition does not present substantial information indicating the requested action may be warranted. Information is lacking to adequately identify the status and distribution of the Riverside cuckoo bee. However, the Service is interested in any additional information about the Riverside cuckoo bee that may be available. Please submit any additional information to the Carlsbad Field Office (see **ADDRESSES** section). If additional data become available in the future, the Service may reassess the listing priority for this species or the need for listing.

References Cited

Cooper, K.W. 1993. The first *Holcopasites* from western California, *H. ruthae* new species, and *H. linsleyi,* a new species from southwestern Arizona (Hymenoptera, Nomadinae). Proc. Entomol. Soc. Wash. 95(1):113–125.

Krombein, K. 1979. Catalog of Hymenoptera in America north of Mexico. Volume 2 Apocrita (Aculeata). Smith. Inst. Press., Washington, DC.

Shinn, A.F. 1967. A revision of the bee genus *Calliopsis* and the biology and ecology of *C. andreniformis* (Hymenoptera, Andrenidae). The Univ. of Kansas Sci. Bull. 46(21)753–936.

Visscher, P.K., B.N. Danforth, and M.M. Barnes. 1992. Investigations of the biology and distribution of a new species of *Holcopasites* found on the proposed salinity laboratory site. Department of Entomology, Univ. of Calif., Riverside.

Author

The primary author of this document is Chris Nagano (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 11, 1995.

Jay L. Gerst,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–23251 Filed 9–19–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 60, No. 182
Wednesday, September 20, 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 COMMERCE

International Trade Administration

[A–588–602]

Certain Carbon Steel Butt-Weld Pipe Fittings From Japan; Negative Preliminary Determination of Circumvention of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Negative Preliminary Determination of Circumvention of Antidumping Duty Order.

SUMMARY: On March 22, 1994, the Department of Commerce (the Department) received a request for a circumvention inquiry on the antidumping duty order on certain carbon steel butt-weld pipe fittings (butt-weld pipe fittings) from Japan, with respect to imports of Awaji Sangyo (Thailand) Co., Ltd. (AST). Pursuant to that request, the Department initiated a circumvention inquiry on October 31, 1994 (59 FR 54433).

We preliminarily determine that AST is not circumventing the antidumping duty order on butt-weld pipe fittings from Japan. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Donald Little or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise stated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1994, the Department received a petition from the U.S. Fittings Group (the petitioner) requesting that the Department conduct a circumvention inquiry on the antidumping duty order on certain carbon steel butt-weld pipe fittings from Japan (52 FR 4167 (February 10, 1987)). The petitioner is an *ad hoc* trade association of domestic producers of butt-weld pipe fittings whose members currently consist of Hackney, Inc., Ladish Co., Inc., Mill Iron Works, Inc., Steel Forgings, Inc., and Tube Forgings of America, Inc.

The petitioner alleged that unfinished pipe fittings from Japan are being finished in Thailand by AST, and thereafter imported into the United States free of any antidumping duties. The Department initiated a circumvention inquiry on October 31, 1994 (59 FR 54433).

Scope of the Circumvention Inquiry

The products covered by this inquiry are certain carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, etc., and, if forged, have been advanced after forging. These advancements may include any one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping or painting. These fittings are currently provided for under item 7307.93.30

Induction pipe bends classifiable under item 7307.93.30 which have at one or both ends tangents that equal or exceed 12 inches in length are excluded from the scope of this inquiry.

The inquiry covers one manufacturer/exporter of butt-weld pipe fittings, AST. The period of inquiry is October 1, 1993 through September 30, 1994.

Case History

The Department sent an anti-circumvention questionnaire to AST on January 3, 1995. On January 9, 1995, AST replied that it had not sold or exported any butt-weld pipe fittings to the United States manufactured from Japanese unfinished butt-weld pipe fittings during the period for which the Department requested such information, or subsequent to that period. AST requested that the Department therefore terminate the inquiry.

In submissions of January 17, 1995, and February 3, 1995, petitioner argued that the Department should change the period of inquiry to January 1991 through August 1993, so as to include the time frame from which the evidence in the anti-circumvention petition was drawn. Petitioner also claimed that, since the Department did not initiate the inquiry until approximately seven months after the petition was filed, AST had ample opportunity to change its business practices in response to the petition, and the period after the date of the petition is therefore inherently unrepresentative.

On January 20, 1995, AST submitted additional comments and additional support for its request to terminate the inquiry. AST stated that it had not altered its behavior as a result of the anti-circumvention petition. AST stated that it had not exported any butt-weld pipe fittings to the United States manufactured from Japanese unfinished butt-weld pipe fittings since the period the Department reviewed in the circumvention inquiry regarding the antidumping duty order on carbon steel butt-weld pipe fittings from the People's Republic of China (PRC) (which ended August 31, 1993).

Negative Preliminary Determination of Circumvention Inquiry

Because record evidence concerning AST's production capabilities during the period of inquiry supports AST's assertion that it did not sell or export any butt-weld pipe fittings to the United States manufactured from Japanese unfinished butt-weld pipe fittings during the period of this circumvention inquiry and because evidence indicates that this fact was not in any way influenced by the filing of a request to conduct this inquiry, the Department preliminarily determines that extension of the period of inquiry is unwarranted and that no circumvention of the antidumping duty order is occurring within the meaning of section 781(b) of the Tariff Act.

Any interested party may request a hearing within ten days of publication of this notice. Any hearing, if requested, will be held approximately 44 days after the publication of this notice. Interested parties may submit written comments (case brief) within 30 days of the date of publication of this notice. Rebuttal

comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish its final determination of this circumvention inquiry, including the results of its analysis of issues raised in any such written comments.

This preliminary negative determination of circumvention is in accordance with section 781(b) of the Tariff Act (19 U.S.C. 1677j(b)) and 19 C.F.R. 353.29(f).

September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23335 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–808]

Chrome-Plated Lug Nuts From the People's Republic of China; Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of the Antidumping Duty Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China.

SUMMARY: On April 20, 1995, the Department of Commerce (the Department) published in the Federal Register the preliminary results of its 1991–1992 and 1992–1993 administrative reviews of the antidumping duty order on chrome-plated lug nuts (lug nuts) from the People's Republic of China (PRC) (60 FR 19720). These reviews cover shipments of this merchandise to the United States during the periods April 18, 1991, through August 31, 1992, and September 1, 1992, through August 31, 1993. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: October 20, 1995.

FOR FURTHER INFORMATION CONTACT: Donald Little, Elisabeth Urfer, or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the Federal Register an antidumping duty order on lug nuts from the PRC on April 24, 1992 (57 FR 15052). On September 11, 1992, and September 7, 1993, the Department published in the Federal Register (57 FR 41725 and 58 FR 47116), respectively, notices of opportunity to request administrative reviews of the antidumping duty order on lug nuts from the PRC covering the periods April 18, 1991, through August 31, 1992, (91–92 review) and September 1, 1992, through August 31, 1993 (92–93 review).

For the 91–92 review, in accordance with 19 CFR 353.22(a)(1994), the petitioner, Consolidated International Automotive, Inc. (Consolidated), requested that we conduct an administrative review of China National Automotive Industry I/E Corp.; China National Machinery & Equipment Import and Export Corporation, Jiangsu Co., Ltd. (Jiangsu); Rudong Grease Gun Factory (Rudong); China National Automotive Industry Shanghai Automobile Import & Export Corp. (Shanghai Automobile); Chu Fong Metallic Industrial Corporation (Chu Fong); and San Chien Electric Industrial Works, Ltd. (San Chien). We published a notice of initiation of this antidumping duty administrative review on October 22, 1992 (57 FR 48201).

For the 92–93 review, in accordance with 19 CFR 353.22(a), Consolidated requested that we conduct an administrative review of China National Automotive Industry I/E Corp; Jiangsu; China National Automobile Import and Export Corp., Yangzhou Branch (Yangzhou); Rudong; Ningbo Knives & Scissors Factory (Ningbo); Shanghai Automobile; and Tianjin Automotive Import and Export Co. (Tianjin). In accordance with 19 CFR 353.22(a), Krossdale Accessories, Inc. requested a review of its supplier, China National Machinery & Equipment Import & Export Corp., Nantong Branch (Nantong). We published a notice of initiation of this antidumping duty administrative review on October 18, 1993 (58 FR 53710).

On April 20, 1995, the Department published in the Federal Register the preliminary results of its 1991–1992 and 1992–1993 administrative reviews of the antidumping duty order on lug nuts from the PRC (60 FR 19720). There was no request for a hearing. The Department has now conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

On April 19, 1994, the Department issued its ''Final Scope Clarifications on Chrome-Plated Lug Nuts from Taiwan and the PRC.'' The scope, as clarified, is described in the subsequent paragraph. All lug nuts covered by these reviews conform to the April 19, 1994, scope clarification.

Imports covered by these reviews are one-piece and two-piece chrome-plated lug nuts, finished or unfinished. The subject merchandise includes chrome-plated lug nuts, finished or unfinished, which are more than 11/16 inches (17.45 millimeters) in height and which have a hexagonal (hx) size of at least 3/4 inches (19.05 millimeters) but not over one inch (25.4 millimeters), plus or minus 1/16 of an inch (1.59 millimeters). The term ''unfinished'' refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not included in the scope of this review. Chrome-plated lock nuts are also not subject to this review.

Chrome-plated lug nuts are currently classified under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

These reviews cover the periods April 18, 1991, through August 31, 1992, and September 1, 1992, through August 31, 1993. The 91–92 review covers six producers/exporters of Chinese lug nuts. The 92–93 review covers eight producers/exporters of Chinese lug nuts.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a case brief from petitioner, and a rebuttal brief from respondents, Rudong and Nantong.

Comment 1: Petitioner concurs with the Department's decision to use best

information available (BIA) with respect to Rudong and the non-responding firms. Petitioner asserts that for the 91–92 review, the response by Rudong was incomplete with regard to factor information on packing costs, that the Department treated Rudong as a non-shipper, and that the Department applied BIA due to Rudong's incomplete response to the Department's questionnaire.

Petitioner states that for the 92–93 review, of the seven firms that were potential respondents, the Department again determined that one firm, Rudong, had responded to the Department's requests for information, but had reported no direct exports to the United States. Petitioner contends that, as in 91–92 review, Rudong provided deficient factor information, and that the Department correctly used BIA to apply the PRC rate of 45.41 percent. Petitioner argues that the remaining six companies did not respond to the Department's questionnaires and received either a PRC or company-specific rate based on the highest rate ever calculated in either the investigation of sales at less-than-fair-value (LTFV) or the previous review, 45.41 percent. Petitioner notes that Jiangsu, which had previously been investigated, received a company-specific rate. Petitioner states that the named exporter in the 92–93 review, Nantong, responded to the questionnaire and received a separate rate; however, the company-specific rate and the PRC rate are identical.

Rudong and Nantong disagree with petitioner's positions that it is appropriate to use BIA with respect to Rudong and Nantong, and they disagree that the Department correctly applied the factors of production methodology in these reviews. They argue that Rudong was fully responsive to the Department's requests for information, and, contrary to petitioner's claims, provided full factors of production information. They maintain that the reported factors data, and not BIA or other factors data used for the preliminary results, should be used by the Department for the final results of these proceedings.

Rudong and Nantong disagree with the Department and the petitioner's claims that Rudong did not provide proper information on packing costs. They state that Rudong provided packing data in its August 3, 1994 submission. Rudong and Nantong maintain that the Department erred in its assessment that Rudong did not provide factor information for transporting steel wire rod. They further maintain the Department should use the surrogate information contained in the Indian publication *Steel Scenario* which they submitted, rather than Indian import statistics, to value steel.

Department's Position: We disagree with both petitioner and respondent, in part. During the 91–92 review Rudong did not export lug nuts to the United States; therefore, we treated Rudong as a non-shipper and applied the PRC rate of 42.42 percent, the highest rate for any firm in the LTFV investigation. We did not apply BIA to Rudong. For the remaining five companies, none of which responded to our requests for information, we applied a BIA rate of 42.42 percent. In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is BIA. When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's review, the Department will normally assign to that company the higher of (1) The highest rate for any firm in the investigation or prior administrative reviews of sales of subject merchandise from that same country; or (2) the highest rate found in the review for any firm. When a company has cooperated with the Department's request for information but fails to provide the information requested in a timely manner or in the form required, the Department will normally assign to that company the higher of either: (1) The highest margin calculated for that company in any previous review or the original investigation; or (2) the highest calculated margin for any respondent that supplied an adequate response for the current review. (*See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, et. al.* (58 FR 39729, (July 26, 1993).) Therefore, we applied as BIA to the firms which did not respond to our questionnaire a PRC rate based on BIA which was the highest rate for any firm in the investigation, or the 91–92 review.

During the 92–93 review, we calculated a rate for Nantong, the only exporter that submitted a questionnaire response. Since Rudong produced the merchandise sold by Nantong, we compared Nantong's United States price with Rudong's foreign market value (FMV). We calculated FMV based on Rudong's factors of production. Rudong generally complied with our requests for information; however, Rudong did not report the amount of the steel input purchased from each supplier and packing weights. While Rudong did provide the information we requested with regard to types of materials used in packing, Rudong did not provide kilogram weights of packing materials, which we needed to value the input materials. The questionnaire specifically asks respondents to prove actual material usage, and requests specifically that respondents provide the method of allocating packing costs for each unit of the subject merchandise. (*See Letter, with Attachment, from Bernard Carreau to Lu Dong Grease Gun Factory,* dated March 4, 1994). Because Rudong did not provide this information, as BIA, we applied a rate of one percent of the cost of production to determine packing costs. This percentage was used in the *Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings from Italy* (52 FR 24198, June 29, 1987). This methodology is consistent with the Department's valuation of packing in the *Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings from the People's Republic of China* (56 FR 67590, December 31, 1991). We also applied partial BIA in calculating transportation costs between the factory and its steel suppliers, because, while Rudong provided distances from its suppliers, it did not provide the percentage purchased from each. Without such information we could not allocate purchases to specific suppliers. In our supplemental questionnaire we specifically asked Rudong to supply the quantity supplied for each input in those instances where there was more than one supplier of the input. (*See Letter from Bernard Carreau to Jiangsu Rudong Grease Gun Factory,* dated July 12, 1994.) As BIA, we used the longest distance between the factory and any of its suppliers of steel.

We disagree with Rudong and Nantong with regard to which source we should use to value steel. Rudong stated in its supplemental questionnaire response that it uses international standard steel #1010, which is a low carbon steel with a carbon content of .08 to .13 percent. The Indian import statistics are more specific in that they indicate the carbon content of the steel. The HTS category we used, 7213.39, ''other bars & rods by weight less than .25 percent carbon,'' covers the low carbon steel used by Rudong to produce lug nuts. By contrast, *Steel Scenario* does not specify either the carbon content of the steel or other chemicals present in the steel. In addition, *Steel*

Scenario prices include taxes and levies, without indicating the amount of taxes and levies included. Therefore, since the Indian import statistics are more specific to the type of steel used in the production of lug nuts, we have continued to use them for these final results.

Because it did not export during the 92–93 period of review we treated Rudong as a nonshipper. We applied BIA to the companies that did not respond to our requests for information. Because the rate calculated for Nantong was the highest rate in this or any other review, or from the investigation of sales at LTFV, the calculated rate for Nantong and the PRC rate are identical. Petitioner correctly notes that we determined that Nantong received a separate rate. However, we disagree that it is appropriate to continue assigning a separate rate to Jiangsu. The test to determine whether to treat an entity as separate from the state was established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) and was amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994). Under this policy, exporters in non-market economies are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. While Jiangsu did receive a separate rate under our old test, because Jiangsu did not respond to our request for information in this review, we were unable to determine whether it is appropriate to assign Jiangsu a separate rate under the current test.

Comment 2: Petitioner contends that the finding that Nantong is entitled to a separate rate does not equate to finding that the Chinese industry is market-oriented. Petitioner argues that Nantong is but one member of an industry that has been unresponsive to the Department's requests for information.

Department's Position: We agree with petitioner that a finding that an entity is entitled to a separate rate does not equate to a finding that the industry is market oriented; however, in neither the 91–92 review nor the 92–93 review did any party make a claim that the Chinese lug nut industry is a market-oriented industry.

Comment 3: Rudong and Nantong contend that there is a mathematical error in the calculation of the surrogate value for steel based on the Indian import statistics.

Department's Position: We agree and have changed our calculation accordingly.

Final Results of Reviews

As a result of the comments received, we have changed the results from those presented in our preliminary results of review:

Manufacturer/exporter	Time period	Margin (percent)
China National Machinery & Equipment Import & Export Corp., Nantong Branch	09/01/92–08/31/93	44.99
PRC Rate	04/18/91–08/31/92	42.42
	09/01/92–08/31/93	44.99

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of these administrative reviews for all shipments of lug nuts from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For Nantong, which has a separate rate, the cash deposit rate will be the company-specific rate published for the most recent (1992–1993) period; (2) for Jiangsu, which was previously investigated and given a separate rate, but did not respond to our request for information to determine whether it still qualified for a separate rate under our current test, the cash deposit rate, which is based on BIA, will be the PRC rate published for the most recent (1992–1993) period; (3) for the companies named above which did not respond to our questionnaire (China National Automotive Industry I/E Corp., Yangzhou, Ningbo, Shanghai Automobile, San Chien, Chu Fong and Tianjin) and for all other PRC exporters, the cash deposit rate will be the PRC rate for the most recent (1992–1993) period; (4) for Rudong, which was a nonshipper and has not been found eligible for a separate rate, the cash deposit rate will be the PRC rate for the most recent (1992–1993) period; and (5) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23334 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–485–804, A–791–803]

Notice of Postponement of Preliminary Determinations: Antidumping Duty Investigations of Circular Welded Non-Alloy Steel Pipe From Romania and South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: John Beck or Jennifer Stagner, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3464 or (202) 482–1673, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

SUMMARY: The Department of Commerce (the Department) is postponing its preliminary determinations in the antidumping duty investigations of circular welded non-alloy steel pipe from Romania and South Africa. The deadline for issuing these preliminary determinations is now no later than November 15, 1995.

SUPPLEMENTARY INFORMATION: On May 16, 1995, the Department initiated antidumping duty investigations of circular welded non-alloy steel pipe from Romania and South Africa (60 FR 27078, May 22, 1995). The notice stated that we would issue our preliminary determinations on October 5, 1995.

On June 12, 1995, the U.S. International Trade Commission determined that there was a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of circular welded non-alloy steel pipe from Romania and South Africa.

Postponement of Preliminary Determination

We have determined that the investigations are extraordinarily complicated within the meaning of section 733(c)(1)(B)(i) of the Act. Given the non-market economy status of Romania, the nature of government ownership of the participating companies raises novel issues which must be further examined. In addition, establishing surrogate values for the factors of production is complex and will require additional time.

For South Africa, we find that additional time is necessary to make the preliminary determination due to the novelty of issues presented in this case. The questionnaire used in this investigation was significantly revised to reflect the changes mandated by the URAA. Since issuing this questionnaire to the respondents, we have discovered that it contains certain ambiguities. Accordingly, we need additional time to issue clarified questions to the respondents, to allow them to submit responses, and to incorporate this information into our analysis for purposes of the preliminary determination.

Furthermore, we have determined that the parties concerned are cooperating, as required by section 733(c)(1)(B)(i) of the Act, and that additional time is necessary to make these preliminary determinations in accordance with section 733(c)(1)(B)(ii) of the Act.

For these reasons, the deadline for issuing these determinations is now no later than November 15, 1995.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated September 14, 1995.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 95–23336 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on August 1, 1995, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–427–009

France
Industrial Nitrocellulose
Objection Date: August 23, 1995
Objector: Aqualon Division, Hercules Incorporated
Contact: David Dirstine at (202) 482–4033

A–588–055

Japan
Acrylic Sheet
Objection Date: August 22, 1995
Objector: ICI Acrylics Inc.
Contact: Karen Park at (202) 482–3518

A–588–704

Japan
Brass Sheet & Strip
Objection Date: August 16, 1995
Objector: The Copper & Brass Fabricators Council
Contact: Thomas Killiam at (202) 482–2704

A–549–601

Thailand
Malleable Pipe Fittings
Objection Date: August 23, 1995
Objector: Grinnell Corp., Ward Manufacturing Inc.
Contact: Matthew Blaskovich at (202) 482–5831

A–570–504

The People's Republic of China
Petroleum Wax Candles
Objection Date: August 15, 1995
Objector: National Candle Association
Contact: Valerie Turoscy at (202) 482–0145.

Dated: September, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–23332 Filed 9–19–95; 8:45 am]
BILLING CODE 3510–DS–P

[A–122–057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Termination of Antidumping Duty Administrative Reviews, Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation of Antidumping Duty Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Antidumping Duty Administrative Reviews, Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation of Antidumping Duty Finding.

SUMMARY: On September 7, 1977, the U.S. Treasury Department (Treasury) published an antidumping duty finding on replacement parts for self-propelled bituminous paving equipment (hereinafter ''paving parts'') from Canada. On October 22, 1992, and on October 18, 1993, the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty finding covering the periods September 1, 1991 through August 31, 1992 (1991–92), and September 1, 1992 through August 31, 1993(1992–93), respectively. On August 23, 1995, the Department initiated a changed circumstances antidumping duty administrative review and issued the preliminary results of changed circumstances antidumping duty administrative review stating its intent to revoke the antidumping duty finding based on petitioner's request of August 1, 1995. We are now revoking the finding, effective September 1, 1991, based on the fact that the finding is no longer of interest to domestic parties. As a result, we are also terminating the two ongoing reviews.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1977, Treasury published an antidumping duty finding on paving parts from Canada (42 FR 41811). On September 11, 1992, Blaw-Knox Construction Equipment Corporation (Blaw-Knox), the petitioner, and on September 28, 1992, the Allatt Paving Equipment Division of Ingersoll-Rand (IR), the respondent, requested an administrative review of the antidumping duty finding, covering the period September 1, 1991 through August 31, 1992. On October 22, 1992, the Department initiated the administrative review (57 FR 48201). On September 21, 1993, and September 30, 1993, IR and Blaw-Knox, respectively, requested an administrative review of the antidumping duty finding covering the period September 1, 1992 through August 31, 1993. On October 18, 1993, the Department initiated this administrative review (58 FR 53710).

On August 1, 1995, Blaw-Knox, the petitioner in this proceeding, submitted a request for a changed circumstances administrative review to revoke the finding on paving parts from Canada. In addition, Blaw-Knox requested that the revocation be effective retroactively to September 1, 1991, thereby terminating the currently pending 1991–92 and 1992–93 administrative reviews. Blaw-Knox made this request based on the fact that the finding on paving parts is no longer of interest to the petitioner.

Pursuant to 19 CFR 353.25(d)(1), we preliminarily determined that Blaw-Knox's affirmative statement of no interest constitutes good cause for conducting a changed circumstances review. Consequently, on August 23, 1995, the Department published a notice of initiation and preliminary results of changed circumstances antidumping duty administrative review stating its intent to revoke the finding (60 FR 43772). We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received no comments.

Scope of Review

The merchandise covered by this changed circumstances review is replacement parts for self-propelled bituminous paving equipment from Canada, excluding attachments and parts for attachments. This merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 4016.93.10, 7315.11.00, 7315.89.50, 7315.90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, and 9015.30.40. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This changed circumstances administrative review covers all manufacturers/exporters of replacement parts for self-propelled bituminous paving equipment from Canada.

Final Results of Review; Revocation of Antidumping Duty Finding; Termination of Antidumping Duty Administrative Reviews

The evidence of record indicates that the finding is no longer of interest to interested parties, as defined in paragraphs (k)(3), (k)(4), (k)(5), and (k)(6) of section 353.2 of the Department's regulations. Therefore, the Department is revoking the finding on paving parts from Canada in accordance with sections 751(d) and 782(h) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.25(d)(1). This revocation applies to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1991. Accordingly, the Department is terminating the 1991–92 and 1992–93 reviews.

The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of paving parts from Canada entered, or withdrawn from warehouse, for consumption on or after September 1, 1991. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of paving parts from Canada entered, or withdrawn from warehouse, for

consumption on or after September 1, 1991, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, revocation of the antidumping duty finding, termination of the 1991–92 and 1992–93 administrative reviews, and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23337 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–351–406]

Certain Agricultural Tillage Tools From Brazil: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On August 4, 1995, the Department of Commerce (the Department) published in the Federal Register its preliminary results of administrative review of the countervailing duty order on certain agricultural tillage tools from Brazil for the period January 1, 1993 through December 31, 1993. We have completed this review and determine the net subsidy to be zero for all companies. The Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Brazil exported on or after January 1, 1993 and on or before December 31, 1993.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Richard Herring, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1995, the Department published in the Federal Register (60 FR 39933) the preliminary results of its administrative review of the countervailing duty order on certain agricultural tillage tools from Brazil. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the preliminary results. We received no comments.

The review covers the period January 1, 1993 through December 31, 1993. The review involves one company and four programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered in this review are certain tillage tools from Brazil (discs) with plain or notched edges, such as colters and furrow-opener blades. The products covered in this review are currently classifiable under the following item numbers of the Harmonized Tariff Schedule of the United States (HTSUS): 8432.21.00, 8432.29.00, 8432.80.00 and 8432.90.00. The HTSUS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

Programs Found Not to be Used

In the preliminary determination we found, based upon our analysis of our questionnaire response that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

- Preferential Financing under FINEP
- Preferential Financing for Industrial Enterprises by the Banco do Brazil (FST and EGF loans)
- Accelerated Depreciation for Brazilian-made Capital Goods
- Preferential Financing Under PROEX (Formerly under Resolution Tax and Duty Exemptions Under Section 28 of the Investment Promotion Act

Since we received no comments to our preliminary results, our results remain unchanged in these final results.

Final Results of Review

For the period January 1, 1993 through December 31, 1993, we determine the net subsidy to be zero for all companies.

The Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Brazil, exported on or after January 1, 1993 and on or before December 31, 1993.

The Department will also instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of the subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.43(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23333 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Settlement on Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Honduras

September 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing

limits and announcing Guaranteed Access Levels.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated September 15, 1995 the Governments of the United States and Honduras agreed, pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC), to establish limits for Categories 352/652 and 435 for three-year terms—March 27, 1995 through December 31, 1995; January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through March 26, 1998 (Categories 352/652) and April 24, 1995 through December 31, 1995; January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through April 23, 1998 (Category 435). The governments also agreed to establish Guaranteed Access Levels (GALs) for Categories 352/652 and 435 for the periods January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through March 26, 1998 (Categories 352/652) and January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through April 23, 1998 (Category 435).

Beginning on November 1, 1995, the U.S. Customs Service will start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 352/652 and 435 that are destined for Honduras and subject to the GAL established for Categories 352/652 and 435 for the period beginning on January 1, 1996 and extending through December 31, 1996. These products are governed by Harmonized Tariff item number 9802.00.8015 and chapter 61 Statistical Note 5 and chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule. Interested parties should be aware that shipments of cut parts in Categories 352/652 and 435 must be accompanied by a form ITA–370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Honduras in order to qualify for entry under the Special Access Program.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint periods for Categories 352/652 and 435 to end on December 31, 1995 at increased levels.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 32654, published on June 23, 1995; and 60 FR 19892, published on April 21, 1995.

Requirements for participation in the Special Access Program are provided in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 60 FR 2740, published on January 11, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 15, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on June 16, 1995, and July 18, 1995 by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Honduras and exported during the twelve-month periods beginning on March 27, 1995 and extending through March 26, 1996 (Categories 352/652); and beginning April 24, 1995 and extending through April 23, 1996 (Category 435).

Effective on September 18, 1995, you are directed, pursuant to the Memorandum of Understanding dated September 15, 1995 between the Governments of the United States and Honduras, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, to amend the current restraint periods for Categories 352/652 and 435 to end on December 31, 1995 and increase the limits for Categories 352/652 and 435 as follows:

Category	New Limit [1]
352/652	45,424,731 dozen, of which not more than 43,516,129 dozen shall be in Categories 352/652–K [2].
435	33,893 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 26, 1995 (Categories 352/652) and April 23, 1995 (Category 435).

[2] Category 352/652–K: Only HTS numbers 6107.11.0010, 6107.11.0020, 6108.19.9010, 6108.21.0010, 6108.21.0020, 6108.91.0005, 6108.91.0015, 6108.91.0025, 6109.10.0005, 6109.10.0007, 6109.10.0009, 6109.10.0037, 6107.12.0010, 6107.12.0020, 6108.11.0010, 6108.11.0020, 6108.22.9020, 6108.22.9030, 6108.92.0005, 6108.92.0015, 6108.92.0025, 6109.90.1047, and 6109.90.1075

Beginning on November 1, 1995, the U.S. Customs Service is directed to start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 352/652 and 435 that are destined for Honduras and re-exported to the United States on and after January 1, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23400 Filed 9-18–95; 10:42 am]

BILLING CODE 3510–DR–F

Adjustment of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Hungary

September 14, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 21, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased for swing and special shift, reducing the limits for Categories 410 and 434 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62717, published on December 6, 1994; and 60 FR 16623, published on March 31, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, as amended on March 27, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on September 21, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
410	856,527 square meters.
434	13,125 dozen.
443	179,303 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23284 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Export Visa Requirements for Certain Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Philippines

September 14, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: September 21, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the Federal Register on August 15, 1995 announces that, effective on September 1, 1995, for goods produced or manufactured in the Philippines and exported from the Philippines on and after September 1, 1995, part-category visas will no longer be required for certain part-categories, including Categories 669–P and 669–O.

The purpose of this notice is to announce that the part-category visa requirement shall continue for Categories 669–P and 669–O.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to continue to require a part-category visa for goods in Categories 669–P and 669–O, produced or manufactured in the Philippines and entered into the United States for consumption and withdrawn from warehouse for consumption.

See 52 FR 11308, published on April 8, 1987.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 9, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to amend export visa requirements for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Philippines.

Effective on September 21, 1995, you are directed to continue to require a part-category visa for goods in Categories 669–P [1] and 669–O [2], produced or manufactured in the Philippines and entered into the United States for consumption and withdrawn from warehouse for consumption.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23283 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DR–F

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Change to the 1995 Correlation

September 14, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1995 Correlation.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1995) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the textile program. The Correlation should be amended to include the following change which was effective on July 1, 1995:

[1] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[2] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

Change in the 1995 Correlation

Replace 4202.92.3040 (870) with 4202.90.3090—Definition remains the same.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23282 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with the Government of Russia on Certain Wool Textile Products

September 14, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On August 31, 1995, in accordance with Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Russia with respect to women's and girls' wool coats in Category 435, produced or manufactured in Russia.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Russia, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in Russia and exported during the twelve-month period which began on August 31, 1995 and extends through August 30, 1996, at a level of not less than 45,896 dozen.

A summary market statement concerning Category 435 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 435, or to comment on domestic production or availability of products included in Category 435, is invited to submit 10 copies of such comments or information to D. Michael Hutchinson, Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Russia.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

The United States remains committed to finding a solution concerning Category 435. Should such a solution be reached in consultations with the Government of Russia, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Statement of Serious Damage

Russia

Women's and Girls' Wool Coats—Category 435

August 1995

Import Situation and Conclusion

Imports of women's and girls' wool coats, Category 435, from Russia reached 44,174 dozen for the year ending June 1995, 34 percent above the 32,991 dozen imported in the year ending June 1994. Imports from Russia during the year ending June 1995 were 3.6 percent of total U.S. imports of Category 435, and were equivalent to 5.0 percent of U.S. production of Category 435 in 1994.

U.S. imports of women's and girls' wool coats from Russia in Category 435 during the year ending June 1995 entered the U.S. at an average landed duty-paid value of $318.13 per dozen, 61 percent below the U.S. producers' average price for women's and girls' wool coats.

The sharp and substantial increase of low priced imports from Russia is causing serious damage to the U.S. industry producing women's and girls' wool coats.

U.S. Production, Import Penetration, and Market Share

U.S. production of women's and girls' wool coats, Category 435, declined in 1993 and in 1994, falling to 874,000 dozen, 7 percent below the 942,000 dozen produced in 1993 and 11 percent below the 987,000 dozen produced in 1992. In contrast, U.S. imports of Category 435 from all sources increased to l,203,000 dozen in 1994, 8 percent above the 1993 level and 44 percent above the 1992 level. Category 435 imports continue to increase in 1995, reaching 1,246,000 dozen in the year ending June 1995.

The ratio of imports to domestic production increased from 84 percent in 1992 to 118 percent in 1993 to 138 percent in 1994. The share of the U.S. women's and girls' wool coat market held by domestic manufacturers fell from 54 percent in 1992 to 42 percent in 1994, a decline of 12 percentage points.

[FR Doc. 95–23281 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision to Upgrade the Wastewater Treatment System in the San Onofre Basin of Marine Corps Base Camp Pendleton, CA

Pursuant to Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, and the Council of Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to upgrade the wastewater treatment system in the San Onofre Basin of Marine Corps Base (MCB) Camp Pendleton, California. This upgrade will construct twelve new percolation basins; about 30 acres in total size and located down stream of existing potable water wells; a new pumping station; and a 5.76 mile pipeline from sewage treatment plants 10 and 11 to the new percolation ponds.

Sewage treatment plants 10 and 11 were constructed in the 1950's and discharge secondary treated effluent to percolation basins adjacent to San Onofre Creek, upstream of potable water wells that serve developments within San Onofre Basin. This condition violates the San Diego Water Quality Control Basin Plan, the State of California Porter Cologne Water Quality Act of 1969, and the National Pollution Discharge Elimination System requirements of the Federal Water Pollution Control Act of 1972. As a result of these violations, the San Diego Regional Water Quality Control Board issued a Cease and Desist Order to MCB Camp Pendleton in January 1989.

Alternatives considered for correcting the conditions cited in the Cease and Desist order included no action, water disposal of effluent, and land disposal of effluent. Water disposal alternatives included construction of an ocean outfall or via live-stream discharge of either secondary- or tertiary-treated effluent. Land disposal alternatives included construction of new percolation basins, leach fields, deep vertical injection wells, biological ponds, discharge to an off-base publicly owned treatment facility, and amendment of the Basin Plan. The Draft Environmental Impact Statement (DEIS) identified discharge of secondary-treated effluents to new percolation basins located downstream from existing potable water wells as the preferred alternative. This alternative was identified in the Final Environmental Impact Statement (FEIS) as the environmentally preferred alternative.

A systematic and multi-disciplinary approach was utilized which incorporated criteria based upon technical suitability, economic feasibility, and compliance with applicable environmental regulations. The analysis determined that the preferred alternative is the only alternative that meets all criteria. This alternative is environmentally preferable to the alternatives considered, and all practicable means to avoid or minimize environmental harm have been adopted as identified below and amplified in the Environmental Impact Statement.

Percolation basin construction will involve grading and excavation. A soil erosion control plan will be prepared for project construction. It will include restricting grading and excavation during the rainy season, restricting heavy equipment to existing rights-of-way, installing sediment control measures, and post-construction revegetation.

The California gnatcatcher, a federally listed threatened species, is present near the percolation basin and pipeline sites. The U.S. Fish and Wildlife Service expressed in their biological opinion that the project is not likely to jeopardize the continued existence of this species. Project impacts include a temporary loss of 0.3 acres coastal sage scrub, the preferred habitat of this species, temporary loss of 1.5 acres of valley needlegrass habitat, and temporary loss of 3.0 acres of riparian habitat during construction of the pipeline. A permanent loss of 3.5 acres of coastal sage scrub will occur due to construction of the percolation basins. To mitigate these impacts, the Marine Corps will regrade, replant, and restore the temporarily impacted vegetative communities and will create 2.85 acres of new coastal sage scrub habitat. The U.S. Fish and Wildlife Service concurs in this mitigation scheme.

In compliance with the biological opinion issued for the project, the Marine Corps will conduct water quality monitoring of areas potentially impacted by possible nutrient loading of coastal waters due to operations of the percolation basins. Should changes in water quality be detected the Marine Corps will consult with the San Diego Regional Water Quality Control Board and the U.S. Fish and Wildlife Service to implement appropriate measures.

The proposed action will not affect archeological, cultural, or historic resources listed, or determined eligible for listing on the National Register of Historic Places. The California State Historic Preservation Officer concurs with this determination.

Analysis of air emissions that would occur during construction and operation of the percolation ponds determined that these emissions will be below *de minimis* levels and that the project conforms with the State Implementation Plan for air quality.

A Coastal Consistency Determination was prepared for this project and it concluded that the proposed action is being carried out in a manner consistent, to the maximum extent practicable, with the enforceable policies of the California Coastal Management Plan. The California Coastal Commission concurs with this determination.

Preparation of the Environmental Impact Statement began with a public scoping process to identify issues that should be addressed in the document. Involvement in scoping was offered through a combination of documented public announcements and meetings with State of California agencies. Public announcements were handled through scoping letters sent to Federal, State, and local governmental agencies, citizen groups and associations, and the general public. Also, a Notice of Intent to prepare an Environmental Impact Statement was published in local newspapers and the Federal Register. A public scoping meeting was held on October 17, 1991 in Oceanside, California.

The Notice of Availability of the DEIS appeared in the Federal Register on January 13, 1995. The DEIS was distributed to officials of Federal, State and local governmental agencies, citizens groups and associations, public libraries, and to other interested parties. The public review period for the DEIS was from January 13, 1995 through March 6, 1995. Comments received on the DEIS focused on alternative analysis and endangered species issues. The FEIS addressed these comments and was distributed to officials of Federal, State and local governmental agencies, citizens groups and associations, public libraries, and to other interested parties on July 21, 1995. No comments were received on the FEIS.

The Department of the Navy believes that there are no outstanding issues to be resolved with respect to this project. Questions regarding the Environmental Impact Statement prepared for this action may be directed to Mr. Lupe Armas, Assistant Chief of Staff, Environmental Security, MCB Camp Pendleton, CA 92055, telephone (619) 725–4512.

Dated: September 14, 1995.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 95–23279 Filed 9–19–95; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 20, 1995.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill,

Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 14, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Reinstatement
Title: Application for the National Assessment of Educational Progress Data Reporting Program
Frequency: Annually
Affected Public: Business or other for-profit; Not for Profit institutions; State, Local or Tribal Government
Reporting Burden:
Responses: 15
Burden Hours: 360
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State Educational agencies to apply for funding under the National Assessment of Educational Progress Data Reporting Program. The Department will use the information to make grant awards.

[FR Doc. 95–23237 Filed 9–19–95; 8:45 am]

BILLING CODE 4000–01–M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: September 28–29, 1995 from 9 a.m. to 5 p.m. daily or until the conclusion of business.

ADDRESS: The meeting will be held at the Ramada Inn Old Town, 901 North Fairfax, Alexandria, Virginia, 22314. Telephone: (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: John W. Cheek, Acting Director, National Advisory Council on Indian Education, 600 Independence Avenue S.W., The Portals-Suite 6211, Washington, DC 20202–7556. Telephone: (202) 205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education (NACIE) is established under section 9151 of Title IX, of the Elementary and Secondary Education Act of 1965, as amended, (20 U.S.C. 7871). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under this Title and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The Chair of the National Advisory Council on Indian Education has called a meeting for Thursday, September 28, and Friday, September 29, 1995. The agenda will include a briefing on the status of Indian Education for the upcoming 1996 fiscal year. Specifically, the budget being proposed for Indian Education Act programs is being drastically reduced with no appropriations designated for all FY 96 discretionary programs and the National Advisory Council on Indian Education. This proposal will have a direct and immediate affect on the quantity and quality of educational services to American Indian and Alaska Native communities nationwide. The purpose of this meeting is to determine the impact this will have on the Office of Indian Education, NACIE and the Department of Education.

The public is being given less than 15 days notice due to problems in scheduling this meeting.

Records shall be kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Indian Education located at 1250 Maryland Avenue S.W., Washington, DC 20202–7556 from the hours of 9 a.m. to 4:30 p.m. Monday through Friday, except holidays.

Dated: September 18, 1995.

John W. Cheek,

Acting Director, National Advisory Council on Indian Education.

[FR Doc. 95–23411 Filed 9–19–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Competitive Financial Assistance for the Office of Environment, Safety and Health

AGENCY: U. S. Department of Energy.

ACTION: Notice of competitive financial assistance solicitation.

SUMMARY: The Department of Energy announces that competitive applications will be solicited for scientific and administrative assistance for the development of a postdoctoral research program in the radiation sciences that will both foster human health effects studies in the national and international programs of the DOE and create a U.S. center of excellence for radiation sciences. Estimated total funding in the

amount of $5,000,000 will be provided over a five year period of performance. This action is restricted to institutions of higher learning as defined by OMB Circular A–122.

DATES: Applications must be received on or before November 20, 1995.

ADDRESSES: Requests for copies of solicitation number DE-PS01–95EH89678 must be made in writing and should be submitted to: U.S. Department of Energy, Office of Placement and Administration, ATTN: Document Control Specialist, HR–562, 1615 M Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Ms. Lynnette Desorcie, at (202) 634–4598.

SUPPLEMENTARY INFORMATION:

Restriction

The proposed financial assistance award will be restricted to United States institutions of higher learning based upon the following qualifications: (a) Such institutions are eminently qualified to establish and run a U.S. postdoctoral fellowship program for radiation research; (b) personnel of such institutions will have the established technical expertise and credibility as well as established rapport with international experts in the field of human health effects of radiation; (c) collectively, U.S. institutions of higher learning are the foremost institutions for scientific research and have the reputation and demonstrated ability to attract new scientists into research and postdoctoral positions in the radiation sciences; and, (d) these institutions have the curricula, laboratories and scientific experts in place that will ensure successful performance of the project requirements.

Background

As part of the mission of the Assistant Secretary for Environment, Safety and Health, studies are undertaken to improve the scientific knowledge of the health effects of ionizing radiation and other major environmental hazards associated with the nuclear weapons programs and technologies in order to further our ability to protect workers and the public from the harmful effects of these hazards. Multidisciplinary environmental and occupational health research is also fostered in a number of international programs. These research needs require a continued flow of young investigators trained in radiobiology, epidemiology, environmental sciences, medical and health physics, and related basic and applied sciences. In support of this national and worldwide need for radiation scientists, the DOE is funding a cooperative program that will stimulate the development of a center(s) of excellence in radiation sciences at a U.S. institution of higher learning.

The grantee will be responsible for establishing and administering a postdoctoral fellowship program for U.S. citizens at a U.S. institution of higher learning. The focus of the program should be to both train future generations of radiation researchers in the U.S. and develop a center of excellence in radiation sciences. The postdoctoral fellowship program should prepare scientists to a degree that they can effectively serve in DOE programs in human health effects as part of their fellowship tenure.

Pursuant to 10 CFR 600.9, a solicitation, which will include the project objectives, application instructions, evaluation criteria, and a model grant, is expected to be issued in late September 1995. Applications will be due 60 days after the date of issuance. The Department intends to award only one grant as a result of this solicitation.

Issued in Washington, DC on September 15, 1995.

Scott Sheffield,

Director, Headquarters Operations Division B.

[FR Doc. 95–23339 Filed 9–19–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–744–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

September 13, 1995.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company Of America

[Docket No. CP95–744–000]

Take notice that on September 8, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP95–744–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, requesting authority to abandon a rescheduling of deliveries service provided by Natural under its Rate Schedule X–68 for The Peoples Gas Light and Coke Company (Peoples), North Shore Gas Company (North Shore) and Northern Illinois Gas Company (NI-Gas) authorized in Docket No. CP76–333.

Natural states that pursuant to a storage agreement dated April 8, 1976 between Natural, Peoples, North Shore and NI-Gas (Agreement—Natural's Rate Schedule X–68), Natural stored gas of up to 5,000,000 Mcf for Peoples, up to 1,000,000 Mcf for North Shore and up to 5,000,000 Mcf for NI-Gas for a limited period ending December 31, 1981. Peoples, North Shore and NI-Gas released gas in the above amounts from their daily quantity entitlements under Natural's Rate Schedule DMQ–1 for injection into storage in Natural's North Lansing Field in Harrison County, Texas. The Agreement provided for: (1) A consecutive twelve (12) month injection period beginning the first day of the month in which gas was first injected and (2) a consecutive thirty-six (36) month withdrawal period immediately following the injection period.

Natural further states that by letters of Peoples, North Shore and NI-Gas dated July 24, 1995, July 24, 1995 and August 24, 1995, respectively, these customers stated they no longer needed the storage service provided under the Agreement and Natural's Rate Schedule X–68. Therefore, Natural requests authority to abandon its storage service for Peoples, North Shore and NI-Gas performed under the Agreement and Natural's Rate Schedule X–68 authorized in Docket No. CP76–333.

Comment date: September 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP95–720–000]

Take notice that on August 31, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–720–000 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 install a bi-directional point for Seneca Resources Corporation (Seneca) under Tennessee's blanket certificate issued in Docket No. CP82–413–000 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.

Tennessee proposes to establish a bi-directional point for receipts and deliveries of natural gas under Seneca's interruptible transportation agreement. The proposed point will be located at M.P. 523M–7301+2.13, Offshore, Louisiana. Tennessee proposes to install electronic gas measurement (EGM),

provide material for fabrication of tie-in assembly, inspect side valve assembly fabrication and installation, inspect customer's installation of interconnecting piping, and inspection of Seneca's measurement facilities. Tennessee will own, operate and maintain the side valve assembly, and operate the meter. Seneca will install and fabricate the side valve assembly, install, own, operate and maintain the interconnecting pipe and install, own, and maintain the meter.

Tennessee does not propose to increase the maximum contract quantity for Seneca, so no impact on peak day or annual deliveries is anticipated. The establishment of the new point is not prohibited by Tennessee's existing tariff. Tennessee states it has sufficient capacity to accomplish receipts and deliveries at the proposed meter without detriment or disadvantage to its other customers.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Murphy Exploration & Production Company v. Quivira Gas Company

[Docket No. CP95–735–000]

Take notice that on September 5, 1995, Murphy Exploration & Production Company (Murphy Exploration), P.O. Box 7000 (71730), Eldorado, Arkansas 71731–7000, filed with the Commission in Docket CP95–735–000 a complaint and request for refunds and investigation of transportation rates pursuant to Rules 206 and 212 of the Commission's Rules of Practice and Procedure (18 CFR 385.206(a) and 385.212), against Quivira Gas Company (Quivira) alleging that the transportation rates of Quivira for transporting Murphy Exploration's Eugene Island Block 24 volumes are unjust and unreasonable and otherwise unlawful.

Murphy Exploration asserts that Quivira owns and operates a 12-inch, 22-mile pipeline in Louisiana state waters and onshore (Eugene Island Pipeline) that connects Tennessee Gas Pipeline Company's (Tennessee) interstate transmission line in the Outer Continental Shelf (OCS) originating at Eugene Island Block 24 to Tennessee's onshore interstate transmission in St. Mary's Parish, Louisiana.

Murphy Exploration claims that although Quivira's Eugene Island Pipeline transports gas in interstate commerce, Quivira has not obtained a certificate under Section 7(c) of the Natural Gas Act (NGA) nor has it obtained Commission authorization under Section 4 of the NGA or Section 311 of the Natural Gas Policy Act of 1978 to charge just and reasonable rates for the interstate transportation service it provides to shippers of OCS gas.

Murphy Exploration requests that the Commission institute an investigation to determine not only Quivira's just and reasonable rates, but to determine the amount of refunds owed by Quivira for its overcharges for the period October 1985 to the present.

Comment date: October 13, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

4. K N Interstate Gas Transmission Co.

[Docket No. CP95–741–000]

Take notice that on September 8, 1995, K N Interstate Gas Transmission Co. (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP95–741–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon approximately 14 miles of 4-inch top-of-ground pipeline and appurtenant facilities located on its Flat Top Lateral in Converse County, Wyoming under K N Interstate's blanket certificate issued in Docket No. CP83–140–000, *et al.*, 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.

K N Interstate states that the pipeline segment has historically been used to facilitate the delivery of natural gas to end users; however, there are currently no customers connected to this pipeline segment. K N Interstate also states that, due to its age, condition and safety considerations associated with top-of-ground pipeline, K N Interstate proposes to abandon this pipeline segment, either by sale or removal. K N Interstate estimates the net cost to remove and salvage the pipeline segment and any appurtenant facilities to be $19,000.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Transwestern Pipeline Company

[Docket No. CP95–743–000]

Take notice that on September 8, 1995, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–743–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate delivery point facilities in Ward County, Texas, to accommodate deliveries of natural gas to Mobil Gas Services, Inc. (Mobil), under Transwestern's blanket certificate issued in Docket No. CP82–534–000 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.

Transwestern proposes to install and operate a 2-inch meter station at a new delivery point for the delivery of gas transported for Mobil, a gatherer and producer of natural gas, to be used by Mobil as fuel gas for compressor units. It is stated that the new delivery point would utilize an existing tap on Transwestern's 24-inch West Texas lateral. It is further stated that the meter station would be capable of delivering up to 1,000 Mcf of natural gas per day. It is explained that the gas would be transported on an interruptible basis pursuant to a service agreement under Transwestern's Rate Schedule ITS–1. It is asserted that the delivery point would be used for the delivery of up to 1,000 Mcf on a peak day, 500 Mcf on an average day and 275,000 Mcf on an annual basis. The construction cost of the facilities is estimated at approximately $15,000. It is asserted that the volumes delivered would be within Mobil's certificated entitlement from Transwestern and that Transwestern's tariffs do not prohibit the addition of delivery points.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP95–745–000]

Take notice that on September 8, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–745–000 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 construct and operate a new delivery point under WNG's 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 install a 2-inch tap, measuring, regulating and appurtenant facilities for the delivery of natural gas transported for J–M Farms, Inc. (J–M Farms) in Ottawa County, Oklahoma. The projected volumes are approximately 52,900 Dth annually and 175 Dth on a peak day. WNG estimates that the cost of construction will be $22,930 which would be reimbursed by J–M Farms.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP95–747–000]

Take notice that on September 8, 1995, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–747–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new delivery point for service to Anchor Glass Container Corporation (Anchor Glass) in Twiggs County, Georgia, under its blanket certificate issued in Docket No. CP82–406–000,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide interruptible transportation service to Anchor Glass at a new delivery point, at or near Mile Post 23.2, on Southern's 12-inch Brunswick Line. Specially, the facilities will consist of a dual 3-inch orifice meter, tap, tie-in piping, electric custody transfer equipment and the necessary appurtenant facilities. The estimated cost of the facilities is approximately $341,271, and Anchor Glass will reimburse Southern for the cost of the facilities. Southern states that the station has been designed to provide up to 4,802 Mcf per day.

Southern holds a blanket transportation certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP88–316–000.[2] Southern states that construction of the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to deliver the requested gas volumes without detriment or disadvantage to it's other customers.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23270 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–P

[1] *See*, 20 FERC ¶ 62,414 (1982).

[2] *See*, 43 FERC ¶ 61,233 (1988).

[Docket No. CP62–205–002, et al.]

Washington Gas Light Company, et al.; Natural Gas Certificate Filings

September 12, 1995.

Take notice that the following filings have been made with the Commission:

1. Washington Gas Light Company

[Docket No. CP62–205–002]

Take notice that on September 7, 1995, Washington Gas Light Company (WGL), 1100 H Street, N.W., Washington, D.C. 20080, filed in Docket No. CP62–205–002 a petition pursuant to Section 7(f) of the Natural Gas Act to amend its certificate issued in Docket No. CP62–205, as amended, authorizing a service area determination, all as more fully set forth in the petition on file with the Commission and open to public inspection.

WGL proposes to amend its service area by adding Frederick County, Maryland, as a result of its merger with Frederick Gas Company, Inc. (Frederick), a wholly owned subsidiary of WGL. It is stated that the merger will be effective January 1, 1996. It is asserted that Frederick is a Maryland corporation engaged in the transportation, sale and distribution of natural within the state of Maryland, receiving all of its gas within Maryland and with no facilities which cross state lines. It is explained that WGL's gas distribution service in Frederick County will be regulated by the Public Service Commission of Maryland (PSCMD) and will be provided at the same rates and under the same terms and conditions as those offered to WGL's existing customers in Maryland and already on file with the PSCMD.

Comment date: October 3, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP95–725–000]

Take notice that on September 1, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–725–000 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 bi-directional point in Iberia Parish, LA, in order to receive and deliver gas to a storage facility operated by Equitable Storage Company (Equitable) under Tennessee's blanket certificate issued in

Docket No. CP82–413–000 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.

Tennessee proposes to install a 12 inch hot tap, approximately 50 feet of interconnecting pipe on Tennessee's right-of-way, a chromatograph and electronic gas measurement. [1] Tennessee also asserts that gas will be moved to and from the bi-directional point under existing agreements for firm or interruptible transportation on Tennessee's system. Tennessee also states that the bi-directional point will accommodate up to 200,000 Dth/d of receipts from and deliveries to Tennessee's system.

Comment date: October 27, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP95–732–000]

Take notice that on September 5, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–732–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by reclamation the Enid Compressor Station in Garfield County, Oklahoma, which was authorized in Docket No. CP70–53, all as more fully set forth in the application on file with the Commission and open to public inspection.

WNG seeks authority to abandon the l,000 horsepower compressor unit, the compressor building, and appurtenant facilities, which compose the Enid Compressor Station. The cost of the proposed abandonment is approximately $47,300 with an estimated salvage value of $25,000.

Comment date: October 3, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. Williston Basin Interstate Pipeline Company

[Docket No. CP95–736–000]

Take notice that on September 7, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed with the Commission in Docket No. CP95–736–000 pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add a new metering station and associated appurtenant facilities to provide transportation service in Cass County, North Dakota, authorized in blanket certificate issued in Docket No. CP82–487–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to add a new metering station and associated appurtenant facilities which would be used for delivering gas into facilities to be owned by Prairielands Energy Marketing, Inc. (PEMI). The gas would ultimately be delivered to the National Sun sunflower plant, in Enderlin, North Dakota. The facilities to be constructed at the metering station would consist of a new tap to the pipeline, a 12 x 14 foot building to house the meter, regulator and miscellaneous gages and valves and a 5 x 7 foot building to house the SCADA system, and would be enclosed with a security fence. The total estimated cost of the proposed metering station and lateral pipeline would be $110,000. The actual cost of the facilities would be reimbursed to Williston Basin by PEMI.

Comment date: October 27, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP95–739–000]

Take notice that on September 7, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma, 74101, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for an order permitting and approving the abandonment by reclaim of five horizontal compressor units and appurtenant facilities at the Welda compressor station located in Anderson County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, WNG seeks authority to abandon by reclaim five Cooper horizontal compressor units totaling 5,400 horsepower at the Welda compressor station. The units were installed in the late 1940's and early 1950's and have not been used since the winter of 1992–93. The compressor units remaining at the Welda station will continue to provide the same level of service. The total cost of the proposed abandonment is approximately $25,000, with an estimated salvage value of $0.

Comment date: October 3, 1995, in accordance with Standard Paragraph F at the end of this notice.

6. Columbia Gas Transmission Corporation

Docket No. CP95–740–000

Take notice that on September 7, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–740–000 a request pursuant to Section 157.205 of the Commission's Regulations to construct and operate facilities for nine new points of delivery for Mountaineer Gas Company (Mountaineer) to serve nine residential customers located in various counties in West Virginia under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a 4-inch by 1-inch saddle tap and less than 20 feet of pipe for each of the nine residential customers on Columbia's existing right-of-way in order to provide firm service of up to 1.5 dekatherms (dth) per day and up to 150 dth annually for each customer under Columbia's Rate Schedules SST and FTS within certificated entitlements. Columbia states that Mountaineer would set the meter and regulator at each location. The new delivery points would be located in Lincoln (2), Kanawha, Clay, Wayne (2), Randolph, and Roane (2) Counties, West Virginia to serve individual residential customers, it is stated. Columbia states that there is no impact on Columbia's existing design day and annual obligations to its other customers as a result the construction and operation of these facilities. Columbia states that the estimated cost of each delivery point is $150 and would be treated as an O&M expense.

Comment date: October 27, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties

[1] Tennessee states that Equitable will install, own and maintain measuring facilities and will install, own operate, and maintain the interconnecting pipe between Tennessee's right-of-way and the meter station.

to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23271 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11077–0001]

Alaska Power and Telephone Company; Errata Notice to Notice of Application

August 16, 1995.

In the notice issued August 9, 1995, published at 60 FR 4872 (August 29, 1995), item ''j'' should read: ''Deadline for comments, recommendations, terms and conditions, and prescriptions: October 10, 1995.''

Lois D. Cashell,

Secretary.

[FR Doc. 95–23272 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR95–11–000]

Egan Hub Partners, L.P.; Order to Show Cause

Issued September 14, 1995.

On May 11, 1995, Egan Hub Partners, L.P. (Egan) filed a petition, supplemented on August 11 and August 18, 1995, in Docket No. PR95–11–000 for authority to charge and collect individually-negotiated, market-based rates for interstate storage and transportation services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA). The instant order establishes a show cause proceeding, pursuant to sections 5, 7, and 16 of the Natural Gas Act (NGA), to investigate the jurisdictional implications of Egan's proposed construction of storage facilities for NGPA ''section 311 only.'' As discussed below, the Commission is requiring Egan to show cause why the proposed storage facilities should not be subject to the Commission's NGA jurisdiction.

Background and Description of the Facilities

Egan is owned by Egan Hub Partners, Inc., its sole general partner and Market Hub Partners, L.P., its sole limited partner. Tejas Power Corporation (Tejas) indirectly owns a 66 percent interest in Egan. Egan provides intrastate transportation services through its intrastate pipeline facilities located in Calcasieu, East Baton Rouge, and Pointe Coupee Parishes, Louisiana. Egan currently provides intrastate transportation services to three gas customers: an electric utility, a university, and an industrial user.

On February 3, 1994, Egan filed a notice with the Commission under 18 CFR 284.11 stating that it intended to commence construction of an underground salt dome storage cavern and appurtenant facilities, including pipeline facilities in Acadia Parish, Louisiana, to be used solely for the purpose of providing services pursuant to section 311(a)(2) of the NGPA. Egan anticipated that construction of the facilities would cost approximately $56 million and take approximately two years to complete, with the facilities available for service during the 1995–1996 winter heating season.

Egan states that the storage facilities are approximately nine miles from Louisiana Gas System Inc.'s (LGS) intrastate pipeline facilities. According to Egan, an interconnection with LGS has not been pursued because of a lack of firm demand for Egan's services. Egan adds that if both intrastate and section 311 gas are stored in the field, the gas may become subject to state regulatory control in the event of a curtailment. As a result of these uncertainties, Egan states that it elected to construct the storage and transportation facilities as ''section 311 only'' facilities.

On May 11, 1995, Egan filed a petition in Docket No. PR95–11–000 for authority to charge and collect individually-negotiated, market-based rates for interstate storage and transportation services performed under section 311. Egan states that construction of the first cavern is nearing completion and will be ready for service on or about September 1, 1995. The cavern will have a capacity for 4.5 Bcf of working gas, with an additional 1.2 Bcf of pad gas. The maximum injection rate is expected to be 135,000 Mcf/d and the maximum deliverability rate is expected to be 750,000 Mcf/d. Two compressors, having a total of 6,260 horsepower, will also be installed. Egan states that as many as four additional caverns could be located at the site, if future demand justifies a need for such additional storage.

Egan states that it has constructed approximately 9,240 feet of dual 20-inch pipeline, and 19,117 feet of dual 24-inch pipeline, as well as other related pipeline facilities in Acadia Parish to provide the ''section 311 only'' services.[1] These facilities will enable Egan to transport, store and/or deliver gas to and from the interstate pipeline systems of ANR Pipeline Company, Trunkline Gas Company, Tennessee Gas Pipeline Company, and Texas Gas Transmission Corporation.

Egan states that pursuant to an open season conducted between January 3

[1] The facilities are the subject of a 30-day prior notice filed with the Commission on February 3, 1994 in Docket CP94–217–000.

and January 14, 1994, three customers have signed long-term firm storage contracts. Those customers are the East Ohio Gas Company, the Northern Indiana Public Service Company, and Tejas Power Corporation. The committed capacity under these contracts totalled 2,900,000 Mcf. Egan contends that if its petition to charge market-based rates is approved, Egan's contract storage and transportation services will be available to help facilitate the Commission's on-going restructuring of the natural gas industry.

Discussion

The Commission is concerned that Egan's construction of storage facilities in Acadia Parish pursuant to section 311 actually may be construction of interstate facilities subject to the Commission's jurisdiction under section 7(c) of the NGA. It appears that Egan's sole purpose in constructing the storage facilities is to provide interstate storage and hub services, in facilities that are physically separate from its existing intrastate facilities, for a purpose that bears no apparent intrastate/local distribution purpose and appears unconnected to any other nonjurisdictional operation.

In 1978, the NGPA was passed to reduce the restraints on the flow of gas between interstate and intrastate markets in order to remedy supply and demand imbalances. The Commission recognizes that one purpose of NGPA section 311 is to enable intrastate pipelines to transport gas destined for the interstate market and thus spare interstate pipelines from having to construct duplicative facilities.[2] The NGPA accomplishes this by permitting intrastate pipelines to perform such transportation without becoming subject to NGA jurisdiction over the entirety of their operations. As the Commission stated in *Lear Petroleum Corporation*:

> NGPA sections 601(a)(1)(C) and (a)(2)(A) provide that the intrastate pipelines do not become subject to the NGA by virtue of section 311 transactions. This ensures that intrastate pipelines are only subject to Commission regulation of their rates for section 311 transactions. Intrastate pipelines do not become subject to Commission regulation of their intrastate activities or of construction of facilities used for intrastate transportation.[3]

In Order No. 46, the Commission explained that ''if a corporate entity qualifies as an intrastate pipeline under [NGPA] section 2(16), it will retain that identity for its entire system even if it constructs a new portion of its system to be used exclusively for section 311(a)(2) transportation.'' [4] Further, the Commission has determined in prior orders that an intrastate pipeline may, in certain circumstances, construct new facilities that are not contiguous to the intrastate pipeline's existing intrastate facilities for use in transactions under section 311(a)(2).

For instance, in *Seagull Pipeline Corporation*, 11 FERC ¶ 61,267 (1980), Seagull, an intrastate pipeline wholly owned by Houston Oil & Minerals Corporation (HO&M), proposed to transport gas produced under HO&M's Cavallo Field leases. Seagull transported 50% of the reserves from the Cavallo Field leases on behalf of Valley Pipe Lines Offshore (Valley), an intrastate pipeline subsidiary of Houston Natural Gas Company, to Houston Pipe Line Company's (HPC) existing intrastate pipeline facilities on State Tract 526. To transport Valley's gas, Seagull constructed the Cavallo line. The Cavallo line, consisting of approximately 15.5 miles of 16-inch pipeline, was not physically connected to any other pipeline facilities included in Seagull's existing intrastate pipeline system. Seagull sought also to transport the remaining gas produced at the Cavallo Field to Texas Gas, an interstate pipeline. Texas Gas would purchase the gas at a point of delivery on HO&M's platform for delivery to HPC's existing intrastate facilities through the Cavallo line. Seagull sought a declaratory order that the Cavallo line was an ''intrastate pipeline'' and that Texas Gas' volumes could be transported pursuant to NGPA section 311(a)(2).

The Commission determined that the construction of the new facility (the Cavallo line) by an existing intrastate company did not change the intrastate status of the existing facilities or system, and that the new facility was itself an intrastate facility. The Commission reasoned that the definition of an ''intrastate pipeline'' applies to the person or corporate entity engaged in natural gas transportation and does not apply to each discrete facility of or operation by the pipeline company.[5]

Like the facts presented in *Seagull*, it appears that Egan's storage cavern and appurtenant facilities in Acadia Parish are not physically connected to any intrastate facilities which comprise Egan's existing intrastate system. However, unlike *Seagull*, Egan intends to use the storage facilities for section 311 service only. As discussed, section 311 was implemented to integrate the intrastate and interstate gas markets, and intrastate pipelines were authorized to transport natural gas on behalf of any interstate pipeline without subjecting the intrastate pipeline to NGA jurisdiction. This purpose was clearly served in *Seagull* because construction of the Cavallo line permitted Seagull to engage in intrastate transportation to deliver gas on behalf of Valley, another intrastate pipeline, as well as to perform section 311 service on behalf of Texas Gas, an interstate pipeline, through the same facility.[6] The Commission questions whether the NGPA's purpose of integrating the interstate and intrastate gas markets will be advanced if Egan constructs facilities that are separate from its existing intrastate facilities, for the sole purpose of providing jurisdictional services to interstate customers.

While the Commission has stated that it is not unusual, much less unlawful, for persons to structure transactions either to qualify for regulation by one entity or to avoid regulation by another,[7] at some point such structuring may nevertheless be contrary to the public interest and inconsistent with the underlying purpose of statutes effecting a federal scheme of regulation. The Commission recognizes that construction and operation of Egan's storage caverns and appurtenant facilities would not frustrate the Commission's regulation over the rates Egan proposes to charge and collect for interstate storage and transportation services provided pursuant to section 311, since the Commission regulates those rates. Rather, the Commission is concerned that the purpose of the NGA may be frustrated because Egan will construct facilities to be used entirely in interstate commerce without becoming subject to the Commission's section 7(c) certification procedures, or complying with the environmental and other requirements of 18 CFR Part 157[8] and

[2] Lear Petroleum Corp., 42 FERC ¶ 61,015 at 61,043 (1988).

[3] *Id. See also* Mustang Energy Corp. v. FERC, 859 F.2d 1447 (10th Cir. 1988).

[4] *See* Sales and Transportation of Natural Gas, Order No. 46, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,081 at 30,536 (1979); *see also* section 284.3(c) (''The Natural Gas Act shall not apply to facilities utilized solely for transportation authorized by section 311(a) of the NGPA'').

[5] Seagull Pipeline Corp., 11 FERC ¶ 61,267 at 61,522 (1980).

[6] The question addressed in Seagull was whether intrastate status is changed where the new, separate facility was constructed ''for the purpose, *in part,* of providing'' 311 service. 11 FERC at 61,522 (emphasis supplied) (1980).

[7] *See, e.g.*, Riverside Pipeline Co., L.P., 48 FERC ¶ 61,309 at 62,015–16 (1989).

[8] Although intrastate pipelines are required to follow the environmental requirements of 18 CFR 157.206(d) for facilities constructed under NGPA section 311(a), a section 7(c) certificate requires case-specific environmental review and conditions.

Order No. 636.[9] In Order No. 636, the Commission required pipelines to unbundle transportation and sales and implement certain procedures including the requirement that interstate pipelines must offer open access to its storage facilities on a firm and interruptible basis.

If the Commission determines that Egan's facilities are in fact jurisdictional storage facilities, Egan may be required to obtain a NGA section 7(c) certificate. In *Petal Gas Storage Company*,[10] the Commission determined that Petal Gas Storage Company (Petal), a wholly owned subsidiary of Chevron U.S.A. Inc. (Chevron), and/or Chevron violated section 7(c) of the NGA because construction of jurisdictional storage facilities commenced before the requisite certificate authorization and environmental clearances were obtained. Petal was required to obtain a section 7(c) certificate to operate leased gas capacity in Chevron's salt dome storage cavern, and to construct and operate related facilities.[11] The Commission also required Petal to file a tariff conforming to Order No. 636, and imposed environmental conditions.

The Commission questions whether Egan should be deemed an interstate pipeline, subject to the requirements of the NGA and Order No. 636, when it constructs and operates new storage facilities for exclusive use in interstate commerce. Accordingly, the Commission is instituting this show cause proceeding, pursuant to sections 5, 7, and 16 of the NGA, to investigate further these matters. In its response, Egan and other interested persons are encouraged to address the concerns raised above by the Commission.

The Commission Orders

(A) Within 30 days of the issuance of this order:

Egan is required to show cause why the Commission should not require Egan to obtain a NGA section 7(c) certificate to construct and operate the storage facilities since the facilities are intended for use in interstate commerce and appear unrelated to any other nonjurisdictional operation on Egan's system.

(B) Notice of this proceeding will be published in the Federal Register. Interested persons will have 20 days from the date of publication of the notice to intervene.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23313 Filed 9–19 –95; 8:45 am]

BILLING CODE 6717–01–P

[9] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992).

[10] 64 FERC ¶ 361,190 (1993), *as amended*, 67 FERC ¶ 61,135 (1994).

[11] Chevron, an independent producer, initially planned to use its salt dome cavern in a nonjurisdictional manner or to obtain a certificate from the State of Mississippi. Subsequently, Chevron decided to form its subsidiary, Petal, to provide jurisdictional stand-alone storage service to third parties.

[Docket No. CP95–738–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

September 14, 1995.

Take notice that on September 7, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP95–738–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to revise an existing meter station to enable Koch Gateway to transport natural gas to serve Phoenix Gas Pipeline Company (Phoenix) for ultimate delivery to Calciner Industries Inc. (Calciner) at this location in Louisiana, under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 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.

Koch Gateway proposes to install two 4-inch positive meters and three 2-inch regulators at an existing delivery meter station located on its Baton Rouge-New Orleans Line designated as TPL 270–8, St. Charles Parish, Louisiana. The additional meter will increase delivery capacity to Calciner from 4,200 MMBtu to 6,050 MMBtu per day. The estimated cost is $42,535. The revision of existing metering facilities will involve only above-ground assembly within existing and previously disturbed right-of-way. Koch Gateway states it is authorized to provide interruptible transportation service to Phoenix under a November 1, 1993 transportation agreement and that the proposed installation of facilities will provide Phoenix with a better means of serving Calciner. Koch Gateway states that the proposed interruptible service provided through these facilities will remain within current certificated levels and will be rendered without detriment or disadvantage to existing customers. Koch Gateway's tariff does not prohibit the proposed modification of facilities.

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. 95–23273 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–35–000]

Order Establishing Hearing

Issued September 14, 1995.

In the matter of Kootenai Electric Cooperative, Inc., Clearwater Power Company, Idaho County Light & Power Cooperative Association, Inc., and Northern Lights, Inc. v. Public Utility District No. 2 of Grant County, Washington

On March 2, 1995, Kootenai Electric Cooperative, Inc., Clearwater Power Company, Idaho County Light & Power Cooperative Association, Inc., and Northern Lights, Inc. (collectively referred to as the Idaho Cooperatives or Complainants) tendered for filing a complaint against Public Utility District No. 2 of Grant County (Grant County). In their complaint, the Idaho Cooperatives request the Commission to determine and fix the applicable portion of capacity and output to be made available to the Idaho Cooperatives from the Priest Rapids Project upon relicensing and expiration of existing power sales contracts. Grant County and the Purchasers [1] oppose this request.

[1] The Purchasers are: City of Tacoma, Washington Water Power Company, Puget Sound Power & Light Company, Seattle City Light, Eugene Water & Electric Board, PacifiCorp, Portland General Electric Company, and Cowlitz County PUD No. 1.

They provide retail electric service in the States of Oregon, Washington, Idaho and Montana, and also engage in wholesale purchases and sales of electricity and transmission services, including transactions with Grant County. The Purchasers each entered into similar contracts with Grant County for the purchase and sale of output of the Priests Rapids Development. The contracts terminate on October 31, 2005. Certain of the

As explained below, we set this matter for trial-type, evidentiary hearing.

I. Background

Grant County is a municipal corporation organized under the laws of the State of Washington, and is the licensee of the Priest Rapids Project No. 2114. The license for the Priest Rapids Project No. 2114 was issued on November 4, 1955, effective November 1, 1955, and expires by its terms on October 31, 2005.[2] The Priest Rapids Project No. 2114 consists of two hydroelectric developments on the Columbia River, the Priest Rapids Development with an installed capacity of 886 MW and the upstream Wanapum Development with an installed capacity of 1017 MW.[3]

The Priest Rapids Project No. 2114 had originally been authorized for Federal development by the Flood Control Act of 1950.[4] In 1954 Congress enacted Public Law No. 83–544, 68 Stat. 573 (1954), which expressly modified the Flood Control Act to permit the development of the Priest Rapids Project No. 2114 pursuant to a license issued under Part I of the Federal Power Act. Section 6 of Public Law No. 83–544[5] provided in pertinent part that, if any disagreements arise under the statute the Commission may be called on to ''determine and fix the applicable portion of power capacity and power output to be made available.''

II. The Complaint

On March 2, 1995, the Complainants filed a complaint claiming, *inter alia*, that Grant County has violated section 6 of Public Law No. 83–544, and asking the Commission to determine and fix an amount of up to 288 MW which Grant County should be required to make available from its Priest Rapids Project No. 2114 to the Idaho Cooperatives when Grant County receives a new license for the project.

Specifically, the Complainants argue that Grant County has violated the terms of Public Law No. 83–544 and/or its existing license in the following ways:[6]

1. Grant County has not offered to make any portion of the capacity or output of the Priest Rapids Project No. 2114 available to the Complainants upon expiration of the existing contracts, after more than sixteen months of requests by the Complainants.

2. Grant County has not cooperated with the Complainants, which are agencies in a neighboring state, to insure compliance with the requirement of Public Law No. 83–544 after 2005. To the contrary, Grant County has been unwilling to even consider the Complainants' request, and instead has proceeded with negotiations with the Purchasers[7] for the future sale of Priest Rapids Project No. 2114 power and energy to the exclusion of the Complainants.

3. Grant County may have made sales of power and energy from the Priest Rapids Project No. 2114 that are not surplus to the requirements of the licensee and other non-Federal marketing agencies.[8]

4. Grant County has contracted for the sale of power and energy from the Wanapum Development after expiration of the original license without obtaining requisite approval; Grant County has already entered into contracts for an allocation of power and energy from the Wanapum Development through October 31, 2009, four years after the original license expires.[9]

III. Notice and Responses to Complaint

Notice of the filing of the complaint was published in the Federal Register,[10] with responses due on or before April 21, 1995.

On April 21, 1995, Grant County filed in opposition to the complaint. Grant County asks that the Commission dismiss the complaint. Grant County states that it has fully complied with Public Law No. 83–544 and, in any event, the complaint addresses matters not ripe for consideration.

Specifically, Grant County states that Complainants themselves concede that they have no problem with the offer of Priest Rapids Project No. 2114 power to date under Grant County's existing license.[11] Grant County states that what the Complainants are seeking from the Commission is that Grant County be ordered now to offer Complainants some yet to be determined amount of power upon relicensing.[12] Grant County states that the Complainants' argument assumes that section 6 of Public Law No. 83–544 applies on relicensing and in any event there is no pending application for relicensing and, therefore, the matter is not ripe for consideration.

Finally, Grant County states that it is not required to offer to the Bonneville Power Administration (BPA), and BPA is not required to purchase, power from the Priest Rapids Project No. 2114 under the statute in question. Grant County argues that the language of the statute is permissive, giving local authorities the opportunity to sell surplus power. Furthermore, according to Grant County, the clause was added to facilitate project financing, not to dictate power sales.[13]

On April 21, 1995, the Purchasers[14] filed in opposition to the complaint. The Purchasers state that the credit support provided by the Purchasers' contracts was essential to the ability of Grant County to construct the Priest

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Purchasers also entered into contracts with Grant County for the purchase and sale of output of the Wanapum Development. These contracts terminate on October 31, 2009. Both of these forms of contract contain rights of first refusal entitling the Purchasers to further output of the Priest Rapids Project upon contract termination.

[2] Public Utility District No. 2 of Grant County, Washington, 14 FPC 1067 (1955).

[3] 64 FERC ¶62,056 (1993).

[4] 64 Stat. 170, 179 (1950).

[5] The full text of Section 6 is as follows:

The operation and maintenance of a project under license pursuant to this Act shall be subject to reasonable rules and regulations by the Secretary of the Army in the interest of flood control and navigation. To assure that there shall be no discrimination between States in the area served by the project, such license shall provide that the licensee shall offer a reasonable portion of the power capacity and a reasonable portion of the power output of the project for sale within the economic market area in neighboring States and shall cooperate with agencies in such States to insure compliance with this requirement: *Provided*, That in the event of disagreement between the licensee and the power marketing agencies (public or private) in any of the other States within the economic market area, the Federal Power Commission may determine and fix the applicable portion of power capacity and power output to be made available hereunder and the terms applicable thereto. Power surplus to the requirements of the licensee and other non-Federal marketing agencies (public or private) within the economic marketing area, as may be economically usable to the Federal system, may be made available to and may be purchased by the Bonneville Power Administrator at rates not higher than the rates charged such non-Federal marketing agencies, and under such terms and conditions as shall be mutually agreeable to the licensee and the Secretary of the Interior. Such power may be co-mingled with power from Federal dams in the Columbia River system for which the Bonneville Power Administrator has been designated marketing agent and shall be sold by the Administrator in accordance with the provisions of the Bonneville Project Act at established rate schedules.

[6] *See* Complaint at 11–13.

[7] *See supra* note 1.

[8] The question with regard to ''surplus power,'' according to Complainants, is whether power which is, in effect, surplus from Priest Rapids Project No. 2114 is being sold to other entities without first being made available to Complainants or other agencies within the economic marketing area of the neighboring states.

[9] Section 22 of the Federal Power Act (FPA), 16 U.S.C. § 815 (1994), provides that contracts for the sale of power beyond the expiration date of a license require ''the joint approval of the [Federal Energy Regulatory Commission] and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made. . . .''

[10] 60 FR 18094 (April 10, 1995).

[11] Grant County Response at 15, citing Complaint at 4 n. 3.

[12] *Id.*

[13] *Id.* at 17–18.

[14] On April 21, 1995, each of the Purchasers also filed separate motions to intervene.

Rapids Project No. 2114.[15] The Purchasers further note that at no time prior to the March 2, 1995 filing by Complainants had any protest been made to the methodology utilized by Grant County or to the contracts negotiated to finance the Priest Rapids Project No. 2114 in accordance with Public Law No. 83–544.[16] The Purchasers, like Grant County, state that in order for the Commission to be in a position to uphold Complainants' request for power, Grant County must first successfully relicense the Priest Rapids Project No. 2114. And Grant County has not yet even submitted an application for relicense and therefore the matter is not ripe for consideration.[17] The Purchasers also state that, when the existing power purchase agreements expire, the Purchasers are entitled to renew their contracts under terms similar to those contained in the existing contracts.[18] Finally, the Purchasers are in agreement with Grant County on the ''surplus power'' question raised by Complainants.[19]

IV. Complainants' Motion for Summary Disposition

On June 9, 1995, Complainants filed a motion for summary disposition. Complainants move that the Commission issue an order granting partial summary disposition of the complaint at this time by:[20]

1. Finding that the Idaho Cooperatives are agencies in neighboring states entitled to a reasonable allocation of power and energy upon expiration of the existing power sales contracts;

2. Directing Grant County to provide copies of the existing draft power sales contracts for the Idaho Cooperatives' consideration without further delay;

3. Directing Grant County to henceforth provide the Idaho Cooperatives with all revised drafts of the power sales contracts on an ongoing basis;

4. Directing Grant County to enter into good faith negotiations and to otherwise cooperate with the Idaho Cooperatives as required by Public Law No. 83–544 for the sale of the Priest Rapids Project No. 2114 power upon expiration of the existing contracts; and

5. Directing the parties to report to the Commission by December 31, 1996, regarding the progress of their negotiations and the status of any contracts executed or contemplated between Grant County and any prospective purchasers.

On June 30, 1995, Grant County and the Purchasers filed in opposition to Complainants' motion for summary judgment, essentially restating their arguments as to why the Idaho Cooperatives' complaint should be dismissed.

V. Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure,[21] the timely, unopposed motions to intervene of Grant County, City of Tacoma, Washington Water Power Company, Puget Sound Power & Light Company, Seattle City Light, Eugene Water & Electric Board, PacifiCorp, Portland General Electric Company, and Cowlitz County PUD No. 1 serve to make them parties to this proceeding.[22]

At the outset, we will address two issues important to the resolution of this complaint:

A. Does Public Law No. 83–544 apply on relicensing (or just to initial licensing)?

B. Did Grant County violate section 22 of the FPA by contracting for the sale and delivery of power beyond the date of termination of the license for Priest Rapids Project No. 2114 without obtaining the requisite approval of this Commission?

A. Public Law No. 83–544 (68 Stat. 573)

1. Background

Public Law No. 83–544, enacted in July 1954, provided for the hydropower development of the Priest Rapids site on the Columbia River in Washington State ''under and in accordance with the terms and conditions of a license duly issued pursuant to the Federal Power Act and in accordance with this Act.'' Section 6 of Public Law No. 83–544 states in relevant part:

> The operation and maintenance of a project under license pursuant to this Act shall be subject to reasonable rules and regulations by the Secretary of the Army in the interest of flood control and navigation. To assure that there shall be no discrimination between States in the area served by the project, such license shall provide that the licensee shall offer a reasonable portion of the power capacity and a reasonable portion of the power output of the project for sale within the economic market area in neighboring States and shall cooperate with agencies in such States to insure compliance with this requirement: *Provided,* That in the event of disagreement between the licensee and the power marketing agencies (public or private) in any of the other States within the economic market area, the Federal Power Commission may determine and fix the applicable portion of power capacity and power output to be made available hereunder and the terms applicable thereto.

As discussed above, Complainants argue that the licensee is violating this provision by refusing to negotiate over the sale of power after the existing license expires in 2005.

Grant County and the Purchasers respond that: (1) Public Law No. 83–544 only applies to the original license and does not apply in the relicensing context; (2) Grant County's current allocation method already shares small amounts of project power with Idaho utilities and has already been approved as consistent with the law; (3) Complainants missed their opportunity when they turned down the option to purchase project power in 1955 (at the time of original licensing) because they viewed Grant County's project power as too expensive; and (4) Complainants' concerns are premature because an application for relicensing for the project has not yet been filed.

2. Discussion

The first question to be addressed is whether section 6 of Public Law No. 83–544 applies after the initial license term for this project expires. We start with the language of the statute itself.[23] Nothing therein indicates that the provision applies *only* to the original license to be issued under Part I of the FPA, even though in the FPA Congress made distinctions between original licenses and ''new'' licenses (*i.e.,* relicenses). This would indicate that Public Law No. 83–544 was intended to comprehend both original and new licenses for the Priest Rapids Project.

We turn next to the legislative history of section 6.[24] The legislative history is bare of any reference to or discussion of the applicability of section 6 after expiration of the initial license term.[25] In the main, the committee reports and the debate on the floor of the House and Senate addressed the consistency of this proposal with the then-existing comprehensive Federal plan for development of the Columbia River, as set out in the Flood Control Act,[26] and the requirement to utilize the water

[15] Purchasers' April 21, 1995 Response at 4.

[16] *Id.* at 4–5.

[17] *Id.* at 9.

[18] *Id.* at 11.

[19] *Id.* at 13–14.

[20] Complainants' Motion at 24.

[21] 18 CFR 385.214.

[22] All of the above parties, except for Grant County, have also filed jointly in this proceeding as the Purchasers. *See supra* note 1.

[23] Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980).

[24] INS v. Cardoza-Fonseca, 480 U.S. 421, 432 (1987); Mead Corp. v. Tilley, et al., 490 U.S. 714, 722 (1989).

[25] *See* H.R. Rep. No. 1601, 83rd Cong., 2d Sess. (1954); S. Rep. No. 1656, 83rd Cong., 2d Sess. (1954); 100 Cong. Rec. 6846–50, 10211–28, 10247–57 (1954).

[26] *See supra* note 4.

resources in the Columbia River Basin for the benefit of the people generally by making a reasonable portion of the power generated available for equitable distribution within the economic marketing area in adjacent states. Although there was frequent mention of the fact that the project would be issued a license under the FPA, the consequences of that action were not fully articulated.

We turn next to the order issuing the license for Project No. 2114.[27] The order identifies Public Law No. 83–544 as applicable, but there is no further discussion. The Commission found that Grant County submitted satisfactory evidence of its financial ability to construct and operate the project.[28] The Commission also found that a portion of the energy generated would be used to meet Grant County's own requirements and the balance of the output and a reasonable portion of the power capacity would be sold to other electric utility systems in Washington and in neighboring states in accordance with the provisions of section 6 of Public Law No. 83–544. There is no discussion in the order regarding future relicensing or future allocation of power from the project.

We have also examined an analogous statute, the Niagara Redevelopment Act (NRA),[29] to see if its power allocation provisions address future applicability or provide any other general guidance on the issue before us. The NRA was being considered by Congress at the same time the Senate was debating the Priest Rapids legislation, and in fact the Senate debates on Priest Rapids referred specifically to the NRA legislation.[30]

As in the Priest Rapids case, Congress passed the NRA directing the Commission to issue a license for the Niagara Project to the Power Authority of the State of New York upon certain conditions contained therein. Two of those conditions, incorporated into the license, provide that ''at least 50 per centum of the project power shall be available for sale and distribution primarily for the benefit of the people as consumers, particularly domestic and rural consumers, to whom such power shall be made available at the lowest rates reasonably possible and in such manner as to encourage the widest possible use,'' and that the licensee ''shall make a reasonable portion of the project power subject to the preference provisions * * * available for use within reasonable economic transmission distance in neighboring States.'' In addition, those conditions also provide that ''[i]n any case in which project power subject to the preference provisions * * * is sold to utility companies organized and administered for profit, the Licensee shall make flexible arrangements and contracts providing for the withdrawal upon reasonable notice and fair terms of enough power to meet the reasonably foreseeable needs of the preference customers.'' [31]

There are some important similarities (and differences) between these NRA provisions and the Priest Rapids provision in dispute here. Although both intend project power to be sold over a wide geographic area for the benefit of the people at low rates, the NRA provision is more detailed and restrictive. The licensee is required to write its contracts in such a way as to allow power to be withdrawn as the needs of the preference customers grow. However, the NRA provisions, like the provisions of Public Law No. 83–544, do not expressly address future relicensing or power allocations after the initial license ends.

The Commission has interpreted the NRA allocation provisions in a number of decisions during a decade or more of litigation.[32] The Commission has found, among other things, that this language requires reallocation of the power at the end of each contract term, and that these provisions could even justify rescission of a contract if the licensee had not reasonably foreseen, and thus reserved sufficient power to withdraw for, the needs of preference customers.[33] However, it has not expressly addressed whether the provisions apply after the initial license ends. Therefore, neither the NRA itself nor the Commission's orders explicitly addresses the analogous issue before us.

In these circumstances, we believe that the most reasonable construction of Public Law No. 83–544 is that section 6 applies after issuance of a new license as well as from the issuance of the original license. First, as discussed above, there is no indication in the statutory language or its legislative history that Congress intended section 6 to apply *only* during the initial license term. In fact, had Congress intended this policy to apply for only a limited period, it would have expressly said so.[34] Second, to interpret the statute to be so limited would be inconsistent with Congress' intent to provide for the most widespread distribution and use of the project's power—both as reflected in the statute's language which prohibits discrimination between states and expressly provides for power to be sold in neighboring states, quoted *supra*, and also as reflected in the legislative history which expressed a desire to utilize the water resources in the Columbia River Basin for the benefit of the people generally including the people of neighboring states.[35] There is no indication whatsoever on the face of the statute or in the legislative history that this intent was to apply only during the initial license term and that after the initial license term the water resources of the Columbia River Basin were to be used differently. Accordingly, we find that section 6 applies after relicensing of the Priest Rapids Project No. 2114.

B. Section 22 of the FPA (16 U.S.C. 815)

The Complainants charge that Grant County has violated section 22 of the Federal Power Act by contracting for the

[27] *See supra* note 2.

[28] The power sales contracts which provided the economic underpinnings for project financing took longer than anticipated to negotiate and resulted in a delay in the commencement of construction. *See* P.U.D. No. 1 of Grant County, Washington, 15 FPC 1487 (1956).

[29] Public Law No. 85–159, 71 Stat. 401 (1957).

[30] *See* 100 Cong. Rec. 10225–26 (1954).

[31] Power Authority of the State of New York, 19 FPC 186, 193–94 (1958).

[32] *See generally* Municipal Electric Utilities Association of the State of New York, et al. v. Power Authority of the State of New York, Opinion No. 151, 21 FERC ¶ 61,021 (1982), *order on rehearing,* Opinion No. 151–A, 23 FERC ¶ 61,031 (1983), *affirmed,* PASNY v. FERC, 743 F.2d 93 (2d Cir. 1984); Massachusetts Municipal Wholesale Electric Company, et al. v. Power Authority of the State of New York, Opinion No. 229, 30 FERC ¶ 61,323, order on rehearing, Opinion No. 229–A, 32 FERC ¶ 61,194 (1985), affirmed, Metropolitan Transit Authority, et al. v. FERC, 796 F.2d 584 (2d Cir. 1986), cert. denied, 479 U.S. 1085 (1987); Municipal Electric Utilities Association of the State of New York, et al. v. Power Authority of the State of New York, Opinion No. 329, 48 FERC ¶ 61,124, *rehearing denied,* 49 FERC ¶ 61,068 (1989), *affirmed,* Allegheny Electric Cooperative, Inc. v. FERC, 922 F.2d 73 (2d Cir. 1990), *cert. denied,* 112 S.Ct. 55 (1991); Villages of Andover, et al., 64 FERC ¶ 61,066, *rehearing denied,* 64 FERC ¶ 61,358 (1993), *affirmed,* Village of Bergen, et al v. FERC, 33 F.3d 1385 (D.C. Cir. 1994).

[33] Municipal Electric Utility Association of New York, et al., 9 FERC ¶ 61,128 at 61,249 (1979); reh'g denied, 10 FERC ¶ 61,001 (1980); cf. Municipal Electric Utilities Association of the State of New York, et al., Opinion No. 151, 21 FERC ¶ 61,021 (1982), order on rehearing, Opinion No. 151–A, 23 FERC ¶ 61,031 (1983), affirmed, PASNY v. FERC, 743 F.2d 93 (2d Cir. 1984).

[34] *See* 33 F.3d at 1389.

[35] *See* H.R. Rep. No. 1601, 83rd Cong. 2d Sess. 3 (1954) (''Safeguards have been included in the bill to assure development of the Priest Rapids site for its optimum capabilities as a part of the comprehensive plan for the development and utilization of water resources in the Columbia Basin for the benefit of the people generally,'' and ''[i]t is desirable that the public benefits to accrue from power made available by this project be over as extensive an area as practical''); S. Rep. No. 1656, 83rd Cong. 2d Sess. 3–5 (1954) (Senate report contains similar language to House report); *cf.* 33 F.3d at 1389–90 (noting Congress' general intent in various statutes to use resources for benefit of people generally); 796 F.2d at 591–95 (noting Congress' intent as to NRA); 743 F.2d at 103–07 (noting Congress' intent as to NRA).

sale and delivery of power from the Wanapum Development beyond the date of termination of the project license, 2005, without obtaining the approval of the Commission.

In response, Grant County argues that the language of section 22 is permissive instead of restrictive toward entering into contracts beyond the license term. Grant County reasons that the provision exists for the protection of investors and purchasers, and thus if these entities do not wish to seek that protection by obtaining Commission approval of a contract that extends beyond the term of the license, that is their prerogative. Grant County states that the willingness of its power purchasers to accept measured business risk is not a proper cause for concern by the complainants.[36]

Section 22 of the FPA states: Whenever the public interest requires or justifies the execution by the licensee of contracts for the sale and delivery of power for periods extending beyond the date of termination of the license, such contracts may be entered into upon the joint approval of the commission and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made, or if sold or delivered in a State which has no such public-service commission, then upon the approval of the commission, and thereafter, in the event of failure to issue a new license to the original licensee at the termination of the license, the United States or the new licensee, as the case may be, shall assume and fulfill all such contracts.

The legislative history is not extensive, but it demonstrates that the Commission was to use its sound discretion in approving contracts beyond the license term.[37] The Commission has received only a small number of requests for approval of contracts under section 22.[38] While we agree that the purpose of section 22 is to remove a potential obstacle from a licensee's ability to finance the project,[39] the section states that a licensee may enter into power sales contracts extending beyond the license term ''upon the joint approval of'' the Commission and the relevant state authority. The plain meaning of this text is that a licensee is not to enter into such a contract *without* the approval of the Commission and state authority, and there is no legislative history to the contrary.

We therefore conclude that section 22 required that Grant County obtain Commission approval of the approximately four-year period that the power purchase contract for the Wanapum Development extended beyond the license term. Accordingly, we direct Grant County to file an application under section 22 in a separate docket for approval of any power purchase agreements for periods extending beyond the termination date of the license.[40]

C. Setting the Matter for Hearing

We have found above that section 6 of Public Law No. 83–544 applies to relicensing. We also have reaffirmed that power sales contracts that extend beyond the term of a license require Commission approval under section 22 of the FPA. All other questions raised in the pleadings in this proceeding are set for trial-type, evidentiary hearing. All entities who have an interest in this proceeding must participate in this proceeding or they will be foreclosed later as to matters at issue in this proceeding.

Finally, we recognize that the license for Project No. 2114 does not expire until 2005, and under the Commission's regulations a relicense application is not due until at least 24 months before the existing license expires.[41] However, the parties have indicated that a licensee must begin the process of consulting with the public and the relevant resource agencies, as well as conducting the necessary environmental and economic studies long before that date,[42] and in this case, there is some indication that Grant County has already begun this process.[43] Indeed, Grant County in its June 30, 1995 filing states as follows: [44]

Grant is in the early process of developing an application for a new license for its Priest Rapids Project in accordance with Part 16 of the Commission's regulations. As part of that process, it commenced in 1992 negotiations with its existing power purchasers to determine, among other things, whether agreement could be reached on mutually beneficial terms and conditions for the sale of project power under any new license which might be issued for the Project.

Additionally, the complainants have indicated that prompt action is important because BPA has begun renegotiating all of its regional power sales contracts including those with the complainants.

Accordingly, we conclude that it is appropriate to take up the instant dispute at this time, rather than later. Moreover, we encourage the presiding judge and the parties to resolve the instant dispute expeditiously so that the relicensing proceeding may commence and be concluded in a timely manner.

The Commission Orders

(A) The Secretary is hereby directed to publish a copy of this order in the Federal Register.

(B) The Secretary is hereby directed to serve a copy of this order on all parties to this proceeding.

(C) Within 30 days from the date of issuance of this order, Grant County shall file in a separate docket an application for approval of its power sales agreements with the Purchasers under section 22 of the Federal Power Act, as described in this order.

(D) Pursuant to the authority contained in the Department of Energy Organization Act and in the Federal Power Act (particularly Sections 4(g), 10(h), 306, 307(a), 308, and 309), and the license for Project No. 2114, a public hearing shall be held in conformance with the Commission's Rules of Practice and Procedure to consider all matters of fact and law, consistent with the provisions of this order, concerning those issues in Docket No. EL95–35–000 not summarily decided in this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge for that purpose, shall preside at the hearing in this proceeding, and shall convene a prehearing conference within 30 days of the date of this order in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426. The conference shall be held for the purposes of clarification of the positions of the

[36] In their response to the complaint (at 12), the Purchasers similarly state:

When the Purchasers entered into their long-term contracts to purchase power, that power was more expensive than available alternatives in the short term and involved substantial financial risks. Therefore, the Purchasers insisted upon and received power purchase contracts not only for the term of the initial license, but rights of first refusal to purchase their proportionate part of the project's output at the termination of their contracts. Those rights of first refusal gave the purchasers enforceable contractual rights under Washington law, which would be jeopardized by the relief requested by the [Complainants].

[37] *See* 58 Cong. Rec. 2240–41 (1919) (debate on H.R. 3184, which became the Federal Water Power Act of 1920).

[38] *See* Swift Creek Power Company, Inc., 61 FERC ¶ 61,227 (1992), and the cases discussed therein; *see also* Department of Water Resources of the State of California, 39 FPC 292 (1968).

[39] *See, e.g.,* Susquehanna Power Company, et al., 32 FPC 826, 830 (1964).

[40] *See* New York Irrigation District, *et al.*, 58 FERC ¶ 61,271 (1992) (when the Commission discovered, in the course of examining a contract for the sale of project power, that the term of the contract extended about eight years beyond the termination date of the license, it ordered the licensee to file a request under section 22 for approval of the power purchase agreement.)

[41] 18 CFR 16.9(b).

[42] *See* 18 CFR Part 16.

[43] *See* Motion of Idaho Cooperatives for Summary Disposition at Attachment 2.

[44] *See* Response of Grant County to Motion for Summary Disposition at 3.

parties, delineation of the specific issues to be litigated, discussion of procedures for expediting the hearing, and establishment by the presiding judge of any procedural dates necessary for this hearing.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23314 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. ER94–1529–001, ER94–1529–002, and EL95–77–000]

Mid-Continent Area Power Pool; Notice of Initiation of Proceeding and Refund Effective Date

September 15, 1995.

Take notice that on September 14, 1995, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL95–77–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL95–77–000 will be 60 days after publication of this notice in the Federal Register.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23312 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–730–000]

Mid Louisiana Gas Company; Application

September 14, 1995.

Take notice that on September 1, 1995, Mid Louisiana Gas Company (Mid Louisiana), 2 Allen Center, Suite 2885, 1200 Smith Street, Houston, Texas 77002 filed an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon (i) the storage services it receives at and from the Hester Storage Field (Hester) and appurtenant facilities owned by Transcontinental Gas Pipe Line Corporation (Transco); (ii) a related transportation and exchange service with Transco; (iii) certain services currently provided by Mid Louisiana to the extent that such services rely on the availability of the storage services at and from Hester, as well as related transportation and exchanges services; and (iv) the firm and interruptible storage services it provides to customers under its Rate Schedules FSS and ISS and its small merchant service provided under Rate Schedule SMS (to replace such services, Mid Louisiana states it will file a separate application, under Section 4 of the Natural Gas Act, to amend its existing no-notice service), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mid Louisiana states that the purpose of the requested abandonment authorizations and the Section 4 changes to be proposed in a later filing is to make available a revised no-notice service that will more accurately reflect the manner in which no-notice service has been used by its customers since the implementation of Order No. 636 on its system, while also providing those customers with an improved level of reliability of service at reduced costs. Mid Louisiana requests that the abandonment authorizations be permitted to become effective September 1, 1996. Consistent with this request, Mid Louisiana states that it will file the separate Section 4 rate application on March 1, 1996 so as to permit the proposed changes in its no-notice services to also become effective September 1, 1996.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 5, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Mid Louisiana to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23274 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–260–002]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

September 14, 1995

Take notice that on September 8, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised, Fourth Revised Sheet No. 319, to be effective October 8, 1995.

Natural states that the purpose of the filing is to comply with the Commission's August 18, 1995, letter order in Docket No. RP95–260–001. The letter order directed Natural to amend its tariff to reflect actual practice used to develop billing determinants used in Account 858 surcharge filings under Section 21 of the General Terms and Conditions of Natural's tariff.

Natural states that it has revised Section 21.3(d) to state that billing determinants will be based on those in effect sixty (60) days prior to the effective date of the semi-annual tracking filing adjusted for known and measurable changes that will occur by the effective date of the adjustment.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective October 8, 1995.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. RP95–260.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

FR Doc. 95–23275 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–397–001]

Panhandle Eastern Pipe Line Company; Notice Of Compliance Filing

September 14, 1995.

Take notice that on September 8, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing pro forma tariff language and information regarding the relationship of Section 284.8(a)(3) of the Commission's regulations as required by Ordering Paragraphs (B) and (D) respectively, of the Commission's August 24, 1995 Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Technical Conference.

Panhandle states that the pro forma tariff sheet included herewith sets forth supplemental clarification that when service is provided under Rate Schedule LFT: (i) It will be subject to the nomination and scheduling procedures included in Sections 8 of the General Terms and Conditions; (ii) it will be subject to the curtailment and interruption procedures included in Section 9 of the General Terms and Conditions; and (iii) that shipper may release all or a part of their Rate Schedule LFT Maximum Daily Contract Quantities in accordance with the procedures established for the assignment of service rights under Section 15 of the General Terms and Conditions. These provisions are applicable to all firm transportation services.

Panhandle further states that it has provided additional information in this compliance filing regarding the relationship of Section 284.8(a)(3) of the Commission's Regulations to service under Rate Schedule LFT.

Panhandle states that copies of this filing have been served on all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before September 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23276 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1625–000]

USGen Power Services, L.P.; Notice of Filing

September 14, 1995.

Take notice that USGen Power Services, L.P. (''USGenPS''), on August 24, 1995, tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

USGenPS intends to engage in electric power and energy transactions as a marketer. In these transactions, USGenPS proposes to charge market-determined rates, mutually agreed upon by the parties. All sales and purchases will be arms-length transactions.

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 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. 95–23277 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–136–000]

Williams Natural Gas Company; Notice of Informal Settlement Conference

September 14, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, September 21, 1995, at 9 a.m., and continuing on Friday, September 22, 1995 at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or Donald A. Heydt at (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23302 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–5–49–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

September 14, 1995.

Take notice that on August 25, 1995, in compliance with the Commission's July 26, 1995, Letter Order, Williston Basin Interstate Pipeline Company (Williston Basin) submitted its explanation of the projected cost of gas utilized in the calculation of fuel use rates included in its Annual Fuel Reimbursement Adjustment filing dated June 30, 1995 in the above referenced docket.

Williston Basin states that copies of the filing is being served upon those listed on the mailing list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before September 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23278 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5298–9]

Proposed Settlement; Hilton Davis Chemical Co. Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act (''Act''), notice is hereby given of a proposed settlement of *Hilton Davis Chemical Co.* v. *United States Environmental Protection Agency,* No. 94–3414 (6th Cir.).

This petition for judicial review involves a challenge to a Request For Information (''RFI'') issued by EPA on February 15, 1994, that *inter alia* required Hilton Davis to submit certain information to EPA pursuant to section 114(a) of the Act.

For a period of thirty (30) days following the date of publication of this notice, the EPA will receive written comments relating to the proposed settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Samantha Hooks, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7606. Written comments should be sent to Mark M. Kataoka at the above address and must be received by October 20, 1995.

Dated: September 5, 1995.

Jonathan Z. Cannon,

Assistant Administrator, (Acting General Counsel).

[FR Doc. 95–23326 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5298–7]

Technical Advisory Committee; Notice of Open Meeting

The Technical Advisory Sub-Committee to the Clean Air Act Advisory Committee will hold its opening meeting October 13 from 9:00 am to 5:00 pm at Ramada Metro, 8270 Wickham Road, Romulus, Michigan. This meeting is open to the public.

The Sub-Committee is established to provide the Office of Mobile Sources independent counsel and advise on scientific and technical aspects of its program. The Sub-Committee will create working groups to evaluate technical materials and approaches in the topics of Modeling, In-Use Deterioration, certifications Program Reform, and Engine Vehicle and Fuel Standards.

Anyone wishing to speak at either or both of the meeting should make a request in writing to Katherine McMillan, Office of Mobile Sources, OAR, Mail Code 6401, U.S. Environmental Protection Agency, Washington, D.C. 20460. Public statements will be limited to ten minutes. For more information, please contact Katherine McMillan at (202) 260–3420 or Fax (202) 260–6011.

Katherine H. McMillan,

Designated Federal Officer, OMS, OAR.

[FR Doc. 95–23324 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5299–5]

Risk Assessment and Risk Management Commission Revision of Earlier Notice of Public Meetings—1995; October 26–27 Cancelled

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Risk Assessment and Risk Management Commission, established as an Advisory Committee under Section 303 of the Clean Air Act Amendments of 1990, will not meet on October 26 and October 27 at the Rockefeller University in New York, New York. Unexpected budget problems prevent the Commission from meeting during the month of October.

November 17

The Commission will meet, as scheduled, November 17 from 8:00 a.m. until 3:00 p.m. at the Capitol Hill Hotel, 200 C Street, SW., Capitol Hill Conference Room, Washington, DC 20003.

December 14—Time Change

The meeting times for the December 14 meeting have been changed. The new times are 1 to 5 at the Breakers Hotel, Palm Beach, Florida 33480.

This amends an earlier notice in the Federal Register.

Dated: September 13, 1995.

Gail Charnley,

Executive Director, Commission on Risk Assessment And Risk Management.

[FR Doc. 95–23322 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5298–4]

North Dakota; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of final determination of full program adequacy for North Dakota's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the

Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

North Dakota applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed North Dakota's application and proposed a determination that North Dakota's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. Since no comments were received, EPA is today issuing a final determination that the State/Tribe's program is adequate.

EFFECTIVE DATE: The determination of adequacy for North Dakota shall be effective September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald Allen (8HWM–WM), Waste Management Branch, US EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone 303/293–1496.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under Part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop ''adequate'' programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an ''adequate'' program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

On September 27, 1993, the EPA Administrator signed the final rule extending the effective date of the landfill Criteria for certain classifications of landfills (proposed rule 58 FR 40568, July 28, 1993). Thus, for certain small landfills that fit the small landfill exemption as defined in 40 CFR Part 258.1(f), the Federal Criteria will not be effective until October 9, 1995, instead of October 9, 1993. The final ruling on the effective date extension was published in the Federal Register October 1, 1993.

B. State of North Dakota

On August 25, 1994, North Dakota submitted an application for adequacy determination for the States MSWLF permit program. On November 25, 1994, EPA published a tentative determination of adequacy for all portions of North Dakota's program. Further background on the tentative determination of adequacy appears at 59 FR 60631 (November 25, 1994).

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA also tentatively scheduled a public hearing for January 12, 1995, to be held if a sufficient number of people expressed interest in participating. After no one expressed interest, the Agency cancelled the public hearing.

EPA has reviewed North Dakota's application and has determined that all portions of the State's MSWLF permit program will ensure compliance with the revised Federal Criteria. In its application, North Dakota demonstrated that the State's permit program adequately meets the location restrictions, operating criteria, design criteria, ground-waster monitoring and corrective action requirements, closure and post-closure care requirements, and financial assurance criteria in the revised Federal Criteria. In addition, the State of North Dakota also demonstrated that its MSWLF permit program contains specific provision for public participation, compliance monitoring, and enforcement.

C. Public Comment

The EPA received no public comments on the tentative determination of adequacy for North Dakota's MSWLF permit program.

D. Decision

Since we received no public comments, I conclude that North Dakota's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, North Dakota is granted a determination of adequacy for all portions of its MSWLF permit program.

In its application for adequacy determination, North Dakota has not asserted jurisdiction over Indian Country, as defined in 18 U.S.C. 1511. Accordingly, this approval does not extend to lands within Indian Country in North Dakota including lands within the exterior boundaries of the Turtle Mountain, Fort Berthold, Fort Totten, and Standing Rock Indian Reservations. Until EPA approves a State or Tribal MSWLF permitting program in North Dakota for any part of Indian Country, the requirements of 40 CFR Part 258, will automatically apply to that area. Thereafter, the requirements of 40 CFR Part 258 will apply to all owner/s operators of MSWLF's located in any part of Indian Country that is not covered by an approved State or Tribal MSWLF permitting program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

This action takes effect on September 18, 1995. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the Federal Register. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law.

Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010 of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945, 6949(a).

Dated: September 7, 1995.

Robert L. Duprey,

Acting Regional Administrator.

[FR Doc. 95–23323 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–180981; FRL–4975–8]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 20 States as listed below. Five crisis exemptions were initiated by various states. These exemptions, issued during the month of May 1995, except for the one in March, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied specific exemption requests from the Arkansas State Plant Board and the Washington Department of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703)–308–8417; e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Florida Department of Agriculture and Consumer Services for the use of imidacloprid on citrus to control citrus leafminers; May 5, 1995, to May 4, 1996. (David Deegan)

2. Idaho Department of Agriculture for the use of bifenthrin on canola to control aphids; May 15, 1995, to August 15, 1995. (David Deegan)

3. Louisiana Department of Agriculture and Forestry for the use of norflurazon on Bermudagrass to control annual grassy weeds; May 1, 1995, to June 15, 1995. Louisiana had initiated a crisis exemption for this use. (Libby Pemberton)

4. Oklahoma Department of Agriculture for the use of cypermethrin on mustard greens to control various insects; May 19, 1995, to October 31, 1995. (Libby Pemberton)

5. Oregon Department of Agriculture for the use of clomazone on cucumbers to control broadleaf weeds and grasses; May 23, 1995, to August 15, 1995. (David Deegan)

6. Oregon Department of Agriculture for the use of bifenthrin on canola to control aphids; May 15, 1995, to July 15, 1995. (David Deegan)

7. Washington Department of Agriculture for the use of bifenthrin on canola to control aphids; May 15, 1995, to August 15, 1995. (David Deegan)

8. Wisconsin Department of Agriculture for the use of metolachlor on spinach to control grasses and weeds; May 5, 1995, to July 1, 1995. (Margarita Collantes)

The following States listed below were granted an emergency exemption for the use of dimethomorph and/or cymoxanil on potatoes to control late blight; May 18, 1995, to September 30, 1995, except for Florida and Oregon whose expiration date is May 18, 1996, and October 31, 1995, respectively. A notice of receipt published in the Federal Register of May 3, 1995 (60 FR 21814). The exemption was granted on the basis that the situation appears to be urgent and nonroutine. Late blight is not a new pest phenomenon; however, new strains of *P.* infestants have been introduced in or adjacent to each of the applicant potato-producing States, and these new strains of late blight are resistant to the primary registered alternative. With no other registered alternative products that exhibit acceptable efficacy against this pest problem, potato growers are expected to suffer significant economic losses without the use of these two fungicides. If this situation persists without an effective control program, the economic viability of potato production in the United States is uncertain. These uses can be toxicologically supported and are not expected to result in hazard to nontarget organisms:

1. Delaware Department of Agriculture.
2. Florida Department of Agriculture and Consumer Services.
3. Georgia Department of Agriculture.
4. Maine Department of Agriculture.
5. Maryland Department of Agriculture.
6. Michigan Department of Agriculture.
7. Minnesota Department of Agriculture.
8. New Jersey Department of Environmental Protection.
9. New York Department of Environmental Conservation.
10. North Dakota Department of Agriculture.
11. Ohio Department of Agriculture.
12. Oregon Department of Agriculture.
13. Pennsylvania Department of Agriculture.
14. South Dakota Department of Agriculture.
15. Virginia Department of Agriculture and Consumer Services.
16. Wisconsin Department of Agriculture, Trade, and Consumer Protection. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. California Department of Pesticide Regulations on March 16, 1995, for the use of maneb on walnuts to control bacterial blight. This program has ended. (Margarita Collantes)

2. Idaho Department of Agriculture on May 3, 1995, for the use of sethoxydim on mint to control grassy weeds. The need for this program is expected to last until November 1, 1995. (Libby Pemberton)

3. Montana Department of Agriculture on May 3, 1995, for the use of sethoxydim on mint to control green foxtail, quackgrass, and wild oats. The need for this program is expected to last until November 1, 1995. (Libby Pemberton)

4. Oregon Department of Agriculture on May 2, 1995, for the use of sethoxydim on mint to control grassy weeds. This program has ended. (Libby Pemberton)

5. Washington Department of Agriculture on May 31, 1995, for the use of clopyralid on asparagus to control Canada thistles. This program has ended. (Libby Pemberton)

EPA has denied a specific exemption request from the:

1. Arkansas State Board for the use of pyrithiobac-sodium on cotton to control weeds. The Agency denied the exemption because the situation is routine and not urgent and significant economic loss is not expected. (Margarita Collantes)

2. Washington Department of Agriculture for the use of imidacloprid on pears to control grape mealybugs. The Agency denied the exemption because of insufficient data to show resistance to alternatives. (David Deegan)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Crisis exemptions.

Dated: August 30, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–22964 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–F

[EPA/OSW–FR–95–FRL–5298–8]

Procedures for Submission of Recycled Content Products Information to EPA

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for information.

SUMMARY: This notice explains the procedures for interested persons to (1) suggest items for EPA to consider for designation in the updates of the Comprehensive Guideline for Procurement of Products Containing Recovered Materials (CPG) and (2) provide information for EPA to use in developing or revising its recommendations for recovered materials content levels contained in the Recovered Materials Advisory Notices (RMANs) that accompany the CPG updates. Specifically, this notice describes the types of information EPA is interested in receiving as well as how to submit information to EPA concerning designation of items or recovered materials content levels. This information will be considered by the Agency when issuing revisions to the items designated in the CPG and recommendations in the RMANs.

DATES: EPA will accept the information described below from December 1, 1995 through February 29, 1996.

ADDRESSES: Commenters must send an original and two copies of their written comments referencing docket number F–95–CPGN–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. Comments may also be submitted electronically through the Internet to: RCRA-Docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–95–CPGN–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. All comments, including those submitted electronically, will be available for viewing in the RIC, located in Room M2616 at the address listed above. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9610 or TDD 703–412–3323.

For more detailed information on specific aspects of this Notice, contact Terry Grist, (703)308–7257, Office of Solid Waste (5306W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background

In Section 6002 of the Resource Conservation and Recovery Act (RCRA), Congress established a program to promote recycling by increasing purchases of products containing recovered materials. Section 6002 requires EPA to designate products that may be produced with recovered materials and to recommend practices for buying these products containing recovered materials. Once a product is designated, Federal, state and local agencies and their contractors that use appropriated Federal funds to purchase the items, must purchase them with the highest recovered materials content level practicable (see 59 FR 18857, April 20, 1995).

On October 20, 1993, President Clinton further addressed the need to develop markets for recovered materials in Executive Order 12873 (58 FR 5491, October 22, 1993). The Executive Order directed EPA to designate procurement items in a Comprehensive Procurement Guideline (CPG) and to recommend content levels in Recovered Materials Advisory Notices (RMANs). EPA published the CPG and RMAN on May 1, 1995 (see 60 FR 21370–21394). The CPG designates 19 items made from recovered materials that procuring agencies must purchase as well as includes the five items previously designated by EPA. The RMAN identifies the range of the recovered materials content levels within which each designated item is now available. The items are listed in seven product categories: Paper and Paper Products, Vehicular Products, Construction Products, Transportation Products, Park and Recreation Products, Landscaping Products, and Non-Paper Office Products. The CPG also contains an eighth category, Miscellaneous Products, for future designations that do not fall within the other categories.

Executive Order 12873 also directed EPA to designate additional items annually and to update the recommended recovered material content ranges periodically. To aid in this process, in the proposed CPG the Agency solicited public comments on procedures that would allow the public to (1) Suggest items for designation in future updates of the CPG and (2) provide information on products made from recovered materials (see 59 FR 18861, April 20, 1994). EPA asked for, but did not receive, comments on these procedures. EPA believes that the solicitation of public input will broaden the information that the Agency can consider in designating items and recommending recovered materials content levels for designated items. This notice explains these procedures.

II. Procedures for Providing Recycled Content Product Information to EPA

Once a year, EPA plans to issue a Federal Register notice asking for information on products containing recovered materials. The timeframe specified in each notice will be chosen to allow the Agency sufficient time to review the information for consideration in the ensuing update to the CPG and RMAN. Throughout the period designated in the Notice, interested parties will be able to suggest items containing recovered materials for EPA to designate, recommend recovered materials content levels, and suggest revisions to EPA's recommendations for purchasing existing designated items containing recovered materials. Respondents may rely on existing information including brochures, sales manuals and specifications, as long as this information addresses the types of information listed in section III below.

EPA will consider the submitted information we receive for future updates or revisions to the CPG and recommended materials content levels. Submission of information and/or requests for consideration for a new item designation or recommended content levels does not guarantee that EPA will designate that item or revise a recommended materials content level.

III. Today's Request for Information

Today, EPA is announcing that it will accept information from December 1, 1995 through February 29, 1996 about products containing recovered materials. EPA invites respondents to provide information on products in all product categories, with one exception. The exception is products addressed by EPA's previous designation of ''paper and paper products.'' On March 15, 1995, EPA issued a draft Paper Products Recovered Materials Advisory Notice (60 FR 14182), which contained draft updates to EPA's 1988 recommendations for the recovered materials content of paper and paper products. Today's notice does not re-open the comment period on the Paper Products RMAN. Rather, EPA will accept information only on paper products that fall outside the scope of the draft Paper Products RMAN.

Respondents should submit information as described above under **ADDRESSES**. The Agency will provide written confirmation of receipt of submitted materials.

EPA requests that respondents provide information regarding the seven areas listed below.

(1) Barriers to Purchasing Products Containing Recovered Materials:

—What government specifications, standards, purchasing policies, or purchasing procedures preclude government agencies from purchasing the item containing recovered materials?

(2) Use of Materials in Solid Waste:

—Is the item made using a material that represents a significant portion of the solid waste stream or presents a solid waste disposal problem?

(3) Economic and Technological Feasibility and Performance:

—Does the item perform as well as necessary to meet a procuring agency's needs?

—Are there government, ASTM or other consensus standards or specifications that would enable a procuring agency to buy the item containing recovered materials?

—Is the item available at a reasonable price considering normal market fluctuations?

(4) Impact of Government Procurement:

—Is the item purchased in appreciable quantities by the Federal government or by state and local governments?

(5) Availability and Competition:

—Is the item available from an adequate number of sources to ensure competition?

—Is the item generally available, rather than available in a limited market area?

(6) Recovered Materials Content Levels:

—What levels of recovered materials content are used in the product?

—Is the recovered materials content postconsumer material? What percentage is postconsumer?

(7) Source of information:

—What is the source of the information provided (e.g., industry studies, technical journals)? Where can purchasing agencies purchase the item? Provide the vendor's company name, address, contact name and phone number.

The first area, barriers to procurement of products containing recovered materials, derives from the underlying objective of RCRA section 6002 which is to use the Federal government's purchasing power to develop markets for materials diverted or recovered from solid waste. It is EPA's intention that, by issuing procurement guidelines, we will help remove barriers to increasing the procurement of products containing recovered materials.

The next four areas of information relate to the key criteria that RCRA section 6002 requires EPA to consider. The sixth area will be used by EPA in recommending recovered materials content levels or other relevant information to assist procuring agencies in purchasing new or existing designated items. The final area of information will be used by EPA to obtain additional information, if needed, and to prepare lists of vendors of designated items for use by procuring agencies.

To reduce the volume of information to be reviewed and stored, EPA requests that respondents not submit the following types of information: video tapes, item samples, and material samples. Also, respondents should not submit confidential business information because the Agency considers the information supporting its guideline program to be public information. Respondents do not need to resend information to EPA if that information was submitted to the Municipal and Industrial Solid Waste Division of EPA within the last two years.

Dated: September 11, 1995.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 95–23325 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0221]

DuCoa L.P.; Filing of Food Additive Petition (Animal Use) Natamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that DuCoa L.P. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of natamycin as a mold retardant of *Aspergillus parasiticus*, *Penicillium rubrum*, and *Fusarium moniliforme* in broiler chicken feed for up to 14 days when used at a level of 11 parts per million (ppm).

DATES: Written comments on the petitioner's environmental assessment by November 20, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sharon A. Benz, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1724.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2234) has been filed by DuCoa L.P., Technical Products Division, P.O. Box 219, Highland, IL 62249–0219. The petition proposes to amend the food additive regulations in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of natamycin as a mold retardant of *A. parasiticus*, *P. rubrum*, and *F. moniliforme* for up to 14 days in broiler chicken feed when used at a level of 11 ppm.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated

under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before November 20, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's findings of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: September 7, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–23249 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0305]

Pfizer, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pfizer, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polydextrose as a bulking agent/texturizer in fruit and water ices.

DATES: Written comments on the petitioner's environmental assessment by October 20, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles,Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3107.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5A4478) has been filed by Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755. The petition proposes to amend the food additive regulations in § 172.841 *Polydextrose* (21 CFR 172.841) to provide for the safe use of polydextrose as a bulking agent/texturizer in fruit and water ices.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before October 20, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: August 28, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–23246 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

RIN 0905–ZA90

Final Project Requirements, Review Criteria, and Funding Preference for Cooperative Agreement for A Model Hispanic Health Careers Opportunity Program for Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces the final project requirements, review criteria and funding preference for the Cooperative Agreement for a Model Hispanic Health Careers Opportunity Program (HCOP) for FY 1995 under the authority of section 740, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992.

Purpose and Eligibility

Section 740 authorizes the Secretary to make grants to and enter into contracts with schools of allopathic medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatric medicine and public and nonprofit private schools which offer graduate programs in clinical psychology and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from such schools. Assistance may be used for the following five legislative purposes:

1. Recruitment—activities designed to identify, recruit and select individuals from disadvantaged backgrounds for education in the health or allied health professions, e.g., motivational activities, distribution of information, exposure to role models, and counseling.

2. Preliminary Education—education designed to expand the academic ability and otherwise prepare student participants from disadvantaged backgrounds during their preprofessional training that they may subsequently complete the regular course of education in a health professions school or school of allied health. This education must be offered prior to entry in a health professions or allied health professions school and may not include courses already taught as part of the regular course of education leading to a degree.

3. Facilitating Entry—activities designed to enhance the competitiveness of student participants from disadvantaged backgrounds for admission to health professions schools or schools of allied health, such as

improving performance on admissions tests, counseling concerning the application process, and assisting admissions committees in the evaluation of disadvantaged applicants.

4. Retention—activities designed to help student participants from disadvantaged backgrounds, who have been accepted to or are enrolled in health professions schools or schools of allied health, to complete their education. These activities may include tutorial assistance, counseling, and assistance in adjusting to the environment of the school. Activities may not include courses already taught as part of the school's curriculum.

5. Financial Aid Information Dissemination—the distribution of information to student participants from disadvantaged backgrounds about financial aid available in health professions schools, schools of allied health or schools and entities which provide training necessary to qualify for enrollment in health professions schools or schools of allied health.

The program announcement, published in the Federal Register on June 22, 1995 at 60 FR 32531, proposed project requirements, review criteria, and funding preference. No comments were received during the 30-day comment period. Therefore, the following project requirements, review criteria, and funding preference will be retained as proposed:

Final Project Requirements

I. The Model Hispanic HCOP will establish an educational continuum from high school graduation through graduation from a health or allied health professions school through development and implementation of activities related to all five of the legislative purposes.

II. A plan for selecting students including criteria for selection must be developed and implemented.

III. Activities related to all of the five legislative purposes undertaken must be evaluated. Modifications must be made in activities based on evaluation.

IV. Activities and experiences related to the establishment of the Model Hispanic HCOP must be documented in a format that would allow for future replication by HCOP applicants.

Final Review Criteria

The following criteria are established for this program:

1. Compliance with the Standard Application Instructions for Form 6025–1, and the Supplement to Instructions for Form 6025–1.

2. The relationship of the proposed project to the purposes stated in the legislative authorization, the stated problem, the particular needs to be addressed, and the relevance of proposed objectives to the identified needs.

3. The extent and outcomes of past efforts and activities of the institution in conduct of disadvantaged student programs particularly for Hispanics and enrollment data on the target population (current and past three years) and the extent to which these data indicate trends.

4. The relevance of objectives to the stated problem and need, and to Model Hispanic HCOP purposes; their measurability and attainability within a specific time frame; and the extent to which they represent outcome measures.

5. The number of Hispanic individuals who can be expected to benefit from the project, types of participants by gender, metropolitan area, and educational level; the appropriateness of the proposed participant eligibility requirements and student selection criteria and process.

6. The specific activities and their scope and relevance to the stated objectives and project outcomes, and the appropriateness of these activities for Model Hispanic HCOP support along with the extent and nature of the academic content and non-academic services and their suitability to the needs of the target group.

7. The logic and sequencing of the planned approaches, soundness for delivery of academic content and non-academic services and appropriateness of scheduling and time allocation.

8. The administrative and managerial capability of the applicant to carry out the project in a cost effective manner considering the extent of past efforts and institutional commitment to disadvantaged students.

9. The adequacy of the staff and faculty to carry out the program; the academic and experiential background, and time commitment of key staff and faculty, the nature and level of their involvement, and their experience in working with the proposed target group.

10. The soundness of the budget for assuring effective utilization of cooperative agreement funds and the cost effectiveness of the proposed project; the compatibility of budget requests with program objectives and activities, the adequacy of the line item justifications, and the extent of the applicant's in-kind contributions.

11. Institutional or organizational plan for phasing-in income from other sources; developing self-sufficiency funding initiatives and strategies (after the end of the current federally funded project period); and achieving self-sufficiency based on a timetable and the level of financial support needed.

12. Extent to which project plans are transferable to other institutions.

Final Funding Preference

A funding preference will be given to a nonprofit, accredited four-year undergraduate college or university:

1. where Hispanic students constitute a minimum of 25 percent of the total enrollment at either the graduate or undergraduate level;

2. which is located in a geographic area with a high concentration of Hispanic residents (approximately 20 percent of the area's total population) such as the following: Anaheim, Los Angeles, Riverside, San Diego and San Jose, California; Miami, Florida; Chicago, Illinois; Northern New Jersey; Long Island and New York City, New York; El Paso, Dallas, Fort Worth, Galveston, Houston, and San Antonio, Texas; and

3. which is able to establish and document formal linkage arrangements with local community colleges, community health organizations and health professions and/or allied health professions schools.

Additional Information

Request for technical or programmatic information should be directed to: Mr. Darl Stephens, Chief, Program Development Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–3843 FAX: (301) 443–5242.

This program, Model Hispanic HCOP, is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: September 11, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–23252 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Periodically, the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C.

Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202)–690–5526.

1. Tamper-Resistant Packaging Requirements for OTC Human Drug Products—0910–0149—Reinstatement, no change—This regulation requires certain OTC human drug and cosmetic products to be appropriately labeled, alerting customers to the tamper-resistant packaging. Respondents: Business or other for-profit; Number of Respondents: 500 hours; Number of Responses per Respondent: 1; Average Burden per Response: 4 hours; Estimated Annual Burden: 2000 hours. Send comments to Allison Eydt, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

2. Anthelmintic Drug Products for OTC Human Use—0910–0232—Reinstatement, no change—The existing rule provides conditions for the market of anthelmintic drug products for OTC use. One provision of the regulation requires the preparation and distribution of a consumer package insert related to the use of the drug by discussing pinworm infestation and its symptoms, identification, detection and treatment. Respondents: Business or other for-profit; Number of Respondents: 1; Number of Responses per Respondent: 1; Average Burden per Response: 24 hours; Estimated Annual burden: 24 hours. Send comments to Allison Eydt, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

3. Aspartame as an Inactive Ingredient in Human Drug Products: Labeling Requirements—Reinstatement, no change—0910–0242—The final rule requires manufacturers of human drug products containing aspartame to declare on their product's label and labeling, a statement alerting phenylketonuries to the presence and amount of the component phenylalanine that is contained in the product per dosage unit. Respondents: Business or other for-profit. Number of Respondents: 50; Number of Responses per Respondent: 2; Average Burden per Response: .1 hour; Estimated Annual burden: 10 hours. Send comments to Allison Eydt, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

4. Foreign Language Disclosure Labeling—0910–0235—Reinstatement, no change—This label/labeling requirement is directed at manufacturers who wish to label their food products for foreign speaking consumers. Also, these provisions assure that the food is labeled with complete information in both English and the foreign language. Send comments to Allison Eydt, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	Number of responsents	Number of responses/respondent	Average burden/response
21 CFR 101.15(c)(2)—Disclosure—Labeling	600	1	1 hour.
21 CFR 101.15(c)(2)—Disclosure—Labeling	600	1	1 hour.

Estimated Total Annual Burden: 1,200 hours.

Written comments and recommendations concerning the proposed information collections should be sent by September 29 directly to the individual designated.

Dated: September 15, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–23289 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3917–N–22]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* November 20, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 4240, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202)–708–0846, (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Low-Income Public and Indian Housing Financial Statements.

OMB Control Number, if applicable: 2577–0067.

Description of the need for the information and proposed use: These forms are needed to provide data for tracking the major accounts of the HUD prescribed Housing Authority (HA) accounting system and provide essential financial information on the operations of HAs.

Agency form numbers, if applicable: HUD–52595, HUD–52596, HUD–52598, HUD–52599, HUD–52603, HUD–52656, HUD–53049 Members of affected public: State, Local or Tribal Government Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 3,800 respondents, annually and semi-annually, 1.30 average hours per response, 21,758 hours for a total reporting burden.

Status of the proposed information collection: Extension, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 13, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–23259 Filed 9–19–95; 8:45 am]

BILLING CODE 4210–33–M

[Docket No. FR–3884–N–03]

Announcement of Funding Awards for the Public Housing (PH) Apprenticeship Demonstration Program in the Construction Trades and PH Operations—Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(c) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1995 Public Housing Authority applicants under the PH Apprenticeship Demonstration Program in the Construction Trades and PH Operations. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to further the Department's commitment to providing apprenticeship and employment opportunities to youth living in public and assisted housing, in partnership with the PHAs and labor-management initiatives designed to focus on job training and employment opportunities leading to self-sufficiency. Recipients were chosen in a competition under selection criteria announced in a Notice of Funding Availability (NOFA) published in the Federal Register on March 23, 1995 (60 FR 15436).

FOR FURTHER INFORMATION CONTACT: Landry Williams, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–4214. (This is not a toll free number). Hearing or speech impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or (202) 708–9300 for information on the program.

SUPPLEMENTARY INFORMATION: The PH Apprenticeship Demonstration Program in the Construction Trades and PH operations is funded under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for 1994 (Pub. L. 103–124, approved October 28, 1993) (the 1994 Appropriations Act).

The purpose of the PH Apprenticeship Demonstration Program in the Construction Trades and PH operations is part of HUD's comprehensive strategy to restore and revitalize communities in urban America, preserve and rebuild public housing stock and create ladders of economic opportunity for public housing residents. This demonstration program specifically links public housing authorities (PHAs) and their residents and the following organizations: the Laborers International Union of North America (LIUNA); the United Brotherhood of Carpenters and the International Brotherhood of Painters or the American Federation of State, County and Municipal Employees (AFSCME).

This demonstration will bring together the skills needed to provide public housing youth with job training, apprenticeship opportunities and employment opportunities leading to self-sufficiency. Further, the PH Apprenticeship Demonstration Program in the Construction Trades and PH Operations will assist in achieving the objectives of section 3 by preparing youths residing in public and assisted housing for the work force.

Section 3 of the 1968 Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) requires that economic opportunities generated by certain HUD financial assistance for housing (including public and Indian housing) and community development programs shall, to the greatest extent feasible, be given to low and very-low income persons.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) the Department is publishing details regarding the recipients of funding awards. This information is provided in Appendix A to this document.

Dated: September 13, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A

Public Housing Authorities

New England—$750,000

Boston Office $250,000
- The City of Boston Housing Authority, 52 Cinch Street, Boston, MA 02111–02375—$250,000

Hartford Office $500,000
- The City of Bridgeport Housing Authority, 150 Highland Ave., Bridgeport, CT 06602—$250,000
- The City of New Haven Housing Authority, 360 Orange Street, New Haven, CT 06509—$250,000

New York/New Jersey—$1,000,000

New York City Office $500,000
- The City of New York Housing Authority/AFSCME, 250 Broadway, Room 901, New York, NY 10007—$250,000
- The City of New York Housing Authority/United Brotherhood of Carpenters and Painters, 250 Broadway, Room 901, New York, NY 10007—$250,000

Buffalo Office $250,000
- Buffalo Municipal Housing Authority, 300 Perry Street, Buffalo, NY 14204–2299—$250,000

Newark Office $250,000
- The Newark Redevelopment and Housing Authority, 57 Sussex Avenue, Newark, NJ—$250,000

Mid-Atlantic—$1,350,000

Philadelphia Office $600,000
- The City of Philadelphia Housing Authority/AFSCME, 2012 Chestnut Street, Philadelphia, PA 19103–4497—$250,000
- The City of Philadelphia Housing Authority/LIUNA 2012 Chestnut Street, Philadelphia, PA 19103–4497—$350,000

Pittsburgh Office $250,000
- The City of Pittsburgh Housing Authority, 200 Ross Street, 9th Floor, Pittsburgh, PA 15219–2068—$250,000

Baltimore Office $250,000
- The City of Baltimore Housing Authority, 417 E. Fayette Street, Baltimore, MD 21202—$250,000

Washington DC Office $250,000
- The Washington DC's Department of Public and Assisted Housing, 1133 North Capitol Street, NE, Washington, DC 20002—$250,000

Southeast/Caribbean—$1,250,000

Nashville Office $250,000
The City of Memphis Housing Authority, 700 Adams Avenue, Memphis, TN 38105—$250,000
Atlanta Office $500,000
The Fulton County Housing Authority, 10 Park Place, Atlanta, GA 30303—$250,000
The City of Atlanta Housing Authority, 739 W. Peachtree Street, NE, Atlanta, GA 30303—$250,000
Jacksonville Office $500,000
The Housing Authority of the City of Jacksonville, 1300 Broad Street, Jacksonville, FL 32202—$250,000
Dade County Housing and Urban Development, 1401 N. West 7th Street, Miami, FL 33125—$250,000

Midwest—$2,149,788

Milwaukee Office $350,000
The City of Milwaukee Housing Authority, 809 N. Broadway, Milwaukee, WI 53202—$350,000
Minneapolis/St. Paul Office $799,788
The City Minneapolis Housing Authority/AFSCME, 1001 Washington Avenue, Minneapolis, MN 55401—$299,788
The City of Minneapolis Housing Authority/United Brotherhood of Carpenters and Painters, 1001 Washington Avenue, Minneapolis, MN 55401—$250,000
The Saint Paul Housing Authority, 480 Cedar Street, St. Paul, MN 55101–2240—$250,000
Detroit Office $250,000
The City of Detroit Housing Authority, 2211 Orleans, Detroit, MI 48207–2780—$250,000
Cincinnati Office $250,000
The Cincinnati Metropolitan Housing Authority/United Brotherhood of Carpenters and Painters, 16 W. Central Parkway, Cincinnati, OH 45210–1991—$250,000
Indianapolis Office $250,000
The City of Indianapolis Housing Authority, 410 N. Meridian Street, Indianapolis, IN 46204–1790—$250,000
Cleveland Office $250,000
The Cuyahoga Metropolitan Housing Authority, 1441 W. 25th Street, Cleveland, OH 44113–3101—$250,000

Southwest—$250,000

The New Orleans Office $250,000
The City of New Orleans Housing Authority, 918 Carondelet Street, New Orleans, LA 70130—$250,000

Greatplains—$600,000

Kansas City Office $350,000
The Kansas City Missouri Housing Authority, 299 The Paseo, Kansas City, MO 64106—$350,000
The St. Louis Office $250,000
The Saint Louis Housing Authority, 4100 Lindell Boulevard, St. Louis, MO 63108–2999—$250,000

Pacific/Hawaii—$1,000,000

Los Angeles Office $500,000
The Housing Authority of the City of Los Angeles, 2600 Wilshire Boulevard, Los Angeles, CA 90057—$250,000
The City of San Diego Housing Authority, 1625 Newton Street, San Diego, CA 92113—$250,000
The San Francisco Office $500,000
The City of San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102—$250,000
The City of Oakland Housing Authority, 1619 Harrison Street, Oakland, CA 94612—$250,000

Northwest/Alaska—$500,000

Portland Office $250,000
The Portland Housing Authority, 135 Southwest Ash Street, Portland, Oregon 97204—$250,000
Seattle Office $250,000
The City of Seattle Housing Authority, 120 Sixth Avenue North, Seattle, WA 98109—$250,000

TOTAL ASSIGNMENT: $8,849,788

[FR Doc. 95–23280 Filed 9–19–95; 8:45 am]
BILLING CODE 4210–33–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Availability of Final Environmental Assessment and Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Availability of Final Environmental Assessment and Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the Operational Procedures of the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC), for implementing section 102 of NEPA, published in the Federal Register September 2, 1981 (46 FR 44083–44094); the USIBWC hereby gives notice that the Final Environmental Assessment and Final Finding of No Significant Impact for Quisto Energy Corporation (Quisto) to construct, operate, and maintain a gas well located on the Main Floodway of the Lower Rio Grande Flood Control Project (LRGFCP) are available. The USIBWC finds that the proposed action to issue a license to Quisto for such works is not a major federal action that would have a significant adverse effect on the quality of the human environment. A Notice of Finding of No Significant Impact was signed August 2, 1995, (60 FR 40603) and provided a thirty (30) day review and comment period before making the finding final.

ADDRESS: Mr. Yusuf E. Farran, Division Engineer, Environmental Management Division, United States Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C–310, El Paso, Texas 79902–1441, telephone: 915/534–6704, Fax: 915/534–668.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is for the USUBWC to issue a license to Quisto to construct, operate, and maintain a gas well and install related features within Meyerhoff No. 5 Drilling Unit, Lot 271, Kelly-Pharr Subdivision, Hidalgo County, Texas. The gas well is proposed to be located on privately owned land within the Main Floodway of the USIBWC LRGFCP approximately 8 kilometers southeast of the town of Pharr. Access to the drilling site is by way of existing county and private roads.

Alternatives Considered

Three alternatives were considered in the Final Environmental Assessment (EA):

The Proposed Action Alternative is for Quisto to construct, operate, and maintain a gas well in a cultivated field within the Main Floodway of the USIBWC LRGFCP. This proposed action will require USIBWC to issue a license to ensure that such works do not cause an obstruction to flood flows within the floodway or interfere with the operation and maintenance of the LRGFCP.

The No Action Alternative is for Quisto to not construct, operate, and maintain a gas well within the Main Floodway of the LRGFCP. The no action alternative will not require the USIBWC to issue a license since no work will be done within the LRGFCP. The no action alternative will result in the denial of access to the mineral owner to rightfully owned minerals, loss of tax revenues to the State of Texas, and result in an unrecoverable clean energy source.

The Directional Well Alternative is for Quisto to drill a well from outside the Main Floodway to a depth below the

proposed surface location. The directional well alternative will not require USIBWC to issue a license since no work will be done within the LRGFCP. The directional well alternative is considered not workable because of a lack of an available surface drillsite outside the Main Floodway and technical problems associated with a bottomhold location some 457 meters or more from the surface location.

Environmantal Assessment

The USIBWC received from Quisto a completed Environmental Assessment (EA) for the proposed gas well and related features. The EA is currently available for review and comment.

Finding of the Final Environmental Assessment

The Final EA finds that the proposed action for Quisto to construct, operate, and maintain a gas well within the Main Floodway of the USIBWC LRGFCP (and USIBWC to issue a license for such work) does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following facts:

1. The United States Army Corps of Engineers has determined that no waters of the United States including the wetlands will be impacted by the proposed gas well and related features.

2. The United States Fish and Wildlife Service has determined that federally listed endangered or threatened species are unlikely to be adversely affected by the proposed gas well and related features.

3. The Texas Historical Commission has determined that no survey is required and the project may proceed.

4. The USIBWC has determined that the proposed gas well and related features will have no significant effect upon the flood carrying capacity of the Main Floodway.

Availability

Single copies of the Final Environmental Assessment and Final Finding of No Significant Impact may be obtained by request at the above address.

Dated: September 11, 1995.

Randall A. McMains,

Attorney.

[FR Doc. 95–23240 Filed 9–19–95; 8:45 am]

BILLING CODE 4710–03–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession permit authorizing continued operation of boat transportation services to and from Isle Royale National Park for the public at Isle Royale National Park, Michigan, for a period of approximately five (5) years from date of execution through December 31, 2000.

EFFECTIVE DATE: November 20, 1995.

ADDRESSES: Interested parties should contact the Superintendent, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931, to obtain a copy of the prospectus describing the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared. The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1994, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 USC § 20), is entitled to be given preference in the negotiation of a new proposed permit providing the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the permit will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer, then the permit will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the permit will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60) day following publication of this notice to be considered and evaluated.

Dated: September 11, 1995.

William W. Schenk,

Field Director, Midwest Region.

[FR Doc. 95–23254 Filed 9–19–95; 8:45 am]

BILLING CODE 4310–70–M

Fish and Wildlife Service

Application for Permit

AGENCY: Fish and Wildlife Service, DOI.

ACTION: Notice of receipt of application for permit.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–806710

Applicant: Christopher Dean Scott, Boynton Beach, Florida.

The applicant requests a permit to take (capture, photograph, and release) one individual of each of the following threatened (T) or endangered (E) species: rice rat (E), *Oryzomys palustris natator* (=O. argentatus); Key Largo woodrat (E), *Neotoma floridana smalli;* Key Largo cotton mouse (E), *Peromyscus gossypinus allapaticola;* Perdido Key beach mouse (E), *Peromyscus polionotus trissyllepis;* bluetail mole skink (T), *Eumeces egregius lividus;* sand skink (T), *Neoseps reynoldsi;* Atlantic salt marsh snake (T), *Nerodia clarkii* (=fasciata) *taeniata;* eastern indigo snake (T), *Drymarchon corais couperi;* and Stock Island tree snail (T), *Orthalicus reses.* Requested activities would occur throughout the species' ranges in Florida for the purpose of enhancement of survival of the species.

Written data or comments on this application should be submitted to: Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit

Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: September 13, 1995.

Noreen K. Clough,

Regional Director.

[FR Doc. 95–23331 Filed 9–19–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Petroglyph National Monument; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that three public meetings of the Petroglyph National Monument Advisory Commission will be held on Thursday, October 19, 1995 and Friday, October 20, 1995.

Public meetings to hear public comments on the Draft General Management Plan will be held at 2 pm–5:30 pm and at 7 pm–9:30 pm on Thursday, October 19, 1995, at Albuquerque's Technical-Vocational Institute, Board Room 100, Smith Brasher Hall, 717 University Boulevard, SE, Albuquerque, New Mexico.

Comments on the Draft General Management Plan will be discussed by Petroglyph National Monument Advisory Commission members on Friday, October 20, 1995, 8:30 am–12 pm, at the University of New Mexico Continuing Education Conference Center, Room I, 1634 University Boulevard, NE, Albuquerque, New Mexico.

The Petroglyph National Monument Advisory Commission was established pursuant to Public Law 101–313, establishing Petroglyph National Monument, to advise the Secretary of the Interior on the management and development of the monument and on the preparation of the monument's general management plan.

Any member of the public may file a written statement concerning the matters to be discussed at the Commission meeting with the Acting Superintendent, Petroglyph National Monument.

Persons who wish further information concerning the meeting, or who wish to submit written statements may contact Douglas E. Eury, Acting Superintendent, Petroglyph National Monument, 6001 Unser Boulevard, N.W., Albuquerque, New Mexico 87120, telephone 505/899–0205.

Minutes of the commission meeting will be available for public inspection six weeks after the meeting at the office of Petroglyph National Monument.

Dated: September 13, 1995.

Douglas E. Eury,

Acting Superintendent, Petroglyph National Monument.

[FR Doc. 95–23255 Filed 9–19–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–378]

In the Matter of Certain Asian-Style Kamaboko Fish Cakes; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 15, 1995, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Yamasa Enterprises, 515 Stanford Avenue, Los Angeles, California 90013. A supplementary complaint was filed on September 6, 1995. The supplementary complaint alleges violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain Asian-style kamaboko fish cakes by reason of infringement of common law trademarks ''YAMASA'' and a Japanese character logo, the threat or effect of which is to substantially injure an industry in the United States.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on September 12, 1995, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States or in the sale within the United States after importation of certain Asian-style kamaboko fish cakes by reason of infringement of the alleged common law trademarks ''YAMASA'' and a Japanese character logo, the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Yamasa Enterprises, 515 Stanford Avenue, Los Angeles, California 90013.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Yamasa Kamaboko Co., Ltd., 419 Higashinobusue, Himeji, Japan

Alpha Oriental Foods, Inc., 4101 ''C'' Industry Drive, Tacoma, Washington 98424

N.A. Sales, Inc., 150 Industrial Way, Brisbane, California 94005

New Japan Food Corp., 9505 Berger Road, Columbia, Maryland 21046

Rhee Brothers, Inc., 9505 Berger Road, Columbia, Maryland 21046

Rokko Trading Co., Inc., 2020 W. 166th Street, Torrance, California 90504.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–Q, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to sections 201.16(d) and 210.13(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the

date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: September 12, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–23328 Filed 9–19–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–371]

Notice

In the matter of Certain Memory Devices with Increased Capacitance and Products Containing Same.

Notice is hereby given that the prehearing conference in this matter that was to commence at 10 a.m. on September 18, 1995, in Courtroom B (Room 111), U.S. International Trade Commission Building, 500 E St. S.W., Washington, D.C., and the hearing commencing immediately thereafter (60 Fed. Reg. 46626) are postponed until 10 a.m. on November 6, 1995, in Courtroom A (Room 100) at the same address.

The Secretary shall publish this notice in the Federal Register.

Issued: September 12, 1995.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 95–23329 Filed 9–19–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32678]

Rio Valley Railroad, Inc., and Rio Valley Switching Company—Acquisition and Operation Exemption—Certain Lines of Missouri Pacific Railroad Company in Cameron County, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45, subject to standard labor protective conditions, the acquisition by Rio Valley Railroad, Inc. (RVRI), and the operation by Rio Valley Switching Company (RVSC) of 9.124 miles of rail line (the line known as the Rio Hondo Industrial Lead) between milepost 0.066 at or near San Benito, and milepost 9.19 at or near Rio Hondo, in Cameron County, TX.[1]

DATES: This exemption is effective on October 20, 1995. Petitions to stay must be filed by October 5, 1995.

Petitions to reopen must be filed by October 16, 1995.

ADDRESSES: Send pleadings, referring to Finance Docket No. 32678, to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423–0001; and (2) Petitioners' representative: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland & Herman, 20 North Wacker Drive, Suite 3118, Chicago, IL 60606–3101.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, D.C. 20423–0001. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: September 7, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23311 Filed 9–19–95; 8:45 am]

BILLING CODE 7035–01–P

[1] RVRI also seeks to acquire and RVSC seeks to operate what they term as ''incidental overhead trackage rights.'' These rights extend over 8.11 miles of MP's rail line extending between milepost 27.50 near Harlingen, and milepost 19.39 at or near San Benito, also in Cameron County, TX, thereby extending the operations of RVRI and RVSC a total of 17.234 miles from Harlingen to Rio Hondo via San Benito.

Exemption of the acquisition of incidental trackage rights pertains to qualifying instances in transactions under 49 U.S.C. 10901. *See* 49 CFR 1150.31(a)(4). Because the acquisition of the trackage rights at issue here is governed by 49 U.S.C. 11343 and is covered by a class exemption, petitioners should file a notice of exemption with the Commission under 49 CFR 1180.2(d)(7), which would provide notice of its qualification to acquire these rights under the class exemption.

[Ex Parte No. 388 (Sub-No. 29)]

Intrastate Rail Rate Authority—South Carolina

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional recertification.

SUMMARY: The State of South Carolina has filed an application for recertification. The Commission, under *State Intrastate Rail Rate Authority,* 5 I.C.C.2d 680, 685 (1989), provisionally recertifies the State of South Carolina to regulate intrastate rail rates, classifications, rules, and practices. After its review, the Commission will issue a recertification decision or take other appropriate action.

DATES: This provisional recertification will be effective on September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green (202) 927–5269 or Beryl Gordon (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

Decided: September 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23309 Filed 9–19–95; 8:45 am]

BILLING CODE 7035–01–P

Release of Waybill Data

The Commission has received a request from the Association of American Railroads, for permission to use certain data from the Commission's 1986 through 1994 I.C.C. Waybill Samples. A copy of the request (WB448____—8/30/95) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections

with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 95–23305 Filed 9–19–95; 8:45 am]

BILLING CODE 7035–01–P

Release of Waybill Data

The Commission has received a request from Consolidated Rail Corporation, for permission to use certain data from the Commission's 1992 through 1994 I.C.C. Waybill Samples. A copy of the request (WB454—9/7/95) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 95–23306 Filed 9–19–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32751]

Consolidated Rail Corporation and CSX Transportation, Inc.—Rationalization of Facilities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the rationalization by lease and trackage rights of certain joint facilities, subject to standard labor protective conditions. It is contemplated that the transaction would vest control of each joint facility in the carrier making the greatest use thereof: CSX Transportation, Inc., (CSXT) would lease the Consolidated Rail Corporation (Conrail) facility at Lansing, MI—that segment of Conrail's Lansing Branch between milepost 36.80, at Michigan Avenue, and milepost 37.86, at Grand River Avenue—and grant back to Conrail trackage rights to operate thereover; Conrail would lease CSXT's facility at Toledo, OH—that segment of CSXT's Rockwell Branch between the connection with Conrail at Rockwell Junction and the connection with track of the former Toledo Terminal Railroad (now owned and operated by CSXT) at the limit of Walbridge Interlocking—and grant back to CSXT trackage rights to operate thereover.

DATES: The exemption will be effective October 20, 1995 unless stayed. Petitions to stay must be filed by October 5, 1995 and petitions to reopen must be filed by October 16, 1995.

ADDRESSES: An original and 10 copies of all pleadings, referring to Finance Docket No. 32751, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of all pleadings must be served on John J. Paylor, 2001 Market Street—16A, Philadelphia, PA 19101, and on Charles M. Rosenberger, 500 Water Street, J–150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing-impaired is available through TDD at (202) 927–5721.)

Decided: September 11, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23310 Filed 9–19–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32757]

Fordyce & Princeton Railroad Company—Purchase Exemption—Line of Ashley, Drew & Northern Railway Company

Fordyce & Princeton Railroad Company (FP) has filed a notice of exemption for FP to purchase from its corporate affiliate, Ashley, Drew & Northern Railway Company (ADN), approximately 5 miles of ADN's rail line after ADN abandons and discontinues operations over its entire line.[1] The involved line extends between milepost 4.7 at Whitlow Junction, AR, to milepost 0.0 at Crossett, AR, including 1,941 feet of ancillary track running east from milepost 0.5 to the Arkansas Louisiana & Mississippi Railroad (ALM) interchange at Crossett. FP currently operates over this line pursuant to a trackage rights agreement with ADN.[2] FP states that that agreement gives it the option to purchase the involved line if ADN abandons and discontinues operations.

The purchase transaction is expected to be consummated on the effective date of ADN's proposed abandonment in Docket No. AB–455X.

Because the parties are members of the same corporate family, and the purchase will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers operating outside the corporate family, the transaction qualifies for the class exemption at 49 CFR 1180.2(d)(3). The purpose of the transaction is to preserve FP's access to Crossett and the ALM interchange after ADN abandons its rail line.

As a condition to use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Eugenia Langan, Shea & Gardner, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

Decided: September 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23307 Filed 9–19–95; 8:45 am]

BILLING CODE 7035–01–P

[1] FP and ADN are wholly owned subsidiaries of Georgia-Pacific Corporation. Concurrent with the filing of this notice, ADN filed a petition in *Ashley, Drew & Northern Railway Company—Abandonment Exemption—in Ashley and Drew Counties, AR,* Docket No. AB–455X, seeking an exemption to abandon its entire line.

[2] *See Fordyce and Princeton Railroad Company, Inc.—Purchase (Portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Between Fordyce and Crossett, AR,* Finance Docket No. 29541 (ICC served Mar. 3, 1981).

[Finance Docket No. 32772]

The New York, Susquehanna and Western Railway Corporation—Trackage Rights Exemption—Onondaga County Industrial Development Agency and Consolidated Rail Corporation

Onondaga County Industrial Development Agency (OCIDA) has agreed to grant local and overhead trackage rights to The New York, Susquehanna and Western Railway Corporation (NYS&W) over 10 miles of rail line, known as the Jamesville Cluster, in Onondaga County, NY.[1] The trackage rights include: (1) the Jamesville Industrial Track from approximately milepost 264.3 to approximately milepost 272.0; (2) the Lake Industrial Track from approximately milepost 272.0 to approximately milepost 273.5 (including the Saltland Spur); and (3) Track 7 of the Chicago Line from approximately milepost 292.0 to approximately milepost 292.8.

It is asserted that the trackage rights will improve operating economies and rail service to local shippers. The exemption became effective on September 7, 1995. The trackage rights were to become effective on September 8, 1995.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Nathan R. Fenno, The New York, Susquehanna and Western Railway Corporation, 1 Railroad Avenue, Cooperstown, NY 13326.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: September 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23308 Filed 9–19–95; 8:45 am]

BILLING CODE 7035–01–P

[1] The line is currently owned by OCIDA and operated by Consolidated Rail Corporation (Conrail). OCIDA acquired the line from Conrail in *Onondaga County Industrial Development Agency—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation,* Finance Docket No. 32287 (ICC served May 19, 1993). Trackage rights over the line were granted by OCIDA to Conrail in *Consolidated Rail Corporation—Trackage Rights Exemption—Onondaga County Industrial Development Agency,* Finance Docket No. 32288 (ICC served May 10, 1993). Pursuant to the Agreement underlying this transaction, OCIDA consents to the assignment of trackage rights by Conrail to NYS&W.

[2] Samuel J. Nasca, New York State Legislative Director for United Transportation Union (UTU), has filed a petition to reject the notice or, in the alternative, to stay the exemption in the instant proceeding, and to revoke the notices of exemption in Finance Docket Nos. 32772 and 32288. UTU's stay request was not received in time for the Commission to act on it prior to effectiveness of the exemption. The notice appears to satisfy the Commission's class exemption provisions under 49 CFR 1180.2(d) and will not be rejected. The merits of UTU's arguments for rejection can be addressed, if appropriate, when the Commission addresses the petition for revocation of the exemptions.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 25–26, 1995
   Time: 9 a.m. to 5 p.m.
   Room: 430
   Program: This meeting will review applications submitted to Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after January 1, 1996.

The delay in publication of this notice was caused by the reorganization and restructuring of the agency which is currently taking place.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 95–23256 Filed 9–19–95; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 4, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 4, 1995—2 p.m. Until the Conclusion of Business

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, and deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only

by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 14, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–23327 Filed 9–19–95; 8:45 am]

BILLING CODE 7590–01–M

Correction to Bi-Weekly Notice Application and Amendments to Operating Licenses Involving No Significant Hazards Consideration

In the Federal Register published on August 30, 1995, page 45175, first column, under Commonwealth Edison Company, the sixth through eighth lines which read, ''Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois'' should be corrected to read, ''Docket Nos. 50–10, 50–237 and 50–249, Dresden Nuclear Power Station, Units 1, 2 and 3, Grundy County, Ilinois.''

Dated at Rockville, Maryland, this 13th day of September 1995.

For the Nuclear Regulatory Commission.

John F. Stang,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23286 Filed 9–19–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–390, 50–391; License Nos. CPPR–91, CPPR–92]

Tennessee Valley Authority (Watts Bar); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a decision concerning the Petition filed by Mr. George M. Gillilan (Petitioner) dated February 25, 1994 as supplemented by letters dated June 16, June 28, July 6, 1994, and February 24 and February 28, 1995. The Petition requested that the Nuclear Regulatory Commission (NRC or Commission) (1) immediately impose a $25,000 per day fine on TVA until all reprisal, intimidation, harassment and discrimination actions involving Gillilan are settled to his satisfaction, and (2) appoint an independent arbitration board to review all past DOL suits and EEO complaints filed against TVA concerning Watts Bar. Since the latter remedy is beyond the scope of the Commission's authority, it was denied in a letter to Petitioner dated April 7, 1994, which acknowledged receipt of the Petition. In that letter, the Petitioner was also informed that the request for immediate action was denied.

Based on a review of Petitioner's request and supplemental submissions, the Licensee's response dated May 20, 1994, the report of NRC's Office of Investigations (OI Report No. 2–94–042), the results of investigations of the TVA Inspector General and the decisions of the Department of Labor on Petitioner's complaints, the Director, Office of Enforcement, has denied this Petition. The reasons for the denial are explained in the ''Director's Decision under 10 CFR 2.206'' (DD–95–20) which is available for public inspection in the Commission's Public Document Room at 2120 L Street, NW, Washington, D.C. 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Dated at Rockville, Maryland this 13th day of September 1995.

Attachment to: Issuance of Director's Decision Under 10 CFR 2.206, Tennessee Valley Authority.

I. Introduction

On February 25, 1994, George M. Gillilan (Petitioner) filed a request for enforcement action pursuant to 10 CFR 2.206 (Petition). The Petitioner requested that the Nuclear Regulatory Commission (NRC or Commission): (1) Immediately impose a $25,000 per day fine on Tennessee Valley Authority (TVA or Licensee) until all reprisal, intimidation, harassment and discrimination actions involving Petitioner are settled to his satisfaction, and (2) appoint an independent arbitration board to review all past DOL suits and EEO complaints filed against TVA concerning Watts Bar. Since the latter remedy is beyond the scope of the Commission's authority, it was denied in a letter to Petitioner dated April 7, 1994, which acknowledged receipt of the Petition.[1]

Petitioner supplemented his Petition by letter dated June 16, 1994, rebutting the Licensee's May 20, 1994 letter responding to the Petition. On June 28 and July 6, 1994, Petitioner reiterated his allegation that the Licensee was continuing to discriminate against him and described the Licensee's actions to deny Petitioner his nuclear plant access security clearance. In a letter dated February 24, 1995, Petitioner stated that TVA's continued pattern of harassment and intimidation had resulted in Petitioner's being ''blackballed'' in the nuclear industry. In a letter dated February 28, 1995, Petitioner advised the NRC that he had been terminated by TVA.

II. Background

As the basis for his February 25, 1994 request, Petitioner asserted that he had reported safety concerns to the Commission and that, as a result, TVA management had subjected him to continuous intimidation, harassment, discrimination and reprisal actions, that his name had been placed on a blackball list that had been circulated nationwide preventing him from obtaining suitable employment outside of TVA, and that these actions by TVA had affected his mental and physical health. In a letter dated February 28, 1995, Petitioner asserted that TVA's pattern of harassment and intimidation had culminated in the termination of his employment with TVA.

III. Discussion

Specific Allegations

Petitioner bases his requests for sanctions on his assertion that he was a victim of unlawful discrimination pursuant to 10 CFR 50.7. Petitioner alleges a general pattern of discrimination, and mentions several specific acts by TVA: (1) putting his name on TVA's list of whistleblowers (Petitioner's February 24, 1995 letter), (2) failure to select Petitioner for a position (Petitioner's June 16, 1994 letter), (3) denying him plant access by withholding his security clearance (Petitioner's June 28 and July 6, 1994 letters), and (4) terminating him (Petitioner's February 28, 1995 letter).

The allegation that Petitioner was subjected to discrimination by having his name put on a list of whistleblowers[2] by TVA was investigated by the TVA Inspector General (TVA/IG) which concluded that the creation of this list was not discriminatory. Furthermore, the Department of Labor (DOL) investigated a complaint with respect to the same list filed by another individual and found that creation of the list of individuals who had filed complaints under Section 210/211 of the Energy Reorganization Act (ERA) with DOL did not constitute discrimination

[1] The letter also denied Petitioner's request for immediate action.

[2] The list was a status report of complaints filed by TVA employees with the Department of Labor.

(Case No. 90–ERA–024, Secretary of Labor's Final Decision and Order of Dismissal, July 3, 1991, slip op. at 4–6). The staff finds that the inclusion of Petitioner's name on a list of ERA cases did not constitute discrimination or violate 10 CFR 50.7.

Petitioner also alleges that he was blacklisted from the industry because the list discussed above was distributed nationwide. In Case No. 90–ERA–024 discussed above, the Secretary of Labor said that ''the record contains no evidence that TVA disseminated these documents to the newspaper or to other outside sources,'' concluding that Petitioner did not establish a prima facie case that the TVA memorandum and accompanying list of ERA cases was used for a discriminatory purpose (id. at 4–5). Petitioner has not provided to the NRC evidence that shows that the list was used to ''blackball'' those on the list. Therefore, we are not able to find that the creation and alleged distribution of the list was discrimination against Petitioner or warrants the enforcement action requested by Petitioner.

With respect to TVA's failure to select Petitioner for a position for which he had applied, Petitioner's complaint on this matter (dated October 10, 1991) was dismissed by the Secretary of Labor as untimely filed (Case Nos. 92–ERA–046 and 50, Final Decision and Order, April 20, 1995, slip op. at 3–5). The TVA/IG investigated this complaint and found that Petitioner did not return phone calls or respond to a registered letter inviting him to schedule an interview for the position and, thus, the individual was not selected. The TVA/IG consequently concluded that the failure to select Petitioner was not discriminatory. Based on a review of the TVA/IG investigation and the limited information provided by the Petitioner, the NRC staff concludes that Petitioner has not provided information that would show that he was discriminated against in this instance.

With respect to withholding Petitioner's security clearance, Petitioner filed a complaint with the DOL on September 1, 1994. On November 4, 1994, the DOL Area Director concluded there was no discrimination in that case and his ruling was not appealed by Petitioner. The TVA/IG investigated this issue and determined that Petitioner's security clearance was suspended following a psychological evaluation relating to fitness-for-duty issues and the TVA/IG concluded that the suspension was not discriminatory. After reviewing the TVA/IG investigation and information provided by the Petitioner, the staff concludes that Petitioner has not provided information that would show that TVA's suspension of Petitioner's security clearance was discriminatory.

With respect to Petitioner's allegation of discriminatory termination in September 1994, on April 27, 1995 the DOL Area Director dismissed Petitioner's complaint as untimely filed. Petitioner appealed this finding and the appeal is pending before the DOL Administrative Law Judge (ALJ) (Case No. 95–ERA–026). The issue was investigated by the TVA/IG who concluded that Petitioner's termination was due to his arrest for carrying a concealed weapon. The NRC's Office of Investigations (OI) reviewed documentation from the DOL and TVA/IG on this matter and concluded that there was insufficient evidence to substantiate Petitioner's allegation that his termination was discriminatory (OI Case No. 2–94–042, April 24, 1995). Based on a review of documentation by OI, DOL, and TVA/IG, the NRC staff concludes that there is not sufficient evidence to establish that TVA's termination of Petitioner's employment was discriminatory.

General Allegations

In addition to the specific acts of discrimination alleged by Petitioner, he also referred to a continuing pattern of discrimination by the licensee against him. While such general allegations are difficult to investigate, the staff decided to review all the Department of Labor complaints filed by Petitioner to assess the likelihood that there is some form of generalized discriminatory treatment of Petitioner that goes beyond the specific acts which he alleges in the Petition. This broader review was undertaken as an attempt to evaluate Petitioner's otherwise unsupported general claim that he was subject to a continuing pattern of discrimination and to determine whether some action against the licensee would be appropriate at this time.

TVA notes, in its May 20, 1994 response to the Petition, that Mr. Gillilan has filed thirteen complaints with the Department of Labor (DOL). NRC's records reflect that some of these were filed as supplements to earlier complaints; only nine are distinct complaints. Three of these complaints deal directly with the specific acts of discrimination alleged by Petitioner, as discussed above. In addition, Petitioner filed several complaints with DOL dealing with allegations of discrimination not raised in his Petition. These complaints allege a pattern of behavior purported to demonstrate that TVA has discriminated against Petitioner. They are addressed below.

Petitioner's complaint to DOL filed on March 2, 1989 was dismissed by the ALJ as settled. The Secretary of Labor disapproved that settlement because one of the conditions required that the record be sealed, a condition that is incompatible with the requirement to make records of discrimination complaints available to the public. The Secretary remanded the case to the ALJ (Case No. 89–ERA–040, Order to Submit Briefs, May 13, 1994, slip op. at 1) and a decision is pending. The DOL Area Director found no discrimination with regard to Petitioner's complaint of November 16, 1990 involving Petitioner's assignment to evening shift and alleged harassment and intimidation by a supervisor. The Area Director also found in that case that the complaint of violation of an earlier settlement agreement was untimely filed. This decision was appealed, assigned Case No. 91–ERA–031, and consolidated with Case No. 91–ERA–034. Ruling in both 91–ERA–031 and 91–ERA–034, the ALJ determined that certain of Petitioner's allegations did not involve discrimination and that the remainder were untimely filed. In accordance with a request by both parties to dismiss 91–ERA–034, the Secretary of Labor dismissed it but remanded 91–ERA–031 to the ALJ for further proceedings, including an evidentiary hearing, noting that in remanding this case, he reached no conclusions regarding the timeliness or the merits of the allegations.[3] (Decision and Remand Order, August 28, 1995). A decision is pending in that case.

Petitioner's combined complaints received by DOL on November 17 and 26, 1991 and January 10, 1992 (combined with that received on October 10, 1991, Case No. 92–ERA–046) were dismissed by the Secretary of Labor, who found that Petitioner had failed to present an issue of material fact with respect to these complaints, and therefore had not demonstrated discrimination.[4] In Petitioner's combined complaints of December 21 and 29, 1993, the DOL Area Director concluded there was no discrimination and the ruling was not appealed. Petitioner's combined complaints of June 10 and August 26, 1993 were originally found by the DOL Area Director to involve discrimination, but after appeal to the ALJ, the hearing was cancelled because Petitioner was deemed ''not . . . mentally capable to withstand trial.'' (Case No. 94–ERA–005, Order Transferring the Record, January 23, 1995, slip op. at 1). A decision is still pending in this case, pending Petitioner's ability to resume the case at trial. In Petitioner's complaint of November 6, 1994, the DOL Area Director concluded that Petitioner's removal was not motivated by his protected activities, therefore there was no discrimination. The ruling was appealed and a decision is pending in that case. *See C*ase No. 95–ERA–009.

Although Petitioner's complaints before DOL are numerous, the DOL findings thus far do not establish a pattern of continuing discrimination against Petitioner. After reviewing the status of Petitioner's DOL complaints, the NRC cannot conclude that enforcement action is necessary against the licensee at this time. In accordance with its normal practice, the NRC will monitor those complaints that remain before DOL and consider the need for enforcement action based on the results of the DOL proceedings.

IV. Conclusion

Based on a review of the Petition and supplemental submissions, the Licensee's response dated May 20, 1994, the report of NRC's Office of Investigations (OI Report No. 2–94–042), the results of the investigations of the TVA/IG, and the decisions of the Department of Labor on several of Petitioner's complaints, I have concluded that Petitioner has provided insufficient information or evidence to indicate that TVA has engaged in a pattern of harassment, intimidation, or discrimination against Petitioner in violation of 10 CFR 50.7, or to warrant additional NRC investigation of general harassment and intimidation with

[3] The Secretary directed that the Acting Chief ALJ first review and decide whether to consolidate Case No. 91–ERA–031 with Case No. 89–ERA–040.

[4] Note that while the Secretary combined the four complaints received October 10, November 17 and 26, 1991, and January 10, 1992, he addressed the October 10 complaint separately. See Case No. 92–ERA–046, Final Decision and Order, April 20, 1995.

regard to Petitioner. I conclude that Petitioner's claims of harassment, intimidation, and discrimination have not been substantiated. Accordingly, the request for daily civil penalties is denied.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided by that regulation, the decision will constitute final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 13th day of September 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 95–23298 Filed 9–19–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–237 and 50–249]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–19 and DPR–25 issued to Commonwealth Edison Company (the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois.

The proposed amendment would upgrade the Dresden TS to the standard Technical Specifications (STS) contained in NUREG–0123. The Technical Specification Upgrade Program (TSUP) is not a complete adaption of the STS. The TS upgrade focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operation and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letters (GL), and (4) relocating specific items to more appropriate TS locations. The September 1, 1995, application proposed to upgrade only Section 6.0 (Administrative Controls) of the Dresden TS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analysis, or provide contained assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment for Dresden Station's Technical Specification Section 6.0 are based on STS guidelines or later operating plant's NRC accepted changes. Any deviations from STS requirements do not significantly increase the probability or consequences of any previously evaluated accidents for Dresden Station. The proposed amendment is consistent with the current safety analyses and has been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

Create the possibility of a new or different kind of accident from any previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the operation of the station; however, these provide additional restrictions which are in accordance with the current safety analysis, or are to provide for additional testing or surveillances which will not introduce new failure mechanisms beyond those already considered in the current safety analyses.

The proposed amendment for Dresden Station's Technical Specification Section 6.0 is based on STS guidelines or later operating plants' NRC accepted changes. The proposed amendment has been reviewed for acceptability at the Dresden Nuclear Power Station considering similarity of system or component design versus the STS or later operating plants. Any deviations from STS requirements do not create the possibility of a new or different kind of accident previously evaluated for Dresden Station. No new modes of operation are introduced by the proposed changes. The proposed changes maintain at least the present level of operability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Involve a significant reduction in the margin of safety because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the later individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analysis, or provide enhanced assurance that specified parameters remain with their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.

The proposed amendment to Technical Specification Section 6.0 implements present requirements, or the intent of present STS. Any deviations from STS requirements do not significantly reduce the margin of safety for Dresden Station. The proposed changes are intended to improve readability, usability, and the understanding of technical specification requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found to be acceptable for use at Dresden based on system design, safety analysis requirements and operational performance. Since the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Dresden and maintain necessary levels of system or component reliability, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, MD, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 20, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Morris Public Library, 604 Liberty Street, Morris, IL 60450. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800)–248–5100 (in Missouri 1–(800)–342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Robert Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear

Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i–v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 1, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Morris Public Library, 604 Liberty Street, Morris, IL 60450.

Dated at Rockville, Maryland, this 13th day of September 1995.

For the Nuclear Regulatory Commission.

John F. Stang,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23285 Filed 9–19–95; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

Senior Executive Service Performance Review Board Membership

AGENCY: President's Council on Integrity and Efficiency (PIE).

ACTION: Notice.

SUMMARY: This notice sets forth the names and titles of the current membership of the PCIE Performance Review Board.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Individual Offices of (the) Inspector General.

SUPPLEMENTARY INFORMATION:

I. Background

The Inspector General's Act of 1978, as amended, has created independent audit and investigative units—Offices of (the) Inspector General—at 61 Federal agencies. In 1981, the President's Council on Integrity and Efficiency (PCIE) was established by Executive Order is an interagency committee charged with promoting integrity and effectiveness in Federal programs. The PCIE is chaired by the Office of Management and Budget's Deputy Director for Management, and comprised principally of the 29 Presidential appointed Inspectors General (IGs). The primary objectives of the PCIE are (1) mounting collaborative efforts to address integrity, economy and effectiveness issues that transcend individual Federal agencies; and (2) increasing the professionalism and effectiveness of IG personnel throughout the Government.

II. PCIE Performance Review Board

Under 5 U.S.C. 4314(c)(1)–(5) and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards are to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the President's Council on Integrity and Efficiency Performance Review Board are as follows:

Members	Title
AGENCY FOR INTERNATIONAL DEVELOPMENT	
Everett L. Mosley	Deputy Inspector General.
Carol L. Levy	Assistant Inspector General for Investigations.
C. Michael Flannery	Assistant Inspector General for Security.
Robert S. Perkins	Legal Counsel.
DEPARTMENT OF AGRICULTURE	
Charles R. Gillum	Deputy Inspector General.
Paula F. Hayes	Assistant Inspector General for Policy Development and Resources Management.
James R. Ebbitt	Assistant Inspector General for Audit.
Richard D. Long	Deputy Assistant Inspector General for Audit.
Robert W. Young, Jr	Deputy Assistant Inspector General for Audit.
Craig L. Beauchamp	Assistant Inspector General for Investigations.
Jon E. Novak	Deputy Assistant Inspector General for Investigations.
DEPARTMENT OF COMMERCE	
Michael Zimmerman	Deputy Inspector General.
John Newell	Assistant Inspector General for Audits.
DEPARTMENT OF DEFENSE	
Derek J. Vander Schaaf	Deputy Inspector General.
Donald Mancuso	Assistant Inspector General for Investigations.
William G. Dupree	Deputy Assistant Inspector General for Investigations.
John F. Keenan	Director, Investigative Operations.
Joel J. Leson	Assistant Inspector General for Criminal Investigative Policy and Oversight.
David A. Brinkman	Assistant Inspector General for Analysis and Follow-up.
Donald E. Davis	Assistant Inspector General for Audit Policy and Oversight.
Michael G. Huston	Director of Audit Planning and Technical Support.

Members	Title
Robert J. Lieberman, Jr	Assistant Inspector General for Auditing.
David K. Steensma, II	Deputy Assistant Inspector General for Auditing.
Thomas F. Gimble	Director, Readiness and Operational Support.
Paul J. Granetto	Director, Contract Management.
Shelton R. Young	Director, Logistics and Support.
Russell A. Rau	Director, Financial Management.
Donald E. Reed	Director, Acquisition Management.
John C. Speedy, III	Deputy Assistant Inspector General for Program Evaluation.
Stephen A. Whitlock	Deputy Assistant Inspector General for Inspections.
Nicholas T. Lutsch	Assistant Inspector General for Administration and Information Management.
Clifford F. Broome	Deputy Assistant Inspector General for Administration and Information Management.
DEPARTMENT OF ENERGY	
Gordon W. Harvey	Principal Deputy Inspector General.
Michael W. Conley	Deputy Inspector General for Inspections.
William H. Garvie	Assistant Inspector General for Investigations.
Herbert Richardson	Deputy Assistant Inspector General for Investigations.
Judith D. Gibson	Assistant Inspector General for Policy Planning and Management.
Gregory H. Friedman	Deputy Inspector General for Audit Services.
Nancy L. Hendricks	Assistant Inspector General for Audits.
Stanley R. Sulak	Director Audit Policy Plans and Programs.
DEPARTMENT OF HEALTH AND HUMAN SERVICES	
Michael F. Mangano	Principal Deputy Inspector General.
Thomas D. Roslewicz	Deputy Inspector General for Audit Services.
Joseph E. Vengrin	Assistant Inspector General for Audit Policy/Oversight.
George Reeb	Assistant Inspector General for Health Care Financing Audits.
Joe Green	Assistant Inspector General for Public Health Service Audits.
John A. Ferris	Assistant Inspector General for Human, Family and Departmental Services Audits.
John E. Hartwig	Deputy Inspector General for Investigations.
Paul F. Conroy	Assistant Inspector General for Policy and Oversight.
George Grob	Deputy Inspector General for Evaluation and Inspections.
Dennis J. Duquette	Deputy Inspector General for Management and Policy.
Eileen Boyd	Assistant Inspector General for Office of Civil Fraud and Administrative Adjudication.
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	
John J. Connors	Deputy Inspector General.
John H. Greer	Assistant Inspector General for Audit.
Patrick J. Neri	Assistant Inspector General for Investigation.
Judith Hetherton	Counsel to the Inspector General.
DEPARTMENT OF INTERIOR	
Joyce N. Fleischman	Deputy Inspector General.
DEPARTMENT OF JUSTICE	
Robert L. Ashbaugh	Deputy Inspector General.
Mary W. Demory	Assistant Inspector General for Management and Planning.
Howard L. Sribnick	General Counsel.
DEPARTMENT OF LABOR	
Patricia Dalton	Deputy Inspector General
Sylvia Horowitz	Assistant Inspector General for Office of Management and Council.
Joseph Fisch	Assistant Inspector General for Audit.
F.M. Broadaway	Assistant Inspector General for Investigations.
DEPARTMENT OF STATE	
John C. Payne	Assistant Inspector General for Audits.
M. Milton MacDonald	Deputy Assistant Inspector General for Audits.
James K. Blubaugh	Assistant Inspector General for Inspections.
Robert S. Terjesen	Assistant Inspector General for Investigations.
Donald S. Norman	Deputy Assistant Inspector General for Security Oversight.

Members	Title
DEPARTMENT OF TRANSPORTATION	
Mario A. Lauro, Jr	Deputy Inspector General.
Roger P. Williams	Senior Counsel.
Raymond J. DeCarli	Assistant Inspector General for Auditing.
Wilbur L. Daniels	Assistant Inspector General for Inspections and Evaluations.
Lawrence H. Weintrob	Deputy Assistant Inspector General for Auditing.
Patricia J. Thompson	Director of Administration.
Alexis M. Stefani	Director, Office of Transportation Program Audits.
David F. Kent	Director, Office of Information Technology, Financial and Secretarial Audits.
DEPARTMENT OF TREASURY	
Vacant	Deputy Inspector General.
Richard Calahan	Assistant Inspector General for Audit.
James Cottos	Assistant Inspector General for Investigations.
Gary Whittington	Assistant Inspector General for Policy, Planning and Resources.
Dennis Schindel	Deputy Assistant Inspector General for Program Audits.
Vacant	Deputy Assistant Inspector General for Financial Audits.
John Balakos	Director of Oversight.
Robert Cesca	Executive Assistant to the Assistant Inspector General for Audit.
DEPARTMENT OF VETERANS AFFAIRS	
Michael J. Costello	Assistant Inspector General for Investigations.
David H. Gamble	Deputy Assistant Inspector General for Investigations.
Michael G. Sullivan	Assistant Inspector General for Auditing.
Michael Slachta, Jr	Deputy Assistant Inspector General for Auditing.
Victor F. Bouril	Director, Planning, Financial Review and Operation Support in the Office of the Assistant Inspector General for Auditing.
Jack H. Kroll	Assistant Inspector General for Departmental Reviews and Management Support.
Alastair M. Connell, M D	Assistant Inspector General for Healthcare Inspections.
Maureen T. Regan	Counselor to the Inspector General.
ENVIRONMENTAL PROTECTION AGENCY	
Nikki Tinsley	Deputy Inspector General.
Kenneth Konz	Assistant Inspector General for Audit.
John Jones	Assistant Inspector General for Management.
FEDERAL EMERGENCY MANAGEMENT AGENCY	
Richard Skinner	Assistant Inspector General for Audit.
Paul Lillis	Assistant Inspector General for Investigations.
GENERAL SERVICES ADMINISTRATION	
Joel S. Gallay	Deputy Inspector General.
Kathleen S. Tighe	Counsel to the Inspector General.
James E. Henderson	Assistant Inspector General for Investigations.
William E. Whyte, Jr	Assistant Inspector General for Auditing.
Eugene L. Waszily	Deputy Assistant Inspector General for Auditing.
Lawrence J. Dempsey	Assistant Inspector General for Quality Management.
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	
Lewis D. Rinker	Deputy Inspector General.
OFFICE OF PERSONNEL MANAGEMENT	
Joseph R. Willever	Deputy Inspector General.
Harvey D. Thorp	Assistant Inspector General for Audits.
SMALL BUSINESS ADMINISTRATION	
Karen S. Lee	Deputy Inspector General.
Phyllis K. Fong	Assistant Inspector General for Management and Legal Counsel.
Stephen Marica	Assistant Inspector General for Investigations.
Peter L. McClintock	Assistant Inspector General for Auditing.

Members	Title
Thomas C. Cross	Assistant Inspector General for Inspection and Evaluation.
SOCIAL SECURITY ADMINISTRATION	
Daniel W. Blades	Assistant Inspector General for Audit.
U S INFORMATION AGENCY	
J. Richard Berman	Assistant Inspector General for Audit.
LeRoy Lowery, III	Assistant Inspector General for Inspections.

Dated: September 11, 1995.

June Gibbs Brown,

Inspector General, Department of Health and Human Services; and Vice Chair, PCIE.

[FR Doc 95–23260 Filed 9–19–95; 8:45 am]

BILLING CODE 4150–04–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36228; PA–19; File No. S7–27–95]

Privacy Act of 1974; Establishment of New System of Records, Telephone Call Detail Records (SEC–39)

AGENCY: Securities and Exchange Commission.

ACTION: Notification of the establishment of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission (Commission) gives notice of a new Privacy Act system of records, Telephone Call Detail Records (SEC–39).

DATES: Comments on the establishment of the new system of records must be received no later than October 20, 1995. The new system of records will be effective October 30, 1995, unless the Commission receives comments which would result in a contrary determination.

ADDRESSES: Persons wishing to submit comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. S7–27–95. Copies of the submission and all written comments will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Hannah R. Hall, Privacy Act Officer, Tel. (202) 942–4320, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549

SUPPLEMENTARY INFORMATION: This report is to give notice of the establishment of a new system of records entitled Telephone Call Detail Records—SEC–39, which is subject to the Privacy Act of 1974, 5 U.S.C. 552a.

The Commission is establishing the Telephone Call Detail Records system to enhance its ability to assess employee use of the telephone systems provided by the Commission (i.e. Private Automated Branch Exchange (PABX) telephone system installed at the Headquarters Building in Washington, DC, and the Operations Center and the Operations Center Annex in Alexandria, Virginia, and the Federal Telecommunications System (FTS) throughout the entire Commission), and to assist investigations into possible employee and contractor misconduct. Since parts of this system may be used to retrieve information about an individual through the telephone number that has been assigned to that individual, the Privacy Act of 1974, as amended, requires a general notice of the existence of this system of records to the public. The information may be used for telecommunication traffic studies, cost projections or other management studies and to enable the Commission to determine responsibility for placement of specific calls in connection with inquiries into possible employee or contractor misconduct, including misuse of Government-provided telephones. The records generated by the telephone system used by the Commissions's Headquarters Building, the Operations Center and the Operations Center Annex may identify the numbers called from a particular extension, calls made from or received at a particular extension, the date and time of the call and the length of the call. This system may also contain telephone assignment records, records reflecting the location of government telephones and requests for information concerning calls made to or from particular extensions.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Oversight and Reform of the U.S. House of Representatives, the Committee on Government Affairs of the U.S. Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated July 15, 1994.

Accordingly, the Commission is giving notice of the establishment the following system of records, entitled Telephone Call Detail Records:

SEC–39

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on individuals (generally Commission employees and contractor personnel) who make local and/or long distance calls and individuals who receive telephone calls placed from Commission telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of Commission telephones to place or receive local and/or long distance calls, whether through the Private Automated Branch Exchange (PABX) telephone system, the Federal Telecommunications System (FTS), commercial systems, or similar systems; records indicating assignment of telephone numbers to employees; and records relating to requests for telephone call detail information (specifically, it includes the telephone number that is assigned to an individual, the telephone number called

for all outgoing calls, the date and time of the call and the length of the call).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 78d; 15 U.S.C. 78w; 5 U.S.C. 301; and 41 CFR subpart 201–21.6.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and data may be disclosed as necessary (1) to employees of the Office of Inspector General in connection with investigations of employee or contractor misconduct; (2) to employees or contractors of the Commission to determine individual responsibility for telephone calls; (3) to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906; (4) in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding; (5) in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding; (6) in the event that material in this system indicates a violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto; (7) to a telecommunications company providing telecommunications support to permit servicing the account; (8) to agency management in connection with employees suspected of misuse of Government-provided telephones that might result in the initiation of disciplinary action; and (9) to agency personnel for use in obtaining a sample of callers for follow-up surveys to assess customer service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Records are maintained on computer diskettes, electronic media, and/or hard copy media.

RETRIEVABILITY:

Records are retrievable by a Commission telephone number that is assigned to an individual, by the telephone number called for all outgoing calls, by the date and time of the call, and by the length of the call.

SAFEGUARDS:

Records are safeguarded through the use of appropriate computer passwords to restrict access. In addition, floppy disks are kept in a locked room which may only be entered with a pass key.

RETENTION AND DISPOSAL:

Records are retained on-site for three (3) years. Thereafter, records will be transferred in accordance with National Archives and Records Administration General Records Schedule 12.

SYSTEM MANAGER AND ADDRESS:

Voice Communications Manager, Facilities Branch, Office of Administrative and Personnel Management, Securities and Exchange Commission, Room 2C05, 450 Fifth Street, NW, Washington, DC 20549.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the Privacy Act Officer, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the Privacy Act Officer, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

RECORD SOURCE CATEGORIES:

Telephone directory, call detail listing, and requests for call detail information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: September 14, 1995.
By the Commission.

Margaret H. McFarland,

Deput Secretary.

[FR Doc. 95–23292 Filed 9–19 –95; 8:45 am]

BILLING CODE 8010–01–P

[Release No. 34–36225; File No. SR–Amex–95–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to Debt Listing Standards

September 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 19, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 703 and Sections 104, 216, 330 and 1003 of the Amex Company Guide.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In light of recent rule changes adopted by the Commission,[1] as well as significant rule changes implemented by the New York Stock Exchange

[1] Recently, the Commission took action to make it easier for exchanges to list debt securities, removing restrictions that existed for listed debt securities but not for over-the-counter traded debt securities. Among other things, the Commission made inapplicable to listed debt certain Commission borrowing restrictions and proxy rules, none of which are applicable to unlisted debt. *See* Securities Exchange Act Release No. 34922 (November 1, 1994), 59 FR 55342 (November 7, 1994).

(''NYSE''),[2] all to facilitate the exchange listing of debt securities, the Amex has similarly reviewed its rules and policies with a view towards making the Exchange more accessible to debt issuers and facilitating the listing of such securities. The Exchange believes that it is important to both investors and companies that the Exchange be able to list debt securities more easily, as an Exchange listing provides debtholders with a transparent auction market for secondary trading.

Original Listing Guidelines

Currently, the Amex applies its original listing guidelines[3] in evaluating the listing eligibility of an issuer of debt securities. The Exchange also specifies that the issuer should be able to demonstrate that it appears to be in a financial position sufficient to satisfactorily service the debt issue to be listed. The debt issue should be at least $5 million in principal amount and aggregate market value, for issuers whose common stock is traded on the Amex or the NYSE, or $20 million with at least 100 holders, for non-listed issuers. The Exchange will consider delisting a bond issue if the aggregate market value or the principal amount of the bonds publicly held is less than $400,000.

The Exchange proposes to replace its numerical listing guidelines with new guidelines based on issuer or bond rating status. Under these new guidelines, if an issuer has equity securities listed on the Amex or NYSE, and is in ''good standing,''[4] the Exchange will normally list that company's debt securities so long as they have an aggregate market value or principal amount of at least $5 million. If an issuer does not have equity securities listed on the Amex or NYSE, the Amex will rely (as set forth below) on the analyses of nationally recognized securities rating organizations (''NYSROs''),[5] such as Standard & Poor's or Moody's.[6]

Specifically, the Exchange proposes to make the following changes to Section 104 of the Amex Company Guide:

- Eliminate the guideline calling for a debt issuer to satisfy the size and earnings guidelines applicable to issuers listing common stock;
- Eliminate the guideline calling for the issuer to demonstrate that it will be able to satisfactorily service the debt issue to be listed;
- Eliminate the guideline calling for non-listed issuers to have at least 100 holders;
- Permit the Exchange to list a debt issue if it has an aggregate market value *or* principal amount of at least $5 million (as opposed to aggregate market value *and* principal amount of $5 million);
- Permit the Exchange to list debt securities that are issued or guaranteed by an issuer which has equity securities listed on the Amex or NYSE (or which is affiliated with a listed issuer); and
- Permit the Exchange to list the debt securities of ''unaffiliated'' issuers[7] if an NRSRO has assigned a current rating to the debt security that is no lower than an Standard & Poor's Corporation ''B'' rating (*i.e.,* B− or better) or the equivalent rating of another NRSRO. A ''B'' rating indicates that the debt issuer currently has the capacity to meet interest payments and principal repayments, and that such capacity is not dependent upon favorable business, financial or economic conditions. If no NRSRO has assigned a rating to the issue, an NRSRO must have currently assigned either an investment grade rating (*i.e.,* an S&P or equivalent rating no lower than ''BBB−'') to a senior issue or a rating that is no lower than an S&P ''B'' rating (or equivalent) to a *pari passu* or junior issue.[8]

The Exchange is also proposing to be able to list municipal and sovereign bonds (*i.e.,* the debt of foreign governments, American states and localities, or government agencies).[9] The Exchange will evaluate whether to list these issuers on a case-by-case basis and will treat the issuer as an ''unaffiliated'' corporate issuer so that the rating guidelines described above will have to be met.

Continued Listing Guidelines

The Amex will still consider delisting a debt issue if its aggregate market value or principal amount is less than $400,000. However, the Exchange proposes to amend Section 1003 of the Amex Company Guide to clarify that any debt issuer that is unable to meet its obligation on the listed debt securities may be delisted. As with all the guidelines in Section 1003, this will permit, but not require, the delisting of the security in such a circumstance. In applying this standard, the Exchange will normally not delist the debt if there is value in the security and continued Exchange trading is in the best interests of investors. However, if an issuer is unable to meet its financial obligations and there is minimal or no value in the security, the Exchange will give serious consideration to delisting the bond issue. The Exchange will also consider delisting debt that was listed based on the issuer being either majority-owned or guaranteed by an Amex or NYSE issuer when the equity securities of such owner or guarantor are delisted.

In the case of debt securities that are convertible into equity securities, the Exchange proposes to review the continued listing of the debt security when the underlying equity security is delisted. The Exchange will delist the convertible bond when the underlying equity security is no longer subject to real-time trade reporting or if the Exchange delists the underlying equity security for violation of any of the Exchange's ''corporate governance'' guidelines.[10]

Listing Procedures

The Exchange also is proposing to simplify the listing process for debt issuers by reducing the number of supporting documents that an applicant must file in support of its debt listing application. In the course of the Exchange's review, several such documents were identified as being either unnecessary, duplicative, or unduly burdensome to issuers.

Specifically, the following changes are proposed to Section 216 of the Company Guide:

- Schedule of distribution—Since the Exchange is proposing to eliminate

[2] In Securities Exchange Act Release No. 34019 (May 5, 1994), 59 FR 24765 (May 12, 1994), the Commission approved amendments to the NYSE listings standards for debt that were similar to this Amex proposal.

[3] The Exchange guidelines provide for the issuer to have stockholders' equity of at least $4,000,000 and pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

[4] A company is in ''good standing'' if it is above the relevant continued listing guidelines.

[5] *See* Securities Exchange Act Release No. 34616 (August 31, 1994), 59 FR 46304 (September 7, 1994) (Concept Release discussing Commission's oversight role with respect to NRSROs).

[6] Like the NYSE, the Exchange will not conduct a review in either instance to determine whether the issuer satisfies its original equity listing guidelines.

[7] An ''unaffiliated'' issuer is one that has no equity securities listed on the Exchange or the NYSE, and is not affiliated with or guaranteed by an issuer of Amex (or NYSE)-listed equity securities.

[8] An S&P debt rating is a current assessment of the creditworthiness of an obligor with respect to a specific obligation. The ratings range from ''AAA'' to ''D.'' Debt rated ''AAA'' has the highest rating assigned by S&P because the capacity to pay interest and repay principal is extremely strong. ''Investment grade ratings'' include bonds rated in the top four categories (''AAA,'' ''AA,'' ''A,'' and ''BBB''). Bonds rated ''CCC'' or lower are dependent on favorable business, financial or economic conditions to meet timely payments of interest and repayment of principal. Debt rated ''D'' is in default.

[9] This does not include debt issued or guaranteed by the United States Government or agencies thereof that can be admitted to dealings on the Exchange pursuant to Amex Rule 140.

[10] The Amex Company Guide contains guidelines regarding, for example, conflicts of interest, independent directors, quorum, and remedies available to bondholders upon default.

distribution (holder) guidelines for debt securities, this schedule will no longer be necessary.

• Trustee's certificate—The Exchange currently requires a certificate from the trustee that shows (1) acceptance of the trust; (2) that the securities have been issued in accordance with the terms of the indenture; (3) what disposition has been made of securities redeemed or refunded; (4) that pledged collateral has been deposited; and (5) what disposition has been made of prior obligations. Issuers often complain that it is unduly burdensome for them to obtain the trustee's certificate because many trustees are reluctant to certify the issuer-specific information required by items (2) through (5). Therefore, the Exchange proposes to require that the certificate show only the trustee's acceptance of the trust. This would conform the Exchange's practice to that of the NYSE.

• Listing resolution—The Exchange currently requires bond issuers to obtain a resolution of their board of directors authorizing the filing of the listing application. This requirement is often burdensome to comply with, and can delay a listing if the company's board is not scheduled to meet for a month or more. The requirement to obtain a listing resolution is essentially ceremonial in nature and does not serve any significant purpose. Therefore, the Exchange proposes to eliminate this requirement.[11]

It is expected that by making the application process less burdensome, the Exchange will be able to increase the number of debt listings.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and to perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

[11] The Commission notes that the NYSE also does not require listing resolutions. Like the NYSE, the Amex requires an opinion of counsel that the issuance of the debt has been approved by the company's board of directors.

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 publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submission should refer to File No. SR–Amex–95–29 and should be submitted by October 11, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23293 Filed 9–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36231; File No. SR–NYSE–95–17]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Specialists Displaying the Full Size of Certain Orders

September 14, 1995

I. Introduction

On April 21, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to issue an Information Memo discussing procedures under exchange rules with respect to the display of limit orders.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35687 (May 8, 1995), 60 FR 25751 (May 12, 1995). No comments were received on the proposal.

II. Description

The Exchange proposes to issue an Information Memo outlining its policy with respect to displaying certain orders received by a specialist. The policy requires specialists to display the full size of all orders received through the SuperDOT order routing system and the full size of all orders received by specialists manually that are subsequently entered into the electronic book. This requirement includes increasing the size of a quotation for orders at the same price as the current bid or offer. The policy also sets forth the specialist's responsibility when a member who gives an order requests that less than the full size of the order be shown in the quotation. In that situation, a specialist is only responsible to enter in the electronic book and show the size requested. The portion not requested to be shown will be handled manually as a ''held'' order, but will be last in terms of time priority to all other orders on the specialist's electronic book at that price. If the specialist is subsequently requested to show an additional portion, or the remainder, of the order, the specialist will enter the price and size into the electronic book, with the order so entered having priority on the book *vis-à-vis* other orders as of the time of entry on the book. The specialist will increase the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

quotation size to reflect the additional amount entered on the book.

Specialists will be expected to display as soon as practicable any order that, in relation to currently market conditions in a particular security, represents a material change in the supply or demand for that security. For example, if the market in XYZ security is 20 bid to 20¼ offered, 1,000 shares bid and 1,000 shares offered, and the specialist receives an order to sell 10,000 shares at 20¼, the specialist will be expected to change the size of the offer to 11,000 shares as soon as he or she becomes aware of the order. If the quotation already reflects significant supply (demand), and the specialist receives an order that is relatively *de minimis* in relation to such supply (demand), the specialist may take a reasonable period of time, which should not generally exceed two minutes, before updating the quotation, so as to avoid constant revisions of quotations that do not reflect material changes in supply and demand. For example, if the market in XYZ security is 20 bid to 20¼ offered, 5,000 shares bid and 50,000 shares offered, and the specialist receives an order to sell 200 shares at 20¼, the specialist will be permitted to wait a reasonable period of time before changing the size of the offer to 50,200 shares.

Under exceptional circumstances, the specialist will not necessarily display the full quotation size. For example, as noted in NYSE Information Memo 94–32,[3] when a member proposes to effect a block transaction at a significant premium or discount from the prevailing market and the specialist is aware of interest on the contra side, it may be more appropriate for the specialist and Floor Official(s) to gap the quotation in a security for a brief period, generally not exceeding five minutes, with a view toward contacting and/or attracting contra market interest. In such case, the bid or asked price should touch the prior sale price and reflect size of 100 shares. The same principles will also apply to a situation where there is a sudden influx of market orders on one side of the market that would be likely to result in significant price change.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b) and 11A.[4] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. The Commission also believes the proposal is consistent with Section 11A(1)(b) of the Act, which directs the Commission to assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in securities. Rule 11Ac1–1 under the Act[5] requires exchanges to establish and maintain procedures and mechanisms for collecting bids, offers, quotation sizes and aggregate quotation sizes from brokers or dealers, processing such bids, offers and sizes, and making such bids, offers and sizes available to quotation vendors.

The Commission has long believed that transparency—the real-time, public dissemination of trade and quote information—plays a fundamental role in the fairness and efficiency of the secondary markets. Commission efforts to ensure that data concerning trading interest, volume, and prices is available to investors, analysts, and all other participants in the U.S. equity markets, have been predicated on the Commission's belief that transparency helps to link dispersed markets and improves the price discovery, fairness, competitiveness, and, attractiveness of equity markets.

In its Market 2000 Study,[6] the Division of Market Regulation (''Division'') recommended that the self-regulatory organizations encourage the display of all limit orders in listed stocks that are better than the best intermarket quotes, because it believed that such a requirement would provide a more accurate picture of trading interest, result in tighter spreads, and contribute to improved price discovery. In NYSE Information Memo No. 93–12, the Exchange advised specialists that, pursuant to NYSE Rule 79A.10,[7] all orders received by specialists through the SuperDOT system were deemed to be accompanied by an instruction that they be quoted at the limit price on the order when such limit price is *better* than the current quotation.

The Exchange now is expanding this policy by requiring that specialists display the full size of all orders (unless specifically instructed otherwise), including increasing the size of a quotation for orders at the same price as the current bid or offer.[8] The policy being adopted herein, in combination with the policy expressed in NYSE Information Memo 93–12, will require in most circumstances that specialists' quotations reflect the full size of the best prices available for securities traded on the NYSE.[9]

The Commission believes that the NYSE proposal to require specialists to display the full size of limit orders received through SuperDot or limit orders received manually and subsequently entered into the electronic book (unless requested by a member to display less than the full size of an order) will add to the transparency of the market for stocks traded on the NYSE. The proposal will ensure that the

[3] *See* Securities Exchange Act Release No. 34303 (July 1, 1994), 59 FR 35157 (July 8, 1994).

[4] 15 U.S.C. 78f(b) and 78k–1 (1988).

[5] 17 CFR 240.11Ac1–1 (1994).

[6] *See* Division of Market Regulation, SEC, *Market 2000: An Examination of Current Equity Market Developments*, January 1994, at Study IV (''Market 2000 Study''). The Division also recommended that the NASD consider encouraging the display of limit orders in Nasdaq securities that improve the best Nasdaq quotation.

[7] NYSE Rule 79A.10 requires that all Exchange members represent limit orders at their limit prices when requested by their customers to do so.

[8] For orders at the same price as the current bid or offer, specialists will be expected to increase the size of the quotation as soon as practicable when, in relation to current market conditions in a particular security, the order represents a material change in the supply or demand for that security. Nonetheless, if the quotation already reflects significant supply (demand), and the specialist receives an order at the current bid or offer that is relatively *de minimis* in relation to such supply (demand) at that price, the specialist may take a reasonable period of time, which should not generally exceed two minutes, before increasing the size of the quotation. The Commission notes that an accumulation of orders considered *de minimis* individually could, in the aggregate, represent a material change in the supply or demand for a security. In that case, the specialist should increase the size of the quotation as soon as practicable to reflect the new aggregate interest.

[9] NYSE Information Memo 93–12 sets forth the Exchange's view that all limit orders received by specialists through the SuperDot system are deemed to contain an implicit instruction to represent such orders at their limit prices. This memo states that specialists must reflect SuperDot limit orders in the Exchange's published quotation at their limit prices as soon as practicable following receipt of the orders. It also states that the mere existence of different size between the existing bid and offer, or a substantial sized bid or offer on the same side of the market as the limit order (compared to the size of the limit order received), would not justify failure to represent the limit order at the limit price immediately. Consequently, the display requirement in Information Memo 93–12 precludes the application of the *de minimis* standard discussed herein (*see supra* note 8) to situations requiring the specialist to change the current quotation to reflect a limit order at a better price. In fact, the policy being adopted in the instant proposal, in conjunction with the policy expressed in Information Memo 93–12, requires specialists in almost all instances to change their quotation upon the receipt of a limit order that betters the market and also to display the full size of that order regardless of its size in relation to the size of the existing bid or offer.

NYSE disseminates quotes that reflect not only the best bid and offer in a stock, but also the depth of the trading interest at those prices. This added transparency should benefit investors and promote the efficiency of the NYSE market.

IV. Conclusion

It is Therefore Ordered, pursaunt to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–95–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23297 Filed 9–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21356; 811–5913]

The INDEPENDENCE CAPITAL Group of Funds, Inc.; Notice of Application for Deregistration

September 13, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The INDEPENDENCE CAPITAL Group of Funds, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on July 26, 1995 and amended on August 29, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Bellevue Park Corporate Center, 103 Bellevue Parkway, Wilmington, Delaware, 19809.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, an open-end, registered investment company, incorporated in the state of Maryland on September 21, 1989. Applicant has three money market series: Money Market Fund; Government Money Market Fund; and Tax-Free Money Market Fund (collectively, the ''Money Market Funds''). Each Money Market Fund has two classes of stock: INDEPENDENCE CAPITAL Class and Janney Montgomery Scott Class. In addition, applicant has eight non-money market series: Total Return Growth Fund; Opportunities Fund, Total Return Bond Fund; Municipal Bond Fund; New York Municipal Bond Fund; Short-Intermediate Government Fund; Balanced Fund; and Small Capitalization Stock Fund. Each Non-Money Market Fund has one class of common stock.

2. On September 29, 1989, applicant filed a Notification of Registration on Form N–8A and a registration statement on Form N–1A pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective on January 31, 1990. The initial public offering for: Total Return Growth Fund, Opportunities Fund, and Total Return Bond Fund commenced on February 1, 1990; the Money Market Funds commenced on April 30, 1990; Municipal Bond Fund and New York Municipal Bond Fund commenced on November 1, 1990; Short-Intermediate Government Fund commenced on April 30, 1992; and Balanced Fund and Small Capitalization Stock Fund commenced on December 31, 1993.

Merging Series

3. On December 12, 1994, applicant's board of directors approved a reorganization plan whereby shares of common stock of Total Return Growth Fund, Opportunities Fund, Total Return Bond Fund, Municipal Bond Fund, New York Municipal Bond Fund, Short-Intermediate Government Fund, and Balanced Fund (collectively, the ''Non-Money Market Funds'') would be exchanged for shares of beneficial interest of corresponding series of Sentinel Group Funds, Inc. (the ''Acquiring Fund''). The board approved the reorganization because the Acquiring Fund had twice the asset size of applicant and was generally able to achieve greater economies of scale and lower expense ratios than applicant. In addition, the Acquiring Fund had a greater capacity for distribution.

4. On January 6, 1995, preliminary copies of proxy materials were filed with the SEC. Applicant and the Acquiring Fund also entered into an Agreement and Plan of Reorganization dated as of February 6, 1995 (the ''Reorganization Agreement''). On February 9, 1995, definitive proxy materials were distributed to shareholders of the Non-Money Market Funds. At a special meeting held on March 10, 1995, the shareholders of the Non-Money Market Funds approved the Reorganization Agreement.

5. On March 24, 1995, Total Return Growth Fund had 2,289,319.870 shares outstanding with an aggregate and per share net asset value of $25,653,998 and $11.21, respectively. On that date, Opportunities Fund had 2,491,972.672 shares outstanding with an aggregate and per share net asset value of $26,240,738 and $10.53, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of Total Return Growth Fund and Opportunities Fund to the Acquiring Fund's Common Stock Fund in exchange for shares of beneficial interest of Acquiring Fund's Common Stock Fund.

6. On March 24, 1995, Balanced Fund had 426,144.768 shares outstanding with an aggregate and per share net asset value of $4,084,150 and $9.58, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of Balanced Fund to Acquiring Fund's Balanced Fund in exchange for shares of beneficial interest of Acquiring Fund's Balanced Fund.

7. On March 24, 1995, Total Return Bond Fund had 3,219,052.158 shares outstanding with an aggregate and per share net asset value of $31,075,198 and $9.65, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of Total Return Bond Fund to Acquiring Fund's Bond Fund in exchange for shares of beneficial interest of Acquiring Fund's Bond Fund.

8. On March 24, 1995, Municipal Bond Fund had 414,491.194 shares outstanding with an aggregate and per share net asset value of $4,493,940 and

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1994).

$10.82, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of Municipal Bond Fund to Acquiring Fund's Tax-Free Income Fund in exchange for shares of beneficial interest of Acquiring Fund's Tax-Free Income Fund.

9. New York Municipal Bond Fund had 514,573.737 shares outstanding with an aggregate and per share net asset value of $5,759,369 and $11.19, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of New York Municipal Bond Fund to Acquiring Fund's New York Tax-Free Income Fund in exchange for shares of beneficial interest of Acquiring Fund's New York Tax-Free Income Fund.

10. On March 24, 1995, Short-Intermediate Government Fund had 1,578,443.284 shares outstanding with an aggregate and per share net asset value of $15,218,556 and $9.64, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of Short-Intermediate Government Fund to Acquiring Fund's Short-Intermediate Government Fund in exchange for shares of beneficial interest of Acquiring Fund's Short-Intermediate Government Fund.

11. Each shareholder of the Non-Money Market Fund received, in exchange for his or her shares in applicant, shares of the corresponding series of the Acquiring Fund having a net asset value equal to the aggregate net asset value of his or her shares in applicant immediately prior to the reorganization.

Liquidating Series

12. On December 29, 1994, Small Capitalization Stock Fund had 100,010 shares outstanding with an aggregate and per share net asset value of $1,000,100 and $10.00, respectively. On that date, the sole shareholder gave notice that it wanted to redeem its entire holdings. On December 30, 1995 complete redemption distributions were made. Such distributions effectively liquidated the Small Capitalization Stock Fund.

13. On March 24, 1995, Money Market Fund had 363,147.490 INDEPENDENCE CAPITAL Class shares outstanding with an aggregate and per share net asset value of $363,154 and $1.00, respectively. Government Money Market Fund had 3,130,200 INDEPENDENCE CAPITAL Class shares outstanding with an aggregate and per share net asset value of $3,136 and $1.00, respectively. Tax-Free Money Market Fund had 111,213.310 INDEPENDENCE CAPITAL Class shares outstanding with an aggregate and per share net asset value of $111,215 and $1.00, respectively. On March 27, 1995, applicant made complete redemption distributions to the shareholders of the INDEPENDENCE CAPITAL Class of stock of the Money Market Funds.

14. On June 9, 1995, Money Market Fund had 407,919,678.080 Janney Montgomery Scott Class shares outstanding with an aggregate and per share net asset value of $407,919,678 and $1.00, respectively. Government Money Market Fund had 279,565,212.580 Janney Montgomery Scott Class shares outstanding with an aggregate and per share net asset value of $279,565,213 and $1.00, respectively. Tax-Free Money Market Fund had 107,965,238.920 Janney Montgomery Scott Class shares outstanding with an aggregate and per share net asset value of $107,965,239 and $1.00, respectively. On June 9, 1995, the sole shareholder of the Money Market Funds' Janney Montgomery Class of stock gave notice that it wanted to redeem its holdings and complete redemption distributions were made.

General Matters

15. Total expenses of the reorganization were $313,000. Total Return Growth Fund bore $1,543.65 and Opportunities Fund bore 1,502.04. The remainder was borne by applicant's investment adviser, Independence Capital Management, Inc. Such expenses were for printing and professional fees.

16. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

17. Applicant will terminate its existence as a Maryland corporation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23296 Filed 9–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21354; 812–7679]

The Managers Funds and The Managers Funds, L.P.; Notice of Application

September 13, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Managers Funds (the ''Trust'') and The Managers Funds, L.P. (the ''Manager'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 15(a) and rule 18f–2.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting the Manager to enter into sub-advisory agreements on behalf of each series of the Trust without receiving approval of the series' shareholders.

FILING DATES: The application was filed on February 8, 1991, and amendments thereto were filed on May 18, 1994, July 29, 1994, July 28, 1995, and September 13, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 40 Richards Avenue, Norwalk, Connecticut 06854.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney at (202) 942–0579, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a registered open-end management investment company organized as a Massachusetts business trust. The Trust is a series company currently consisting of eleven separate series, each constituting a different investment portfolio (each a ''Fund'' and, collectively, the ''Funds''). Applicants also request relief with

respect to any Fund that may be created in the future.

2. The Manager serves as investment manager to each Fund. Under its investment management agreement with the Trust, the Manager provides certain administrative services to the Trust and the Funds. In addition, the Manager selects and recommends to the trustees investment advisers to manage the portfolio of each Fund (the ''Sub-Advisers''). The portfolio of a Fund may be managed by a single Sub-Adviser or may be allocated by the Manager between or among more than one Sub-Adviser.

3. The Manager monitors the performance of the various Sub-Advisers and researches and tracks the performance of potential new Sub-Advisers. The Manager has the authority to reallocate, from time to time, Fund assets among Sub-Advisers or terminate a sub-advisory relationship without prior approval by the trustees.[1] The Manager also makes recommendations to the trustees for the addition of new Sub-Advisers as it deems appropriate. For these services the Manager receives a management fee from each Fund, and the Manager in turn pays the advisory fee of each Sub-Adviser.

4. Applicants request an order permitting the Manager to enter into contracts with new Sub-Advisers for the Funds without obtaining shareholder approval. Although shareholders will not vote on Sub-Adviser changes, applicants will provide shareholders with an information statement that includes all the information about a new Sub-Adviser or sub-advisory contract that would be included in a proxy statement. The investment management contracts between the Manager and the Trust or between the Manager and the Funds would remain subject to the shareholder voting requirements of the Act.

5. In 1983, the SEC issued an order to applicants granting an exemption similar to the one now being requested.[2] At that time, each investor in the Funds entered into a separate asset management consulting agreement with the Manager and paid an individually negotiated fee directly to the Manager. No advisory fees were paid by the Funds to the Manager. Subsequently, the fee structure was changed so that the Funds, rather than individual shareholders, pay management fees to the Manager. Applicants ceased relying on the 1983 order after the Funds' fee structure was changed. The requested order would supersede the 1983 order.

Applicants' Legal Analysis

1. Section 15(a) makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants argue that the requested exemption would permit the Manager to perform to the fullest extent the principal function the Funds are paying it to perform: selecting Sub-Advisers, monitoring their performance, and making whatever changes in the roster of Sub-Advisers are appropriate, subject to the approval of the Fund trustees. To require that shareholders approve each new Sub-Adviser would result not only in unnecessary administrative expense to the Funds, but could result in harmful delays in executing changes in Sub-Advisers or their sub-advisory agreements that the Manager and the trustees have determined are necessary.

3. Primary responsibility for management of the Funds is vested in the Manager, subject to oversight by the trustees. The Manager continuously monitors the performance of each Sub-Advisor, and from time to time recommends the replacement of a particular Sub-Adviser, or allocation of a portion of the assets of a particular Fund to an additional Sub-Adviser. Applicants argue that this practice distinguishes the Trust from the vast majority of other investment companies. Applicants note that the Trust currently has eleven Funds that were organized at various times over the last eleven years. During this time, fifty different Sub-Advisers have been employed by the Trust.

Applicants state that the frequency of Sub-Adviser changes and the reasons underlying these changes relate to a variety of factors including, the size of a Fund's assets, the type of assets the Fund purchases, the performance of a particular Sub-Adviser, a change in control that causes the sub-advisory agreement to terminate, or a decision to change investment styles. Applicants argue that their arrangements are distinguishable from those of most other investment companies where the identity of the company providing portfolio management is the primary basis for choosing among funds with similar investment objectives and policies.

4. Applicants submit that investors will be in a position to make a fully informed investment decision as to the purchase, redemption, or retention of Fund shares. The Trust's prospectus discloses information concerning the identity, ownership, and qualifications of the Sub-Advisers in full compliance with Form N–1A. Further, the information statements would provide shareholders with all information regarding a new Sub-Adviser or a material change in a sub-advisory agreement to the same extent as would set forth in a proxy statement. These arrangements are consistent with the protection of investors because they both permit the Trust to avoid the administrative burden and expense associated with a proxy solicitation (which benefits all shareholders, including those that might redeem their shares after review of an information statement relating to a new Sub-Adviser or a material change in a sub-advisory agreement they did not favor) and provide full disclosure to investors, permitting them to ''vote with their feet.''

5. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the same extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the policies and purposes fairly intended by the policies and provisions of the Act. Applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. The Manager will provide general management and administrative services to the Trust, and, subject to review and approval by the board of trustees (the ''Trustees''), will (a) set the Funds' overall investment strategies; (b) select Sub-Advisers; (c) monitor and evaluate the performance of Sub-Advisers; (d) allocate and, when appropriate, reallocate a Fund's assets among its Sub-Advisers; and (e) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the Trust's investment objectives, policies, and restrictions.

2. The operation of the Funds in the manner described in this application has been approved by a majority of each Fund's outstanding voting securities, as

[1] As a matter of practice, however, the trustees are kept apprised of such actions contemplated by the Manager, and all such actions are subject to review by the trustees.

[2] Investment Company Act Release Nos. 13594 (Oct. 24, 1983) (notice) and 13635 (Nov. 22,1983) (order). At the time of the 1983 order, only nine of the current eleven Funds were in existence.

defined in the Act. Before a future Fund that does not presently have an effective registration statement may rely on the order, its initial shareholder will approve the multi-manager structure before that Fund's shares are offered to the public.

3. The Trust will furnish to shareholders the information about a new Sub-Adviser or material change in a sub-advisory contract that would be included in a proxy statement. The Trust will meet this condition by providing shareholders, within sixty (60) days of the hiring of a Sub-Adviser or the implementation of any material change to the terms of a sub-advisory contract, with an information statement complying with Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 (the ''Exchange Act''). This information statement also will meet the requirements of Schedule 14A under the Exchange Act.

4. Each Fund's prospectus will disclose the existence, substance, and effect of the order requested hereby.

5. No trustee or officer of the Trust or general partner or officer of the Manager owns or will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such trustee, officer or general partner) any interest in any Sub-Adviser, except for: (a) ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

6. The Manager will not enter into any sub-advisory contract with any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Manager (an ''Affiliated Sub-Adviser'') without such contract, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

7. At all times, a majority of the trustees of the Trust will be persons each of whom is not an ''interested person'' of the Trust as defined in section 2(a)(19) of the Act. (''Independent Trustees''), and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

8. When a change in Sub-Advisers is proposed for a Fund that has an Affiliated Sub-Adviser, the trustees, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trustee's board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 95–23294 Filed 9–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21357; 812–9612]

Sierra Trust Funds, et al.; Notice of Application

September 13, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Sierra Trust Funds, The Sierra Variable Trust (collectively, the ''Existing Funds''), any registered investment companies, or series thereof, for which Sierra Investment Advisors Corporation (''Sierra Advisors'') or any entity controlling, controlled by, or under common control with Sierra Advisors, acts in the future as investment adviser or principal underwriter (''Future Funds,'' and together with the Existing Funds, the ''Funds''), and Sierra Advisors.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a) and rule 2a–7 thereunder, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1), and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit each applicant investment company to enter into deferred compensation arrangements with its trustees who are not interested persons of the company.

FILING DATES: The application was filed on May 19, 1995 and amended on August 18, 1995 and September 8, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 9301 Corbin Avenue, Suite 333 Northridge, California 91324.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Existing Funds is a Massachusetts business trust registered under the Act as an open-end management investment company. The Sierra Trust Funds continuously offers its shares for sale to the general investing public and has three money market series. The Sierra Variable Trust continuously offers its shares for sale to insurance company separate accounts that fund variable annuity contracts and has one money market series. Sierra Advisors is the investment adviser to each Fund and is registered under the Investment Advisers Act of 1940.

2. Each Existing Fund has a board of trustees (collectively, the ''Boards''), a majority of the members of which are not ''interested persons'' (the ''Independent Trustees'') of such Existing Fund within the meaning of section 2(a)(19) of the Act. Each Independent Trustee or one or more of the Funds receives fees each year which collectively are, and are expected to continue to be, insignificant in comparison to the total net assets of the Funds. Applicants request an order to permit the Independent Trustees to elect to defer receipt of 50% or more of their trustees' fees pursuant to a deferred compensation plan (the ''Plan'') and related election agreement entered into between each Independent Trustee and the appropriate Fund. Under the Plan, the Independent Trustees could defer payment of trustees' fees (the ''Deferred Compensation'') in order to defer payment of income taxes, or for other

reasons. Participation in the Plan will be limited to the Independent Trustees.

3. Under the Plan, the deferred fees payable by a Fund to a participating Independent Trustee (a ''Participant'') will be credited to a book reserve account established by the Fund (an ''Account''), as of the first business day following the date such fees would have been paid to the Independent Trustee. The value of an Account will be determined by reference to a hypothetical investment in shares of one or more of the Funds, as selected by each Participant or the Boards from a list as designated from time to time by the committee established to administer the Plan, in its sole discretion, as eligible for hypothetical investment under the Plan (the ''Investment Funds''). Each Participant may elect to have his or her Deferred Compensation treated as if it had been invested and reinvested in shares of one or more of the Investment Funds (the ''Underlying Securities'').

4. With respect to open-end Funds, the initial value of Deferred Compensation credited to an Account will be effected at the respective current net asset value of each such open-end Fund. With respect to closed-end Funds, the initial value of Deferred Compensation credited to an Account will be effected at the respective current market price, less any brokerage fees which would be payable upon the acquisition of shares of such closed-end Fund in the open market. Thereafter, the value of such Account will fluctuate as the net asset value of the shares of each open-end Fund fluctuates or as the market value of the shares of each closed-end Fund fluctuates, as the case may be, and will also reflect the value of assumed reinvestment of dividends and capital gains distributions from each open-end and closed-end Fund in additional shares of such Fund.

5. The Funds' respective obligations to make payments of amounts accrued under the Plan will be general unsecured obligations, payable solely from their respective general assets and property. The Plan provides that the Funds will be under no obligation to purchase, hold or dispose of any investments under the Plan, but, if one or more of the Funds choose to purchase investments to cover their obligations under the Plan, then any and all such investments will continue to be a part of the respective general assets and property of such Funds.

6. As a matter of prudent risk management, to the extent a Participant selects an Investment Fund other than the Fund for which the Participant is deferring his or her trustee's fees, each Fund intends to and, with respect to any money market Fund that values its assets by the amortized cost method, will, purchase and hold shares of the Underlying Securities in amounts equal in value to the deemed investments of the Accounts of its Participants. Thus, in cases where the Funds purchase shares of the Underlying Securities, liabilities created by the credits to the Accounts under the Plan are expected to be matched by an equal amount of assets (i.e., a direct investment in Underlying Securities), which assets would not be held by the Fund if trustee's fees were paid on a current basis.

7. Payments under the Plan will be made in one lump sum or in generally equal annual installments over a five year period beginning as soon as administratively feasible after the Participant's termination of service. In the event of Participant's death, amounts payable under the Plan will thereafter be payable to the Participant's designated beneficiaries. In all other events, a Participant's right to receive payments will be nontransferable. In the event of the liquidation dissolution, or winding up of a Fund or the distribution of all or substantially all of a Fund's assets and property to its shareholders (unless the Fund's obligation under the Plan have been assumed by a financially responsible party purchasing such assets) or in the event of a merger or reorganization of a Fund (unless prior to such merger or reorganization, the Fund' Board determines that the Plan shall survive the merger or reorganization), all unpaid amounts in the Accounts maintained by such Fund shall be paid in a lump sum to the Participants on the effective date thereof.[1] The Plan will not obligate any participating Fund to retain a trustee in such a capacity, nor will it obligate any Fund to pay any (or any particular level of) trustee's fees to any trustee.

Applicants' Legal Analysis

1. Applicants request an order which would exempt the Funds (including each Fund's successors in interest [2]): (a) under section 6(c) of the Act from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a) and rule 2a–7 thereunder, to the extent necessary to permit the Funds to adopt and implement the Plan; (b) under sections 6(c) and 17(b) of the Act from section 17(a)(1) to permit the funds to sell securities for which they are the issuer to participating Funds in connection with the Plan; and (c) under section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to effect certain joint transactions incident to the Plan.

2. Sections 18(a) and 18(c) restrict the ability of a registered closed-end investment company to issue senior securities.[3] Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact these sections. The Plan would not: (a) induce speculative investments or provide opportunities for manipulative allocation of any Fund's expenses or profits; (b) affect control of any Fund; or (c) confuse investors or convey a false impression as to the safety of their investments. All liabilities created under the Plan would be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The Plan would set forth all such restrictions, which would be included primarily to benefit the Participants and would not adversely affect the interests of the trustees or of any shareholder.

4. Sections 22(g) and 23(a) prohibit registered open-end investment companies and closed-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. These provisions prevent the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plan would merely provide for deferral of payment of such fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

[1] Applicants acknowledge that the requested order would not permit a party acquiring a Fund's assets to assume a Fund's obligations under the Plan if such obligations would constitute a violation of the Act by the assuming party.

[2] ''Successors in interest'' is herein limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[3] Although none of the Funds currently are closed-end funds, applicants request relief from sections 18(a), 18(c), and 23(a) of the Act in the event that Future Funds may include closed-end funds.

5. Section 13d(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. The relief requested from section 13(a)(3) would extend only to Future Funds for which Sierra Advisors becomes investment adviser subsequent to such Future Fund's initial public offering and that have investment policies prohibiting the purchase of investment company shares without shareholder approval. Applicants believe that relief from section 13(a)(3) is appropriate to enable the affected Funds to invest in Underlying Securities without a shareholder vote. Applicants will provide notice to shareholders in the prospectus of each affected Fund of the Deferred Compensation under the Plan. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the respective Fund, and will at all times equal the value of the Fund's obligations to pay deferred fees (plus any increase in value thereof.)

6. Rule 2a–7 imposes certain restrictions on the investments of ''money market funds.'' as defined under the rule, that would prohibit a Fund that is a money market Fund from investing in the shares of any other Fund. Applicants believe that the requested exemption would permit the Funds to achieve an exact matching of Underlying Securities with the deemed investments of the Accounts, thereby ensuring that the deferred fees would not affect net asset value.

7. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the relief requested from the above provisions satisfies this standard.

8. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company. Funds that are advised by the same entity may be ''affiliated persons'' under section 2(a)(3)(C) of the Act by reason of being under common control. Applicants asserts that section 17(a)(1) was designed to prevent, among other things, sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interest in such enterprises. Applicants submit that the sale of securities issued by the Funds pursuant to the Agreement does not implicate the concerns of Congress in enacting this section, but merely would facilitate the matching of each Fund's liability for deferred trustees' fees with the Underlying Securities that would determine the amount of such Fund's liability.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the general purposes of the Act. Applicants assert that the proposed transaction satisfies the criteria of section 17(b). The finding that the terms of the transaction are consistent with the policies of the registered investment company is predicated on the assumption that relief is granted from section 13(a)(3). Applicants also request relief from section 17(a)(1) under section 6(c) to the extent necessary to implement the Deferred Compensation under the Plan and Agreement on an ongoing basis.

10. Section 17(d) and rule 17d–1 generally prohibit a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan ''on a basis different from or less advantageous than that of'' the affiliated person. Participants will not receive a benefit, directly or indirectly, that would otherwise inure to a Fund or its shareholders. Participants will receive tax deferral but the Plan otherwise will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the deferred fees were paid on a current basis. When all payments have been made to a Participant, the Participant will be no better off (apart from the effect of tax deferral) than if he or she had received trustees fees on a current basis and invested them in Underlying Securities.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. With respect to the relief requested from rule 2a–7, any money market Fund, or series thereof, that values its assets in accordance with a method prescribed by rule 2a–7 will buy and hold Underlying Securities that determine the value of the Accounts to achieve an exact match between such Fund's or series' liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the Fund will vote such shares in proportion to the votes of all other shareholders of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23295 Filed 9–19–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from October 23 through October 26, 1995, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held October 23 and October 26 in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, and on October 24 and October 25 at the National Business Aircraft Association, 1200 Eighteenth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. W. Frank Price, Executive Director, ATPAC, Air Traffic Rules and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held October 23 and October 26 in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC, and on October 24 and October 25 at the

National Business Aircraft Association, 1200 Eighteenth Street, NW, Washington, DC.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than October 20, 1995. The next quarterly meeting of the FAA ATPAC is planned to be held from January 22–25, 1996, in San Francisco, CA.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on September 14, 1995.

Charles R. Bramble,

Acting Manager, Procedures Division, ATP–100.

[FR Doc. 95–23340 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

DATES: The meeting will be held on October 17 and 18, 1995 beginning at 8:30 a.m. on October 17. Arrange for oral presentations by October 5, 1995.

ADDRESSES: The meeting will be held at the Hawthorne Hotel; On The Common; Salem, MA 01970.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held October 17 and 18, 1995 at the Hawthorne Hotel, On The Common, Salem, MA 01970.

The agenda for the meeting will include:

- Opening remarks.
- Review of action items.
- Reports of working groups.
- Vote on a draft Advisory Circular and Notice of Proposed Rulemaking on Hydraulic Test Harmonization.
- Vote on a draft Advisory Circular on 16G Seats.
- Vote on a draft Advisory Circular and Notice of Proposed Rulemaking on Inclement Weather.
- Vote on a draft Notice of Proposed Rulemaking on Braked Roll Conditions.
- Vote on a draft Notice of Proposed Rulemaking on Repairs.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 5, 1995, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on September 14, 1995.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–23344 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–M

Impose and Use, and Use a Passenger Facility Charge (PFC) at Pensacola Regional Airport, Pensacola, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to Impose and Use, and Use a PFC at Pensacola Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 20, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frank Miller, Airport Director of the City of Pensacola at the following address: 2430 Airport Blvd, Suite 225, Pensacola, FL 32504–8977.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Pensacola under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra A. Nazar, Project Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida, 32827, 407–648–6586. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to Impose and Use, and Use a PFC at Pensacola Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 6, 1995, the FAA determined that the application to Impose and Use, and Use a PFC submitted by the City of Pensacola was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 21, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1993.

Proposed charge expiration date: December 31, 2018.

Total estimated PFC revenue: $22,208,000.

Brief description of proposed project(s): Expand Terminal Building, Expand Terminal Apron/Baggage.

Class or classes of air carriers which the public agency has requested to be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office

listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Pensacola.

Issued in Orlando, Florida on September 6, 1995.

Charles E. Blair,

Manager, Orlando Airports District Office Southern Region.

[FR Doc. 95–23345 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Supplemental Environmental Impact Statement: Salt Lake County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement will be prepared to amend the design features on a proposed highway project in Salt Lake County, Utah.

FOR FURTHER INFORMATION CONTACT: Tom Allen, Project Development Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone: (801) 963–0182; or Byron Parker, Preconstruction Engineer, Utah Department of Transportation, Region Two, 2060 South 2400 West, Salt Lake City, Utah 84104, Telephone: (801) 975–4806.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, will prepare a supplemental environmental impact statement (SEIS) on a proposal to amend the design features of the West Valley Highway (Bangerter Highway) 9000 to 126000 South, project to accommodate an at-grade intersection with 9800 South. The record of decision was made on March 7, 1994 on the final EIS, FHWA–UT–EIS–92–01–F. West Valley Highway (Bangerter Highway), 9000 South to 12600 South, in Salt Lake County, Utah. The final EIS did not address an intersection connection with 9800 South because the road was constructed by South Jordan City after the record of decision on the final EIS was made.

The proposal would provide for an intersection at 9800 South which is on the long range plan for South Jordan City. Alternatives under consideration include: (1) No Action, which would require the construction of a grade separated structure without access to Bangerter Highway; and (2) At-grade Intersection, with access to Bangerter Highway. The proposal is considered to be limited in scope and does not affect other project activities, therefore, design and construction of Bangerter Highway, from 9000 South to 12600 South, will proceed as provided for in 23 CFR 771.130(f).

South Jordan City has conducted several public meetings and a public hearing leading to their decision to construct 9800 South and to request an intersection with the Bangerter Highway. Considerable public interest has been identified, both for and against the intersection. Knowledge of this interest has led to the decision to conduct an SEIS. No additional formal scoping is expected at this time. A public hearing will be held. Public notice will be given of the time and place of the public hearing. The draft SEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited for all interested parties. Comments or questions concerning this proposed action and the SEIS should be directed to the FHWA or UDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: September 11, 1995.

Michael G. Ritchie,

Division Administrator, Salt Lake City, Utah.

[FR Doc. 95–23261 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–22–P–M

National Highway Traffic Safety Administration

[Docket No. 95–40; Notice 2]

Vector Aeromotive Corporation Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Vector Aeromotive Corporation of Jacksonville, Florida, applied to be exempted from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.* The basis of the application was that compliance will cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application was published on June 26, 1995, and an opportunity afforded for comment (60 FR 33029). This notice grants the application.

According to its application, Vector intends to begin production of a two-seat high performance sport car in September 1995 called the Vector Avtech SC (''Avtech''). Design concept specifications were developed several years ago for the Avtech, and a prototype shown at the Geneva Automobile Show in March 1992. During this time, Vector produced a sports car called the Vector W8. This car went out of production in early 1993 after a run of 22 vehicles, and Vector has produced no motor vehicles since.

Vector's single largest shareholder is V'Power Corp., a Bahamian Corporation, which is also the controlling shareholder of Automobili Lamborghini S.p.A. Lamborghini, which manufactured 1,475 cars between 1989 and 1994, was recently granted a temporary exemption from Motor Vehicle Safety Standard No. 214 *Side Impact Protection* (59 FR 59458). V'Power will provide Vector with $5.5 million in funds to finance Vector's proposed development schedule over the next 12 months. Vector's cumulative net losses in the three years preceding the filing of its application were approximately $12,400,000.

Vector evaluated ''the original Avtech prototype'' in order to determine ''what changes had to be made to install a driver and passenger side airbag system. The specific areas which are projected to require design changes or additional development are related to the main chassis design forward of the A pillar, instrument panel, steering column, steering wheel, and seats.'' The applicant has begun to integrate these design changes into the Avtech SC. Vector has received airbag development program cost estimates of approximately $1,500,000 from airbag suppliers. At the time of its application, it stated that it had already spent $56,000 in pursuit of the project and an estimated 1000 man hours. Vector estimates that a year will be required in order to complete development, and that vehicles conforming to Standard No. 208 will be available in the time period June–September 1996. However, to allow for development problems, Vector asked for an exemption until May 1, 1997. In the meantime, it promises that the Avtech will be equipped ''with an active, three point, seat belt system that meets, or exceeds, all FMVSS performance requirements.''

The applicant also argued that an exemption would be in the public

interest as its development and production ''will result in additional employment at the factory, vendor, dealer, and service levels.'' Its success ''should establish the US as a major source for ultrahigh performance vehicles and technology''. The Avtech will be equipped with ''the only twelve cylinder engine offered by a US manufacturer.'' In its view, an exemption would be consistent with traffic safety objectives because the vehicle will otherwise comply with all applicable Federal motor vehicle safety standards. In addition, the company's production would be limited. It estimated sales of 60 cars through the second quarter of 1996.

No comments were received on the petition.

Pursuant to 49 U.S.C. 30113(b)(3)(B)(i), small manufacturers such as Vector may be temporarily exempted from a Federal motor vehicle safety standard such as Standard No. 208 if ''compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.'' The application must contain ''a complete description of the manufacturer's good faith effort to comply'' with the standard (49 U.S.C. 30113(c)(1)).

As a general rule, the agency is sympathetic to the economic problems of small manufacturers and tends to equate a cumulative net loss position to a per se showing of ''substantial economic hardship.'' NHTSA recognizes that the engineering and testing of prototypes are costly and may be more easily borne by small manufacturers if conducted over a more extended period of time than is the custom with the major manufacturers. With the cumulative net losses of over $12,000,000 as mentioned above, Vector has made a sufficient demonstration to convince the agency that, to require immediate compliance with the automatic restraint requirements of Standard No. 208 would cause it substantial economic hardship.

However, in order for the agency to make the requisite finding of good faith, a manufacturer who applies for an exemption under section 30113(b)(3)(B)(i) must demonstrate that it has made at least a colorable attempt to meet the requirements of the standard from which it requests exemption.

In 1991, Congress decided that 95% of passenger cars manufactured between September 1, 1996, and September 1, 1997, must be equipped with a driver and front seat passenger airbag, plus a manual lap/shoulder belt, and that 100% of all cars manufactured on and after September 1, 1997, be so equipped. This requirement originated in Section 2508 of the NHTSA Authorization Act of 1991 (part of the Intermodal Surface Transportation Efficiency Act of 1991, known as ''ISTEA''), enacted in December 1991. To implement this requirement, NHTSA published a notice of proposed rulemaking (NPRM) on December 14, 1992 and a final rule on September 2, 1993.

Thus, by the time Vector displayed its prototype at Geneva in March 1992, the industry had been aware for at least three months that it would eventually have to provide air bags for the driver and front seat passenger. By the time of the Geneva show, Vector was on notice that, four and one-half years later, 95% of its production would have to be so equipped. When the production of the Vector W8 terminated in early 1993, NHTSA had already issued the NPRM reiterating the compliance schedule mandated by Congress. The final rule was issued 20 months before Vector's application. These regulatory actions were widely publicized at the time.

Vector identified the Avtech SC shown at Geneva as a ''prototype'', rather than a ''concept'', indicating to NHTSA that the vehicle was intended for eventual production. NHTSA believes that a good faith effort to conform the Avtech SC to the automatic restraint requirements of Standard No. 208 (whether automatic belts or airbags) should have begun as part of the further development of the prototype for production, and that the modification of the chassis, instrument panel, seats, etc. mentioned in the application should have commenced years earlier than it apparently has. Although the applicant states that it has spent $56,000 on its efforts to conform, this figure represents less than two percent of the amount that it has spent on research and development, a total of $3,178,501 for its fiscal years 1992, 1993, and 1994.

Very simply, NHTSA expects an American manufacturer to develop and engineer new products to conform to all applicable Federal motor vehicle safety standards, especially when a leadtime of this length has been provided.

However, NHTSA recognizes that the applicant was experiencing well-publicized problems when the W8 went out of production which eventually resulted in a complete change of corporate management. It may have been that, until these problems were resolved, the applicant had not decided as to the course of its future production and whether such would include the Avtech. Thus, NHTSA is willing to give Vector the benefit of the doubt in finding that it has made a good faith effort to comply with Standard No. 208. However, in the belief that it might have done more, NHTSA is providing an exemption that will expire on September 1, 1996, eight months less than Vector requested.

In granting an exemption of only one year instead of twenty months, NHTSA has taken into account the company's financial position. Its single largest shareholder intends to provide it with $5.5 million in funds to finance its proposed development schedule over the next 12 months, and a short exemption period will encourage Vector to achieve conformance by September 1, 1996.

The applicant believes that an exemption would be in the public interest as its development and production ''will result in additional employment at the factory, vendor, dealer, and service levels.'' In the past, NHTSA has found such an argument sufficient to uphold the public interest in granting an exemption, no matter how minimal the positive impact might be on the economy.

In its view, an exemption would be consistent with traffic safety objectives because the vehicle will otherwise comply with all applicable Federal motor vehicle safety standards. NHTSA notes also that the market for so-called ''supercars'' like the Vector has softened considerably and that the company's projected estimate of sales of 60 cars through the second quarter of 1996 may be unduly optimistic. Vector's limited exemption is likely to have only the most minimal impact upon motor vehicle safety. Finally, one of the objectives of Chapter 301 is to provide temporary relief to small manufacturers attempting to comply with the Federal motor vehicle safety standards.

In consideration of the foregoing, it is hereby found that to require immediate compliance with Standard No. 208 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard, and that an exemption is consistent with the public interest and 49 U.S.C. Chapter 301—*Motor Vehicle Safety*. Accordingly, Vector Aeromotive Inc. is hereby granted NHTSA Exemption No. 95–3 from paragraph S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*, expiring September 1, 1996.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on September 13, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–23262 Filed 9–19–95; 8:45 am]

BILLING CODE 49I0–59–P

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on September 20 in Room 600, 301 4th Street, S.W., Washington, DC. from 9 a.m.–12 noon.

At 9 a.m. the Commission will meet with Ms. Donna Oglesby, Counselor, USIA, to discuss USIA 2000, a report of the Agency's Senior Review Committee identifying adaptive challenges facing the U.S. Information Agency.

FOR FURTHER INFORMATION CONTACT: Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: September 14, 1995.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 95–23330 Filed 9–19–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 182
Wednesday, September 20, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

TIME AND DATE: Tuesday, September 26, 1995.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: This entire meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Dividends
Membership
Appointment of Financing Corporation Directors
Approval of an Increase in the Office of Finance Global Debt Authority
Affordable Housing Program Application Subsidy Limits—Interim Final Rule

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–23388 Filed 9–18–95; 9:51 am]

BILLING CODE 6725–01–P

Corrections

Federal Register
Vol. 60, No. 182
Wednesday, September 20, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Commission

[A-580-812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

Correction

In notice document 95–22501 beginning on page 47149 in the issue of Monday, September 11, 1995, make the following correction:

On page 47152, in the first column, in the table, in the second column, in the entry corresponding to ''Samsung Electronics Co., Ltd'' remove ''(de minimis)''.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94-267-006]

Wyoming Interstate Company, Ltd.; Notice of Filing of Refund Report

August 8, 1995

Correction

In notice document 95–19965 appearing on page 41886, in the issue of Monday, August 14, 1995, the docket number is corrected as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 400 and 411

[BPD-482-FC]
RIN 0938-AD73

Medicare Program; Medicare Secondary Payer for Individuals Entitled to Medicare and Also Covered Under Group Health Plans

Correction

In rule document 95–21265 beginning on page 45344 in the issue of Thursday, August 31, 1995, in the second column, under **DATES**, beginning in the second line, ''October 2, 1995'' should read ''September 29, 1995''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-ANM-11]

Amendment of Class E Airspace; Salt Lake City, Utah

Correction

In rule document 95–18917, appearing on page 39247 in the issue of Wednesday, August 2, 1995, make the following corrections:

§ 71.1 [Corrected]

1. On the same page, in the third column, in the 32nd line, insert ''east'' after ''airspace''.

2. On the same page, in the third column, in the 38th line, ''east'' should read ''west ''.

BILLING CODE 1505–01–D

Federal Register

Wednesday
September 20, 1995

Part II

Federal Reserve System

12 CFR Part 213
Consumer Leasing; Proposed Rules

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–0892]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is issuing this proposal to revise Regulation M, which implements the Consumer Leasing Act. The act requires lessors to provide uniform cost and other disclosures about consumer lease transactions. The Board has reviewed Regulation M, pursuant to its policy of periodically reviewing its regulations, and proposes revisions to simplify and clarify its provisions to carry out more effectively the purposes of the act. The proposal contains several substantive revisions, for example: additional disclosure requirements about early termination charges, disclosure of the gross cost of leases, the residual value, and the estimated lease charge; a requirement that certain leasing disclosures be segregated from other information; and pursuant to a statutory change, new advertising provisions for radio and television. The proposal also simplifies the language and format of the regulation, deleting obsolete provisions and eliminating the footnotes or moving them to the Official Staff Commentary. A proposal to revise the commentary is being published elsewhere in today's issue of the Federal Register.

DATES: Comments must be received by November 17, 1995.

ADDRESSES: Comments should refer to Docket No. R–0892, and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street) any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR section 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller, Obrea O. Poindexter, or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or 452–3667; for the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background on the Consumer Leasing Act and Regulation M

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The Board was given rulewriting authority, and its Regulation M (12 CFR part 213) implements the CLA. An official staff commentary that interprets the regulation has also been published (Supplement I–CL–1 to 12 CFR 213).

The CLA generally applies to consumer leases of personal property involving $25,000 or less and a term of more than four months. An automobile lease is the most common type of consumer lease covered by the CLA. Like the credit provisions of the TILA, the CLA requires lessors to provide uniform cost and other disclosures in consumer lease transactions and lease advertising. Prior to entering into a lease agreement, lessors must give consumers 15 to 20 disclosures, including the amount of initial charges to be paid, an identification of leased property, a payment schedule, the responsibilities for maintaining the leased property, and the liability for terminating a lease early. The law also regulates balloon payments by limiting liability at the end of a lease term to no more than three times the monthly payment.

II. The Review of Regulation M

The Board's Regulatory Planning and Review Program calls for the periodic review of a regulation with four goals in mind: to clarify and simplify regulatory language; to determine whether regulatory amendments are needed to address technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions. Regulation M has not been substantially revised or reviewed since it was first issued. The Board began a review of Regulation M in November 1993 by publishing an advance notice of proposed rulemaking (58 FR 61035, November 19, 1993). While comment was solicited generally on the provisions of Regulation M and the CLA, the Board identified three specific issues on which comment was desired: (1) Disclosure of early termination charges, (2) broadcast media advertising of leases, and (3) segregation of leasing disclosures from other information.

The Board received 70 comment letters on the advance notice of proposed rulemaking. Most commented only on the three issues addressed in the advance notice. Based on its review and on the comments received, the Board now proposes revisions to Regulation M. While several revisions would make substantive changes to the regulation, including new disclosure requirements, the proposal leaves many provisions substantively unchanged. In addition to seeking comment on the proposed regulatory changes, the Board again solicits views on whether specific legislative revisions to the CLA may also be warranted. For example, several commenters on the advance notice suggested that CLA coverage be expanded to cover leases that exceed the current $25,000 total contractual obligation limitation.

The proposal simplifies the language and format of the regulation to state the requirements more clearly. Footnotes have been either moved to the staff commentary or deleted as unnecessary. Obsolete provisions have been deleted and explanatory material transferred to the commentary. In addition to comments on the proposed changes, the Board requests specific suggestions for other revisions that would facilitate compliance without causing an adverse impact on consumer protections.

Although the regulation applies to all consumer leases covered by the CLA (for example, automobile leases and furniture leases), much of the focus of the review has been on automobile leasing. The Board solicits specific comment on whether any of the proposed rules are more appropriately limited to automobile lease transactions.

It is anticipated that proposed revisions to Regulation M will be adopted in final form in the Spring of 1996 with compliance optional until October 1, 1996, the uniform effective date for mandatory compliance.

III. Discussion of Proposed Revisions

The following discussion covers the proposed revisions section-by-section. In many cases, the proposed changes would simplify or clarify the current text, with no substantive change intended. Captions have been added to each paragraph, to conform with current Board style; the addition or wording of captions alone is not meant as a substantive change in the meaning of the paragraph itself. The entire proposed regulation and its appendices have been printed in full.

Section 213.1—Authority, Scope, Purpose, and Enforcement

1(b) Scope and Purpose

This paragraph is revised to add a sentence about the scope of the law and to more closely parallel the purpose clause in § 102 of the TILA, 15 U.S.C. 1601.

1(d) Issuance of Staff Interpretations.

Current paragraph 1(d) has been moved to appendix C.

Section 213.2—Definitions

2(a) Definitions

Most of the definitions remain unchanged and are not discussed below. The current definitions of ''Period'' and ''Real Property'' in paragraphs (a) (10) and (13) respectively have been deleted as unnecessary. Definitions of ''gross cost,'' ''estimated lease charge,'' ''residual value,'' and of a ''closed-'' and an ''open-end lease'' are added.

The following definitions are redesignated as indicated below:

Current	Proposed
''Arrange for lease of personal property'' in 2(a)(4).	moved to comment 2(a)(10)–1.
''Board'' in 2(a)(5)	moved to section 2(a)(4).
''Lessee'' in 2(a)(7) ...	moved to section 2(a)(9).
''Lessor'' in 2(a)(8)	moved to section 2(a)(10).
''Organization'' in 2(a)(9).	moved to section 2(a)(12).
''Person'' in 2(a)(11) .	moved to section 2(a)(13).
''Personal property'' in 2(a)(12).	moved to section 2(a)(14).
''Realized value'' in 2(a)(14).	moved to section 2(a)(15).
''Security interest'' in 2(a)(15).	moved to section 2(a)(17).
Examples of security interests in 2(a)(15).	moved to comment 2(a)(17)–1.
''State'' in 2(a)(16)	moved to section 2(a)(18).
''Total lease obligation'' in 2(a)(17).	moved to section 2(a)(19).
''Value at consummation'' in 2(a)(18).	moved to section 2(a)(20).

2(a)(2) Advertisement

The definition of ''advertisement'' is simplified and the examples moved to the commentary as part of proposed comment 2(a)(2)–1. The simplified language is consistent with other consumer regulations. The definition of an advertisement is broad; it covers commercial messages in any medium that directly or indirectly promote a consumer lease transaction. No substantive change in the definition is intended by the proposed revision.

2(a)(3) Agricultural Purpose

For simplicity, the portion of this statutory definition which describes agricultural products is moved to the commentary as proposed comment 2(a)(3)–1.

2(a)(5) Closed-End Lease

The proposal adds a definition of a closed-end lease, modeled after the definition of closed-end credit in Regulation Z (12 CFR § 226.2(a)(10)). The term covers any lease that does not fall within the definition of an open-end lease. In closed-end leases, sometimes referred to as ''walk-away'' leases, the lessee is not responsible for the residual value of the leased property at the end of the lease term.

2(a)(6) Consumer Lease

The rule of construction, currently in § 213.2(b)(1), has been moved to this paragraph.

2(a)(7) Estimated Lease Charge

The proposal adds a definition of ''estimated lease charge'' to provide guidance in making the proposed disclosure in § 213.5(q). The estimated lease charge would reflect the total dollar amount of the cost of the lease attributable to interest and other charges (whether paid upfront or during the term of the lease). The Board believes that such a disclosure together with a statement indicating what the figure represents and the formula for calculating the estimated lease charge (as provided in § 213.5(q)) would further assist the consumer in comparing leases. A first monthly or other periodic payment paid at or before consummation is not included in the calculation of the estimated lease charge, as it is reflected in the total periodic payment disclosure. Any refundable charge such as a security deposit would also not be included in the calculation.

2(a)(8) Gross Cost

The proposal adds a definition of ''gross cost'' to provide guidance in making the proposed disclosure in § 213.5(p) for closed-end lease transactions. The Board proposes to define gross cost as the total dollar amount of all items included in the value of a lease at consummation. This figure would include the base price of the leased property and any other items added to that price—such as a lessor's markup, taxes, service agreements, insurance, and any outstanding balance from a prior lease that is included in a new lease—prior to being offset by any downpayment or trade-in by the consumer. Amounts consisting of fees and other charges paid out-of-pocket at consummation by the lessee are also included in the gross cost figure. The gross cost is the amount upon which the periodic and other payments and terms of the lease are based. The Board solicits comment on this definition.

2(a)(10) Lessor

The proposal deletes the phrase ''in the ordinary course of business,'' as it may not be very helpful in determining whether a person must comply with the CLA. In its place, a numerical test is set forth. Under this test, a person who leases, offers, or arranges to lease personal property more than five times in the preceding calendar year is subject to the CLA and Regulation M. If a person did not meet this numerical test in the preceding calendar year, the test is applied to the current year. The Board solicits comment on the proposed numerical test.

2(a)(11) Open-End Lease

The proposal adds a definition of ''open-end lease.'' The Board believes the definition will provide useful guidance given that certain disclosures are only relevant to open-end leases, those in § 213.5(m), and (o), and § 213.8(d)(2)(vi).

2(a)(16) Residual Value

The proposal adds a definition of ''residual value'' to provide guidance in making the proposed disclosure in § 213.5(r) for closed-end lease transactions. The residual value of leased property is the amount determined at consummation to be the value of the leased property at the end of the lease term.

2(b) Rules of Construction

This section is deleted from the regulation. Current paragraph 2(b)(1) is moved to paragraph 2(a)(6) of this section. Paragraphs (b)(2) and (b)(3) of this section are deleted as unnecessary.

Section 213.3—Exempt Transactions

No changes have been proposed to this section.

Section 213.4—General disclosure requirements

4(a) General Requirements

Paragraph (a) contains general rules about the disclosures required under § 213.5, including the form, content, and timing of disclosures. The major revision is the proposed requirement that certain disclosures be segregated from other information. Several existing format rules have been eliminated as unnecessary because of the proposed segregation requirement. Other

provisions would be simplified and clarified to ease compliance.

4(a)(1) Form of Disclosures

The general disclosure requirements are found in section 182 of the CLA. Clear and conspicuous lease disclosures must be given prior to consummation of a lease on a dated written statement that identifies the lessor and lessee. Generally, all the disclosures must be made together on a separate statement or in the lease contract to be signed by the lessee. Under the proposal, the segregated disclosures in § 213.4(a)(2), discussed below, may be provided on a separate document and other CLA disclosures provided in the lease contract, as long as all disclosures are given to a consumer at the same time.

Where the disclosures are included in the lease contract, the regulation currently requires that the disclosures be provided above the lessee's signature. Under the proposal, this specific requirement is deleted as unnecessary. However, lessors must continue to ensure that the disclosures are given to lessees before the lessee becomes obligated on the lease transaction. To provide evidence of compliance, disclosures may still be placed above the lessee's signature where disclosures are included in a lease agreement. Alternatively, lessors may include instructions alerting a lessee to read the disclosures prior to signing the lease or could provide a signature line or an acknowledgement of receipt for the lessee on the disclosure statement.

To satisfy the statutory standard that disclosures be made clearly and conspicuously, the regulation currently requires that disclosures be made on the same page and in a meaningful sequence—the grouping together of related disclosures. The regulation also imposes type-size requirements on numerical disclosures. In light of the proposal to segregate certain disclosures, discussed below, the meaningful sequence and the same page rule, and type-size disclosure requirements are deleted as unnecessary.

Nonsegregated disclosures need not be on the same page but they should be grouped together. Disclosures should also be presented in a way that does not obscure the relationship of the terms to each other.

4(a)(2) Segregation of Certain Disclosures

The CLA does not require the segregation of the required leasing disclosures from other information given to the consumer in a lease transaction. There is some concern that the absence of a requirement that the consumer leasing disclosures be segregated from general contract or other terms limits the effectiveness of these disclosures in meeting one of the goals of the CLA—to assure clear, conspicuous, and meaningful disclosure of lease terms to consumers.

Lease contracts can be long, detailed, and complex and often contain leasing disclosures interspersed among contract provisions. Consumers generally have little time to review their lease contracts before signing them. The Board believes a requirement that certain of the mandated disclosures be segregated would highlight these disclosures and thereby enhance consumers' ability to understand lease terms and thus make more informed choices.

In its advance notice of proposed rulemaking, the Board specifically requested comment on whether a segregation requirement should be imposed. Thirty of the seventy commenters addressed the issue. Twenty-six commenters favored some form of disclosure segregation. The other four commenters believed that any consumer benefit associated with isolating certain disclosures would not outweigh the costs to lessors of revising forms, or that a segregated disclosure requirement would require a statutory change.

Under section 105(a) of the TILA, which includes the CLA, the Board has the authority to prescribe regulations containing ''such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purpose of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.'' Pursuant to this authority, the Board proposes that certain disclosures be segregated from other disclosures and information. As discussed previously, lessors may include the segregated disclosures in their lease contracts, but would be required to separate them from other information. Alternatively, lessors may provide the segregated disclosures to consumers on a separate document. The content, format, and headings for these disclosures should be substantially similar to those contained in the model forms in appendix A of the regulation. To ensure uniformity, no additional information may be included among the segregated disclosures, except as permitted under any future provision found in the official staff commentary to Regulation M.

The following disclosures (some of which are new) would be segregated from other information:

- Gross cost of the lease (new)—§ 213.5(p).
- Total payment due at lease signing, subdivided into an itemization of the costs to be paid at lease signing, and an itemization of the means of paying these costs (this type of itemization would be new)—§ 213.5(b).
- Total of periodic payments and payment schedule—§ 213.5(c).
- Total of other charges payable to lessor—§ 213.5(e).
- Residual value (new)—§ 213.5(r).
- Statement concerning the consumer's right to purchase the leased property at the end of the lease term—§ 213.5(k)(1).
- Estimated lease charge (new)—§ 213.5(q).
- Statement that a substantial charge may be imposed for terminating a lease early and an example of an early termination charge (new)—§ 213.5(l)(2).
- Statement concerning lessee's possible wear and use liability, including liability for excessive mileage (new in part)—§ 213.5(h)(3).
- Statement that the consumer should refer to lease documents for nonsegregated CLA-required information (new)—§ 213.5(s).
- In an open-end lease, the value of the property at consummation, the total lease obligation, and the difference between them—§ 213.5(o)(1).

The remaining disclosures required by Regulation M and the CLA would continue to be provided in a nonsegregated format (typically, together with the other terms and conditions that comprise the lease agreement). Comment is solicited on whether any items should be excluded from, or others added to, the segregated disclosures.

Regulation M currently contains model forms for open-end leases, for closed-end leases, and for furniture leases. These forms have been revised to reflect how the segregated disclosures would appear. The model forms are in appendix A.

4(a)(5) Language of Disclosures

Current paragraph 4(a)(4) states that lease disclosures must be provided in English, except in the Commonwealth of Puerto Rico. The proposal revises this position. Lessors would be permitted to give disclosures in another language as long as disclosures in English are given to a lessee who requests them. The Board believes that a more permissive rule could promote the delivery of more meaningful disclosures to consumers.

4(b) Additional Information

Current paragraph 4(b) permits additional information to be included with any disclosures required by the regulation. The proposal would permit additional information only with the nonsegregated CLA leasing disclosures, provided the information does not detract from those disclosures.

Current paragraphs 4(b) (1) and (2) have been deleted as unnecessary. Pursuant to section 186(a) of the CLA and Regulation M, proposed § 213.10, if information required by state law is inconsistent with the requirements of the act or regulation, the state law is preempted.

4(c) Multiple Lessors or Lessees

Paragraph (c) provides that when a transaction involves multiple lessors, one lessor may make the disclosures on behalf of all of them. The phrase ''and the one that discloses shall be the one chosen by the lessors'' is deleted as unnecessary. No substantive change is intended.

4(d) Use of Estimates

Current paragraph 4(d), which implements section 182 of the CLA on the use of estimated disclosures, is proposed (4)(d)(1) and (2).

4(e) Effect of Subsequent Occurrence

Paragraph 4(e) provides that generally when an event occurs after disclosures have been delivered which makes a disclosure inaccurate, the inaccuracy does not constitute a violation of the act. This paragraph clarifies that this rule applies to events occurring after consummation of a lease. The first sentence of footnote 1 of the current regulation, which contains a specific example of a subsequent occurrence, has been incorporated into the staff commentary in comment 4(e)-3. The second sentence of the footnote is deleted as unnecessary guidance under this regulation.

4(f) Minor Variations

Current paragraph 4(f) allows lessors to disregard February 29 in a leap year when making disclosures. Proposed paragraph (f) incorporates into the regulation all rules on minor variations that may be disregarded in making disclosures, thus provisions currently contained in comment 4(a)–2 of the commentary have been moved to this paragraph. No substantive change is intended.

Section 213.5—Content of Disclosures

Section 213.4(g) is proposed § 213.5. Several new disclosures have been added under paragraphs (b), (h)(3), (l)(2), and (p) through (s). Paragraphs which have not been changed, or which contain no substantive changes, have been redesignated as follows:

Current	Proposed
Paragraph 4(g)(1)	redesignated as 5(a).
Paragraph 4(g)(3)	redesignated as 5(c).
Paragraph 4(g)(4)	redesignated as 5(d).
Paragraph 4(g)(5)	redesignated as 5(e).
Paragraph 4(g)(6)	redesignated as 5(f).
Paragraph 4(g)(7)	redesignated as 5(g).
Paragraph 4(g)(9)	redesignated as 5(i).
Paragraph 4(g)(11) ...	redesignated as 5(k).
Paragraph 4(g)(13) ...	redesignated as 5(m).
Paragraph 4(g)(15) ...	redesignated as 5(o).

5(b) Total Amount Due at Lease Signing

Paragraph 5(b), currently § 213.4(g)(2), requires lessors to disclose to consumers the total amount of any payment due at the consummation of a lease. The payment may include a security deposit, a trade-in allowance or a downpayment (the ''capitalized cost reduction''), a first periodic payment in advance, and fees such as delivery charges. Under the current regulation, these charges must be itemized by type but need not be itemized by amount. The Board is proposing several changes to this paragraph. The language has been revised to clarify that a total amount of payments due at lease signing is required. The Board proposes to require that amounts paid at lease signing be itemized by amount as well as by type. The Board believes that these lease costs should be more completely and uniformly disclosed, and requiring itemization by type and amount would ensure this result. Under the proposal, the type and amount of each charge due at consummation is included among the segregated disclosures under the subheading ''itemized costs.'' Also, to enhance consumer understanding of what payments are made and how they are allocated—particularly the amount agreed upon as the trade-in allowance of property being provided by the lessee—the lessor should disclose the net trade-in allowance, any rebate, payments in cash, and any other credits under the subheading ''means of paying itemized costs.'' (See the model forms in appendix A for format.) The Board believes that standardization of the terminology to be used and the full itemization of the initial costs and means of payment will provide consumer benefit without imposing substantial compliance costs on lessors.

5(h) Maintenance Responsibilities

Paragraph 5(h), currently § 213.4(g)(8), requires disclosures about maintaining or servicing leased property. Lessors currently must identify the party responsible for maintaining or servicing the leased property, along with a description of the responsibility, and as applicable, a statement of reasonable wear and use standards. For example, an automobile lease may state that a consumer will be liable for excessive wear and use if the vehicle is returned with little tread on the tires, with rust, dents or broken parts or accessories, or if the vehicle is driven over a certain number of miles.

Some of the consumer representatives commenting on the Board's advance notice expressed concerns about excess wear and use standards. Generally, they suggested that lessors should have to describe, in detail, the standard applied and the penalties that would be charged. They also called for the development of standardized measurements of excess wear and use. One commenter suggested that the Board prohibit charges for excess wear and use beyond actual repair costs. In addition, the Board's Consumer Advisory Council and others have advised the Board that highlighting information about excessive mileage charges is important.

Although the Board receives very few consumer complaints about leasing, it has over the years received complaints about reasonable wear and use standards. Consumers sometimes do not realize that lessors may impose strict standards for what they consider normal use of lease property, particularly leased automobiles, and that these standards may vary depending on the lessor. While issues concerning excessive wear and use liability are generally a matter of contract between a lessee and lessor, the Board believes that a disclosure notice about the possibility that a charge may be imposed at the end of the lease term for excessive wear and use of leased property, based on the standards imposed by the lessor, may heighten a consumer's awareness about maintenance responsibilities without any substantial compliance costs on lessors. Therefore, the Board proposes to add a disclosure requirement in paragraph 5(h)(3), to be included among the segregated disclosures, that ''you may be charged for excessive wear and use based on the lessor's standard for normal use.'' In a vehicle lease transaction, any applicable charge for excessive mileage must also be included. The Board solicits comment on the proposed new disclosure, including the required language.

5(j) Penalties and Other Charges for Delinquency

The Board proposes to add that any penalty or charge shall be reasonable, to reflect the requirement found in section

183(b) of the CLA. No substantive change is intended.

5(l) Early Termination

Paragraph 5(l), currently § 213.4(g)(12), requires a disclosure about charges for terminating a lease early. The Board proposes additional disclosure requirements, in § 213.5(l)(2), that would be included among the segregated disclosures. Lessors would have to include a statement alerting consumers about charges for terminating a lease early, including an example of an early termination penalty based on an assumed termination of the lease at the end of the first year.

The CLA requires lessors to disclose the conditions under which the lessee or lessor may terminate the lease before the end of the lease term and the amount or method of determining a penalty or other charge for early termination. Lessors typically disclose the method of determining an early termination charge and such a disclosure is often complex.

In its advance notice of proposed rulemaking, the Board solicited comment on whether the disclosure of early termination charges could be revised to more easily inform consumers about these charges. The Board also solicited comment on whether the disclosure of the name of the lessor's early termination method along with a representative example of a lease termination charge should be considered, as well as any other disclosure alternative. The notice mentioned a U.S. Court of Appeals case, *Lundquist* v. *Security Pacific Automotive Financial Services Corp.*, 993 F.2d 11 (2d Cir.), *cert. denied*, 62 U.S.L.W. 3320 (U.S. Nov. 1, 1993), that has caused lessors concern. In that case, the court held a lessor liable for violating the ''reasonably understandable'' standard for disclosure under Regulation M; the lessor had an early termination formula that the court found to be overly complex and beyond the understanding of the average consumer. Many lessors say that, given the complexity of modern automobile lease transactions, it is difficult to describe every part of an early termination formula in terms clearly understandable to consumers. In particular, lessors state that the various methods used to determine the ''unamortized capitalized cost'' portion of their early termination formulas are inherently complex and cannot be reduced to a disclosure that is easily understandable.

In responding to the Board's request for comment on this issue, many lessor representatives favored allowing a reference to the name of the method employed to determine the unamortized capitalized cost portion of the early termination formula instead of requiring a detailed description of that method. Some suggested that the Board also define the most common amortization methods currently used (such as the ''actuarial'' or the ''constant yield'' methods) to provide for uniformity. They believed that through education and exposure to the names of the most commonly used methods, consumers would eventually become aware of their advantages and disadvantages. Opponents believed that merely providing the name of the method would not be useful and would make it difficult or impossible for consumers to compute the amount of an early termination charge. Some consumer advocates said that in using complex methods and highly complicated descriptions in determining early termination charges, lessors preclude consumers from determining whether the charges themselves are reasonable. (The CLA specifies that charges for early termination must be ''reasonable.'') Other commenters, including both lessors and consumer representatives, favored a full description of all aspects of a lessor's early termination method, along with an example of how that method would work. In addition, some commenters suggested a general statement warning the consumer of the possibility of a substantial charge for early termination.

Based on the comments received and upon further analysis, the Board proposes to require that, along with an example of an early termination charge, a statement be given by lessors among the segregated disclosures that ''you may have to pay a substantial charge if you end this lease early,'' that ''the actual charge will vary depending on when the lease is terminated,'' and that ''other charges such as for excessive wear and use may also be imposed.'' The Board believes these highlighted disclosures would serve to better inform consumers about the consequences if they were to terminate their leases early.

The Board believes that the CLA mandates full disclosure of a lessor's method of determining an early termination charge, even if it is complex. Therefore, in addition to the above statement and example, a full description of the complete early termination method must be disclosed by lessors outside of the segregated disclosures. However, given the complexity of the methods involved, a lessor is permitted—in giving the full description of its early termination method—to include a reference to the name of a generally accepted method of computing the unamortized gross or capitalized cost (also known as the ''adjusted lease balance'') portion of its early termination charge. For example, a lessor may state that the ''constant yield'' method would be utilized in obtaining the unamortized portion of the gross cost, but the lessor would have to specify how that figure—and any other term or figure—is used in computing the total early termination charge that would be imposed upon the consumer. Additionally, if a lessor refers to a named method in this manner, it would have to provide a written explanation of that method if requested by the consumer. While lessors should attempt to provide clear and understandable explanations of their early termination provisions to consumers, explanations that are full, accurate, and not intended to be misleading are in compliance with CLA and Regulation M disclosure requirements. (And, of course, the statute requires that the early termination charges themselves must be ''reasonable.'') These positions are codified in the proposed revisions to the Official Staff Commentary to Regulation M.

Finally, regarding the selection of an assumed termination period for the early termination example, several approaches were considered by the Board. The proposed example is based on an assumption that the consumer terminates the lease near the beginning of the lease term—at the end of the first year. This approach provides a ''worst case'' scenario. Early termination charges are typically highest at the beginning of the lease term. The example could have been based on an assumption that the consumer terminates the lease towards the end of the lease—such as the end of the third year for a four-year lease, and at the end of the second year for a three-year lease. The last year of a lease is the period when many early terminations occur. An example could have been based on an assumed early termination occurring for instance, at the 50 percent mark of the lease term. Arguably, this approach could allow an easier comparison of early termination examples among leases, in contrast to the first two approaches where the assumed early termination would not occur at proportionately equivalent points in leases of different lengths.

While there is some merit to each alternative (and there are others), the Board is proposing an early termination example based on the assumption that the lease terminates at the end of the first year, which illustrates to

consumers how substantial the charge could be if the lease is terminated very early during the lease term. The figure used to calculate the example must be calculated in the same manner the residual value is calculated for purposes of § 213.5(r). Therefore, if a lessor uses the fair market value of the leased property to estimate the value of the property at the end of the lease, the early termination example must also be calculated using the fair market value. Comment is solicited on the proposed example including whether using an assumed termination period other than the one proposed would be more appropriate.

5(n) Right of Appraisal

Paragraph 5(n), currently § 213.4(g)(14), requires disclosure of the right to an appraisal of leased property. Generally this provision is applicable to open-end leases, but it also applies to closed-end leases. Language is revised for clarity and accuracy, for example, the term ''realized value'' replaces ''estimated value.'' No substantive change is intended.

5(p) Gross Cost

The Board proposes to require disclosure of the gross cost among the segregated disclosures. This disclosure is applicable only to closed-end leases; proposed § 213.5(o), currently § 213.4(g)(15), requires the disclosure of the ''value at consummation'' in open-end leases. Federal law does not currently require disclosure of information on the base price of the leased property in closed-end leases. Because this figure usually is not given, consumers may assume that the lease is based on the manufacturer's suggested retail price, or on the negotiated sales price (if the parties initially contemplated that the consumer would finance or purchase the property). However, the starting price of the leased property may actually be significantly higher than either of these figures.

Sixteen of the seventy commenters on the advance notice favored a ''capitalized cost'' disclosure. They included representatives of both the leasing industry and consumer groups. Several trade associations representing a large segment of the industry have recently asked their members to voluntarily disclose this item. In addition, a few lessors have been disclosing this figure for some time.

Pursuant to its authority under section 105(a) of the TILA, the Board proposes to require disclosure of the ''gross cost'' in closed-end lease transactions, using that term, in order to further effectuate the purposes of the law. The Board believes such a disclosure (together with a brief description such as ''the agreed upon acquisition value of the vehicle including but not limited to items such as taxes, fees, service contracts, and insurance'') would further the CLA's goal that cost disclosures enable consumers to draw comparisons between leases and, where appropriate, between leases and credit transactions. The gross cost would include the agreed upon price of the leased property and any other items added to that price—such as a lessor's markup, taxes, fees, extended warranties, insurance, and any outstanding balance from a prior lease that is included in a new lease—prior to being offset by any downpayment or trade-in by the consumer. The gross cost is the amount that the periodic and other payments and terms of the lease are based upon, and is intended to be used by consumers to compare a lease with similar lease and non-lease transactions. The gross cost would be readily available to lessors from worksheets they utilize in setting the terms and conditions of the lease. However, as discussed in 5(q) below, the inclusion of a gross cost figure in the segregated disclosures in some cases could invite consumers to make misleading comparisons of leasing and financing options. The Board solicits specific comment on this disclosure and its definition.

5(q) Estimated Lease Charge

Pursuant to its authority under section 105(a) of the TILA, the Board proposes to require disclosure of the estimated lease charge among the segregated disclosures to further effectuate the CLA's goal of enabling consumers to comparison shop. This figure would show the total dollar amount of the ''financing'' costs that will be charged to the consumer over the lease term, including the amount attributable to interest, or the ''time-price differential.'' Although this figure is similar in concept to the finance charge required to be disclosed in consumer credit transactions subject to the TILA, it is not identical to a finance charge. As proposed, the lease charge would include items such as use taxes, registration and other fees, and insurance—items that are (under certain circumstances, at least) excluded from the finance charge. Therefore, the lease charge would not typically be an appropriate tool to make comparisons between lease and financing transactions.

The Board currently does not propose to exclude any of the fees and charges in the lease transaction from the estimated lease charge. However, comment is solicited on whether and how this disclosure could be made more comparable to the finance charge under the TILA. For example, the Board requests comment on whether insurance charges—which typically are not included directly in the finance charge—or charges payable in a comparable cash transaction (such as automobile registration fees)—should be excluded from the estimated lease charge.

When consumers are comparing different lease transactions with the same gross costs and durations (for example, three-year auto leases from two different dealers with the same gross cost but different monthly payments and purchase option prices), the estimated lease charge could be used to compare the transactions. However, as discussed below, an estimated lease charge disclosure would not be useful in comparing different leases where the gross costs or durations differ substantially.

Lease rate. Some commenters on the advance notice—including a number of consumer representatives and several small depository institutions—recommended that the Board require lessors to disclose the interest rate implicit in a lease transaction. Some recommended that this lease rate reflect an annual percentage rate concept—that is, a uniformly calculated rate that would include both interest and other charges imposed in connection with the lease transaction. These commenters suggested that the true cost of leasing would not be known to consumers without a lease rate disclosure. They noted that if the gross or capitalized cost and residual value of leased property are to be disclosed to consumers, the lease rate would be the only missing component necessary to determine the full cost of a lease. Commenters opposed to an interest rate disclosure noted that it would not necessarily reflect the ''true cost'' of leasing, as lessors might simply be able to manipulate the residual value in order to show a lower interest rate.

As noted by some commenters, the lease rate is the only key information about the cost of leasing property that would not be disclosed to consumers under the Board's proposed rule. Showing a lease rate seems important if consumers are to consider adequately the choice between leases involving different gross costs or leases of different durations. For example, if the same automobile could be leased for either three or five years, and the lessor applies the same rate in either case, the two transactions would have

significantly different estimated lease charges (based on one lease incurring interest charges for two years more than the other), yet they would have the same annual lease rate.

A lease rate is clearly defined only in leases that have a fixed dollar purchase option. In that case, a lease rate would be based on a standard formula using the same information as in the estimated lease charge: gross cost, total payment due at lease signing (less a first monthly or other periodic payment and any refundable charges), total of monthly payments, total of other charges payable to the lessor, and the purchase option price. In view of some commenters' concerns that the residual value could be manipulated to show a misleading lease rate, the Board would not contemplate requiring a lease rate in leases that do not have a dollar purchase price option.

Unlike the estimated lease charge, the lease rate disclosure may be of use to consumers in comparing a lease with a credit transaction. However, the lease rate may be of less use in cases when the fees reflected in that rate differ substantially from the fees reflected in the APR under the TILA. For example, leases typically include insurance charges; these are included in the estimated lease charge, and the Board would contemplate them being included in a lease rate disclosure as well. If a lease and a credit transaction had the same annualized rate, but the lease rate included insurance charges that are not included in the credit transaction, the consumer would be misled if he or she simply compared the two rates. In the instance where insurance was not a factor and other fees were similar in amount, however, such a comparison could prove to be of use to consumers in analyzing the costs of these alternative transactions. The Board solicits comment on whether and how a lease rate could be made more comparable to an APR to facilitate such comparisons.

If the disclosure of a lease rate were not required, the inclusion of a gross cost figure (which is prominently displayed in the disclosure statement) could, in some instances, invite misleading comparisons between competing leases or between a lease and a financed purchase. For example, assume a consumer and an auto dealer negotiate a $17,000 purchase price and a 9 percent APR to finance a car. The dealer then suggests that the consumer consider leasing the car instead. Assuming that potential lessees are likely to attach significance to the gross cost of the leased car, the dealer could agree to base the monthly lease payments on a gross cost figure of $17,000. The dealer could then apply a higher interest rate of 14 percent to calculate the monthly payments, and this rate would not be disclosed to the consumer. Even using this 14 percent interest rate, the monthly payments on the lease may be less than the monthly payments if the car were financed. The consumer might prefer the financing alternative if he or she realized that the implicit interest rate on the lease was 14 percent. However, absent a lease rate disclosure, the consumer could conclude that the lease was a better deal. On the other hand, since the dollar amount of the increase attributable to the lessor's use of a higher interest rate would be reflected in the estimated lease charge, this could be sufficient to inform the consumer. In addition, there may be competitive and operational pressures upon lessors that could prevent them from artificially decreasing the gross cost, such as limits on dealer markups in interest rates. Thus any deception that would be associated with disclosure of a low gross cost may be minimal.

While an annualized lease rate may improve comparison shopping between leases, some believe that the disclosure of the estimated lease charge would be sufficient for these purposes (assuming that consumers comparison shop items with similar gross costs and lease durations), and thus the disclosure of a lease rate would be unnecessary. Moreover, disclosure of a uniform lease rate disclosure may significantly increase the cost of complying with the requirements of the CLA and Regulation M, and this burden may outweigh any benefit to consumers of such a disclosure.

In light of the above discussion, the Board has not proposed requiring the disclosure of a lease rate. However, comment is solicited on this matter, including the advantages and disadvantages of such a disclosure to consumers. In the event that the Board were to require disclosure of a lease rate, the Board further solicits comment on whether the rate should be defined in such a way as to make it more comparable to the APR in a credit transaction (such as by excluding insurance charges from the calculation in certain circumstances). The Board also solicits comment on whether the gross cost (and therefore the estimated lease charge) figures should be de-emphasized or removed from the required disclosures to avoid potential manipulation of these figures in order to mislead consumers; or whether in commenters' views, this type of manipulation would not arise. Finally, the Board solicits comments on how and whether the costs of imposing a lease rate disclosure would outweigh the consumer benefit of having such a rate disclosed.

5(s) Statement Referencing Nonsegregated Disclosures

It is important that the value of the nonsegregated CLA disclosures not be diminished. Therefore, the Board proposes to add a statement among the segregated disclosures to alert consumers to other CLA-required disclosures (not contained among the segregated disclosures) that they should read in the lease documents. The disclosures include information about conditions for and the amount or method of determining early termination charges, charges for delinquency, default or late payments, maintenance responsibilities, any purchase option prior to the end of the lease term, insurance, total taxes and official fees, warranties, liability at the end of the lease term, and any security interest in the leased property.

Section 213.6—Renegotiations, Extensions, and Assumptions

Section 213.6 contains all the rediscloure rules governing leases that are renegotiated, extended, or assumed, including the exceptions, which currently are generally contained in § 213.4(h). The section has been rearranged and revised for clarity. For example, rules on assumptions in the current staff commentary have been moved to this section. Proposed § 213.6(d) retains the substance of the exceptions found in the current regulation, but has been rephrased. Several exceptions located in the current commentary under current comments 3, 7, and 8 to § 213.4(h) have also been moved to proposed § 213.6(d).

Section 213.7—Reserved

Section 213.7 has been reserved. Section 213.7 in the current regulation has been moved to § 213.10.

Section 213.8—Advertising

Section 213.5 in the current regulation is proposed § 213.8. Some of the language of the existing provisions have been revised for simplicity.

Under the CLA, if a lease advertisement states certain cost information (such as the amount of a monthly lease payment) as many as six additional disclosures must be clearly and conspicuously given. The Board proposes to make several clarifications and substantive revisions in this section that it believes will ease the compliance concerns of lessors while providing

uniform and more meaningful information to consumers and furthering the CLA mandate that disclosures in advertisements be clearly and conspicuously displayed.

8(b) Clear and Conspicuous Standard

For clarity and simplicity, the Board proposes to state the clear and conspicuous standard in this section in one place; currently in § 213.5 references to the clear and conspicuous standard are made in several places.

Several representatives of state attorneys general and others have questioned the way advertisements of automobile leases display the required Regulation M disclosures. Lessors sometimes conspicuously advertise low or no downpayments when, in much smaller print, other upfront charges such as an acquisition fee, a security deposit, or the first monthly lease payment may be given. Some leasing representatives have expressed concern about their possible exposure to liability due to the potential for differing state interpretations of what is clear and conspicuous. The Board is therefore proposing that a reference in an advertisement to any component of the total amount of payments due at consummation, such as the downpayment (or that there is no downpayment), may not be more prominently displayed in the advertisement than the required disclosure in § 213.8(d)(2)(ii) of the total amount of payments due at lease signing. The Board believes this rule would address some of the concerns about lease advertisements without adding significant burdens on lessors or interfering with the effective marketing of their products. The proposed rule would not control what terms are to be advertised, but only that components of the total amount due at lease signing could not be emphasized without giving equal prominence to the disclosure of the total amount due itself. It should be noted that lessors can advertise lease transactions without including any CLA disclosures. Disclosures are only required when certain ''trigger'' terms are included in the advertisement, for example, a payment amount.

8(c) Catalogs and Multi-Page Advertisements

Section 8(c), currently § 213.5(b), has been simplified. No substantive change is intended.

8(d) Advertisement of Terms That Require Additional Disclosure

Section 8(d) incorporates current § 213.5(c). The introductory language of current § 213.5(c) is simplified. No substantive change is intended.

Currently, some advertisements do not provide a total of payments required at or before consummation, but instead give an itemization of each charge due at that time. In paragraph 8(d)(2)(ii), the Board proposes to clarify that the CLA requires only that the total of payments due by the consumer before or at lease signing be stated in an advertisement in which a trigger term has been used. (The language of the statute is somewhat ambiguous on this point.) Lessors may provide an itemized list of the payments due by lease signing but would not be required to under the proposed rule. Full disclosure of these initial fees by type and amount are among the required disclosures given to consumers who actually enter into lease transactions.

In paragraph 8(d)(2)(iv), the Board proposes to clarify that disclosing the method for determining the purchase price is limited to instances where the lessee has the option to purchase the leased property prior to the end of the lease. Language is added to the second sentence of this paragraph, consistent with the specific disclosure requirements in § 213.5(k), which the Board believes is consistent with congressional intent to provide the price of the leased property if the option to purchase is available at the end of the term.

Current § 213.5(c)(5) contains two requirements. Under the first requirement, lessors must disclose the amount of ''any liabilities'' that the lessee may be required to pay at the end of the term. To remove any ambiguity as to the applicability of this provision to both open- and closed-end leases, the Board proposes to incorporate this portion of the current paragraph in paragraph 8(d)(2)(v). For example, charges for excessive wear and use (such as an excessive mileage charge) on an automobile lease under both open- and closed-end leases would have to be disclosed in advertisements under this proposed provision.

Under the second requirement in current § 213.5(c)(5), lessors must disclose whether the lessee is liable for any difference between the estimated value of the leased property and its realized value at the end of the lease, applies only to open-end leases. The Board has moved this requirement to § 213.8(d)(2)(vi).

8(e) Alternative Disclosures—Merchandise Tags

Section 213.8(e) broadens current § 213.5(d) by allowing the use of triggering terms on merchandise tags, for items normally used in multiple-item leases, without providing full advertising disclosures on the tag itself.

8(f) Alternative Disclosures—Telephone or Radio Advertisements

Section § 213.8(f) implements amendments to section 184 of the CLA made by section 336 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160). Section 336 amended the CLA to provide an alternative disclosure scheme for radio lease advertisements in order to reduce the amount of information in such advertisements.

Before the statutory revisions, if any of the trigger terms (such as a payment amount) were used in any type of lease advertisement, as many as six additional disclosures had to be given. These disclosures include statements specifying (1) whether or not the lessee has the option to purchase the leased property, and at what price and time, (2) the amount or method of determining the amount of any liabilities the lease imposes at the end of the term, and (3) that the consumer is liable for the difference between the estimated value of the leased property and its realized value at the end of the term, if such liability exists.

Under the statutory amendments, in radio advertisements, lessors are permitted to substitute a reference to a toll-free telephone number or to a specified print advertisement for the disclosures about the purchase option and the end-of-term liability. If consumers call the toll-free number, they must receive all the required disclosures (not simply the ones omitted from the radio advertisement) orally, or in writing if requested by the consumer. Alternatively, all of the disclosures could be provided in a publication in general circulation in the community served by the radio station.

Although the statutory amendment is limited to radio advertisements, the legislative history takes note of the Board's Regulation M review and states that, after public comment, the Board should consider extending the new radio advertising provisions to television and print advertisements. It stated that television advertisements, for example, ''raise complex questions regarding the content prominence, and duration of disclosures necessary to simplify the process and to convey more meaningful information to consumers.'' The Board believes that television lease advertisements have time constraints similar to those on radio; given these constraints, it is generally agreed that consumers cannot comprehend all the disclosure information provided

currently. It is not clear that similar concerns exist with print advertisements. Therefore, in § 213.8(f), pursuant to its authority under section 105(a) of the TILA, the Board is proposing to apply the new statutory disclosure alternative to lease advertisements in both radio and television broadcasts to effectuate the purpose of the CLA and to facilitate compliance. The Board specifically solicits comment on this matter and on whether similar constraints exist for print advertisements that would warrant their inclusion in any final rule.

When a television or radio advertisement includes any of the trigger terms in § 213.8(d)(1), the alternative disclosure rules allow lessors to comply with § 213.8(d)(2) by combining certain required disclosures with a referral to either a toll-free number or a written advertisement. Required information in § 213.8(d)(2)(i)–(iii) must be stated in the television or radio advertisement along with the alternative disclosures in § 213.8(f)(1). The remaining disclosures in § 213.8(d)(2)(iv)–(vi), are not required to be disclosed. However, all the required disclosures in § 213.8(d)(2) must be given to consumers through the toll-free number or in a written advertisement appearing in a publication of general circulation in the community served by the media station on which the advertisement is broadcast.

The Board solicits comment on its approach in implementing section 336 of the Riegle Community Development and Regulatory Improvement Act.

Section 213.9—Record Retention

Section 213.9, currently § 213.6, has been revised for simplicity. The language ''or action is required to be taken'' has been added to cover circumstances requiring action by a lessor other than providing disclosures. The language in current § 213.6(b) is eliminated as unnecessary. The caption ''Preservation and Inspection of Evidence of Compliance'' has been changed to ''Record Retention'' to conform with usage in other of the Board's regulations.

Section 213.10—Relation to State Laws

Section 213.10 combines and simplifies current §§ 213.7 and 213.8. No substantive changes are intended. Information about procedures and criteria for preemption or exemption determinations is removed.

Appendix A—Model Forms

To simplify the regulation, the written information contained in the current appendix about the procedures and criteria for an exemption determination has been removed. Such information would be available from the Board upon request.

Model forms, currently in appendix C of the regulation, have been moved to this appendix and revised to illustrate the new segregated disclosure scheme required by § 213.4(a)(2). Instructions to the current model forms have been deleted as repetitive of the regulation and unnecessary. The Board solicits comment on whether any additional model forms or model clauses are warranted (such as for single or ''lump sum'' payment leases). Specific comment is also solicited on whether the open-end lease model form is needed and to what extent such leases are being offered.

Appendix B—Federal Enforcement Agencies

The list of federal agencies that enforce the CLA for particular classes of businesses is moved from appendix D to this appendix. To simplify the regulation, the written information contained in the current appendix about the procedures and criteria for a preemption determination has been removed. Such information would be available from the Board upon request.

Appendix C—Issuance of Staff Interpretations

Current paragraph § 213.1(d) is moved to this appendix. Model forms have been moved to proposed appendix A.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–0892. The Board requests that, when possible, comments be prepared using a standard courier type-face with a type-size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format, but must be accompanied by an original document in paper form.

V. Regulatory Flexibility Analysis

The Board's Office of the Secretary has prepared a preliminary regulatory analysis of the proposal. A copy of the analysis may be obtained from Publication Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

Concerning the impact on small firms, the Board believes that most consumer leasing subject to Regulation M is undertaken by large firms. Therefore, elements of revised Regulation M that might increase burden on lessors should not have much impact, if any, on small firms. There is evidence from other regulations of economies of scale (that is, cost conditions that lead to higher average costs at small firms than large firms) in start-up costs for new regulations or for changes in regulations. Thus, implementation of proposed revisions to Regulation M could be disproportionately costly to small firms, to the extent that they engage in covered consumer leasing.

Provisions of the CLA are similar to those of the credit provisions of the TILA, and available evidence suggests also the existence of economies of scale in on-going costs for Truth in Lending. Since the requirements of the existing regulation and the proposed revised regulation do not differ by size of firm, small firms would possibly continue to face relatively higher costs under the proposed revised rule.

It appears, however, that few, if any, firms that provide consumer leases are small firms. Moreover, evidence on scale economies for other regulations indicates that scale economies are exhausted at relatively low levels of output. Therefore, it is unlikely that the proposed revisions would cause any firms in the industry to incur disproportionately higher costs because of their size.

VI. Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The third-party disclosure requirements contained in 12 CFR 213.5 will aid consumers in understanding leases they negotiate. The respondents are for-profit institutions, including small businesses. Because the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises.

Institutions are not required to respond to this collection of information unless it displays a currently valid OMB control number. The OMB control

number is 7100–0202. OMB has deemed that inclusion of the OMB control number in this preamble satisfies this requirement.

The Board estimates that the annual burden for state member banks will increase from 9,272 hours to 10,786 hours. The Board estimates that the average length of time to disclose the costs and terms to a consumer will increase from fifteen minutes to seventeen minutes. The Board also estimates that the average length of time to prepare basic lease information for inclusion in all advertisements will decrease from thirty minutes to twenty-five minutes.

The Board has found that few state member banks engage in consumer leasing and that while the prevalence of leasing has increased in recent years, it has not increased substantially among state member banks. It also has been found that among state member banks that engage in consumer leasing, only a very few advertise consumer leases. For estimates of the annual burden imposed on other institutions that engage in consumer leasing, please contact their regulator.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 213 as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604.

2. The table of contents to part 213 is revised to read as follows:

Sec.
213.1 Authority, scope, purpose, and enforcement.
213.2 Definitions.
213.3 Exempt transactions.
213.4 General disclosure requirements.
213.5 Content of disclosures.
213.6 Renegotiations, extensions, and assumptions.
213.7 [Reserved].
213.8 Advertising.
213.9 Record retention.
213.10 Relation to State laws.
Appendix A to Part 213—Model Forms
Appendix B to Part 213—Federal Enforcement Agencies
Appendix C to Part 213—Issuance of Staff Interpretations
Supplement I–CL–1 to Part 213—Official Staff Commentary to Regulation M

3. Part 213 would be amended as follows:

a. Sections 213.1 through 213.6 are revised;

b. Section 213.7 is removed and reserved;

c. Section 213.8 is revised;

d. Sections 213.9 and 213.10 are added;

e. Appendices A through C are revised; and

f. Appendix D is removed.

The revisions and additions read as follows:

§ 213.1 Authority, scope, purpose, and enforcement.

(a) *Authority.* The regulation in this part, known as Regulation M, is issued by the Board of Governors of the Federal Reserve System to implement the consumer leasing provisions of the Truth in Lending Act, which is Title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*).

(b) *Scope and purpose.* This part applies to all persons who are lessors of consumer leases as defined in § 213.2(a)(6) and (10). The purpose of this part is:

(1) To ensure that lessees of personal property receive meaningful disclosures that enable them to compare lease terms with other leases and with credit transactions, where appropriate;

(2) To limit the amount of balloon payments in consumer lease transactions; and

(3) To provide for the accurate disclosure of lease terms in advertising.

(c) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 130, 131, and 185 of the act contain the liability provisions for failing to comply with the requirements of the act and this part.

§ 213.2 Definitions.

(a) *Definitions.* For the purposes of this part the following definitions apply:

(1) *Act* means the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

(2) *Advertisement* means a commercial message in any medium that directly or indirectly promotes a consumer lease transaction.

(3) *Agricultural purpose* means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products including but not limited to the acquisition of personal property and services used primarily in farming.

(4) *Board* refers to the Board of Governors of the Federal Reserve System.

(5) *Closed-end lease* means a consumer lease other than an open-end lease as defined in this section.

(6) *Consumer lease* means a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding $25,000, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. It does not include a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a). It also does not include a lease for agricultural, business, or commercial purposes or a lease made to an organization. Unless the context indicates otherwise in this part, ''lease'' shall be construed to mean ''consumer lease.''

(7) *Estimated lease charge* means the estimated total dollar amount of the cost of the lease attributable to interest and other charges regardless of when such charges are paid, as calculated under § 213.5(q).

(8) *Gross cost* means the total dollar amount of all items included in the value of a lease at consummation, including but not limited to the base price of the leased property and any other items added to that price, such as any markup by the lessor, taxes, insurance, service agreements, and any outstanding balance from a prior lease that is included in the new lease.

(9) *Lessee* means a natural person who leases or who is offered a consumer lease.

(10) *Lessor* means a person who regularly leases, offers to lease, or arranges for the lease of personal property under a consumer lease. A person who leased, offered, or arranged to lease personal property more than five times in the preceding calendar year is subject to the act and this part; if a person did not meet this numerical test in the preceding calendar year, the numerical test is applied to the current year.

(11) *Open-end lease* means a consumer lease in which the lessee's liability at the end of the lease term is based on the difference between the estimated value of the leased property and its realized value.

(12) *Organization* means a corporation, trust, estate, partnership, cooperative, association, or government entity or instrumentality.

(13) *Person* means a natural person or an organization.

(14) *Personal property* means any property that is not real property under the law of the state where the property is located at the time it is offered or made available for lease.

(15) *Realized value* means:

(i) The price received by the lessor for the leased property at disposition;

(ii) The highest offer for disposition; or

(iii) The fair market value at the end of the lease term.

(16) *Residual value* means the amount determined at consummation to be the value of the leased property at the end of the lease term.

(17) *Security interest* and *security* mean any interest in property that secures the payment or performance of an obligation.

(18) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(19) *Total lease obligation* applicable to an open-end lease, means the total of:

(i) The scheduled periodic payments under the lease;

(ii) Any nonrefundable cash payment required of the lessee or agreed upon by the lessor and lessee including any trade-in allowance made at consummation; and

(iii) The estimated value of the leased property at the end of the lease term.

(20) *Value at consummation* means the cost to the lessor of the leased property including, if applicable, any increase or markup by the lessor prior to consummation.

(b) [Reserved]

§ 213.3 Exempt transactions.

This part does not apply to consumer lease transactions of personal property which are incident to the lease of real property and which provide that:

(a) The lessee has no liability for the value of the property at the end of the lease term except for abnormal wear and use; and

(b) The lessee has no option to purchase the leased property.

§ 213.4 General disclosure requirements.

(a) *General requirements.* A lessor shall make the disclosures required by § 213.5, as applicable. The disclosures shall be made clearly and conspicuously in writing, and in accordance with this section.

(1) *Form of disclosures.* Except as provided in paragraph (a)(4) of this section, the disclosures required by § 213.5 shall be given to the lessee together on a dated statement that identifies the lessor and the lessee. All the disclosures may be made either on a separate statement that identifies the consumer lease transaction or on the contract or other document evidencing the lease transaction. As an alternative, the disclosures required under paragraph (a)(2) of this section to be segregated from other information may be provided on a separate statement that identifies the lease transaction and other required disclosures provided in the lease contract.

(2) *Segregation of certain disclosures.* The following disclosures shall be segregated from other information and shall contain only permissible related or additional information: the disclosures required by § 213.5(b), (c), (e), (h)(3), (k)(1), (l)(2), (o)(1) and (p) through (s). The content, format, and headings for these disclosures shall be provided in a manner substantially similar to the applicable model form in appendix A of this part.

(3) *Timing of disclosures.* A lessor shall provide disclosures to the lessee prior to the consummation of a consumer lease.

(4) *Multiple leased items.* In a lease of multiple items, the description required by § 213.5(a) may be given on a separate statement that is incorporated by reference in the disclosure statement required by paragraph (a)(1) of this section.

(5) *Language of disclosures.* The disclosures required by § 213.5 may be made in a language other than English, provided that the disclosures are made available in English upon the lessee's request.

(b) *Additional information.* Additional information may be provided with the disclosures that are not required by paragraph (a)(2) of this section to be segregated from other information. The additional information shall not be stated, used, or placed so as to mislead or confuse the lessee or contradict, obscure, or detract attention from any disclosures required by this part.

(c) *Multiple lessors or lessees.* When a transaction involves more than one lessor, the disclosures required by this part may be made by one lessor on behalf of all of the lessors. When a lease involves more than one lessee, the disclosures may be provided to any lessee who is primarily liable on the lease.

(d) *Use of estimates*—(1) *Standard.* At the time disclosures are made, if an amount or other item required to be disclosed, or needed to determine a required disclosure, is unknown or is not available to the lessor and the lessor has made a reasonable effort to ascertain the information, the lessor may use an estimate, provided that the estimate is reasonable, is clearly identified as an estimate, is based on the best information available to the lessor, and is not used to circumvent or evade the disclosure requirements of this part.

(2) *Open-end purchase option lease.* Notwithstanding that an estimate shall be based on the best information available, a lessor is not precluded in an open-end lease with a purchase-option from understating the estimated value of the leased property at the end of the term in computing the total lease obligation required by § 213.5(o)(1).

(e) *Effect of subsequent occurrence.* If information required to be disclosed becomes inaccurate because of an event occurring after consummation of a lease, the inaccuracy is not a violation of this part.

(f) *Minor variations.* A lessor may disregard the effects of the following in making calculations and disclosures:

(1) That payments must be collected in whole cents;

(2) That dates of scheduled payments may be different because the scheduled date is not a business day;

(3) That months have different numbers of days; and

(4) That February 29 occurs in a leap year.

§ 213.5 Content of disclosures.

For a consumer lease subject to this part, the lessor shall disclose the following information, as applicable:

(a) *Description of property.* A brief description of the leased property sufficient to identify the property to the lessee and lessor.

(b) *Total amount due at lease signing.* The total amount to be paid by the lessee prior to or at consummation of the lease, using the term ''total amount due at lease signing.'' The lessor shall itemize each payment by type and amount, including any refundable security deposit, advance monthly or periodic payment, and any downpayment (capitalized cost reduction), and shall disclose the means of payment, including any trade-in allowance, payments in cash, or rebates, in a format substantially similar to that contained in the model forms in appendix A of this part.

(c) *Payment schedule.* The number, amount, and due dates or periods of payments scheduled under the lease, and the total amount of the periodic payments.

(d) *Fees and taxes.* The total dollar amount for all official and license fees, registration, title, or taxes required to be paid by the lessee in connection with the lease.

(e) *Other charges.* The total amount of other charges payable by the lessee to the lessor, itemized by type and amount, that are not included in the periodic payments. This total includes the amount of any liability the lease imposes upon the lessee at the end of the term, but excludes the potential difference between the estimated and realized values referred to in paragraph (m) of this section.

(f) *Insurance*. A brief identification of insurance associated with the consumer lease including:

(1) If provided or paid for by the lessor, the types and amounts of coverage and cost to the lessee; or

(2) If not provided or paid for by the lessor, the types and amounts of coverage required of the lessee.

(g) *Warranties or guarantees*. A statement identifying all express warranties and guarantees available to the lessee made by the manufacturer or lessor with respect to the leased property.

(h) *Maintenance responsibilities*. The following are required:

(1) A statement identifying the party responsible for maintaining or servicing the leased property together with a brief description of the responsibility;

(2) A statement of standards for wear and use, which must be reasonable, if the lessor sets such standards; and

(3) A notice regarding wear and use which shall be substantially similar to the following: ''*wear and use*: you may be charged for excessive wear and use based on the lessor's standard for normal use.'' In a vehicle lease transaction, the notice shall also specify any charge for excess mileage.

(i) *Security interest*. A description of any security interest, other than a security deposit disclosed under paragraph (b) of this section, held or to be retained by the lessor and a clear identification of the property to which the security interest relates.

(j) *Penalties and other charges for delinquency*. The amount or the method of determining the amount of any penalty or other charge for delinquency, default, or late payments, which must be reasonable.

(k) *Purchase option*. A statement of whether or not the lessee has the option to purchase the leased property and:

(1) If at the end of the lease term, the purchase price; and

(2) If prior to the end of the lease term, the purchase price or the method for determining the price and when the lessee may exercise this option.

(l) *Early termination*—(1) *Conditions and disclosure of charges*. A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or the description of the method of determining the amount of any penalty or other charge for early termination, which must be reasonable.

(2) *Notice and example*. A notice about any charge for terminating a consumer lease early, and an example of a charge for terminating a lease at the end of the first year, which shall be substantially similar to the following: ''You may have to pay a substantial charge if you end this lease early. For example, if you terminate this lease at the end of the first year, you may owe the lessor [amount]. The actual charge will vary depending on when the lease is terminated. Other charges such as for excessive wear and use may also be imposed.''

(m) *Liability between estimated and realized values*. A statement that the lessee is liable for the difference between the estimated value of the leased property and its realized value at early termination or at the end of the lease term, if such liability exists.

(n) *Right of appraisal*. If the lessee's liability at early termination or at the end of the lease term is based on the realized value of the leased property, a statement that the lessee may obtain at the lessee's expense, a professional appraisal, by an independent third party agreed to by the lessee and the lessor, of the value that could be realized at sale of the leased property. The appraisal shall be final and binding on the parties.

(o) *Liability at end of lease term based on estimated value*. If the lessee's liability at the end of the lease term is based on the estimated value of the leased property:

(1) *Value at consummation and total lease obligation*. The value of the property at consummation, the itemized total lease obligation at the end of the lease term, and the difference between them;

(2) *Excess liability*. A statement about the rebuttable presumption that the estimated value of the leased property at the end of the lease term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average payment allocable to a monthly period; and that the lessor cannot collect the excess amount unless the lessor brings a successful action in court in which the lessor pays the lessee's attorney's fees;

(3) *Exception for unreasonable wear*. A statement that the provision regarding the rebuttable presumption and attorney's fees does not apply to the extent the excess of the estimated value over the realized value is due to unreasonable or excessive wear or use; and

(4) *Mutually agreeable final adjustment*. A statement that the requirements of this paragraph (o) do not preclude a willing lessee from making any mutually agreeable final adjustment regarding such excess liability.

(p) *Gross cost*. In a closed-end consumer lease, the gross cost, using that term, with a brief description such as ''the agreed upon acquisition value of the vehicle including but not limited to items such as taxes, fees, service contracts, and insurance.''

(q) *Estimated lease charge*. The estimated lease charge.

(1) *Closed-end lease*. In a closed-end lease, the estimated lease charge is calculated by subtracting the gross cost from the sum of the total payment due at lease signing (less a first periodic payment and any refundable charges), the total of periodic payments, the total of other charges payable to the lessor and the price the leased property may be purchased for at the end of the lease term. Where there is no purchase option, the residual value shall be used in the calculation.

(2) *Open-end lease*. In an open-end lease, the estimated lease charge is calculated in the same manner set forth in paragraph (q)(1) of this section, except that the initial value of the leased property, the value at consummation, is substituted for the gross cost, and the estimated value of the leased property substitutes for the residual value, to the extent there is any difference.

(r) *Residual value*. In a closed-end consumer lease, the residual value.

(s) *Statement referencing nonsegregated disclosures*. A statement that the lessee should refer to the lease documents for information on: conditions for and the amount or method of determining early termination charges; charges for delinquency, default, or late payments; maintenance responsibilities; any purchase option prior to the end of the lease term; insurance; total taxes and official fees paid; warranties; liability at the end of the lease term; and any security interest.

§ 213.6 Renegotiations, extensions, and assumptions.

(a) *Renegotiations*. A renegotiation occurs when a consumer lease subject to this regulation is satisfied and replaced by a new lease undertaken by the same consumer. A renegotiation is a new lease requiring new disclosures, except as provided in paragraph (d) of this section.

(b) *Extensions*. An extension is the continuation of an existing consumer lease beyond the originally scheduled termination date that is agreed to by the lessor and the lessee, except when the continuation is the result of a renegotiation. An extension that exceeds six months is a new lease requiring new disclosures, except as provided in paragraph (d) of this section.

(c) *Assumptions*. New disclosures are not required when a consumer lease is

assumed by another person, whether or not an assumption fee is charged.

(d) *Exceptions.* New disclosures under this part shall not be required for the following, even if they meet the definition of a renegotiation or an extension:

(1) The addition, deletion, or substitution of leased property in a multiple-item lease, provided the average payment is not changed by more than 25 percent;

(2) A lease that is extended for not more than six months on a month-to-month basis or otherwise;

(3) A reduction in the lease charge;

(4) A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed;

(5) An agreement involving a court proceeding; or

(6) The deferment of one or more payments, whether or not a fee is charged.

§ 213.7 [Reserved]

§ 213.8 Advertising

(a) *General rule.* No advertisement for a consumer lease may state that a specific lease of property at specific amounts or terms is available unless the lessor usually and customarily leases or will lease the property at those amounts or terms.

(b) *Clear and conspicuous standard.* Disclosures required by this section shall be made clearly and conspicuously. Any reference to a charge that is a part of the total of payments required prior to or at consummation under § 213.8(d)(2)(ii), such as the amount of any downpayment (or that no downpayment is required), shall not be more prominent than the disclosure of the total amount required to be paid by the lessee prior to or at consummation of the lease.

(c) *Catalogs and multi-page advertisements.* If a catalog or other multi-page advertisement provides a table or schedule of the disclosures required by this section for the leased property being advertised, the catalog or multi-page advertisement shall be considered a single advertisement if, whenever any lease term not accompanied by all the required disclosures is located elsewhere, it refers to the page or pages on which the table or schedule appears.

(d) *Advertisement of terms that require additional disclosure.*—(1) *Triggering terms.* An advertisement that states any of the following items shall contain the disclosures required by paragraph (d)(2) of this section, except as provided in paragraphs (e) and (f) of this section:

(i) The amount of any payment;

(ii) The number of required payments; or

(iii) A statement of any downpayment or other payment required at consummation, or that no payment is required.

(2) *Additional terms.* An advertisement containing any item under paragraph (d)(1) of this section shall state the following items:

(i) That the transaction advertised is a lease;

(ii) The total amount required to be paid by the lessee prior to or at consummation of the lease, or that no payment is required;

(iii) The number, amounts, due dates or periods of scheduled payments, and the total of payments under the lease;

(iv) A statement of whether or not the lessee has the option to purchase the leased property and at what price and time. The method of determining the price may be substituted for the price in disclosing that the lessee has the option to purchase the leased property prior to the end of the lease;

(v) A statement of the amount or method of determining the amount of any liabilities the lease imposes on the lessee at the end of the term; and

(vi) A statement that the lessee will be liable for any difference between the estimated value of the leased property and its realized value at the end of the lease term, if the lessee has such liability.

(e) *Alternative disclosures—merchandise tags.* A merchandise tag setting forth information listed under paragraph (d)(1) of this section need not contain the disclosures required by paragraph (d)(2) of this section, provided the tag refers to a sign or display prominently posted in the lessor's showroom. The sign or display shall contain a table or schedule of the information required to be disclosed by paragraph (d)(2) of this section.

(f) *Alternative disclosures—television or radio advertisements.*—(1) *Toll-free number or print advertisement.* An advertisement made through television or radio containing any information listed in paragraph (d)(1) of this section complies with paragraph (d)(2) of this section if the advertisement states the information required by paragraphs (d)(2)(i)–(iii) of this section; and:

(i) Lists a toll-free telephone number established in accordance with paragraph (f)(2) of this section that may be used by consumers to obtain the information required by paragraph (d)(2) of this section; or

(ii) Refers to a written advertisement appearing in a publication of general circulation in the community served by the media station on which the advertisement is broadcast, including the name and the date of the publication, published beginning three days before and ending ten days after the broadcast. The written advertisement shall include the information required to be disclosed by paragraph (d)(2) of this section.

(2) *Establishment of toll-free number.* If a toll-free telephone number is referred to in a television or radio advertisement for the purposes of complying with this section, the lessor shall:

(i) Establish the toll-free telephone number no later than the date the advertisement is broadcast;

(ii) Maintain the telephone number for no less than ten days, beginning on the date of the broadcast; and

(iii) Provide the information required by paragraph (d)(2) of this section to any person who calls. The information shall be provided orally, or in writing if requested by the consumer.

§ 213.9 Record retention.

A lessor shall retain evidence of compliance with the requirements imposed under this part, other than the advertising requirements under § 213.8, for a period of not less than two years after the date disclosures are required to be made or action is required to be taken.

§ 213.10 Relation to state laws.

(a) *Inconsistent state laws.* A state law that is inconsistent with the requirements of the act and this part is preempted to the extent of the inconsistency. If a lessor cannot comply with a state law without violating a provision of this part the state law is inconsistent with the requirements of the act and this part within the meaning of section 186(a) of the act and is preempted, unless the state law gives greater protection and benefit to the consumer. A state, through an appropriate official having primary enforcement or interpretative responsibilities for its consumer leasing law, may apply to the Board for a preemption determination.

(b) *Exemptions.*—(1) *Applications.* A state may apply to the Board for an exemption from the requirements of the act and this part for any class of lease transactions within the state. The Board will grant such an exemption if the Board determines that:

(i) The class of leasing transactions is subject to state law requirements substantially similar to the act and this

part or that lessees are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) *Enforcement and liability.* After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by federal law) will constitute the requirements of the act and this part. No exemption will extend to the civil liability provisions of sections 130, 131, and 185 of the act.

(c) *Procedures and criteria for preemptions and exemptions.* The procedures and criteria for requesting a preemption or an exemption determination are available from the Board upon request.

Appendix A to Part 213—Model Forms

A–1 Model Open-End or Finance Vehicle Lease Disclosures
A–2 Model Closed-End or Net Vehicle Lease Disclosures
A–3 Model Furniture Lease Disclosures

A–1 Model Open-End or Finance Vehicle Lease Disclosures

Federal Consumer Leasing Act Disclosure Statement

Date _____

1. LESSOR(S)

_____

LESSEE(S)

_____

2. Description of leased property

Year	Make	Model	Body style	Vehicle ID#

3. a. Initial Value of Vehicle ..... $_____

b. Total Payment Due at Lease Signing ..... $_____

(Total of the itemized costs should equal the means of paying itemized costs)

Itemized Costs		Means of paying Itemized Costs	
Downpayment	$_____	Net Trade-in Allowance	$_____
Registration Fee	$_____	Rebate	
_____	$_____	Cash	$_____
*First Monthly Payment	$_____	.....	
*Refundable Security Deposit	$_____	.....	

c. Total of Monthly Payments ..... $_____

Base Payment ..... $_____

Use/Lease Tax ..... $_____

Insurance ..... $_____

_____.

Total Monthly Payment ..... $_____

Payment Schedule: The first monthly payment of $_____ is due on ____, followed by ____ payments of ____ due on the ____ of each month.

d. Total of Other Charges Payable to Lessor (not included in b or c) ..... $_____

Disposition Fee ..... $_____

_____ ..... $_____

e. Estimated [Retail/Wholesale] Value of Vehicle ..... $_____

(Your liability for this sum may be limited, see item 6)

f. Purchase Option: You have __ /do not have __ an option to purchase the leased property at the end of the lease term. If you purchase the property at that time, the price will be $_____

g. Total Lease Obligation (Downpayment, trade-in + c + e) ..... $_____

h. Estimated Lease Charge ..... $_____

(Cost of the lease attributable to interest and other charges obtained by adding b (less less *first monthly payment and *any refundable charges) + c + d + f (but if no purchase option is available then e) − a))

Early Termination. You may have to pay a substantial charge if you end this lease early. For example, if you terminate this lease at the end of the first year, you may owe the lessor $_____. The actual charge will vary depending on when the lease is terminated. Other charges such as for excessive wear and use may also be imposed.

Excessive Wear and Use. You may be charged for excessive wear and use of the vehicle based on the *lessor's standards* for normal use. [In addition, you will be charged _____ cents per mile for each mile in excess of _____ miles shown on the odometer.]

Other Important Terms. Before signing this lease, please read your lease documents for further information about Conditions for and the Amount or Method of Determining Early Termination Charges, Charges for Delinquency, Default, or Late Payments, Maintenance Responsibilities, Any Purchase Option Prior to the End of the Lease Term, Insurance, Total Taxes and Official Fees Paid, Warranties, Liability at the End of the Lease Term, and Any Security Interest, if applicable.

4. Official Fees and Taxes

The total amount you will pay for official and license fees, registration, title and taxes during the lease term is $_____.

5. Insurance

The following types and amounts of insurance will be acquired in connection with this lease: _____

_____.

____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $_____.

____ You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

6. End of Term Liability

(a) The estimated value of the vehicle stated in item 3(e) is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is *greater* than the estimated value, you will have no further liability under this lease, except for other charges already incurred [and are entitled to a credit or refund of any surplus]. If the actual value of the vehicle is *less* than the estimated value, you will be liable for any difference up to $ _____ (3 times the monthly payment). For any difference in excess of that amount, you will be liable only if

1. Excessive use or damage [as described in item 7] [representing more than normal wear and tear] resulted in an unusually low value at the end of the term.

2. You voluntarily agree with us after the end of the lease term to make a higher payment.

3. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment. Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle. Unless we prove that the excess amount owed was the result of excessive use or unreasonable wear and use, we will pay your reasonable attorney's fees.

(b) If you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

7. Standards for Wear and Use

The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle _____.

8. Maintenance

[You are responsible for the following maintenance and servicing of the leased vehicle: _____.]

[We are responsible for the following maintenance and servicing of the leased vehicle: _____.]

9. Warranties

The leased vehicle is subject to the following express warranties: _____.

10. Early Termination and Default

(a) You may terminate this lease before the end of the lease term under the following conditions: _____.

The charge for such early termination is _____.

(b) We may terminate this lease before the end of the lease term under the following conditions: _____.

Upon such termination we shall be entitled to the following charge(s) for _____.

(c) To the extent these charges take into account the value of the vehicle at the end of the lease term, you have the same right to a professional appraisal as that stated in item 6(b):

_____.

11. Security Interest

We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:

_____.

12. Late Payments

The charge for late payments is _____.

13. Option to Purchase

[You have an option to purchase the leased vehicle prior to the end of the term. The price will be $_____/or the method of determining the price].

[You have no option to purchase the leased vehicle.]

A–2 Model Closed-End or Net Vehicle Lease Disclosures

FEDERAL CONSUMER LEASING ACT DISCLOSURE STATEMENT

Date _____

1. LESSOR(S)

_____

LESSEE(S)

_____

2. Description of leased property

Year	Make	Model	Body style	Vehicle ID#

3. a. Gross Cost ..... $_____

(The agreed upon acquisition value of the vehicle including but not limited to items such as taxes, fees, service contracts, and insurance. The gross cost is commonly referred to by the industry as the ''gross capitalized cost.'')

b. Total Payment Due at Lease Signing ..... $_____

(Total of the itemized costs should equal the means of paying itemized costs)

Itemized Costs		Means of Paying Itemized Costs	
Downpayment	$_____	Net Trade-in Allowance	$_____
Registration Fee	$_____	Rebate	$_____
$_____	$_____	Cash	$_____
*First Monthly Payment	$_____		
*Refundable Security Deposit	$_____		

c. Total of Monthly Payments ..... $_____

Base Payment ..... $_____

Use/Lease Tax ..... $_____

Insurance ..... $_____

$_____ ..... $_____
Total Monthly Payment ..... $_____
Payment Schedule: The first monthly payment of $_____ is due on ____, followed by ____ payments of _____ due on the ____ of each month.
d. Total of Other Charges Payable to Lessor (not included in b or c) ..... $_____
Disposition Fee ..... $_____
_____ ..... $_____
e. Residual Value ..... $_____
(The estimated value of the vehicle at the end of the lease term)
f. Purchase Option: You have __ / do not have __ an option to purchase the leased property at the end of the lease term. If you purchase the property at that time, the price will be $_____
g. Estimated Lease Charge ..... $_____
(Cost of the lease attributable to interest and other charges obtained by adding b (less *first monthly payment and *any refundable charges) + c + d + f (but if no purchase option is available, then e) − a))

Early Termination. You may have to pay a substantial charge if you end this lease early. For example, if you terminate this lease at the end of the first year, you may owe the lessor $_____. The actual charge will vary depending on when the lease is terminated. Other charges such as for excessive wear and use may also be imposed.

Excessive Wear and Use. You may be charged for excessive wear and use of the vehicle based on the *lessor's standards* for normal use. [In addition, you will be charged _____ cents per mile for each mile in excess of _____ miles shown on the odometer.]

Other Important Terms. Before signing this lease, please read your lease documents for further information about Conditions for and the Amount or Method of Determining Early Termination Charges, Charges for Delinquency, Default, or Late Payments, Maintenance Responsibilities, Any Purchase Option Prior to the End of the Lease Term, Insurance, Total Taxes and Official Fees Paid, Warranties, Liability at the End of the Lease Term, and Any Security Interest, if applicable.

4. Official Fees and Taxes

The total amount you will pay for official and license fees, registration, title and taxes during the lease term is $_____.

5. Insurance

The following types and amounts of insurance will be acquired in connection with this lease: _____
_____.

____We (lessor) will provide the insurance coverage quoted above for a total premium cost of $_____.
____You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

6. Standards for Wear and Use

The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle: _____
_____.

7. Maintenance

[You are responsible for the following maintenance and servicing of the leased vehicle: _____
_____.]

[We are responsible for the following maintenance and servicing of the leased vehicle: _____
_____.]

8. Warranties

The leased vehicle is subject to the following express warranties: _____
_____.

9. Early Termination and Default

(a) You may terminate this lease before the end of the lease term under the following conditions: _____
_____.

The charge for such early termination is _____
_____.

(b) We may terminate this lease before the end of the lease term under the following conditions: _____
_____.

Upon such termination we shall be entitled to the following charge(s) for: _____
_____.

(c) To the extent that these charges take into account the value of the vehicle at the end of the lease term, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

10. Security interest

We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:
_____.

11. Late Payments

The charge for late payments is: _____
_____.

12. Option to Purchase

[You have an option to purchase the leased vehicle prior to the end of the term. The price will be $_____ / the method of determining the price.]

[You have no option to purchase the leased vehicle.]

A–3 Model Furniture Lease Disclosures

FEDERAL CONSUMER LEASING ACT DISCLOSURE STATEMENT

Date _____

1. LESSOR(S)

_____

LESSEE(S)

_____

2. Description of leased property

Item	Color	Stock #	Mfg.	Qty.

3. a. Gross Cost ..... $_____
(The agreed upon acquisition value of the furniture including but not limited to items such as taxes, fees, and insurance.)
b. Total Payment Due at Lease Signing ..... $ _____
(Total of the itemized costs should equal the means of paying itemized costs)

Itemized Costs		Means of Paying Itemized Costs	
Downpayment	$_____	Net Trade-in Allowance	$_____
Delivery Fee	$_____	Rebate	$_____
_____	$_____	Cash	$_____
*First Monthly Payment	$_____		
*Refundable Security Deposit	$_____		

c. Total of Monthly Payments ..... $_____

Base Payment	$_____
Use/Lease Tax	$_____
_____	$_____
Total Monthly Payment	$_____

Payment Schedule: The first monthly payment of $_____ is due on _____, followed by _____ payments of $_____ due on the ____ of each month.
d. Total of Other Charges Payable to Lessor (not included in b or c) ..... $_____

Pick-up Charge	$_____
_____	$_____

e. Residual Value ..... $_____
(The estimated value of the furniture at the end of the lease term)
f. Purchase Option: You have ____ / do not have ____ an option to purchase the leased property, at the end of the lease term. If you purchase the property at that time, the price will be $_____
g. Estimated Lease Charge ..... $_____
(Cost of the lease attributable to interest and other charges obtained by adding b (less *first monthly payment and *any refundable charges) + c + d + f (but if no purchase option is available, then e) − a))

Early Termination. You may have to pay a substantial charge if you end this lease early. For example, if you terminate this lease at the end of the first year, you may owe the lessor $_____. The actual charge will vary depending on when the lease is terminated. [Other charges such as for excessive wear and use may also be imposed.]

Excessive Wear and Use. You may be charged for excessive wear and use of the furniture based on the *lessor's standards* for normal use.

Other Important Terms. Before signing this lease, please read your lease documents for further information about Conditions for and the Amount or Method of Determining Early Termination Charges, Charges for Delinquency, Default, or Late Payments, Maintenance Responsibilities, Any Purchase Option Prior to the End of the Lease Term, Insurance, Total Taxes and Official Fees Paid, Warranties, Liability at the End of the Lease Term, and Any Security Interest, if applicable.

4. Official Fees and Taxes
The total amount you will pay for official and license fees, registration, title and taxes during the lease term is $_____.

5. Insurance
The following types and amounts of insurance will be acquired in connection with this lease: _____ _____
____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $_____.
____ You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

6. Maintenance
[You are responsible for the following maintenance of the leased furniture: _____
_____.]
[We are responsible for the following maintenance of the leased furniture: _____
_____.]

7. Warranties
The leased furniture is subject to the following express warranties: _____
_____.

8. Standards for Wear and Use
The following standards are applicable for determining unreasonable or excess wear and use of the leased furniture: _____
_____.

9. Early Termination and Default
(a) You may terminate this lease before the end of the lease term under the following conditions: _____
_____.
The charge for such early termination is _____
_____.
(b) We may terminate this lease before the end of the lease term under the following conditions: _____
_____.
Upon such termination we shall be entitled to the following charge(s) for: _____
_____.

10. Security interest
We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: _____
_____.

11. Late Payments
The charge for late payments is: _____

12. Option to Purchase
[You have an option to purchase the leased furniture prior to the end of the term. The price will be $_____/ the method of determining the price].
[You have no option to purchase the leased vehicle.]

Appendix B to Part 213—Federal Enforcement Agencies

The following list indicates which federal agency enforces Regulation M (12 CFR part 213) for particular classes of business. Any questions concerning compliance by a particular business should be directed to the appropriate enforcement agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

1. *National banks and federal branches and federal agencies of foreign banks.*

District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

2. *State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.*

Federal Reserve Bank serving the District in which the institution is located.

3. *Nonmember insured banks and insured state branches of foreign banks.*

Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

4. *Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).*

Office of Thrift Supervision regional director for the region in which the institution is located.

5. *Federal credit unions.*

Regional office of the National Credit Union Administration serving the area in which the federal credit union is located.

6. *Air carriers.*

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590.

7. *Those subject to Packers and Stockyards Act.*

Nearest Packers and Stockyards Administration area supervisor.

8. *Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations.*

Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, DC 20578.

9. *All other lessors* (lessors operating on a local or regional basis should use the address of the FTC regional office in which they operate).

Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

Appendix C to Part 213—Issuance of Staff Interpretations

Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this Regulation M (12 CFR part 213). These interpretations provide the formal protection afforded under section 130(f) of the act. Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official commentary to Regulation M, which will be amended periodically. No staff interpretations will be issued approving lessor's forms, statements, or calculation tools or methods.

By order of the Board of Governors of the Federal Reserve System, September 12, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–23048 Filed 9–19–95; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–0893]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation M which implements the Consumer Leasing Act. The Consumer Leasing Act requires lessors to provide uniform cost and other disclosures about consumer lease transactions. The Board is issuing this proposal to revise the commentary that applies and interprets the requirements of Regulation M pursuant to the Board's policy of periodically reviewing its regulations and official interpretations. A proposal to revise Regulation M is published elsewhere in today's issue of the Federal Register.

DATES: Comments must be received by November 17, 1995.

ADDRESSES: Comments should refer to Docket No. R–0893, and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street) any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR section 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Kyung Cho-Miller, Obrea O. Poindexter, or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or 452–3667; for the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. General

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, governs consumer leasing transactions and is implemented by the Board's Regulation M (12 CFR part 213). Effective May 13, 1982, an official staff commentary (Supplement I–CL–1 to 12 CFR part 213) was published to interpret the regulation. The commentary is designed to provide guidance to lessors in applying the regulation to specific transactions and is intended to be updated periodically to address significant questions that arise. It is anticipated that the proposed revisions to the Regulation M commentary will be adopted in final form in the Spring of 1996 with compliance optional until October 1, 1996, the uniform effective date for mandatory compliance.

II. The Review of Regulation M

The Board's Regulatory Planning and Review Program calls for the periodic review of a regulation and its official interpretations with four goals in mind: to clarify and simplify regulatory language; to determine whether regulatory amendments are needed to address technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions. The official staff commentary has never been

substantially revised or reviewed. The Board initially began a review of Regulation M according to the goals of its review program in November 1993, when it published an advance notice of proposed rulemaking on Regulation M (58 FR 61035, November 19, 1993). In its advance notice, the Board solicited comments generally on the provisions of Regulation M and the CLA, including coverage, exempt transactions, and general format and disclosure requirements. In addition, the Board identified specific issues about disclosures of early termination charges, broadcast media advertising of leases, and segregation of leasing disclosures from other information. Most of the seventy comment letters on the advanced notice addressed those issues. The proposed revisions to the regulation are published elsewhere in today's issue of the Federal Register.

III. Discussion of Proposed Revisions

The following discussion covers the proposed revisions to the Regulation M commentary section-by-section. Most of the discussion focuses on new comments and significant revisions to existing comments.

Introduction

Comments I–3, I–4, and I–6 are deleted as obsolete or unnecessary.

Section 213.1—Authority, Scope, Purpose, and Enforcement

Current	Proposed
1–2	Deleted as unnecessary.

Section 213.2—Definitions

2(a) Definitions

Current	Proposed
2(a)(2)–1	2(a)(2)–1 and –2.
2(a)(2)–2	2(a)(2)–3. 2(a)(3)–1 new.
2(a)(4)–1	2(a)(10)–1.
2(a)(4)–2	2(a)(10)–4.
2(a)(4)–3	2(a)(10)–2. 2(a)(6)–3 new.
2(a)(6)–3 through –6 .	2(a)(6)–4 through 7.
2(a)(7)–1	2(a)(9)–1.
2(a)(8)–1	2(a)(10)–3.
2(a)(9)–1	2(a)(12)–1.
2(a)(12)–1	2(a)(14)–1.
2(a)(14)–1 through –6	2(a)(15)–1 through –6. 2(a)(17)–1 incorporates list from the regulatory definition of security interest.
2(a)(15)–1 through –3	2(a)(17)–2 through –4.
2(a)(17)–1 through –3	2(a)(19)–1 through –4.
2(a)(17)–4 and –5	2(a)(19)–5 and –6.
2(a)(18)–1 through –3	2(a)(20)–1 through –3.
2(b)–1 and –2	Deleted.

2(a)(2) Advertisement

Comment 2(a)(2)–1 would be revised to incorporate examples of advertisements, currently in § 213.2(a)(2).

2(a)(3) Agricultural Purpose

Proposed comment 2(a)(3)–1 incorporates the portion of current § 213.2(a)(3) and the statutory definition in section 103(s) of the Truth in Lending Act which describes agricultural products.

2(a)(6) Consumer Lease

Comment 2(a)(6)–2 would be revised to provide additional guidance on when a lease is deemed to exceed four months and, therefore, covered under the act and regulation. An example has been added to clarify that a month-to-month lease with a penalty for cancelling within the first year is deemed to be a consumer lease subject to the act and regulation.

Proposed comment 2(a)(6)–3 provides guidance on the total contractual obligation for purposes of determining whether a lease is covered under the regulation, and clarifies that the total contractual obligation may be different from the total lease obligation which applies only to open-end leases.

Comment 2(a)(6)–7, currently comment 2(a)(6)–6, would be revised to add another example of a lease deemed incidental to a service. The narrow list of exceptions in the existing commentary of leases incidental to a service is exhaustive, rather than illustrative. Questions have arisen about Regulation M coverage of cellular phones leased in conjunction with obtaining cellular service. Cellular service providers typically offer customers the opportunity to lease or purchase cellular telephones when subscribing for cellular service. The leasing of a cellular telephone is not incidental to obtaining cellular service and is, thus, covered under the regulation.

2(a)(7) Estimated Lease Charge

Proposed comment 2(a)(7)–1 clarifies that a monthly or other periodic payment paid at or before consummation is not included in the calculation of the estimated lease charge, as it is reflected in the total periodic payment disclosure. Any refundable charge such as a security deposit would also not be included in the calculation.

2(a)(8) Gross Cost

Proposed comment 2(a)(8)–1 provides guidance in making the proposed disclosure in § 213.5(p). Amounts consisting of fees and other charges paid out of pocket at consummation by the lessee are included in the gross cost figure.

2(a)(10) Lessor

Proposed comment 2(a)(10)–1 incorporates the existing regulatory definition of ''arrange for leasing of personal property'' (in § 213.2(a)(4) and provisions in the current commentary) into the proposed commentary under the definition of lessor.

Section 213.4—General Disclosure Requirements

4(a) General requirements

Current	Proposed
4(a)–1	Revised to adopt ''legal obligation'' terminology of Regulation Z.
4(a)–2	Moved to proposed § 213.4(f) of the regulation on minor variations that may be disregarded in making disclosures.
4(a)–3	4(a)(1)–1.
4(a)–5	Deleted as no longer applicable.
4(a)(1)–1	4(a)–2 (deleted the word ''or format''); 4(a)–3.
4(a)(1)–2	Deleted as no longer applicable.
4(a)(2)–1	Deleted.
4(a)(2)–2	4(a)(1)–2.
4(a)(2)–3	4(a)(1)–3.
4(a)(2)–4	4(a)(1)–4.
4(a)(2)–5	4(a)(1)–5. 4(a)(2)–1 new.
4(a)(4)–1	Deleted as unnecessary because of revised position in proposed § 213.4(a)(5).
4(a)(4)–2	Deleted as unnecessary because of revised position in proposed § 213.4(a)(5).

4(a)(2) Segregation of Certain Disclosures

Proposed comment 4(a)(2)–1 provides guidance in making the segregated disclosures required by § 213.4(a)(2).

4(b) Additional Information

Comment 4(b)–1 would be revised by deleting the second sentence.

4(d)(2) Open-End Purchase Option Lease

Comment 4(d)(2)–1, currently comment 4(d)–6, would be revised to clarify that this paragraph only applies to open-end leases. No substantive change is intended.

4(e) Effect of Subsequent Occurrence

Proposed comment 4(e)–3 incorporates the first sentence of footnote 1 of the regulation.

Section 213.5—Content of Disclosures

All of the comments in § 213.4(g) would be redesignated according to a new proposed § 213.5.

Current	Proposed
4(g)–1	Deleted as unnecessary.
4(g)–2	5–1.
4(g)(1)–1	Deleted as unnecessary.
4(g)(2)–1	Deleted as unnecessary 5(b)–1 new (incorporated from the instructions to the model form in the current appendix C–2).
4(g)(2)–2	5(b)–2 (incorporates current comment 2(b)–2).
4(g)(2)–3	5(b)–3.
4(g)(3)–1 and –2	5(c)–1 and –2.
4(g)(4)–1	5(d)–1.
4(g)(5)–1	5(e)–1 and –2.
4(g)(5)–2	Deleted as unnecessary.
4(g)(5)–3	5(e)–3 and –4.
4(g)(5)–4	5(e)–5.
4(g)(6)–1 and –2	5(f)–1 and –2.
	5(f)–3 new.
4(g)(7)–1 through –3	5(g)–1 through –3.
4(g)(8)–1	5(h)–1.
4(g)(9)–1	5(i)–1.
4(g)(10)–1 through –5	5(j)–1 through –5.
4(g)(11)–1 through –3	5(k)–1 through –3.
4(g)(12)–1 through –3	5(l)–1 through –3; the word ''capitalized'' in comment 2 is deleted.
	5(l)–4 new.
	5(l)–5 new.
4(g)(14)–1 through –3	5(n)–1 through –3.
4(g)(15)–1	5(o)–1.
4(g)(15)–2	5(o)(1)–1.
4(g)(15)–3	5(o)(1)–2.
4(g)(15)–4	5(o)–2.
4(g)(15)–5	5(o)(2)–1.
4(g)(15)–6	5(o)(2)–2; the word ''capitalized'' is deleted.
	5(o)(2)–3 new.
	5(p)–1 new.

5(b) Total Amount Due at Lease Signing

Proposed comment 5(b)–1 incorporates a definition of ''capitalized cost reduction'' from the instructions in current appendix C–1.

Comment 5(b)–2 would incorporate the first sentence of current comment 2(b)–2.

5(d) Fees and Taxes

Comment 5(d)–1 is revised to provide guidance on taxes that should be disclosed pursuant to this paragraph. If the tax is payable by the lessor (such as a gas guzzler tax), but the tax is passed on to the consumer and the existence of the tax is indicated in the consumer's lease documents—for example on the lease agreement—or the sticker or tag affixed to the personal property—then the tax should be disclosed pursuant to this paragraph. However, if the existence of the tax is not indicated, and the tax is absorbed by the lessor as a cost of doing business, then the tax should not be disclosed under this section.

5(f) Insurance

Proposed comment 5(f)–3 is added to indicate that this paragraph applies to voluntary and required insurance provided in connection with a lease transaction.

5(l) Early Termination

Proposed comment 5(l)–4 provides guidance in disclosing a full description of the method used to determine the amount of an early termination charge. A full description of the complete early termination method must be disclosed by lessors outside of the segregated disclosures. However, given the complexity of the methods involved, a lessor is permitted—in giving the ''full description'' of its early termination method—to include a reference to the name of a generally accepted method of computing the unamortized gross or capitalized cost portion of its early termination charge. For example, a lessor may state that the ''constant yield'' method would be utilized in obtaining the unamortized portion of the gross cost, but the lessor would *also* have to specify how that figure—and any other term or figure—is used in computing the total early termination charge that would be imposed upon the consumer. A lessor referring to a named method in this manner must provide a written explanation of that method if requested by the consumer.

Proposed comment 5(l)–5 provides guidance on what value such as the fair market value or the wholesale value should be used when calculating the required example of an early termination charge based on termination at the end of the first year.

5(o) Liability at End of Lease Term Based on Estimated Value

The proposed regulation reformats this section, currently section 213.4(g)(15), for clarity. The commentary has been similarly reformatted.

Proposed comment 5(o)(2)–3 states the intent of section 183(a) of the CLA that lessors must pay the lessees' attorney's fees in all actions brought by lessors under this subsection, even if those actions are decided in favor of the lessee.

5(s) Statement Referencing Nonsegregated Disclosures

Proposed comment 5(s)–1 provides guidance in making the proposed new disclosure referencing and alerting consumers to read CLA required disclosures not included among the segregated disclosures. It is only necessary to refer to the applicable items, thus, the lessor may delete inapplicable items from the disclosure.

Section 213.6—Renegotiations, Extensions, and Assumptions

Current	Proposed
4(h)–1	6–1.
4(h)–2	First sentence moved to regulation; second sentence moved to 6–1.
4(h)–3	Moved to the regulation.
4(h)–4	Moved to the regulation.
4(h)–5	6(b)–1.
	6(b)–2 new.
4(h)–6	6–2.
4(h)–7	Moved to the regulation.
4(h)–8	Moved to the regulation.
4(h)–9	Moved to the regulation.

Section 213.6 of the proposed regulations contain the disclosure rules governing leases that are renegotiated, extended or assumed (currently in section 213.4(h) and the commentary). Many of the commentary provisions have been moved to the regulation. For example, the definitions of a renegotiation and an extension would be included in the regulation. (This change parallels the approach under Regulation Z for refinancings and assumptions, section 226.20.) Other commentary provisions have been reformatted to conform to the proposed regulatory changes.

Comment 6(b)–1, currently comment 4(h)–5, would be revised to clarify that where a consumer lease is extended on a month-to-month basis for more than 6 months, new disclosures are required at the beginning of the seventh month, and also at the start of each seventh month thereafter. This revision incorporates into the commentary a longstanding interpretation originally issued under leasing provisions that were a part of Regulation Z (Truth in Lending) prior to 1982.

Proposed comment 6(b)–2 also incorporates a longstanding interpretation originally issued under the pre-1982 leasing provisions in Regulation Z that disclosures for a consumer lease, as defined by the

regulation, extended on a month-to-month basis for more than 6 months should reflect the month-to-month nature of the transaction.

Section 213.8—Advertising

Current	Proposed
5(a)–1	8(a)–1.
5(a)–2	8(a)–2.
5(b)–1	8(c)–1.
5(b)–2	8(c)–2.
5(c)–1	8(b)–1.
	8(b)–2 new.
5(c)–2	8(d)(1)–1.
	8(d)(2)–1 new.
5(d)–1	8(e)–1.
	8(e)–2 new.
	8(f)–1 new.
	8(f)(1)–2 new.

8(b) Clear and Conspicuous Standard

Proposed 8(b)–2 provides that lease disclosures must appear on a television screen for at least five seconds, which parallels the ''five second rule'' adopted by the Federal Trade Commission.

8(e) Alternative Disclosures—Merchandise Tags

Proposed comment 8(e)–2 clarifies that merchandise tags are generally considered a multiple item lease.

8(f) Alternative Disclosures—Television or Radio Advertisements

8(f)(1) Toll-Free Number or Print Advertisement

Proposed comment 8(f)(1)–1 clarifies that a newspaper circulated nationally qualifies as a publication in general circulation.

Section 213.10 Relations to State Laws

Section 213.10 in the proposed regulation combines and simplifies current §§ 213.7 and 213.8. The comments to these sections have been deleted as unnecessary.

Appendix A Model Forms

Under the proposed rule, the model forms are moved to appendix A. Comment app. A–2 would be deleted. Minor revisions would be made to other comments in this appendix. For example, comment app. A–1 would be revised to indicate that changes to the headings, format, and the content of the segregated disclosures should be minimal. Also the definition of a closed–end lease in comment app. A–3 would be deleted because a definition would be added in the regulation.

IV. Form of Comment Letters

As discussed above, comment letters should refer to Docket No. R–0893. The Board requests that, when possible, comments be prepared using a standard courier type-face with a type-size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5 ¼ inch computer diskettes in any IBM-compatible DOS-based format, but must be accompanied by an original document in paper form.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, 12 CFR part 213, as proposed to be amended by a document published elsewhere in today's issue of the Federal Register, is further proposed to be amended as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604

2. Supplement I–CL–1 to Part 213—Official Staff Commentary to Regulation M would be revised to read as follows:

Supplement I–CL–1 to Part 213—Official Staff Commentary to Regulation M

Introduction

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation M (12 CFR part 213). Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 U.S.C. 1640). Section 130(f) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedures for requesting interpretations.* Under appendix C of Regulation M, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the Federal Register. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 213.4(a) are further divided by subparagraph, such as comment 4(a)(1)–1 and comment 4(a)(1)–2. In other cases, comments have more general application and are designated, for example, as comment 4(a)–1. This introduction may be cited as comments I–1 through I–3. An appendix may be cited as comments app. A–1.

Section 213.1—Authority, Scope, Purpose, and Enforcement

1. *Foreign applicability.* Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents (including resident aliens) of any state as defined in § 213.2(a)(18). The regulation does not apply to a foreign branch of a U.S. bank or leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

Section 213.2—Definitions

2(a) Definitions

2(a)(2) Advertisement

1. *Coverage.* Only commercial messages that promote consumer lease transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of consumer leases, whether in visual, oral, or print media, are covered by the definition. The term includes the following:

i. Print media.

ii. Broadcast media, including radio and television messages.

iii. Catalogs and fliers.

iv. Direct mail literature.

v. Printed material on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag which is delivered or made available to a lessee or prospective lessee in any manner whatsoever.

vi. Telephone solicitations.

2. *Exceptions.* The term does not include the following:

i. Direct personal contacts, such as follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction.

ii. Informational material distributed only to businesses.

iii. Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.

iv. News articles, the use of which is controlled by the news medium.

v. Market research or educational materials that do not solicit business.

3. *Persons covered.* See the commentary to § 213.8(a).

2(a)(3) Agricultural purpose

1. *Agricultural products.* Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

2(a)(6) Consumer lease

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If some question exists as to the primary purpose for a lease, the lessor is, of course, free to make the disclosures, and the fact that disclosures are made in such circumstances is not controlling on the question of whether the transaction was exempt. The primary purpose of a lease is generally determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in primary usage.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. A lease with a penalty for cancelling during the first four months is considered to have a term of more than four months. A month-to-month or week-to-week extension of a lease that was originally for four months or less is not a consumer lease, even if the extension actually lasts for more than four months. See the comments on § 213.6(b) for guidance on extensions of covered leases. To illustrate:

i. A month-to-month lease with a penalty for terminating before one year, such as the forfeiture of a security deposit, is a consumer lease covered by this definition.

ii. A three-month lease extended on a month-to-month basis and terminated after one year is not a consumer lease covered by this definition.

3. *Total contractual obligation.* The term total contractual obligation includes all nonrefundable amounts a lessee is contractually obligated to pay under a lease for the purpose of determining whether the lease is covered by this regulation. The total contractual obligation is not necessarily the same as the total lease obligation defined in § 213.2(a)(19).

4. *Organization.* A consumer lease does not include a lease made to an organization, such as a corporation or a government agency or instrumentality. A lease to an organization is outside the requirements of the regulation even if the property is used (by an employee, for example) primarily for personal, family or household purposes. Likewise, a lease made to an organization is not a consumer lease even if it is guaranteed by or subsequently assigned to a natural person.

5. *Credit sale.* A lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), is not a consumer lease. Regulation Z defines a credit sale, in part, as ''a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.''

6. *Safe deposit boxes.* A lease of a safe deposit box is not a consumer lease for purposes of this regulation.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and are not consumer leases subject to the requirements of the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Burglar alarm systems requiring the installation of leased equipment that triggers a telephone call when a home is burglarized.

iii. Propane gas service where the consumer is required to lease a propane tank to receive the service.

2(a)(7) Estimated lease charge

1. *Advance periodic payment and refundable charges.* A first monthly (or other periodic payment) paid at or before consummation which is included in the total periodic payment disclosure and refundable charges are not included in the calculation of the estimated lease charge.

2(a)(8) Gross cost

1. *Fees and other charges paid at lease signing.* This figure includes all nonrefundable fees and charges required to be paid before or at lease signing as well as those fees and charges which are capitalized over the lease term.

2(a)(9) Lessee

1. *Guarantors.* Guarantors are not lessees for purposes of the regulation.

2(a)(10) Lessor

1. *Arranger of a lease.* To ''arrange'' for the lease of personal property means to provide or offer to provide a lease which is or will be extended by another person under a business or other relationship pursuant to which the person arranging the lease (a) receives or will receive a fee, compensation, or other consideration for the service; or (b) has knowledge of the lease terms and participates in the preparation of the contract documents required in connection with the lease.

To illustrate:

i. An automobile dealer who, pursuant to a business relationship, completes the necessary lease agreement before forwarding it to the leasing company (to whom the obligation is payable on its face) for execution is ''arranging'' for the lease.

ii. An automobile dealer who, receiving no fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not ''arranging'' for the lease.

2. *Consideration.* The term ''other consideration'' used in the definition of arranger in comment 2(a)(10)–1 refers to an actual payment corresponding to a fee or similar compensation. It does not refer to intangible benefits, such as the advantage of increased business, which may flow from the relationship between the parties.

3. *Assignees.* An assignee may be a lessor for purposes of the regulation in circumstances such as those described in *Ford Motor Credit Co.* v. *Cenance,* 452 U.S. 155 (1981). In that case, the U.S. Supreme Court held that an assignee was a creditor for purposes of previous Regulation Z because of its substantial involvement in the credit transaction.

4. *Multiple lessors.* See the commentary to § 213.4(c).

2(a)(12) Organization

1. *Coverage.* The term includes joint ventures and persons operating under a business name.

2(a)(14) Personal property

1. *Coverage.* Whether property is considered personal property depends on state or other applicable law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

2(a)(15) Realized value

1. *General.* Realized value is not a required disclosure. It refers to the value of the property at early termination or at the end of the lease term. It may be either the retail or wholesale value. Realized value is relevant only to leases in which the lessee's liability at early termination or at the end of the lease term is the difference between the estimated value of the property and its realized value.

2. *Options.* Subject to the contract and to state or other applicable law, the lessor may choose any of the three methods for calculating the realized value in determining the lessee's liability at the end of the lease term or at early termination. If the lessor sells the property prior to making that determination, the price received for the property is the realized value. If the lessor does not sell the property prior to making that determination, the lessor may choose either the highest offer or the fair market value as the realized value.

3. *Exclusions.* The realized value may exclude any amount attributable to taxes.

4. *Disposition charges.* Disposition charges may not be subtracted in determining the realized value. If the lessor charges the lessee a fee to cover the disposition expenses, the fee must be disclosed at consummation under § 213.5(e). Disposition charges may be estimated in accordance with § 213.4(d), and this does not prevent the lessor from collecting the actual disposition costs incurred.

5. *Offers.* In determining the highest offer for disposition, the lessor need not consider offers that an offeror has withdrawn or is unable or unwilling to perform.

6. *Appraisals.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in section 183(c) of the act and § 213.5(n); those provisions refer to the lessee's right to an independent professional appraisal.

2(a)(17) Security interest and security

1. *Coverage.* The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialman's, artisan's, and other similar liens, vendor's liens in both real and personal property, any

lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

2. *State or other applicable law.* Other than those listed, only interests that are security interests under state or other applicable law are encompassed by the definition. For example, any interest the lessor may have in the leased property falls within this definition only if it is considered a security interest under state or other applicable law.

3. *Disclosable interests.* For purposes of the regulation, a security interest is an interest taken by the lessor to secure performance of the lessee's obligation. For example, if a bank that is not a lessor makes a loan to a leasing company and takes assignments of consumer leases generated by that company to secure the loan, the bank's security interest in the lessor's receivables is not a security interest for purposes of this regulation.

4. *Insurance.* The lessor's right to insurance proceeds or unearned insurance premiums is not a security interest for purposes of this regulation.

2(a)(19) Total lease obligation

1. *Disclosure.* The total lease obligation is disclosed under § 213.5(o)(1). It is relevant only to open-end leases.

2. *Periodic payments; disclosure distinguished.* Certain items that may be paid periodically are not part of the lessee's total lease obligation. Therefore, the amount of the scheduled periodic payments for purposes of calculating the total lease obligation may be less than the amount of the periodic payments disclosed under § 213.5(c).

3. *Periodic payments; inclusions.* The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation is composed of the following items:

i. Any portion of the periodic payments attributable to depreciation, cost of money, and profit.

ii. Taxes in some cases. See the commentary to § 213.5(o)(1).

iii. The cost of mechanical breakdown protection contracts.

4. *Periodic payments; exclusions.* The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation does not include the following:

i. Any amount not paid periodically.

ii. Any portion of periodic payments attributable to official fees, registration, certificate of title, or license fees.

iii. Taxes in some cases. See the commentary to § 213.5(o)(1).

iv. At the lessor's option, the capitalized cost of service contracts and insurance premiums may be either included or excluded from this calculation.

5. *Initial payments.* The following amounts are not included among the payments at consummation when calculating the total lease obligation:

i. Refundable security deposits.

ii. Official fees and charges disclosable under § 213.5(d).

iii. Other charges disclosable under § 213.5(e).

iv. The cost of a mechanical breakdown protection contract purchased at consummation.

6. *Estimated value.* See the commentary to § 213.4(d) regarding the use of estimates and section 183(a) of the act regarding the criteria for estimating the value of the leased property at the end of the lease term.

2(a)(20) Value at consummation

1. *Disclosure.* The value at consummation is relevant only to open-end leases and is disclosed and subtracted from the total lease obligation under § 213.5(o)(1).

2. *Taxes.* The value at consummation includes taxes paid by the lessor in connection with the acquisition of leased property and amortized over the lease term. See the commentary to § 213.5(o)(1).

3. *Other amounts.* The definition of the value at consummation explicitly permits the lessor to include a profit or markup (without separate itemization). The lessor may include costs of doing business, such as insurance that the lessor purchases on its own behalf. See the commentary to § 213.5(f). The lessor may not include in this amount other items (such as maintenance or extended warranty insurance) that are purchased by the lessee.

Section 213.4—General Disclosure Requirements

4(a) General requirements

1. *Basis of disclosures.* The disclosures must reflect the terms of the legal obligation between the parties. For example:

i. In a three-year lease with a one-year minimum term after which there is no penalty for termination, disclosures should be based on the full three-year term of the lease. The one-year minimum term is only relevant to the early termination provisions of §§ 213.5(l), (m) and (n).

2. *Clear and conspicuous standard.* The clear and conspicuous standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no mathematical progression, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. Appendix A contains model forms that meet this standard, although lessors are not required to use the forms. In addition, although no minimum typesize is mandated, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

3. *Multipurpose disclosure forms.* Lessors are not precluded from using a multipurpose disclosure form that enables a lessor to designate the specific disclosures applicable to a given transaction, consistent with the requirement that disclosures be clearly and conspicuously provided.

4. *Number of transactions.* Lessors have flexibility in handling lease transactions that may be viewed as multiple transactions. For example:

i. When a lessor leases two items to the same lessee on the same day, the lessor may disclose the leases as either one or two lease transactions.

ii. When a lessor sells insurance or other incidental services in connection with a lease, the lessor may disclose in one of two ways: a single lease transaction or a lease and a credit sale transaction.

4(a)(1) Form of disclosures

1. *Form of disclosures.* In making disclosures lessors may cross-reference rather than repeat items that are disclosed among the segregated disclosures. In addition, when a required disclosure consists of a total amount only, lessors need not separately itemize each component part of the total charge. Similarly, if a required disclosure must be separately itemized, a total amount is not required.

2. *Identification of parties.* While disclosures must always be made clearly and conspicuously, lessors are not required to use the word ''lessor'' and ''lessee'' when identifying those parties.

3. *Multiple lessors and multiple lessees.* In transactions involving multiple lessors and lessees, the disclosure statement must identify all the lessors and lessees; however, § 213.4(c) permits a single lessor to make all the disclosures for a single lessee.

4. *Lease disclosures integrated in lease contract.* Contract terms or disclosures that are not required by the regulation may be added to the disclosure statement so long as the required disclosures are made together and the lessor adheres to the limits of § 213.4(b) governing the inclusion of additional information.

5. *Lessee's signature.* The regulation does not require the lessee to sign the disclosure statement, whether disclosures are separately provided or are part of the lease contract.

Nevertheless, for contract or evidentiary purposes, the lessor may want a lessee to sign the disclosure statement or an acknowledgement of receipt.

4(a)(2) Segregation of certain disclosures

1. *Permissible related or additional information among segregated disclosures.* The disclosures required to be segregated under this paragraph must contain only the information required or permitted to be included among the segregated disclosures (see § 213.5 and its commentary for guidance on information required or permitted in the segregated disclosures.) The segregated disclosures in § 213.4(a)(2) may be provided on a separate document and other CLA disclosures provided in the lease contract, so long as all disclosures are given at the same time.

4(b) Additional information

1. *State law disclosures.* If state law disclosures are not inconsistent with the act and regulation under § 213.10, in accordance with the standard set forth in § 213.4(b) for providing additional information, the lessor may make those disclosures along with the nonsegregated disclosures required under the regulation.

4(c) Multiple lessors or lessees

1. *Multiple lessors.* If a lease transaction involves more than one lessor, the lessors may choose which of them will make the disclosures. All disclosures for the transaction must be given, even if the lessor making the disclosures would not otherwise have been obligated to make a particular disclosure.

4(d) Use of estimates

4(d)(1) Standard

1. *Time of estimated disclosure.* The lessor may use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made. For example:

i. Section 213.5(d) requires the lessor to disclose the total amount payable by the lessee during the lease term for official and license fees, registration, certificate of title fees, or taxes. If these amounts are subject to indeterminable increases or decreases over the course of the lease, the lessor may estimate its disclosures based on the rates or charges in effect at the time of the disclosure.

2. *Basis of estimates.* Estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The ''reasonably available'' standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. The lessor normally may rely on the representations of other parties in obtaining information. For example, the lessor might look to the consumer to determine the purpose for which leased property will be used, to insurance companies for the cost of insurance, or to an automobile manufacturer or dealer for the date of delivery.

3. *Estimated value of leased property at termination.* When the lessee's liability at the end of the lease term is based on the estimated value of the leased property (see § 213.5(o)), the estimate must be reasonable and based on the best information reasonably available to the lessor. That standard permits a lessor to use a generally accepted trade publication listing estimated current or future market prices for the leased property, rather than investing in the most sophisticated computer equipment to determine the estimated value at the end of the lease term. The lessor should rely on other information, its experience, or reasonable belief, if those sources provide the best information. For example:

i. An automobile lessor offering a three-year open-end lease intends to assign a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimate a wholesale value derived from a generally accepted trade publication listing current wholesale values, if the trade publication is the best information available.

ii. Same facts as above, except that the lessor discloses an estimated value derived by adjusting the value quoted in the trade publication because, in its experience, the trade publication values either understate or overstate the prices actually received in local used-vehicle markets. The lessor may adjust estimated values quoted in trade publications based on the lessor's experience or reasonable belief that the values will be understated or overstated.

4. *Retail or wholesale value.* The lessor may choose either a retail or a wholesale value in estimating the value of leased property at termination, provided that choice is consistent with the lessor's general practice or intention when determining the value of the property at the end of the lease term.

5. *Labelling estimates.* Generally, only the disclosure for which the exact information is unknown is labelled as an estimate. Nevertheless, when several disclosures are affected because of the unknown information, the lessor has the option of labelling as an estimate either every affected disclosure or only the disclosure primarily affected.

4(d)(2) Open-end purchase option lease

1. *Understating the estimated value.* In non-purchase-option open-end leases, the lessor must not use a value lower than that indicated by the best information available when disclosing the estimated value of leased property at the end of the lease term under § 213.5(o).

4(e) Effect of subsequent occurrence

1. *Subsequent occurrences.* Examples of subsequent occurrences include:

i. An agreement between the lessee and lessor to change from a monthly to a weekly payment schedule.

ii. The addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease.

iii. An increase in official fees or taxes.

iv. An increase in insurance premiums or coverage caused by a change in the law.

v. Late delivery of an automobile caused by a strike.

2. *Redisclosure.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under § 213.6.

3. *Lessee's failure to perform.* The act is not violated if a previously given disclosure becomes inaccurate when a lessee fails to perform obligations under the contract and a lessor takes actions that are necessary and proper in such circumstances to protect its interest.

Section 213.5—Content of Disclosures

1. *Other required disclosures.* The disclosure statement must include the date and identify the lessor and the lessee. See the commentary to § 213.4(a)(1). The lessor need only be identified by name; an address may be provided but is not required.

5(b) Total amount due at lease signing

1. *Capitalized cost reduction.* Capitalized cost reduction is a payment in the nature of a downpayment which reduces the amount of the leased property to be amortized over the term of the lease.

2. *Consummation.* When a contractual relationship is created between the lessor and the lessee is a matter to be determined under state or other applicable law; the regulation does not make that determination.

3. *Fees payable upon delivery.* This provision does not apply to fees paid at delivery, when delivery occurs after consummation. For example, the lessee agrees to pay registration fees, sales taxes, and a delivery charge in one lump sum on the date the automobile is delivered, sometime after consummation. None of these charges is an initial payment under § 213.5(b) because they are paid after consummation of the lease. The registration fees and sales taxes are disclosed under § 213.5(d), and the delivery charge is disclosed as an ''other charge'' under § 213.5(e).

5(c) Payment schedule

1. *Itemization not required.* Although the model forms in appendix A itemize the components of the periodic payments, a lessor may but is not required to do so. Some of the components must be disclosed separately if their disclosure is required by other provisions of the regulation, such as official fees and lessee's insurance.

2. *Periodic payments.* The phrase ''number, amount, and due dates or periods of payments'' requires the disclosure of all payments made periodically. The disclosed payments must include all amounts, such as maintenance and insurance charges, that are paid periodically. In addition, the lessor must disclose the total of the periodic payments. In an open-end lease, however, the lessor may disclose as the total of periodic payments the sum of the scheduled periodic payments referred to in § 213.2(a)(19). See the commentary to § 213.2(a)(19).

5(d) Fees and taxes

1. *Taxes.* Taxes that are included in the value at consummation are not disclosed pursuant to this paragraph. See the commentary to § 213.2(a)(20). Taxes payable by the lessor that are separately imposed on the consumer and thus noted in the lease documentation must be disclosed under this paragraph. However, taxes payable by the lessor and absorbed as a cost of doing business are not disclosed under this paragraph.

5(e) Other charges

1. *Coverage.* Section 213.5(e) requires the disclosure of charges that are anticipated by the parties as incident to the normal operation of the lease agreement.

2. *Excluded charges.* This section does not require disclosure of charges that are imposed when the lessee terminates early or fails to abide by the lease agreement, such as charges for:

i. Late payment.

ii. Default.

iii. Early termination.

iv. Deferral of payments.

v. Extension of the lease.

3. *Relationship to other provisions.* The other charges mentioned in § 213.5(e) are charges that are not required to be disclosed under another provision of § 213.5.

4. *Other charges.* Examples of charges not disclosed under this section include:

i. A delivery charge that is paid after consummation is disclosed as an ''other charge.'' A delivery charge that is paid at consummation, however, is disclosed as part of the total initial charges under § 213.5(b), not as an ''other charge.''

ii. Occasionally, the price of a mechanical breakdown protection (MBP) contract is disclosed as an ''other charge.'' More often, the price of MBP is reflected in the periodic payment disclosure under § 213.5(c), in which case it is not disclosed as an ''other charge.'' In states where MBP is regarded as insurance, however, the cost should be disclosed in accordance with § 213.5(f), not as an ''other charge.'' See the commentary to § 213.5(f).

5. *Lessee's liabilities at the end of the lease term.* Liabilities that the lease imposes upon the lessee at the end of the scheduled lease term and that must be disclosed under this section include, but are not limited to, disposition and ''pick-up'' charges.

5(f) Insurance

1. *Lessor's insurance.* Insurance that is purchased by the lessor primarily for its own benefit, and that is absorbed as a business expense and not separately charged to the lessee, need not be disclosed under this section even if it provides an incidental benefit to the lessee.

2. *Mechanical breakdown protection.* Whether mechanical breakdown protection (MBP) purchased in conjunction with a lease should be treated as insurance is determined by state or other applicable law. In states that do not treat MBP as insurance, the lessor need not make § 213.5(f) disclosures. The lessor may, however, disclose the § 213.5(f) information in such cases in accordance with the additional information provision in § 213.4(b).

3. *Voluntary Insurance.* Insurance not required but provided by the lessor must be disclosed under this section.

5(g) Warranties or guarantees

1. *Brief identification.* The statement identifying warranties may be brief and need not describe or list all warranties applicable to specific parts such as for air conditioning, radio, or tires in an automobile. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty.

2. *Warranty disclaimers.* A disclaimer of warranties is not required by the regulation, but the lessor may give a disclaimer as additional information in accordance with § 213.4(b).

3. *State law.* Whether an express warranty or guaranty exists is determined by state or other law.

5(h) Maintenance responsibilities

1. *Standards for wear and use.* No disclosure is required for lessors that do not set standards for wear and use (such as excess mileage.) See the commentary to § 213.5(o).

5(i) Security interest

1. *Disclosable security interests.* See § 213.2(a)(17) and accompanying commentary to determine what security interests must be disclosed.

5(j) Penalties and other charges for delinquency

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under § 213.5(j). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditure of amounts in conjunction with a collection proceeding or upon the employment of an attorney to effect collection, need not be disclosed.

2. *Charges for early termination.* When default is a condition for early termination of a lease, default charges must also be disclosed under § 213.5(l). The § 213.5 (j) and (l) disclosures may be combined. Examples of combined disclosures are provided in the model lease disclosure forms in appendix A.

3. *Simple-interest leases.* In a simple-interest accounting lease, the additional lease charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the lease charge after termination of the lease because the lessee fails to return the leased property does not constitute a default charge. In either case, if the additional charge accrues at a rate higher than the normal lease charge, the lessor must disclose the amount of or the method of determining the additional charge under § 213.5(j).

4. *Extension charges.* Extension charges that exceed the lease charge in a simple-interest accounting lease or that are added separately are disclosed under § 213.5(j).

5. *Reasonableness of charges.* Pursuant to section 183(b) of the act, penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

5(k) Purchase option

1. *Mandatory disclosure of no purchase option.* Although generally the lessor need only make the specific required disclosures that apply to a transaction, it must disclose affirmatively that the lessee has no option to purchase the leased property when the purchase option is inapplicable.

2. *Existence of purchase option.* Whether a purchase option exists is determined by state or other applicable law. The lessee's right to submit a bid to purchase property at termination of the lease is not an option to purchase under § 213.5(k) if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.

3. *Purchase option fees.* A purchase option fee must be disclosed under this paragraph unless the lessor discloses the fee under § 213.5(e) as an ''other charge.''

5(l) Early termination

1. *Default.* When default is also a condition for early termination of a lease, default charges must be disclosed under this paragraph. See the commentary to § 213.5(j).

2. *Lessee's liability at early termination.* When the lessee is liable for the difference between the unamortized cost and the realized value at early termination, the amount or the method of determining the amount of the difference must be disclosed under this paragraph.

3. *Reasonableness of charges.* See the commentary to § 213.5(j).

4. *Description of the method.* A full description of the method of determining any early termination charge is required by the act and this regulation. Lessors should attempt to provide clear and understandable descriptions to consumers of their early termination charges. Descriptions that are full, accurate, and not intended to be misleading are in compliance with the act and this regulation, even if complex. (And, of course, the statute requires that the early termination charges themselves be reasonable.) In providing a full description of an early termination method, a lessor may use the name of a generally accepted method of computing the unamortized cost (also known as the ''adjusted lease balance'') portion of its early termination charges. For example, a lessor may state that the ''constant yield'' method would be utilized in obtaining the adjusted lease balance, but the lessor would have to specify how that figure, and any other term or figure, is used in computing the total early termination charge imposed upon the consumer. Additionally, if a lessor refers to a named method in this manner, the lessor would have to provide a written explanation of that method if requested by the consumer.

5. *Example.* The figure used to calculate the early termination example must be calculated in the same manner the residual value is calculated for purposes of § 213.5(r). Therefore, if a lessor uses the fair market value to estimate the value of the property at the end of the lease, the example must also be calculated using the fair market value.

5(n) Right of appraisal

1. *Disclosure inapplicable.* When the lessee is liable at the end of the lease term or at early termination for unreasonable wear or use but not for the estimated value of the leased property, the lessor need not disclose the lessee's right to an independent appraisal. For example:

i. The automobile lessor may reasonably expect a lessee to return an undented car with four good tires at the end of the lease term. Even though it holds the lessee liable for the difference between a dented car with bald tires and the value of a car in reasonably good repair, the lessor is not required to disclose the lessee's appraisal right.

2. *Lessor's appraisal.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in section 183(c) of the act and in § 213.5(o) of the regulation, and the lessor still must disclose the lessee's independent right to an appraisal under § 213.5(n).

3. *Time restriction on appraisal.* Neither the act nor the regulation specifies any time period in which the lessee must exercise the appraisal right. The lessor may require a lessee to obtain the appraisal within a reasonable time after termination of the lease. The regulation does not define what is a ''reasonable time.''

5(o) Liability at end of lease term based on estimated value

1. *Coverage.* The disclosure under § 213.5(o) limiting the lessee's liability for the value of the leased property does not apply at early termination.

2. *Leases with a minimum term.* If a lease has an alternative minimum term, the § 213.5(o) disclosures governing the liability limitation are not applicable for the minimum term. See the commentary to § 213.4(a).

5(o)(1) Value at consummation and total lease obligation

1. *Total lease obligation.* The requirement that the total lease obligation be itemized is satisfied by disclosing the three components

in the definition of total lease obligation in § 213.2(a)(19) with their corresponding amounts. The lessor may cross-reference the individual components disclosed in the segregated disclosures, as done in the model forms in appendix A–1.

2. *Taxes.* Taxes included in the value at consummation are included in the total lease obligation. Taxes not included in the value at consummation may, but need not, be included in the total lease obligation at the lessor's option. See the commentary to § 213.2(a)(20).

5(o)(2) Excess liability

1. *Average payment allocable to a monthly period.* The phrase ''average payment allocable to a monthly period'' is based on the periodic payment used to compute the total lease obligation. See the commentary to § 213.2(a)(19).

2. *Charges not subject to rebuttable presumption.* The limitation on liability applies only to liability that is based on the estimated value of the property at the end of the lease term. The lessor also may recover additional charges from the lessee at the end of the lease term. Examples of such additional charges include:

i. Disposition charges.

ii. Excess mileage charges.

iii. Late payment and default charges.

iv. Amounts by which the unamortized cost exceeds the estimated residual value that have accrued in simple interest accounting leases because the lessee has made late payments.

3. *Lessor's payment of attorney's fees.* Section 183(a) of the act requires that the lessor pay the lessee's attorney's fees in all actions brought by the lessor under this paragraph, whether successful or not.

5(p) Gross cost

1. *Basis.* The gross cost is the amount that the periodic and other payments and terms of the lease are based upon, and is intended to be used by consumers to compare a lease with similar lease and non-lease transactions.

5(s) Statement referencing nonsegregated disclosures

1. *Content.* A lessor may delete inapplicable items, for example, when the contract documents contain no information regarding a purchase option.

Section 213.6—Renegotiations, Extensions and Assumptions

1. *Coverage.* Section 213.6 applies only to existing leases that are covered by the requirements of the regulation. It therefore does not apply to the renegotiation or extension of leases with an initial term of four months or less, because such leases are not covered by the definition of consumer lease in § 213.2(a)(6). Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

2. *Inapplicable disclosures.* Disclosures that are inapplicable to the terms of a renegotiation or extension need not be given. For example:

i. If the term for which extension disclosures are given is one month and the lessee will pay no official fees and taxes during that month, no disclosure of those amounts is necessary.

ii. If a renegotiation involves no initial charges, no disclosure of initial charges is necessary.

6(b) Extensions

1. *Time of extension disclosures.* If a consumer lease is extended for a specified term greater than six months, at the time the extension is agreed to, new disclosures are required. If the lease is extended on a month-to-month basis and exceeds six months, new disclosures are required at the commencement of the seventh month, and at the commencement of each seventh month thereafter. If a consumer lease is extended for several terms, one of which will exceed six months beyond the originally scheduled termination date of the lease, new disclosures are required at the commencement of the term that will exceed 6 months beyond the originally scheduled termination date.

2. *Content of disclosures for month-to-month extensions.* The disclosures for a lease extended on a month-to-month basis for more than six months should reflect the month-to-month nature of the transaction.

Section 213.8—Advertising

8(a) General rule

1. *Persons covered.* All ''persons'' must comply with the advertising provisions in this section, not just those that meet the definition of lessor in § 213.2(a)(10). Thus, automobile dealers, merchants, and others who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions. Pursuant to section 184(c) of the act, the owner and personnel of the medium in which an advertisement appears or through which it is disseminated, however, are not subject to civil liability for violations under section 185(b) of the act.

2. *''Usually and customarily.''* This paragraph does not prohibit the advertising of a single item or the promotion of new leasing programs, but prohibits the advertising of terms that are not and will not be available. Thus, an advertisement may state terms that will be offered for only a limited period or terms that will become available at a future date.

8(b) Clear and conspicuous standard

1. *Standard.* Section 213.8 prescribes no specific rules for the format of the necessary disclosures. The terms need not be printed in a certain type size and need not appear in any particular place in the advertisement.

2. *Television advertisements.* In lease television advertisements, the lease disclosures required under paragraph 8(d) or the alternate disclosures under paragraph 8(f)(1) must be visible for at least five seconds to satisfy the requirements of this paragraph.

8(c) Catalogs and multi-page advertisements

1. *General rule.* The multiple-page advertisements referred to in this paragraph are advertisements consisting of a numbered series of pages—for example, a supplement to a newspaper. A mailing comprised of several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

2. *Cross-references.* A multiple-page advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule clearly stating sufficient information for the reader to determine the disclosures required under § 213.8(d)(2) (i) through (vi). If one of the triggering terms listed in § 213.8(d)(1) appears on another page of the catalog or other multiple-page advertisement, that page must clearly refer to the specific page where the table, chart, or schedule begins.

8(d)(1) Triggering terms

1. *Triggering terms.* When triggering terms appear in lease advertisements, the additional terms enumerated in § 213.8(d)(2) (i) through (vi) must also appear. An example of one or more typical leases with a statement of all the terms applicable to each may be used. The additional terms must be disclosed even if the triggering term is not stated explicitly, but is readily determinable from the advertisement. For example, if an advertisement states a five-year lease term with monthly payments, the number of required payments—a triggering term—is readily apparent.

8(d)(2) Additional terms

1. *Lease transaction.* An advertisement must clearly and conspicuously disclose that the transaction is a lease.

8(e) Alternative disclosures—merchandise tags

1. *Alternative disclosure rule.* This section provides a method for using merchandise tags without including all the required disclosures on the tags. As an alternative to this disclosure method, a merchandise tag may state all the necessary terms on one or both sides of the tag. If the terms are on both sides of the tag, both sides must be accessible to the consumer.

2. *Multiple item leases.* Multiple item leases which utilize merchandise tags requiring additional disclosures may use the alternate disclosure rule.

8(f) Alternative disclosures—television or radio advertisements

8(f)(1) Toll-free number or print advertisement

1. *Publication in general circulation.* A referral to a written advertisement appearing in a newspaper circulated nationally, for example, The Wall Street Journal, meets the general circulation requirement in § 213.8(f)(1)(ii).

2. *Toll-free number, local or collect calls.* In complying with the disclosure requirement of this paragraph, generally a lessor must provide a toll-free number for nonlocal calls made from an area code other than the one used in the lessor's dialing area. Alternatively, a lessor may provide any telephone number that allows a consumer to call for information and reverse the phone charges.

Section 213.9—Record Retention

1. *Manner of retaining evidence.* A lessor must retain evidence of having performed required actions and of having made required disclosures. Such records may be retained on microfilm, microfiche, computer, or by any

other method designed to reproduce records accurately, as well as paper form. The lessor need retain only enough information to reconstruct the required disclosures or other records.

Appendix A—Model Forms

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms, therefore, any changes in the segregated disclosures should be minimal. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. The changes to the model forms may not be so extensive as to affect the substance and the clarity of the forms.

2. *Examples of acceptable changes.*

i. Using the first person, instead of the second person, in referring to the lessee.

ii. Using ''lessee,'' ''lessor,'' or names instead of pronouns.

iii. Rearranging the sequence of the nonsegregated disclosures.

iv. Incorporating certain state ''plain English'' requirements.

v. Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multi-purpose standard forms.)

vi. Adding language or symbols to indicate estimates.

3. *Model closed-end or net vehicle lease disclosure.* Model A–2 is designed for a closed-end or net lease of a vehicle. Item 9(c) is included for those closed-end leases in which the lessee's liability at early termination is based on the vehicle's estimated value. (See section 213.5(n))

4. *Model furniture lease disclosures.* Model A–3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination that is required under § 213.5(n) because few closed-end furniture leases base the lessee's liability at early termination on the estimated value of the leased property. Of course, the disclosure should be added, if it is applicable.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–23049 Filed 9–19–95; 8:45 am]

BILLING CODE 6210–01–P

Federal Register

Wednesday
September 20, 1995

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171 et al.
Infectious Substances; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, and 178

[Docket No. HM–181G; Amdt. Nos. 171–138, 172–146, 173–247, 178–111]

RIN 2137–AC36

Infectious Substances

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA published a notice of proposed rulemaking (NPRM) in December 1994 that proposed to revise the regulations pertaining to infectious substances, including regulated medical waste (RMW). In this final rule, RSPA is revising requirements for Division 6.2 materials (infectious substances). This rule clarifies the scope of regulation for infectious substances, provides relief for certain shipments of RMW that conform to other Federal agency regulations, allows certain quantities of RMW to be transported by aircraft, and makes other changes to clarify regulatory provisions applicable to infectious substances. This rulemaking action is necessary to ensure that the regulations for infectious substances and regulated medical waste are cost effective and provide an adequate level of safety in transportation.

DATES: *Effective date.* The effective date of these amendments is October 1, 1995.

Compliance date. Voluntary compliance with the regulations, as amended herein, is authorized immediately. The mandatory compliance date for these regulations is January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Antonielli, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

In a final rule published on September 22, 1994 (59 FR 48762), RSPA revised 49 CFR 171.14(b) to delay the compliance date for requirements applicable to RMW and materials infectious only to animals from October 1, 1994, to October 1, 1995. RSPA also delayed the compliance date for requirements for infectious substances, other than RMW and animal-only pathogens, from October 1, 1994, to January 1, 1995.

On December 21, 1994, RSPA published a notice of proposed rulemaking and announced a public meeting under Docket HM–181G (59 FR 65860). In the notice, RSPA proposed to revise the requirements for infectious substances, including regulated medical waste, which were adopted in final rules under Docket HM–181 in December 1990 and 1991. Some of the proposals contained in the NPRM were substantive, such as the proposal to add an exception from specific packaging and labeling requirements for RMW if it is prepared in accordance with the regulations of the Occupational Safety and Health Administration (OSHA). However, the majority of the changes proposed in the notice were minor and primarily intended to ease compliance by clarifying the requirements. Also in the NPRM, RSPA outlined issues for possible future rulemaking action. The public meeting, which gave interested persons an opportunity to orally present their comments on the notice, was held on January 17, 1994, in Washington, DC.

This rule was developed, with the concerns of the health care industry and medical waste companies in mind, in coordination with other Federal agencies (e.g., OSHA, Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and Environmental Protection Agency (EPA)) to minimize differences between the Hazardous Materials Regulations (HMR) and other Federal agency regulations to ease compliance and eliminate gaps and inadequacies in regulatory coverage to assure that safety is maintained in transportation. RSPA will continue to be aware of significant steps being taken by other Federal agencies to remain cognizant of potential impacts regarding infectious substances and regulated medical waste prior to their entering, and in, transportation.

In March 1995, the President directed Federal agencies to review all agency regulations to eliminate or revise those that are outdated or in need of reform. RSPA issued a notice on April 4, 1995, under Docket HM–222 (60 FR 17049), that announced its review of the HMR and related programs and solicited comments on possible candidates for elimination or revision to provide clarity or relief from undue requirements. The provisions contained in this final rule contribute to meeting the goals of the President's Regulatory Reinvention Initiative.

II. Summary of Comments and Regulatory Changes

RSPA received 41 written comments on the notice of proposed rulemaking and 4 oral statements at the public meeting. The comments were submitted by hospitals, pharmaceutical companies, trade associations, packaging manufacturers, academic institutions, transporters of medical waste, and private individuals. Commenters generally supported RSPA's efforts to amend the regulations to regulating those materials that likely pose a threat in transportation to ensure the safe transportation of infectious substances and RMW. The commenters also were pleased that RSPA coordinated with other Federal agencies in the development of these regulations. Several commenters stated that, although the proposed amendments narrowed the scope of and clarified the infectious substance and RMW provisions, they need more refinement. The commenters predominantly addressed the following topics: (1) The definition of ''regulated medical waste''; (2) exclusion of discarded cultures and stocks from the definition of RMW; (3) a packaging and labeling exception for RMW; (4) a laundry exception; (5) the definitions of ''biological product'' and ''diagnostic specimen'' and retention of exceptions for these materials; and (6) aligning the infectious substance provisions with the international standards. A detailed discussion of the comments and RSPA's response to them is provided in the following summary.

A. Definition of RMW

RSPA received numerous comments concerning the proposed revision of the definition of ''regulated medical waste'' (RMW). The majority of commenters favored RSPA's proposal to limit the definition of RMW to materials containing an infectious substance. Commenters stated that RSPA defined RMW rationally, and that this definition would significantly reduce the amount of medical waste required to be specially handled without jeopardizing transportation safety. Also, commenters stated that the proposed definition, which allows shippers to segregate their waste, is more cost-effective than treating all waste as RMW. One commenter stated, ''Adoption of a criteria-based definition, as opposed to a list-based definition, also eliminates the categories of waste (e.g., unused sharps) that are not hazardous.''

Some commenters raised concerns that the proposed definition of RMW is impractical and does not account for the fact that RMW is rarely ''known to contain'' an infectious substance. Commenters claimed that, in order to confirm the presence of an infectious substance, medical waste would have to undergo cost-prohibitive testing.

Commenters stated that shippers are forced to make a ''best guess'' as to whether a medical waste is subject to the HMR, increasing the potential for undeclared shipments of RMW. In addition, commenters argued that not all personnel who are responsible for identifying and packaging the wastes possess the knowledge required to make an accurate assessment. A commenter claimed that if RMW is not clearly defined and if guidance is not provided, the volume of waste treated as RMW will increase and potentially infectious waste will go undeclared in the solid waste stream. One commenter stated that the definition ''fails to provide the appropriate guidance to the health care worker responsible for segregating the regulated medical waste stream and is virtually impossible to enforce.'' Some commenters recommended that RSPA adopt ''Universal Precautions,'' a method of infection control introduced by CDC which considers all blood and certain body fluids, whether or not known to be infectious, are treated as if known to be potentially infectious. The commenters added that universal precautions are widely used in the health care industry and, if adopted, would be consistent with current practices. Some commenters requested that RSPA add language to the definition of RMW to include those materials that ''may'' or ''are suspected to'' contain an infectious substance to eliminate some of the guesswork. While some commenters asked RSPA to expand the definition of RMW, other commenters stated that RSPA's definition should be narrowed further. One commenter asserted that the proposed definition is ''inaccurate and inconsistent with science'' and claimed that essentially all material, including human skin, harbor a population of microorganisms capable of causing infection in a susceptible host. The commenter stated, ''[T]he mere presence of an infectious substance does not result in risk of infection.'' The commenter claimed that other factors have to be present for infection to occur such as, the presence of an infectious agent in the environment, a susceptible host, a portal of entry into the host, and a sufficient dose of organisms. Some commenters requested that RSPA limit the definition of RMW to ''waste * * * which contains an infectious substance and has been causally linked scientifically to human disease acquisition.'' Another commenter added, ''RSPA's definition, if applied literally, would result in classifying as regulated medical waste virtually all of the waste that is generated in the health care environment.''

RSPA has considered the commenters' suggestions. With regard to universal precautions, RSPA acknowledges that they are widely used in the workplace as recommended in CDC guidelines and required under OSHA regulations contained in 29 CFR 1910.1030. In addition, RSPA agrees that broadening the scope of RMW to include all waste containing blood or certain body fluids may ease RMW identification when the exact constituents of a waste stream are not known. However, RSPA believes that this concept might result in overregulation if adopted for the purposes of transportation. At this time, RSPA has no evidence to support the conclusion that the benefits associated with implementing universal precautions in transportation outweigh the compliance costs and regulatory burdens imposed. Therefore, RSPA is not adopting universal precautions in this rule. RSPA agrees with commenters that the principles of disease transmission (i.e., presence of an infectious agent in the environment, susceptible host, portal of entry, sufficient virulence, and sufficient dose of organisms to cause infection) would support limiting the definition to those wastes that in fact pose a hazard in transportation. However, RSPA believes that this definition would be difficult and, in some cases, impossible to implement since certain factors, such as the dose of organisms sufficient to cause infection, are not known by most shippers. Therefore, RSPA is not adopting the principles of disease transmission for general applicability. RSPA does not agree with the commenters who requested that the definition of RMW be revised to mean ''waste * * * which contains an infectious substance and has been causally linked scientifically to human disease acquisition.'' While the commenters' suggestion supports a definition based on scientific considerations, RSPA believes that the definition is not practical for all shippers. To determine whether a particular waste has been linked to disease acquisition requires knowledge of any incidents that have occurred involving that waste. This information is not available to most shippers. Therefore, RSPA is not revising the definition as requested. However, for shippers that possess this information for a given waste stream, RSPA believes that the information may be used to determine whether the waste requires special handling as RMW.

In the proposed rule, RSPA attempted to correct an existing oversight in the HMR with regard to hazard precedence in a case involving a material that meets the definitions of both Division 6.2 and Class 7. The oversight is found in § 173.2a(c), which prescribes that a Division 6.2 material that meets the definition of another hazard class or division is required to be classed as Division 6.2. RSPA did not intend for Division 6.2 to take precedence over Class 7, other than for limited quantities of Class 7. To correct the oversight, RSPA proposed to exclude waste materials meeting the definition of Class 7 from the definition of RMW but failed to exclude Class 7 materials from the definition of an infectious substance. As proposed, Class 7 materials, including wastes, containing an infectious substance would be excepted from the RMW requirements but subject to all applicable requirements for infectious substances. In this final rule, RSPA is not adopting the wording ''other than Class 7 (Radioactive) materials'' in the proposed definition of regulated medical waste. RSPA is amending § 173.2a(c)(3) to exclude Class 7 (radioactive) materials, other than limited quantities, which also meet the definition of Division 6.2 from being classed as Division 6.2. This will alleviate the need to make changes in § 173.134 for the definitions of ''regulated medical waste'' and ''infectious substances.''

Based on the merits of comments received and RSPA's own initiative, RSPA is revising the definition of ''regulated medical waste'' as proposed. RMW is defined as ''a waste or reusable material, other than a culture or stock of an infectious substance, which contains an infectious substance and is generated in: (1) The diagnosis, treatment or immunization of human beings or animals; (2) research pertaining to the diagnosis, treatment or immunization of human beings or animals; or (3) the production or testing of biological products.'' RSPA understands that it is not always feasible for shippers to verify the presence of an infectious substance in a waste stream. The wording ''contains an infectious substance'' does not imply that the shipper is required to verify the presence of an infectious substance by testing or other means. Shippers may use information that is available to them (e.g., source of material, patient's medical history, preliminary test data) to make the most accurate determination possible as to whether or not a waste meets the definition of RMW under the HMR. If the shipper does not possess any

information concerning a waste stream, the shipper may employ universal precautions, which considers waste containing human blood and certain human body fluids as infectious. However, as previously stated, it is not RSPA's intent to require the use of universal precautions. RSPA strongly encourages the use of segregation and separation practices at the point of generation. It is our understanding that many entities currently implement such practices, which help to minimize shipping costs and ensure that only those wastes that pose a hazard are regulated.

In the NPRM, RSPA proposed to except certain categories of waste from the definition of RMW. Included was an exception for waste generated in animal husbandry or food production. RSPA received a comment requesting clarification of whether waste generated in animal research activities also would be excluded from the definition of RMW. The answer is no. Waste, generated in research activities, that contains an infectious substance and is offered for transportation or transported in commerce is regulated as RMW. The definition of RMW, as adopted in this final rule, includes waste that is generated in the diagnosis, treatment or immunization of human beings or animals or research pertaining thereto. RSPA is excluding waste generated in animal husbandry or food production because regulation of these activities under the HMR could impose burdens on agricultural and farm operations disproportionate to benefits likely to be achieved. Regulation of waste that is generated in animal research activities and contains an infectious substance is fully within the scope of the HMR.

RSPA clarified in the notice that the exceptions applicable to biological products and diagnostic specimens do not apply to materials which have become wastes. One commenter recommended that RSPA limit the definition of RMW to include only those discarded (waste) biological products and diagnostic specimens that have been confirmed to contain an infectious substance by a screening test required or recommended by the Food and Drug Administration. RSPA understands that not all biological products or diagnostic specimens are tested before shipment for treatment or disposal. Therefore, RSPA is not adopting a requirement to limit the application of the definition of RMW as requested by the commenter. If the discarded biological product or diagnostic specimen contains an infectious substance and has not been treated to eliminate the hazard, it must be shipped as RMW.

Another commenter requested that RSPA clarify that it is the responsibility of the shipper, and not the carrier, to properly class a material. The commenter stated that the waste generator is in the best position to determine whether the waste is a regulated medical waste, an infectious substance, or not regulated. In accordance with § 173.22, a person who offers a hazardous material for transportation in commerce is responsible for properly classing the material in accordance with the hazard class definitions of 49 CFR Part 173. Because this requirement already appears in the HMR, RSPA is not adding an additional requirement. Also, RSPA notes that some carriers assume responsibilities of the waste generator through contractual arrangement.

B. Discarded Cultures and Stocks

Several commenters agreed with RSPA's proposal to exclude waste cultures and stocks from the definition of RMW and subject them to requirements applicable to non-waste cultures and stocks of infectious substances. Commenters stated that cultures and stocks contain a high concentration of microorganisms that have the potential to cause disease in humans or animals and require special handling. In addition, the commenters claimed that cultures and stocks typically are treated on-site by autoclave or other treatment method. Therefore, commenters affirmed that RSPA would not be imposing an unreasonable burden on shippers by requiring the infectious substance requirements for untreated cultures and stocks. However, other commenters believed that discarded cultures and stocks should be considered as RMW. According to one commenter, most laboratories and hospitals sterilize cultures and stocks before transporting them off-site; therefore, the packaging for RMW should be adequate for the hazards posed by these materials. Another commenter asserted that waste cultures and stocks should not be treated differently from RMW but did not substantiate its claim.

In the notice, RSPA clarified that if a material has been sterilized or treated to eliminate its hazard as an infectious substance, it is not subject to the HMR, provided it does not meet the definition of any other hazard class. Therefore, cultures and stocks that have been autoclaved, incinerated, or treated by other effective means are not subject to the HMR, provided they do not meet the definition of any other hazard class. In view of the comments, RSPA is excluding untreated cultures and stocks intended for disposal from the definition of RMW. These materials are included under the definition of infectious substances.

C. RMW Packaging and Labeling Exception

In the notice, RSPA proposed to except RMW from the specific packaging requirements of § 173.197 and labeling requirements of Subpart E of Part 172 if packaged in rigid non-bulk packagings conforming to the general packaging requirements of §§ 173.24 and 173.24a and OSHA packaging and marking requirements in 29 CFR 1910.1030. RSPA proposed to limit the exception to RMW that is offered for transportation or transported by private or contract carrier. The majority of the commenters addressing this subject supported the proposed exception. Some commenters indicated that the exception will allow generators of RMW to maintain their current practices. One commenter recommended that RSPA limit the application of the RMW exception to contract carriers registered with the Federal Highway Administration (FHWA) and vehicles operated by drivers holding a Commercial Drivers License (CDL). If the exception is not modified, the commenter stated that the exception ''would be abused by any number of carriers who may not be familiar or in compliance with DOT Motor Carrier Safety Regulations or familiar with industry standards and practices.''

RSPA disagrees with this commenter. Familiarity with the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Parts 300–399) and possession of a CDL would not necessarily enhance a carrier's or driver's specialized knowledge of medical waste requirements. In addition, the FMCSR and CDL requirements are only applicable to highway motor carriers and drivers. Because the HMR relate to all modes of transportation, the commenter's suggestion to limit the applicability of the exception to RMW transported by contract carriers registered under the FMCSR and drivers with CDLs is not adopted.

Another commenter asserted that the exception allowing OSHA packaging and marking does not sufficiently communicate the nature and risk of the package to the carrier. The commenter requested that RSPA require packages containing RMW to display the name, address, and telephone number of the generator and the date of generation. The commenter stated that in the event of a needle stick injury, OSHA requires the employer/carrier to ascertain the route of exposure. According to the

commenter, some carriers pick up RMW from several generators on a given route and it is impossible to determine the route of exposure if the source of the package is unknown.

In the NPRM, RSPA proposed to except RMW from specific packaging and labeling requirements, but not from marking or other hazard communication requirements. Section 172.301(d) requires that non-bulk packages of hazardous material be marked with the name and address of the consignee or consignor, unless the package is transported by highway and is not being transferred from one carrier to another; or is part of a carload, truckload, or freight container load, and the entire contents of the rail car, truck or freight container are shipped from one consignor to one consignee. In cases which the name and address of the consignor or consignee are not required on package markings, a carrier may, by contractual arrangement, have the waste generator mark its name and address on packages or use other means to keep track of where packages originate. RSPA does not believe there is a need for a regulatory requirement for the consignor's name and address to appear on a package in all instances. Therefore, the commenter's recommendation is not adopted.

In this final rule, RSPA is authorizing non-bulk, non-specification packagings for RMW under the conditions specified in the NPRM. RSPA intends to monitor incident reports for these shipments to ensure that the packaging and handling requirements achieve an acceptable level of safety. If they do not, RSPA will propose adjustments in future rulemaking action.

D. Exception for Laundry and Medical Equipment

To relieve the burden of compliance with both the HMR and OSHA regulations, RSPA proposed to except from the HMR contaminated laundry and medical equipment that conforms to OSHA regulations at 29 CFR 1910.1030. Of the few commenters addressing this issue, most supported RSPA's proposed exception. However, one commenter contended that laundry should not be regulated differently than RMW. The commenter reported that although OSHA requires sharps to be separated from other RMW, in reality, sharps are occasionally left in laundry which poses a hazard to personnel handling the laundry. The commenter stated, ''it is appropriate to include laundry in a RMW category because laundry, while not itself a waste, does contain RMW.''

RSPA agrees with the commenter that laundry and disposable garments share similar characteristics. However, laundry and disposable materials are handled differently from the point of generation to decontamination or disposal. Typically, laundry is segregated from waste materials at the point of generation and specially handled and reprocessed by employees dealing exclusively with laundry. Conversely, disposable garments and the like are combined with other non-sharp wastes at the point of generation and managed as medical waste, regulated or non-regulated. RSPA believes that the OSHA requirements applicable to laundry and medical equipment provide an adequate level of safety in transportation and it is unreasonable and impractical to require RMW packaging and hazard communication for laundry and medical equipment that are intended for reuse. OSHA prescribes that contaminated laundry shall be placed and transported in bags or containers labeled or color-coded in accordance with 29 CFR 1910.1030(g)(1)(i) of the OSHA regulations or, if utilizing universal precautions, alternative labeling is permitted if it is recognizable to all employees as requiring compliance with universal precautions. In addition, OSHA requires contaminated laundry that is wet and presents a reasonable likelihood of soak-through of or leakage from the bag or container to be placed in bags or containers which prevent soak-through and/or leakage of fluids to the exterior. See 29 CFR 1910.1030(d)(4)(iv). OSHA prescribes that medical equipment, including equipment used for diagnosis, research, or treatment, shall be decontaminated, to the maximum extent practicable, before transportation. If decontamination is impractical, the equipment should be labeled with the ''BIOHAZARD'' label. See 29 CFR 1910.1030(d)(2)(xiv). In this final rule, RSPA is adopting the exception for laundry and medical equipment as proposed in the NPRM.

E. Biological Products and Diagnostic Specimens

In an attempt to clarify the scope of the HMR, RSPA proposed to amend the definitions of ''biological product'' and ''diagnostic specimen'' to include only those materials that contain an infectious substance. However, commenters' responses suggest that the proposal may have added confusion. Some commenters contended that it was illogical for RSPA to amend the definitions of biological products and diagnostic specimens to limit them to materials that contain an infectious substance, but continue to except them from the HMR. Commenters asserted that defining a ''diagnostic specimen'' as ''a material that contains an infectious substance being shipped for purposes of diagnosis'' is contradictory. One commenter argued that the primary reason a diagnostic specimen is shipped is to determine, through testing, whether or not it contains an infectious substance. Another commenter requested that RSPA keep its previous definitions of diagnostic specimen and biological product because they are consistent with other Federal regulations. RSPA agrees with the commenters and is not amending the definitions of ''biological product'' and ''diagnostic specimen'' as proposed in the notice.

Several commenters also opposed retaining the exceptions for biological products and diagnostic specimens, asserting that insufficient protection will be afforded to transport workers and the public if biological products and diagnostic specimens, especially those that are known to contain an infectious substance, are excepted from regulation. One commenter stated that these exceptions effectively eliminate Division 6.2 materials from the HMR.

RSPA agrees with commenters that some level of regulation may be needed for biological products and diagnostic specimens under the HMR to ensure safety, but RSPA is not imposing any requirements for these materials in this rule. Under the current requirements, a biological product or diagnostic specimen that contains an infectious substance is excepted from the HMR, unless the biological product or diagnostic specimen is being discarded, in which case it would be regulated as RMW. RSPA anticipates proposing to delete the exceptions for biological products and diagnostic specimens and impose appropriate requirements for these materials, if justified after evaluation of associated benefits and costs, in future rulemaking action.

F. Extension of Compliance Date

In the notice, RSPA proposed to extend the compliance date for the requirements applicable to RMW and infectious substances affecting animals only, from October 1, 1995, to January 1, 1996. Some commenters supported having additional time to come into compliance with the requirements for RMW and infectious substances affecting animals only. The commenters stated that an extension will also allow RSPA time to issue its final rule and provide regulated industry sufficient time to comply with the new changes. However, other commenters expressed concern in regard to RSPA's proposal to

extend the compliance date from October 1, 1995, to January 1, 1996. These commenters suggested that the compliance date be delayed for an indefinite period of time until the final rule has been issued and RSPA has resolved all of the issues.

RSPA disagrees with these latter comments and believes there is a need to put these requirements in place as quickly as practicable, to help eliminate ongoing confusion over what regulatory requirements apply. Also, RSPA believes that implementation on January 1, 1996 is a reasonable extension of time. Therefore, the proposal is adopted.

Because these amendments extend the compliance date from October 1, 1995, to January 1, 1996, they are effective without the customary 30–day delay following publication. This will allow the changes to appear in the next revision of 49 CFR.

G. Air Transportation

RSPA received several comments concerning the proposal to add Special Provisions ''A13'' and ''A14'' to allow certain quantities of regulated medical waste aboard aircraft. Most of the commenters supported removal of the prohibition to transport RMW by air. Some commenters questioned RSPA's rationale for the quantities selected in the proposed rule. One commenter expressed concern about allowing 12 liters of RMW by air without prescribing higher integrity packaging requirements. Some commenters stated that RMW should not be restricted to any quantity limits since the International Civil Aviation Organization (ICAO) Technical Instructions do not impose quantity limits for RMW.

RSPA selected the proposed quantity limits in the NPRM based on comments received on the March 3, 1993 advance notice of proposed rulemaking and for consistency with quantity limits under U.S. Postal Service regulations. Therefore, RSPA is adding these special provisions, as proposed, to facilitate air transportation of RMW.

H. Animal Pathogens

In the NPRM, RSPA requested comments concerning HMR regulation of infectious substances affecting animals only. RSPA received limited comments on this issue. One commenter stated that RSPA does not have the authority to regulate infectious substances affecting animals only and that the likelihood of an incident involving an animal exposed to an infectious substance as a result of a release in transportation is small.

RSPA agrees with the commenter that the probability of an incident occurring involving animals exposed to animal pathogens during transportation might be low. However, the potential exists and RSPA is aware of at least one such incident. Under the Federal hazardous material transportation law, RSPA is required to promulgate regulations for the transport of materials that may pose an unreasonable risk to health, safety and property. Protection of animals is encompassed within this jurisdiction. In addition, RSPA has determined that the costs incurred by regulation of these materials is minimal compared to the benefits acquired. In regard to other applicable Federal regulations, RSPA has examined the Department of Agriculture's regulations concerning animal pathogens contained in 9 CFR parts 1–199 and determined that they do not adequately address transportation concerns with regard to communication of hazard, provision of emergency response information, and packaging. Therefore, RSPA is regulating infectious substances affecting animals only, as proposed.

I. Other Issues

Two commenters asked RSPA to clarify its preemption authority in the preamble. The commenters suggested that States may impose requirements on the transportation of medical waste that go beyond those imposed by this rule. In particular, the commenters noted, States may define infectious substances and medical waste more broadly, to include categories of materials not regulated under the HMR. One commenter stated: ''a decision by RSPA *not* to regulate (e.g., a decision to exclude certain materials from the definition of regulated medical waste), should carry as much preemptive effect as a decision to regulate.''

As provided in Subpart C to Part 107, any law, regulation, order, ruling, provision or other requirement of a State, political subdivision, or Indian tribe that concerns a ''covered subject,'' as defined at § 107.202(a), and that is not substantively the same as any provision of the Federal hazmat law or any regulation issued thereunder, is preempted. Covered subjects include classification of, and specification of packaging and hazard communication requirements for the transportation of, hazardous materials. Non-Federal requirements pertaining to the transportation of infectious substances that concern a covered subject accordingly are subject to preemption under this standard.

The HMR do not, however, preempt non-Federal requirements imposed on the transportation of materials that are not hazardous materials as defined in the HMR. One exception to this general principle, however, would be where a non-Federal law or regulation requires a method of hazard communication for non-hazardous materials sufficiently similar to that prescribed by the HMR for a hazardous material that the regulation is ''tantamount to the creation of an additional class of hazardous materials with its own marking requirements.'' 59 FR 6186, 6192 (Feb. 9, 1994) (preemption determination PD–6). Short of this type of circumstance (*de facto* classification of materials as hazardous materials), however, State, local and tribal regulation of materials that are not hazardous materials is not subject to preemption by the Federal hazmat law. RSPA has proposed to extend application of the HMR to all intrastate transportation in a notice of proposed rulemaking published on July 9, 1993, under Docket HM–200 (58 FR 36920). Further action under that docket is pending.

RSPA received comments requesting that RSPA require treated medical waste to be physically altered until it is unrecognizable so that it can be readily identified as non-regulated. Although this practice may be required under certain State medical waste regulatory programs, RSPA is not adopting it at this time because it is beyond the scope of this rule.

In the NPRM, RSPA invited comments on possible adoption of a vehicle placarding requirement for Division 6.2 materials based on a petition for reconsideration (P–1080). Due to inadequate information, RSPA did not propose to adopt such a requirement in the NPRM but stated that it is under consideration for future rulemaking. Several commenters urged RSPA to clarify that RMW is not and will not be subject to placarding requirements. The commenters asserted that bloodmobiles carrying bulk blood intended for disposal would be subject to CDL and drug and alcohol regulations if placarding is required. RSPA is not adopting a placarding requirement, as requested by the petitioner, or vehicle marking requirement for Division 6.2 materials in this rule. However, RSPA is aware that several States have differing marking requirements for medical wastes. It may be appropriate, for purposes of national uniformity and minimum communication, to propose in future rulemaking a special marking, other than a placard, to identify the presence of these materials in a vehicle.

In the preamble of the notice, RSPA stated that this rulemaking action was limited to amendments that could be accomplished in the short term and that

more substantive issues would be addressed in future rulemaking. Some commenters contended that dividing the problematic issues into two or more rulemakings would be confusing. These commenters urged RSPA to make all necessary adjustments to the regulations in one rule.

RSPA believes that certain changes to the requirements for RMW adopted under Docket HM–181 on December 20, 1991, are necessary, before they become mandatory, to eliminate confusion and facilitate transportation of RMW. However, in order to make the necessary changes to the RMW requirements and publish the rule before October 1, 1995, RSPA had to limit the amendments in this rule to minor, short-term adjustments.

RSPA received comments requesting that bulk packaging standards for RMW be incorporated into the HMR. Currently, their use is authorized under the provisions of a number of exemptions. RSPA stated in the preamble of the notice that it anticipates proposing to convert the provisions of some or all of these exemptions into regulations of general applicability. RSPA intends to address bulk packagings for RMW in a future rulemaking.

Several commenters encouraged RSPA to align the classification, hazard communication, and packaging requirements for Division 6.2 materials in the HMR with the most recent edition of the UN Recommendations and ICAO Technical Instructions. Specifically, some commenters recommended that RSPA require infectious substances packagings to be UN marked and certified for consistency with international standards.

RSPA believes that uniform standards, applicable to both domestic and international transportation, are essential to ensuring the safe and efficient movement of infectious substances. To this end, RSPA continues to work with other Federal agencies and the United Nations Subcommittee of Experts on the Transport of Dangerous Goods to improve standards for classification, hazard communication, packaging and operational control of infectious substances. The HMR generally are consistent with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), although there are differences. RSPA anticipates proposing changes to the HMR in future rulemaking concerning defining criteria, particularly the adoption of risk groups and regulation of genetically-modified organisms and microorganisms, biological products and diagnostic specimens, and new shipping descriptions and marking requirements for non-bulk packagings based on the UN Recommendations. Both through rulemaking action and in working with other Federal agencies, RSPA anticipates advocating standards based on UN Recommendations.

RSPA intends to continue its review of the HMR and the regulations of other Federal agencies and to work with these agencies to identify and eliminate inconsistencies, overlaps, gaps and inadequacies in regulatory coverage. Moreover, as new information becomes available, RSPA may propose to make adjustments to the requirements for Division 6.2 materials in future rulemaking as necessary.

III. Section-by-Section

Part 171

Section 171.14. RSPA is amending § 171.14(b)(7) to change the compliance date from October 1, 1995, to January 1, 1996, to give industry additional time to comply with the changes adopted in this final rule.

Part 172

Section 172.101. RSPA is amending Column (8A) of the Hazardous Materials Table for the entries, ''Infectious substances, affecting humans'', ''Infectious substances, affecting animals'' and ''Regulated medical waste'', to reflect the correct section references. RSPA is revising the identification number in Column 4 for ''Regulated medical waste'' from ''NA9275'' to ''UN3291.'' RSPA also is adding two special provisions, ''A13'' and ''A14,'' in Column 7 for ''Regulated medical waste.''

Section 172.102. RSPA is adding Special Provisions ''A13'' and ''A14'' to permit transportation of RMW by aircraft as proposed. Special Provision A13 allows the transportation of sharps aboard passenger and cargo-carrying aircraft in quantities not exceeding 16 kilograms (35 pounds) per package and maximum liquid content of 50 milliliters (1.7 ounces) for each inner packaging. Special Provision A14 permits the transportation of RMW by aircraft in quantities of not more than 16 kilograms (35 pounds) for solid waste and 12 liters (3 gallons) for liquid waste, when means of transportation other than air are impracticable or unavailable. These provisions are necessary to facilitate transportation of RMW in rural areas and ensure that shippers of used sharps do not encounter unnecessary delays or frustration of shipments.

Part 173

Section 173.2a. RSPA is amending § 173.2a(c)(3) to provide that Division 6.2 materials do not include those meeting the criteria for Class 7 (radioactive) materials, other than limited quantities. RSPA did not intend for Division 6.2 to take precedence over Class 7 materials.

Section 173.134. RSPA is revising § 173.134 for clarity and to provide relief from overly restrictive requirements for certain shipments of RMW. RSPA is not amending the definitions of ''biological product'' and ''diagnostic specimen'' as proposed. RSPA believes, based on commenters' observations, that clarifying RSPA's intent in the preamble is likely to be more effective than revising the definitions.

Based on comments received, RSPA is relocating the definition of ''regulated medical waste'' and its exceptions from Appendix G of Part 173 to § 173.134 to ease compliance with the HMR. In addition, RSPA is relocating the exceptions for biological products and diagnostic specimens from § 173.196 to § 173.134. RSPA is adding an exception for material that once contained an infectious substance but has been treated to eliminate the hazard. In addition, RSPA is clarifying that the following materials are not considered RMW: (1) EPA hazardous wastes; (2) waste derived from households; (3) corpses, remains, and anatomical parts intended for ceremonial interment or cremation, and (4) animal waste generated in animal husbandry or food production.

Based on commenters' requests and RSPA initiative, RSPA is revising the definition of RMW by adopting a criteria-based definition as opposed to a list-based definition, that is, removing the categories in Appendix G and replacing them with a general definition. Regulated medical waste is defined as a waste or reusable material, other than a culture or stock of an infectious substance, that contains an infectious substance and is generated in the diagnosis, treatment or immunization of human beings or animals, research pertaining thereto, or the production or testing of biological products.

Also in § 173.134, RSPA is adding an exception for RMW that is packaged in a rigid, non-bulk packaging that meets the general packaging requirements of §§ 173.24 and 173.24a, meets packaging and marking requirements in 29 CFR 1910.1030, and is offered for transportation or transported by private or contract carrier.

In paragraph (c) of this section, RSPA is clarifying that Division 6.2 materials other than RMW are not assigned a packing group. RMW is assigned to a Packing Group II performance level.

Part 178

Section 178.609. RSPA is adding a new paragraph (i) to clarify that packagings for infectious substances conforming to this section are not required to be marked and certified in accordance with § 178.503.

IV. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget. This rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034), because of substantial public interest. A regulatory evaluation is available for review in the docket.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(A) the designation, description, and classification of hazardous material;

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of those documents;

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule concerns the classification, packaging, labeling, and handling of hazardous material, among other covered subjects.

This rule preempts any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d)) as the Federal requirements.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption for the requirements in this final rule that concern covered subjects is January 1, 1996.

C. Regulatory Flexibility Act

This final rule revises requirements for infectious substances and regulated medical waste contained in the HMR by narrowing the scope of these provisions. The changes in this rule provide relief to shippers, carriers of infectious substances and regulated medical waste, and some packaging manufacturers. Although the changes will affect many small entities, such as medical clinics, we expect the economic impact on each of them to be minimal. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN numbers contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 172, 173, and 178 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.8, the following definition is added in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Regulated medical waste. See § 173.134 of this subchapter.

* * * * *

§ 171.14 [Amended]

3. In § 171.14, as revised at 59 FR 67406, effective October 1, 1995, in paragraph (a)(1)(ii), in the heading, the wording ''*October 1, 1995*'' is revised to read ''*January 1, 1996*'' and, in the regulatory text, the wording ''October 1, 1995'' is revised to read ''January 1, 1996''.

§ 171.15 [Amended]

4. In § 171.15, the wording ''etiologic agents'' in paragraphs (a)(3) and (b) introductory text is revised to read ''infectious substances (etiologic agents)''.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

5. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

6. In § 172.101, in the Hazardous Materials Table, as revised at 59 FR 67409, effective October 1, 1995, the following changes are made:

a. For the entry, ''Infectious substances, affecting animals *only*'', in Column (8A), ''196'' is removed and replaced with ''134''.

b. For the entry, ''Infectious substances, affecting humans'', in Column (8A), ''196'' is removed and replaced with ''134''.

c. For the entry, ''Regulated medical waste'', in Column (4), the identification number ''NA9275'' is removed and replaced with ''UN3291''; in Column (7), ''A13, A14'' is added; and in Column (8A), ''197'' is removed and replaced with ''134''.

7. In § 172.102, in paragraph (c)(2), Special Provisions A13 and A14 are added in alphanumeric sequence, to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(2) * * *

Code/Special Provisions

* * * * *

A13 Non-bulk packagings conforming to § 173.197 of this subchapter not exceeding 16 kilograms (35 pounds) gross mass containing only used sharps are permitted for transportation by aircraft. Maximum liquid content in each inner packaging may not exceed 50 milliliters (1.7 ounces).

A14 Non-bulk packagings of regulated medical waste conforming to § 173.197 of this subchapter not exceeding 16 kilograms (35 pounds) gross mass for solid waste or 12 liters (3 gallons) total volume for liquid waste may be transported by passenger and cargo aircraft when means of transportation other than air are impracticable or not available.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

8. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

9. In § 173.2a, paragraph (c)(3) is revised to read as follows:

§ 173.2a Classification of a material having more than one hazard.

* * * * *

(c) * * *

(3) A Division 6.2 (infectious substance) material that also meets the definition of another hazard class or division, other than Class 7, or that also is a limited quantity Class 7 material, shall be classed as Division 6.2;

* * * * *

10. Section 173.134 is revised to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions, exceptions and packing group assignments.

(a) *Definitions.* For the purposes of this subchapter, the categories of materials that constitute Division 6.2 are defined as follows:

(1) An *infectious substance* means a viable microorganism, or its toxin, that causes or may cause disease in humans or animals, and includes those agents listed in 42 CFR 72.3 of the regulations of the Department of Health and Human Services and any other agent that causes or may cause severe, disabling or fatal disease. The terms *infectious substance* and *etiologic agent* are synonymous.

(2) A *diagnostic specimen* means any human or animal material including, but not limited to, excreta, secreta, blood, blood components, tissue, and tissue fluids, being shipped for purposes of diagnosis.

(3) A *biological product* means a material that is prepared and manufactured in accordance with the provisions of 9 CFR part 102 (Licenses for biological products), 9 CFR part 103 (Experimental products, distribution, and evaluation of biological products prior to licensing), 9 CFR part 104 (Permits for biological products), 21 CFR part 312 (Investigational new drug application), or 21 CFR parts 600 to 680 (Biologics).

(4) A *regulated medical waste* means a waste or reusable material, other than a culture or stock of an infectious substance, that contains an infectious substance and is generated in—

(i) The diagnosis, treatment or immunization of human beings or animals;

(ii) Research pertaining to the diagnosis, treatment or immunization of human beings or animals; or

(iii) The production or testing of biological products.

(b) *Exceptions.* (1) The following are not subject to any requirements of this subchapter if the items as packaged do not contain any material otherwise subject to the requirements of this subchapter:

(i) Biological products;

(ii) Diagnostic specimens;

(iii) Laundry or medical equipment that conforms to 29 CFR 1910.1030 of the regulations of the Occupational Safety and Health Administration of the Department of Labor;

(iv) A material, including waste, that previously contained an infectious substance and has been treated by steam sterilization, chemical disinfection, or other appropriate method, so that it no longer poses the hazard of an infectious substance;

(v) Any waste material, including garbage, trash and sanitary waste in septic tanks, derived from households, including but not limited to single and multiple residences, hotels and motels;

(vi) Corpses, remains and anatomical parts that are intended for ceremonial interment or cremation; and

(vii) Animal waste generated in animal husbandry or food production.

(2) A hazardous waste is not subject to regulation as a regulated medical waste.

(3) A regulated medical waste that is transported by a private or contract carrier is excepted from—

(i) The requirement of an ''INFECTIOUS SUBSTANCE'' label if the outer packaging is marked with a ''BIOHAZARD'' marking in accordance with 29 CFR 1910.1030; and

(ii) The specific packaging requirements of § 173.197, if packaged in a rigid non-bulk packaging conforming to—

(A) The general packaging requirements of §§ 173.24 and 173.24a; and

(B) Packaging requirements specified in 29 CFR 1910.1030.

(c) *Assignment of packing groups and applicable packaging sections.* (1) Division 6.2 materials, other than regulated medical waste, are not assigned a packing group. Packaging requirements for these materials are prescribed in § 173.196.

(2) Except as otherwise provided, regulated medical waste is assigned to Packing Group II and must be packaged as specified in § 173.197.

Appendix G [Removed]

11. Appendix G to part 173 is removed.

PART 178—SPECIFICATIONS FOR PACKAGINGS

12. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

13. In § 178.609, paragraph (i) is added to read as follows:

§ 178.609 Test requirements for packagings for infectious substances (etiologic agents).

* * * * *

(i) Packagings subject to this section are not subject to § 178.503 or any other requirements of this subpart, except § 178.608.

Issued in Washington, DC on September 14, 1995, under authority delegated in 49 CFR part 1.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 95–23243 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Wednesday
September 20, 1995

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 21

Type Certification Procedures for Changes in Helicopter Type Design; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 22334; Notice No. 95–15]

RIN 2120–AF10

Proposed Amendment of the Type Certification Procedures for Changes in Helicopter Type Design To Attach or Remove External Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend the existing helicopter noise certification procedures with respect to certain changes in type designs. This proposal would amend the applicability of the noise certification procedures to exclude those changes in type design that involve the attachment or removal of external equipment, floats and skis, and certain airframe and operational changes made to accommodate such changes in type design (acoustical change requirements). This proposal would also exclude helicopter flight operations with doors and/or windows removed or in an open position from the applicability of the acoustical change requirements. This change would reconcile 14 CFR part 21 with the procedural treatment of external equipment in the original helicopter noise certification rulemaking effort and would make U.S. helicopter noise certification regulations more consistent with the International Civil Aviation Organization (ICAO) standards.

DATES: Comments must be submitted on or before November 20, 1995.

ADDRESSES: Send comments on this proposal to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC–10), Docket No. 28334, 800 Independence Avenue, S.W., Room 915G, Washington, DC 20591 or deliver comments in triplicate to: FAA Rules Docket, Room 915G, 800 Independence Avenue, S.W., Washington, DC 20591. Comments may also be submitted electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. Comments may be inspected in Room 915G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth E. Jones, Research and Engineering Branch (AEE–110), Technology Division, Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–8933, facsimile (202) 267–5594.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impacts of this proposal. Comments should identify the regulatory docket or notice number and be submitted in triplicate to the address above. All comments received, as well as a report summarizing any substantive public contact with Federal Aviation Administration (FAA) personnel on this rulemaking will be filed in the docket, and will be considered by the Administrator before taking action on this proposed rulemaking. The docket is available for public inspection both before and after the closing date for comments. The FAA will acknowledge the receipt of a comment if the commenter includes a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28334''. When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3474. Requests should be identified by the docket number of this proposed rule.

Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

The certification procedures for aeronautical products and parts are contained in 14 CFR part 21. Under part 21, an applicant for approval of a change to a helicopter type certificate must show compliance with the noise regulations in 14 CFR part 36 (part 36) if the change in type design may increase the noise level of the helicopter (an acoustical change). Section 21.93 defines an ''acoustical change'' and classifies the aircraft which must demonstrate compliance with part 36 following an acoustical change. Section 21.93(b)(4) described helicopters required to demonstrate compliance with part 36 for an acoustical change, and specifically excludes helicopters designated exclusively for ''agricultural aircraft operations,'' ''dispensing firefighting materials,'' or ''carrying external loads.'' The intent of the existing § 21.93(b)(4) is to exclude helicopters designated exclusively to carry external loads from the requirement to demonstrate compliance with part 36.

This proposal addresses type certification (including noise requirements) procedures for changes to helicopter type designs to configure helicopters for carriage of external equipment. External equipment is defined herein as any instrument, mechanism, part, apparatus, or accessory that is attached to or extends from the helicopter exterior but is not used nor is intended to be used in operating or controlling a helicopter in flight and is not part of an airframe or engine. Examples of external equipment are spotlights, cameras, airborne signs, and cargo tanks and baskets.

External equipment may be attached to a helicopter as a Class A Rotorcraft External Load Combination under 14 CFR part 133 (part 133) ''Rotorcraft External Load Operations'', or alternatively, the external equipment may be attached to the helicopter as a change in type design under Subpart D of part 21. The noise certification requirements do not apply to any helicopter, regardless of airworthiness certification category, that is designated exclusively for carrying external loads pursuant to part 133. Section 133.51 states that ''[a] Rotorcraft External-Load Operator Certificate is a current and valid airworthiness certificate for each rotorcraft . . . listed by registration number on a list attached to the certificate, when the rotorcraft is being used in operations conducted under [part 133].'' However, when the original helicopter noise certification rules were adopted in part 21, external equipment was not excluded from the acoustical change provisions of § 21.93. Thus, except for helicopters operated under part 133, the addition of external equipment is currently subject to the acoustical change provisions of § 21.93. This proposed change to § 21.93 would reconcile the procedural treatment of external equipment added to helicopters with the intent of § 21.93(b)(4) by expanding the acoustical change

exception to include carriage of external equipment.

While many helicopter operators would like to use their aircraft to perform specialized operations that require the use of external equipment, many of these operations do not take place because the cost of complying with the noise regulations is financially impractical; i.e., the cost of demonstrating compliance with the noise regulations would substantially deplete any profit the operation might generate. Some helicopter operators suggest that the current acoustical change type certification procedures are hampering the growth of their industry because compliance costs deter them from performing certain operations that require the addition of external equipment.

History of Aircraft Noise Certification Regulations Relevant to This Proposed Amendment

On November 3, 1969, the Administrator of the FAA adopted part 36 entitled ''Noise Standards: Aircraft Type Certification.'' That action implemented the FAA's regulatory noise abatement program by prescribing type certification noise standards for subsonic turbojet powered airplanes. Procedural changes were concurrently made to part 21, ''Certification Procedures for Products and Parts,'' to provide criteria and requirements for demonstrating compliance with the specifications in part 36 (34 FR 13855, November 18, 1969). The noise certification requirements of parts 21 and 36 are designed to promote the incorporation of noise abatement technology into aircraft design. Parts 21 and 36 have been amended as appropriate to add new aircraft types to the certification requirements or change the technical specifications as necessary. Subsequently, helicopter noise certification requirements were adopted with amendment 36–14 to part 36 and amendment 21–61 to part 21 (53 FR 3534, February 5, 1988).

The first amendment to part 21 relevant to the original aircraft noise certification regulation was amendment 21–27 (34 FR 18355, November 10, 1969). That amendment established the general requirement that an applicant must demonstrate compliance with the applicable provisions of the part 36 procedures prior to issuance of an original, amended, or supplemental type certificate. The same amendment to part 21 included the addition under § 21.93(b) that specified an ''acoustical change'' as any voluntary change in type design of a transport category or turbojet-powered airplane that may increase the noise levels of that airplane. Section 21.93 was subsequently amended in response to the promulgation of part 36 noise standards for propeller-driven small airplanes (Amdt. 21–42; 40 FR 1029, January 6, 1975), supersonic airplanes (Amdt. 21–47; 43 FR 28406, June 29, 1978), commuter category airplanes (Amdt. 21–59; 52 FR 1806, January 15, 1987), and helicopters (Amdt. 21–61; 53 FR 3534, February 5, 1988).

Section 21.93 has also been amended to exclude certain changes in aircraft type design from the acoustical change requirements. The necessity for exempting these changes in type design became apparent only after experience was gained from implementation of the original noise certification regulations for the aircraft type in question. For turbojet-powered airplanes, amendment 21–56 (47 FR 756, January 7, 1982) excludes time-limited engine and/or nacelle changes, where the change in type design specifies that the airplane may not be operated for a period of more than 90 days, and amendment 21–62 (53 FR 16360, May 6, 1988) excludes both gear down flight with one or more retractable landing gear down during the entire flight and spare engine and nacelle carriage external to the skin of the aircraft. For propeller-driven commuter category and propeller-driven small airplanes, amendment 21–63 (53 FR 47394, November 22, 1988) excludes ''antique'' airplanes (i.e., those airplanes that have flight time before January 1, 1955) and land configured aircraft reconfigured with floats and skis.

Synopsis of the Proposal

The FAA has determined that this proposed rulemaking would provide benefits in the form of regulatory relief to the helicopter industry and to individual helicopter operators. From a number of noise certification studies, the FAA has concluded that this rulemaking will result in little or no increase of public exposure to helicopter noise emissions. The portion of the existing helicopter regulations relevant to this rulemaking imposes an undue financial burden on the helicopter industry and operators without providing any measurable benefit to the public.

This proposal would amend the acoustical change provisions of § 21.93 to exclude helicopters that have been modified by the addition or removal of external equipment mounted on the helicopter airframe or floats (rigid or bag) and skis. The proposal would also exclude certain changes in helicopter type design from the acoustical change requirements to certain airframe changes made to accommodate the external equipment, and to helicopter flight operations with doors and/or windows removed or in an open position. The proposal also applies to any operating limitations placed on, or removed from, the helicopter as a consequence of the addition or removal of external equipment, floats, and skis.

The FAA recognizes the utility aspect of the helicopter as an aerial platform for external equipment. It is a common practice in the helicopter industry to add or remove external equipment as mission requirements vary. Although external equipment may be offered by the original manufacturer of the helicopter, it is usually added as an after-market addition by individual operators to meet specific mission needs. Given the potential variety of external equipment, the nature of the external equipment is not considered part of the basic design of a given helicopter and does not influence the basic aerodynamic design or the incorporation of noise abatement technology into the helicopter design. As stated in the preamble of the final rule (cited previously) for the original helicopter noise certification rulemaking, ''* * * the [helicopter] noise standards apply [only] to internal load configurations.''

This proposed rule is consistent with a similar provision in the applicability section of the helicopter noise certification standard approved by the ICAO under its International Standards and Recommended Practices: Environmental Protection; Annex 16, Volume 1, Chapters 8 and 11 (Third Edition-July 1993). The proposed rule change would bring the acoustical change provision in the U.S. noise certification regulations into closer harmony with that used by foreign noise certification authorities.

Details of the proposed amendment and limitations of the amendment are provided in the following analysis.

Section 21.93 Classification of Changes in Type Design

Part 21 prescribes that certain types of aircraft, including helicopters, must demonstrate compliance with the applicable requirements of part 36 if a change in type design results in an acoustical change. Section 21.93 specified an ''acoustical change'' as any voluntary change in type design (including operational limitations) that may increase the noise levels of an aircraft. The proposed rule, applicable only to helicopters, would exclude the installation or removal of external equipment from being considered an acoustical change. The proposed rule

would specifically exclude from the acoustical change provision the addition or removal of all external equipment where ''external equipment'' means any instrument, mechanism, part, apparatus, appurtenance, or accessory (e.g., spotlights, cameras and other optical devices, public address systems, hoists, airborne signs, tow banners, cargo tanks and baskets, emergency flotation gear, personnel platforms, wire strike kits, crop spraying equipment, scientific apparatus and their accessories) that is not used or intended to be used in operating or controlling an aircraft in flight, that is attached to the helicopter, and is not part of an airframe or engine. The proposed rule would apply to changes in the airframe made to:

(1) Accommodate the addition or removal of external equipment;

(2) facilitate the use of external equipment; or

(3) facilitate the safe operation of the helicopter with external equipment mounted on the helicopter.

Examples of airframe changes that would be excepted include fairings, attachment hardware, cavities constructed in the airframe to accommodate conformally attached equipment, and bubble windows. The proposed rule would also exclude from the acoustical change provision external load attaching means, the airworthiness certification of which is specified in §§ 27.865 and 29.865.

The proposed rule change would also exclude the addition or removal of floats and skis on helicopters from the acoustical change provision. The proposal would also make it clear that any changes in the operating limitations placed on the helicopter as a consequence of the addition or removal of external equipment, floats, and skis is not an acoustical change. Similarly, it would also exclude flight operations conducted with one or more doors and/or windows removed or in an open position.

The FAA has included addition or removal of floats and skis on helicopters under this proposed rule change in order to provide the same provision for helicopters as is currently provided small propeller driven airplanes and propeller driven commuter category airplanes under § 21.93(b)(3). The acoustical change requirements of § 21.93 do not require a noise certification compliance demonstration for such airplanes, and would not for helicopters under this proposal, because the FAA did not have a rational basis to consider such design configurations in the original rulemaking that established noise certification requirements for these aircraft. While the additions of floats and skis adversely affects the aerodynamic performance, and consequently the noise levels, of both small airplanes and helicopters, the FAA lacks the acoustical and performance data necessary to develop noise certification regulations relevant to small airplanes and helicopters that are reconfigured by the addition of floats or skis.

If a noise compliance demonstration is otherwise required for compliance with part 36, the noise flight test must be conducted without any external equipment, floats, or skis mounted to the helicopter and with doors and windows mounted and closed (i.e., aerodynamically clean configuration) unless otherwise approved or required by the FAA. In granting exemptions and establishing conditions of exemptions, the rationale for the FAA's decision will be based on whether or not the measured helicopter noise levels from a proposed noise compliance demonstration would be representative of a ''clean configured'' helicopter. For example, assume a cavity was created in the fuselage (as a related airframe change) to accommodate a conformally (flush) fitted camera. Under the proposed rule change, both the camera and the cavity would be exempt from the acoustical change requirements of part 21. However, in the event of any future noise testing of that helicopter for a change in type design unrelated to the camera and cavity, such a noise test without the camera mounted and the cavity exposed would likely lead to unrepresentative noise levels due to alteration of the aerodynamic performance of the helicopter. In this example, during the actual noise test for the unrelated change in type design, the FAA would probably require that the flush-mounted camera be inserted in its associated fuselage cavity or that the fuselage cavity be covered in a manner that would return the fuselage to its original aerodynamic shape. Similarly, any analysis for the purpose of demonstrating a ''nonacoustical change'' under § 21.93 must assume performance levels consistent with an aerodynamically clean helicopter (relative to the changes in type design excepted under this proposed rulemaking). That is, a decrease in a noise certification level effected by the addition of equipment exempted under this proposed rulemaking may not be used to ''mathematically' offset an increase in noise from a change in type design not affected by this proposed rulemaking. For example, assuming the certification basis for a given helicopter is part 36 Appendix J, an increase in flyover noise certification level caused by the upgrade of a transmission may not be offset by the decrease in noise from the assumed addition of external equipment, floats or skis as part of the change in type design for the transmission.

The FAA also proposed to delete the current text in § 21.93(b)(4) (i) and (ii). These paragraphs indicate examples of design changes which would be considered acoustical changes. Since § 21.93(b) already makes it clear that ''any voluntary change in the type design of an aircraft that may increase the noise levels of the aircraft is an 'acoustical change' * * *'' existing paragraphs § 21.93(b)(4) (i) and (ii) may be erroneously interpreted to indicate that (any) change to a muffler (including a change to a quieter muffler) is by regulation an acoustical change. The existing paragraphs (i) and (ii) do not represent a regulatory requirement and add nothing toward the interpretation of the acoustical change requirements for helicopters. The proposed new text addresses the definition of external equipment and the exclusions discussed earlier in this synopsis.

During development of this proposed rule change, the FAA has examined such factors as the utility aspect of the helicopter mission, the necessity for the addition or removal of external equipment to meet mission needs, the relevance of such equipment with regard to the incorporation of noise abatement technology in the design of the helicopter, and the desire for commonality of U.S. noise certification regulations with relevant international standards and foreign national regulations. After consideration of these factors, the Administrator has determined that the proposed rule change is consistent with the criteria set forth for proposing and amending aircraft noise abatement regulations under the authority of § 611(d) of the Federal Aviation Act of 1958.

International Compatibility

The FAA has reviewed corresponding ICAO standards and JAA regulations, where they exist. These proposed amendments would make U.S. helicopter noise certification regulations more consistent with the ICAO standards.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Regulatory Evaluation Summary

Three principal requirements pertain to the economic impacts of changes to the Federal Regulations. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the expected benefits to society outweigh the expected costs. Second, the regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits exceeding costs; (2) is not ''significant'' as defined in the Executive Order and DOT's policies and procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will lessen restraints on international trade. These analyses, available in the docket, are summarized below.

Benefits

The proposed rule would provide regulatory relief and a cost savings of $31,690,468 (non-discounted) or $23,409,159 discounted, over a ten year period, to helicopter manufacturers, modifiers, and operators. Of this amount, the projected cost savings for part 36 noise certification testing under Appendix H for major helicopter manufacturers is $4,800,000 (non-discounted) or $4,264,244 discounted; Appendix J Testing for light helicopter manufacturers, $3,000,000 (non-discounted) or $2,330,305 discounted; and Appendix J Testing for modifiers, $22,500,000 (non-discounted) or $15,803,025 discounted. The FAA would also realize a cost savings under these appendices: Appendix H, $222,460 (non-discounted) or $178,312 discounted; Appendix J, $231,740 (non-discounted) or $173,525 discounted; and Appendix J (for modifiers), $936,268 (non-discounted) or $659,748 discounted.

Costs

From the number of noise certification studies, the FAA has learned that allowing applicants to attach external equipment to their helicopters will result in no net increase in helicopter noise or, at worst, insignificant increases in noise levels.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance prescribes standards for complying with RFA review requirements in FAA rulemaking actions. The order defines ''small entities'' in terms of size thresholds, ''significant economic impact'' in terms of annualized cost threshold, and ''substantial number'' as a number that is not less than eleven and that is more than one-third of the small entities subject to the proposed rule.

The FAA has determined that, in accordance to the above order, the proposed rule to part 21 would not have a significant economic impact on a substantial number of small entities. The proposed rule would directly affect two types of entities: (1) Light helicopter manufacturers, and (2) small helicopter modifiers.

For small aircraft and aircraft parts manufacturers, Order 2100.14A specifies a size threshold for classification as a small entity as 75 or fewer employees. Based upon this size threshold, all of the affected U.S. manufacturers are large. For the purpose of the regulatory flexibility determination, an aircraft modifier is considered a small entity if it has 200 or fewer employees.

The FAA concludes that a substantial number of small entities (less than one third) would not be significantly affected by the proposed rule. Therefore, the proposed rule would not impose a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Trade Impact Assessment

The FAA has determined that the proposed rule would neither affect the sale of foreign aviation products and services in the United States nor the sale of U.S. products and services in foreign countries. This determination is based on the FAA's contention that the proposed rule would parallel more closely the U.S. standards with foreign standards for noise certification of external equipment.

Federalism Implications

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

Environmental Analysis

Pursuant to the Department of Transportation ''Policies and Procedures for Considering Environmental Impacts'' (FAA Order 1050.1D), a draft environmental analysis will be prepared and placed in the docket.

Conclusion

The FAA has determined that this proposed rule: (1) is not a significant regulatory action under Executive Order 12866; (2) is not a significant regulatory action under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this proposed rule would have little or no effect on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States.

List of Subjects in 14 CFR Part 21

Aircraft, Helicopters, Noise control.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend 14 CFR part 21 as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 49 U.S.C. App. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 7572; E.O. 11514; 49 U.S.C. 106(g).

2. Section 21.93 is amended by revising paragraph (b)(4) to read as follows:

§ 21.93 Classification of changes in type design.

* * * * *

(b) * * *

(4) Helicopters except:

(i) Those helicopters that are designated exclusively:

(A) For ''agricultural aircraft operations'', as defined in § 137.3 of this chapter, as effective on January 1, 1966;

(B) For dispensing fire fighting materials; or

(C) For carrying external loads, as defined in § 133.1(b) of this chapter, as effective on December 20, 1976.

(ii) Those helicopters modified by installation or removal of external equipment. For purposes of this paragraph, ''external equipment'' means any instrument, mechanism, part, apparatus, appurtenance, or accessory that is attached to, or extends from the helicopter exterior but is not used nor is intended to be used in operating or controlling a helicopter in flight and is not part of an airframe or engine. An ''acoustical change'' does not include:

(A) Addition or removal of external equipment;

(B) Changes in the airframe made to accommodate the addition or removal of external equipment, to provide for an external load attaching means, to facilitate the use of external equipment or external loads, or to facilitate the safe operation of the helicopter with external equipment mounted to, or external loads carried by, the helicopter;

(C) Reconfiguration of the helicopter by the addition or removal of floats and skis;

(D) Flight with one or more doors and/or windows removed or in an open position; or

(E) Any changes in the operational limitations placed on the helicopter as a consequence of the addition or removal of external equipment, floats, and skis, or flight operations with doors and/or windows removed or in an open position.

* * * * *

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

James D. Erickson,

Director, Office of Environment and Energy.

[FR Doc. 95–23208 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Wednesday
September 20, 1995

Part V

Environmental Protection Agency

Alaskan Outer Continental Shelf; Draft National Pollutant Discharge Elimination System General Permit; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5297–3]

Alaskan Outer Continental Shelf; Draft National Pollutant Discharge Elimination System General Permit

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of Draft NPDES General Permit (Reissuance), Notice of State of Alaska Certification and Notice of State of Alaska Determination of Consistency with the Alaska Coastal Management Program.

SUMMARY: The Regional Administrator, Region 10, is proposing to issue a draft National Pollutant Discharge Elimination System (NPDES) general permit for oil and gas stratigraphic test and exploration wells on the Alaskan Outer Continental Shelf (OCS) in addition to exploration, production and development wells in offshore and coastal waters of the State of Alaska. A general NPDES permit (51 FR 35460, 10/03/86) was issued September 4, 1986, for all areas offered for lease by the U.S. Department of the Interior's Minerals Management Service (MMS) in Federal Lease Sales 55 (Gulf of Alaska) and 60 (Cook Inlet) and all Cook Inlet blocks offered for lease by the State of Alaska in Lease Sales 32, 33, 35, 40, 46A, and 49. The permit issued in 1986 also covered areas offered under state lease sales held during the effective period of the permit (i.e., 10/10/86–10/10/91). The permit proposed today will not cover areas outside of Cook Inlet (i.e., Federal Lease Sale 55).

When issued, the proposed permit will establish effluent limitations, standards, prohibitions, and other conditions on discharges from facilities in the general permit area. These conditions are based on the administrative record. EPA regulations and the permit contain a procedure which allows the owner or operator of a point source discharge to apply for an individual permit instead. A total of 23 facilities were covered under the previous general permit. Of those 23 facilities, 16 are currently active. All of those permittees have complied with the reissuance application procedures and have indicated preference to be covered under this general permit as well. Therefore, Region 10 hereby announces its intention to cover these facilities under this general permit. If any individual objects to this automatic coverage, that objection should be submitted in writing during the public comment period.

A brief description of the basis for the conditions and requirements of the proposed permit is given in the fact sheet published below.

DATES: Interested persons may submit comments of the draft general permit by 4 pm on November 30, 1995.

ADDRESSES: Public comments and requests for coverage should be sent to: Environmental Protection Agency, Region 10, Attn: Ocean Programs Section, WD–137, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Kris Flint, Region 10, at the address listed above or telephone (206) 553–8155. Copies of the draft general permit and today's publication will provided upon request.

SUPPLEMENTARY INFORMATION:

State Certification

This Notice will also serve as Public Notice of the intent of the State of Alaska, Department of Environmental Conservation to consider certifying that the subject discharge will comply with the applicable provisions of Section 208(e), 301, 303, 306 and 307 of the Clean Water Act. The NPDES permit will not be issued until the certification requirements of Section 401 have been met. Persons wishing to comment on State Certification should submit written comments within this 60 day period to the State of Alaska, Southcentral Regional Office, Alaska Department of Environmental Conservation (ADEC), 555 Cordova Street, Anchorage, Alaska 99501.

State Consistency Determination

This Notice will also serve as Public Notice of the intent of the State of Alaska, Office of Management and Budget, Division of Governmental Coordination, to review this action for consistency with the approved Alaska Coastal Management Program. Persons wishing to comment on the State Determination of Consistency with the Alaska Coastal Management Program should submit written comments within this 60 day period, to the State of Alaska, Office of Management and Budget, Division of Governmental Coordination at the Joint Pipeline Office, 411 West 4th Street, Anchorage, Alaska 99501. Comments should be addressed to the attention of Alaska Coastal Management Program Consistency Review.

Public Hearing

Public hearings on the proposed general permit are tentatively scheduled to be held in Anchorage and Soldotna, Alaska. The Anchorage hearing will be held in Room 154 of the Anchorage Federal Building at 222 West Seventh on November 28, 1995, from 1 p.m. to 5 p.m. The Soldotna hearing will be held in the Assembly Chambers of the Kenai Peninsula Borough at 144 North Binkley Road on November 29, 1995, from 4 p.m. until all persons have been heard. Either or both of the public hearings will be cancelled if insufficient interest is expressed in them. People interested in making a statement at either hearing must contact Kris Flint at the address below or at (206) 553–8155 by 4 pm on November 16, 1995, to confirm that the hearing will take place. At the hearings, interested people may submit oral or written statements concerning the draft general permit.

Request for Coverage

Written request for authorization to discharge under the general permit shall be provided, as described in Part I.A. of the permit, to EPA, Region 10, at least 60 days prior to initiation of discharges. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to operations at the discharge site. The permit also requires permittees to notify EPA no more than seven (7) days prior to the initiation of discharges at the site, and prior to the initiation of discharges from each new well at a given site.

Administrative Record

The proposed NPDES permit and other related documents are on file and may be inspected any time between 8:30 a.m. and 4 p.m., Monday through Friday at the addresses shown below.

U.S. EPA, Anchorage Operations Office, Anchorage Operations Office, Room 537, Federal Building, 222 West Seventh Avenue, #19, Anchorage, Alaska 99513–7588

U.S. EPA, Region 10, Office of Water, WD–137, Ocean Programs Section, 1200 6th Avenue, Seattle, Washington 98101

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Fact Sheet

I. General Permits and Requests for Individual Permits

Section 301(a) of the Clean Water Act (the ''Act'') provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. The Regional Administrator has determined that oil and gas facilities operating in the areas described in the proposed general NPDES permit are more appropriately controlled by a general permit than by individual permits. This decision is based on 40 CFR 122.28, 40 CFR 125 (Subpart M) and the Agency's previous permit decisions in other areas of the Alaskan Outer Continental Shelf (OCS).

Any owner and/or operator authorized to discharge under a general permit may request to be excluded from coverage under the general permit by applying for an individual permit as provided by 40 CFR 122.28(b). The operator shall submit an application together with the reasons supporting the request to the Director, Water Division, EPA, Region 10 (''Director'').

A source located within the general permit area, excluded from coverage under the general permit solely because it already has an individual permit (i.e., a permit that has not been continued under the Administrative Procedures Act), may request that its individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply. Procedures for modification, revocation, termination, and processing of NPDES permits are provided by 40 CFR 122.62–122.64. As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Act that is enforceable under section 309 of the Act.

II. Covered Facilities and Nature of Discharges

A. Types of Discharges Authorized

The proposed permit will authorize discharges from exploratory operations in all areas, and from development and production operations only in state waters of Upper Cook Inlet, north of the Forelands (see Part II.D. below). The Agency considers it appropriate to include exploration discharges with development and production discharges in this permit because, although some development and production discharges vary from exploration discharges, all exploratory discharges are a subset of those occurring in development and production.

Exploratory operations involve drilling to determine the nature of potential hydrocarbon reserves. Under the permit, exploratory operations would be limited to a maximum of five wells per site. Development operations are engaged in the drilling and completion of production wells. Development operations may occur prior to, or simultaneously with, production operations, which are engaged in active recovery of hydrocarbons from producing formations.

The proposed general permit will authorize the following discharges in all areas of coverage: drilling mud; drill cuttings and washwater; deck drainage; sanitary wastes; domestic wastes; desalination unit wastes; blowout preventer fluid; boiler blowdown; fire control system test water; non-contact cooling water; uncontaminated ballast water; uncontaminated bilge water; excess cement slurry; and mud, cuttings, and cement at the seafloor. Waterflooding discharges, produced water discharges, and well treatment fluids (other than test fluids) will also be authorized for Upper Cook Inlet development and production operations. Descriptions of discharges are given in Part V. of this fact sheet.

Operators of existing facilities are encouraged to consider whether the above discharge categories will cover all discharges at their facilities. If additional categories are necessary, notification should be given to Region 10 during the public comment period.

B. Existing Facilities

Oil and gas are extracted from drilling operations on the production platforms. The oil and gas are in emulsion with water and must be separated for sale. There are various ways in which oil and gas (''products'') are separated from the water (''produced water''). Some of the production platforms are equipped to separate product from produced water onboard and discharge produced water directly to Cook Inlet. Other production platforms perform initial oil/water separation and route their produced water to onshore facilities for further treatment. In these cases, produced water is discharged from the onshore facility. Platforms that send produced water to shore-based facilities for treatment are not authorized to discharge produced water. Produced water is an authorized discharge from the following facilities: (Unocal) Granite Point Treatment Facility, (Unocal) Trading Bay Facility, (SWEPI) East Forelands Treatment Facility, and platforms (Unocal) Anna, (Unocal) Baker, (Unocal) Bruce, Phillips Tyonek A, SWEPI A, SWEPI C, and (Marathon) Spark. The shore-based produced water treatment facilities are authorized to discharge only produced water.

The proposed permit lists 23 operations which may, or may not, all be operating and discharging at any given time during the course of the proposed permit. Occasionally, operators may decide to ''close in'' a platform, ceasing production and subsequent discharges for some period of time. These facilities may resume production and discharging during the effective period of the proposed permit and, if so, will be subject to requirements at Part I.B.3 of the proposed permit. ''Inactive'' refers to operations which are complete, such as exploration operations from mobile units. Previous ''inactive'' operations are listed in the proposed permit simply to ensure that the NPDES permit numbers assigned to those operations are not reassigned to future operations.

C. Discharges Not Authorized

During the effective period of the general permit issued in 1986 (''1986 permit''), permittees identified several discharges that were not authorized. Region 10 has reviewed the questioned wastestreams and has determined that they cannot be covered by this permit. The bases for excluding the following wastestreams are listed below:

- Paint chips, paint overspray, or wastes from paint removal resulting from maintenance of platforms—

MARPOL, Annex V (see Part VI.E. below)

- Water resulting from the cleaning of contaminated soils—40 CFR 122.28(a)(2)
- Wastes resulting from the treatment of contaminated groundwaters—40 CFR 122.28(a)(2)

D. Areas of Coverage

It is important to understand the differences among ''federal'' and ''state'' waters, and the Offshore and Coastal subcategories of discharges. ''Federal'' and ''state'' waters *do not* coincide with the Coastal and Offshore discharge subcategories. Figure 1 illustrates the differences among these terms, and the way in which they apply to oil and gas operations in general.

''State'' waters or ''territorial seas'' are the waters extending 3 miles seaward from the baseline. The ''baseline'' typically follows the line of ordinary low water along the portion of the coast that is in direct contact with the open sea, although closing lines may be drawn straight across the mouth of bays. These closing lines, or baselines, are established by the U.S. Department of State and NOAA. In Cook Inlet, the primary baseline runs across the southern end of Kalgin Island (see Figure 1). Federal waters extend seaward from the territorial seas. All operations north of the baseline in Cook Inlet are part of the Coastal Subcategory of oil and gas operations, while all operations south of the baseline are part of the Offshore Subcategory. In Cook Inlet, all waters north of the Kalgin Island baseline are state and Coastal, while waters south of the baseline are Offshore only, but include state and federal properties.

1. Areas of Coverage in Federal Waters

As discussed above, federal waters are located three miles from the ordinary low tide mark along the shoreline. The permit proposed today will cover a smaller area than the 1986 permit (i.e., only Cook Inlet v. Cook Inlet & Gulf of Alaska). The 1986 general permit authorized discharges in all areas offered for lease by MMS in Federal Lease Sales 55 (Gulf of Alaska) and 50 (Cook Inlet). No federal lease sales were held during the effective period of the 1986 permit. At this time, MMS has tentatively scheduled Lease Sale 149 (Cook Inlet/Shelikof Strait) for late 1996. To the knowledge of Region 10, specific development and production operations are not planned and do not presently exist in federal waters in Cook Inlet; therefore, the proposed permit will cover only exploratory operations in federal waters.

2. Areas of Coverage in State Waters

The proposed permit will authorize discharges from all Cook Inlet blocks previously offered for lease by the State of Alaska, or offered under state lease sales held during the effective period of the 1986 permit. State sales that have occurred and will be covered under the proposed permit are 67A (Cook Inlet Exempt, held January 1991) and 74 (Cook Inlet, held September 1991). The proposed permit will also authorize discharges from blocks offered for lease during the effective period of the permit. Lease sales planned for state waters within the next five years include Sale 85, 85A and 90 (based on Alaska's proposed 5-year state leasing program (ADNR/O&G 1994)). For the purposes of the proposed permit, the southern boundary of Cook Inlet is defined to be the line between Cape Douglas on the west and Port Chatham on the east.

Discharges from new exploratory operations would be allowed in all state waters in Cook Inlet. These include operations in both the Coastal and Offshore Subcategories (40 CFR Part 435, Subparts A and D). Operations in the Offshore Subcategory in state waters would be located within either three miles of the ordinary low tide mark along the shoreline, or of closure lines.

Discharges from development and production operations would be allowed only for Coastal Subcategory operations north of the Forelands in Upper Cook Inlet, where the existing production platforms are located. The proposed permit covers discharges from three shore-based facilities which discharge produced water extracted at several of the platforms. Region 10 has excluded potential development and production in other areas from this permit for two reasons. First, the number and precise nature of such future operations is unknown, in contrast to existing operations in Upper Cook Inlet. Second, other areas are generally richer in biota and more sensitive to discharges than Upper Cook Inlet.

The proposed permit will not authorize discharges into any wetlands adjacent to territorial waters of the State or from facilities in the Onshore Subcategory as defined in 40 CFR Part 435, Subpart C.

E. Nature of Discharges

The Agency has established that drilling muds and cuttings are the major pollutant sources discharged from exploratory and development drilling operations. Produced water and well treatment fluids are the major pollutant sources discharged from production operations. The 1986 permit required the permittees, singly or jointly, to provide information on the composition, quantities, and in some cases the toxicity, of development and production discharges. Region 10 encouraged Cook Inlet operators to participate in a joint study with a single contractor to ensure uniform sampling, analyses, and data compilation. Permittees participating in the study, known as the Cook Inlet Discharge Monitoring Study (CIDMS), included the following:

- Amoco Production Company.
- Marathon Oil Company.
- Shell Western E&P, Inc.
- ARCO Alaska, Inc.
- Phillips Petroleum Company.
- Unocal Corporation.

The CIDMS yielded the following six reports:

- Deck Drainage,
- Non-Contact Cooling Water and Desalination Wastes,
- Blowout Preventer Fluid, Boil Blowdown, Fire Control System Test Water, Uncontaminated Ballast Water, Uncontaminated Bilge water, and Waterflooding Discharges,
- Excess Cement Slurry and Mud, Cuttings, Cement at the Seafloor,
- Well Treatment Fluids, and
- Produced Water.

The pollutants present in the discharges, as reported in the CIDMS, discharge monitoring reports and Agency documents, are summarized below. The toxic pollutants (defined at 40 CFR 401.15) are also known as priority pollutants. Conventional pollutants are defined at 40 CFR 401.16 as pH, biochemical oxygen demand (BOD_5), oil and grease, total suspended solids (TSS), and fecal coliform. The category of nonconventional pollutants includes all pollutants not included in either of the other categories.

1. Conventional Pollutants. pH, BOD_5, oil and grease, TSS and fecal coliform.

2. Toxic Pollutants. Benzene; ethylbenzene; naphthalene; toluene; phenol; 2,4-dimethylphenol; bis (2-ethylhexyl) phthalate; anthracene; phenanthrene; and zinc. The pollutants listed here have been reported as components of produced water discharges in both Cook Inlet and the Gulf of Mexico.

3. Nonconventional Pollutants. Nonconventional pollutants comprise the remaining pollutants and parameters for which the Agency has determined that effluent limits or monitoring is necessary in NPDES permits. These include: chemical oxygen demand (COD), toxicity, total organic carbon (TOC), salinity, temperature, and chlorine.

In developing the proposed permit conditions, EPA has evaluated the concentrations of these pollutants relative to the levels allowed under federal regulations and state water quality standards. The pollutants and discharge parameters limited in each waste stream are summarized in section V.A., and discussed in sections V.C—IV.H.

III. Basis for Permit Conditions

Sections 301(b), 304, 306, 307, 308, 401, 402, 403, and 501 of the Clean Water Act (The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987), 33 U.S.C. 1311, 1314 (b), (c), and (e), 1316, 1317, 1318 and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 101 Stat. 7, Pub. L. 100–4 (''the Act'' or ''CWA''), and the U.S. Coast Guard regulations (33 CFR Part 151), provide the basis for the permit conditions contained in the permit. The general requirements of these sections fall into four categories, which are described in sections A-D below. In section E, the way in which water quality based permit limitations are derived from the Alaska water quality standards is described. In section F, mixing zones are discussed.

A. Technology Bases

1. BPT Effluent Limitations

The Act requires particular classes of industrial discharges to meet effluent limitations established by EPA. EPA promulgated effluent limitations guidelines requiring Best Practicable Control Technology Currently Available (BPT) for the Offshore and Coastal Subcategories of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subparts A and D) on April 13, 1979 (44 FR 22069).

BPT effluent limitations guidelines require ''no discharge of free oil'' for discharges of deck drainage, drilling muds, drill cuttings, and well treatment fluids. This limitation requires that a discharge shall not cause a film or sheen upon, or discoloration on, the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (40 CFR 435.11(d)). The BPT effluent limitation guideline for sanitary waste required that the concentration of chlorine be maintained as close to 1 mg/l as possible in discharges from facilities housing ten or more persons. No floating solids are allowed as a result of sanitary waste discharges from facilities continuously staffed by nine or fewer persons or intermittently staffed by any number. A ''no floating solids'' guideline also applies to domestic waste. BPT limitations on oil and grease in produced water allowed a daily maximum of 72 mg/l and a monthly average of 48 mg/l.

2. BAT and BCT Effluent Limitations

As of March 31, 1989, all permits are required by section 301(b)(2) of the Act to contain effluent limitations for all categories and classes of point sources which: (1) Control toxic pollutants (40 CFR 401.15) and nonconventional pollutants through the use of Best Available Technology Economically Achievable (BAT), and (2) represent Best Conventional Pollutant Control Technology (BCT). BCT effluent limitations apply to conventional pollutants (pH, BOD, oil and grease, suspended solids, and fecal coliform). In no case may BCT or BAT be less stringent than BPT.

BAT and BCT effluent limitations guidelines and New Source Performance Standards (NSPS) for the Offshore Subcategory were proposed on August 26, 1985 (50 FR 34592) and signed on January 15, 1993 (58 FR 12454, March 4, 1993). The new guidelines were established under the authority of sections 301(b), 304, 306, 307, 308, and 501 of the Act. The new guidelines were also established in response to a Consent Decree entered on April 5, 1990 (subsequently modified on May 28, 1993) in *NRDC* v. *Reilly*, D. D.C. No. 79–3442 (JHP) and are consistent with EPA's Effluent Guidelines Plan under section 304(m) of the CWA (57 FR 41000, September 8, 1992). This permit incorporates BAT and BCT effluent limitations based upon the BAT and BCT effluent limitations guidelines.

BAT and BCT effluent limitations guidelines and NSPS for the Coastal Subcategory were proposed on February 17, 1995 (60 FR 9428). In the absence of final BAT and BCT effluent limitations guidelines for the Coastal Subcategory, permit conditions must be established using Best Professional Judgment (BPJ) procedures (40 CFR 122.43, 122.44, and 125.3). The proposed permit incorporates BAT and BCT effluent limitations for the Coastal Subcategory based on the Agency's BPJ and previous permit actions for similar discharges. Previous BPJ determinations for the Coastal Subcategory were incorporated into the 1986 permit for Cook Inlet/Gulf of Alaska (51 FR 35460, October 10, 1986) and the individual permit issued to ARCO Alaska, Inc. for exploration discharges in upper Cook Inlet (EPA 1993b). Best Professional Judgement (BPJ) procedures are also used to establish permit conditions for wastestreams not addressed in the offshore effluent guidelines (e.g., desalination unit wastes, blow out preventer fluid, boiler blowdown; fire control system test water; non-contact cooling water; uncontaminated ballast water; uncontaminated bilge water; excess cement slurry; and muds, cuttings, cement at seafloor).

As required by section 304(b)(2)(B) of the Act, in developing the BPJ/BAT permit conditions, the Agency considered the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Director deemed appropriate.

The types of equipment and processes used in exploratory, development, and production operations are well known to the Agency. Region 10 has issued numerous individual permits for such operations, as well as the general permits referenced above. The records for this permit and those earlier permits thoroughly discuss the types of equipment, facilities and processes used in exploratory, development, and production operations. With regard to the engineering aspects of the application of various types of control techniques, there are no BAT permit limitations based on installation of control equipment. All proposed BAT permit limitations can be achieved through product substitution. Any costs of achieving the effluent limitations and any non-water quality environmental impacts were also evaluated. Such evaluations are discussed below with respect to any limitation where applicable.

As required by section 304(b)(4)(B) of the Act, the same factors as in BAT are considered in determining BCT permit conditions, with one exception. Rather than considering ''the cost of achieving such effluent reduction,'' any BCT determination includes ''consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived and the comparison of the cost and level of reduction of such pollutants from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources.'' BCT effluent limitations cannot be less stringent than BPT; therefore, if the candidate industrial technology fails the BCT

''cost test,'' BCT effluent limitations are set equal to BPT.

The Agency's evaluation of the BAT factors, as discussed above, is also applicable to BCT, as well as to the Agency's BPJ determinations of BPT in cases where there is no BPT effluent limitation guideline for a particular wastestream. There is one BCT limitation based on installation of control equipment: oil and grease limits for produced water are based on the use of oil-water separators. With respect to the BCT ''cost test,'' all BCT limitations are equal to the BPT effluent limitations guidelines or to Region 10's BPJ determinations of BPT. Therefore, no incremental cost will be incurred.

B. Ocean Discharge Criteria

Section 403 of the Act requires that an NPDES permit for a discharge into marine waters located seaward of the inner boundary of the territorial seas (i.e., state and federal offshore waters) be issued in accordance with guidelines for determining the potential degradation of the marine environment. These guidelines, referred to as the Ocean Discharge Criteria (40 CFR Part 125, Subpart M), and section 403 of the Act are intended to ''prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal'' (49 FR 65942, October 3, 1980).

If EPA determines that the discharge will cause unreasonable degradation, an NPDES permit will not be issued. If a definitive determination of no unreasonable degradation cannot be made because of insufficient information, EPA must then determine whether a discharge will cause irreparable harm to the marine environment and whether there are reasonable alternatives to on-site disposal. To assess the probability of irreparable harm, EPA is required to make a determination that the discharger, operating under appropriate permit conditions, will not cause permanent and significant harm to the environment during a monitoring period in which additional information is gathered. If data gathered through monitoring indicate that continued discharge may cause unreasonable degradation, the discharge shall be halted or additional permit limitations established.

Preliminary Ocean Discharge Criteria Evaluations for Sale 60, and a Revised Preliminary Ocean Discharge Criteria Evaluation for Sale 88 and state lease sales located in Cook Inlet, were completed for discharges from operations in these lease sale areas covered under the current permit. For the proposed permit, the Region recently updated the existing ODCE information in the *ODCE for Cook Inlet (Oil & Gas Lease Sale 149) and Shelikof Strait* (Tetra Tech 1995). The Region has determined that discharges occurring under the proposed permit will not cause unreasonable degradation as long as the depth-related conditions and environmental monitoring requirements imposed under section 403 of the Act are met.

C. Section 308 of the Clean Water Act

Under section 308 of the Act and 40 CFR 122.44(i), the Director must require a discharger to conduct monitoring to determine compliance with effluent limitations and to assist in the development of effluent limitations. EPA has included several monitoring requirements in the permit, as listed in the table in section V.A. of this fact sheet.

D. State of Alaska Standards and Limitations

Permits for discharges to state waters must ensure compliance with water quality standards and limitations imposed by the State as part of its certification of NPDES permits under section 401 of the Act. The state waters of Cook Inlet and the Gulf of Alaska have been classified by the Alaska Department of Environmental Conservation (ADEC) as marine water with water use classes 2A through 2D (water supply; water recreation; growth and propagation of fish, shellfish, other aquatic life, and wildlife; and harvesting for consumption of raw mollusks or other raw aquatic life).

The NPDES regulations at 40 CFR 122.44(d) require that permits include limits on all pollutants or parameters which ''are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standard, including state narrative criteria for water quality'' (54 FR 23868–23899, June 2, 1989). The regulations require that this evaluation be made using procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant in the effluent, species sensitivity (for toxicity), and where appropriate, dilution in the receiving water. The limits must be stringent enough to ensure that water quality standards are met, and must be consistent with any available wasteload allocation.

The regulations at 40 CFR 122.44(d) also specifically address when toxicity and chemical-specific limits are required. A toxicity limit is required whenever toxicity is at a level of concern relative to either a numeric or narrative standard for toxicity. The only exception is where chemical-specific limits will fully achieve the narrative standard. A chemical-specific limit is required whenever an individual pollutant is at a level of concern relative to the numeric standard for that pollutant. The regulations also provide three options for developing a chemical-specific limit needed to control a pollutant which does not have a numeric standard, but is contributing to a problem with achieving the narrative standard.

In proposing to reissue this permit, EPA has considered Alaska's antidegradation policy (18 Alaska Administrative Code (AAC) 70.101(c)). The reissuance of this permit will not result in additional pollutant loading to the receiving water; therefore, this action complies with the State's antidegradation policy.

E. Water Quality-based Permit Limit Derivation

Water quality-based permit limits have been derived for state waters only. In deriving permit limits, reported effluent values are compared to wasteload allocations to determine if limits are needed for individual pollutants. The wasteload allocation is the concentration (or loading) of a pollutant that may be discharged by a permittee without causing or contributing to a violation of water quality standards in the receiving water. It is calculated based on the available dilution, if appropriate, and the water quality standard. As discussed above, 40 CFR 122.44(d)(1) requires consideration of existing controls on all point or nonpoint sources of pollutants when establishing water quality-based limits on point sources.

Under 40 CFR 122.44(d)(1), water quality-based effluent limits must be included in a permit if the discharge shows ''reasonable potential'' to exceed water quality standards. EPA's *Technical Support Document for Water Quality-based Toxics Control* (EPA 1991b) (''TSD'') defines ''reasonable potential'' as being within a percentage of the wasteload allocation. The percentage increases as the uncertainty decreases. Uncertainty decreases with increased numbers of samples. The percentage is also based on the coefficient of variation (a measure of the variability) of the data. When there are not enough data to reliably determine a coefficient of variation, the TSD

recommends using 0.6 as a default value.

In deriving the water quality-based permit limits, Region 10 applied the statistical permit limit derivation approach described in the EPA guidance documents, *Permit Writer's Guide to Water Quality-Based Permitting for Toxic Pollutants* (EPA 1987), and the TSD. This approach takes into account effluent variability, as well as the difference in timeframes between the water quality standards and monthly average and daily maximum limits, and sampling frequency. In addition to the wasteload allocation values, EPA used the following values in deriving limits using the formulas in the guidance documents:

Probability value for long-term average calculation: 99%
Probability value for monthly average limit calculation: 95%
Probability value for daily maximum limit calculation (for parameters with greater than monthly monitoring): 99%
Probability value for daily maximum limit calculation (for parameters with monthly or less frequent monitoring): 95%
Coefficient of Variation: 0.6

The water quality-based limits proposed in the draft permit are further discussed in section V.

F. Mixing Zones

The State has issued a preliminary mixing zone determination for produced water that specifies mixing zones and dilutions for eight facilities discharging produced water to Cook Inlet. The State has notified EPA that the mixing zone request submitted by Unocal, Marathon, Phillips and Shell is adequate for incorporation into the draft permit (ADEC 1995). At each of the eight facilities, individual mixing zones are proposed for metals (acute, chronic & human health), total aromatic hydrocarbons (TAH) and total aqueous hydrocarbons (TAqH), and toxicity (see section V.G.). Wasteload allocations for produced water pollutants are calculated using the dilutions modeled by the permittees; permit limits are then calculated based on the wasteload allocation (see section III.E.).

As part of the state's certification under section 401 of the Act, the mixing zones will either be approved or modified. A mixing zone for total residual chlorine in the sanitary waste stream may also be added to the final permit, as discussed in section V.E.

The state's preliminary mixing zone determination includes mixing zones for arsenic and benzene (as a subset of TAH), both of which are human carcinogens. The state water quality standards at 18 AAC 70.032 state that

''(a) * * * The department will not authorize a mixing zone if it finds that available evidence reasonably demonstrates that * * *

(1) pollutants discharged could * * *

(B) be expected to cause carcinogenic, mutagenic, or teratogenic effects on biota or human health, so that significant human health risks could occur to consumers of water, fish, or shellfish when evaluated using reasonable assumptions about exposure pathways, including exposure duration of affected aquatic organisms in the proposed mixing zone and the patterns of fisheries use and consumption in the area; * * *

[4](b) * * * Human health and chronic aquatic life criteria apply at and beyond the boundaries of the mixing zone. Acute aquatic life criteria apply at and beyond the boundaries of a smaller initial zone surrounding the outfall. * * *''

As part of the proposal for arsenic and TAH mixing zones, permittees evaluated the potential risks to aquatic life and human health at the edge of each site-specific mixing zone. The results of the aquatic life risk assessment indicate that produced water discharged to Cook Inlet from the oil and gas facilities is not expected to be acutely or chronically toxic at the edge of the mixing zones. Similarly, the human health risk assessment results indicate that produced waters are not expected to pose significant risks to human health from the consumption of fish and shellfish in Cook Inlet.

Public comments to EPA on the proposed mixing zone and other water quality standards issues will be copied to the state of Alaska for its review. If the mixing zone approved by the state is different from the mixing zones used to calculate the limits for the draft permit, the limits in the final permit will reflect these changes.

IV. Summary of New and Changed Permit Conditions

The following discussion is intended to provide a summary of the parts of the proposed permit which are substantively different from the 1986 permit. For a detailed discussion of requirements and their bases, please refer to section V of this fact sheet. Many of the new and changed requirements result from promulgation of the final Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory in March, 1993 (see 40 CFR Part 435, Subpart A). As discussed above, the promulgated offshore guidelines apply directly to dischargers in the Offshore segment of Cook Inlet (i.e., the lower inlet). For the Coastal segment of Cook Inlet (i.e., the upper inlet), the Offshore rule is the primary basis for Region 10's best professional judgement regarding technology-based control of pollutant discharge (see section III.A.2., above); although, the proposed Coastal guidelines (60 FR 9428, February 17, 1995) are also referenced throughout this fact sheet.

The balance of new and changed requirements in the proposed permit are the result of the inclusion of water-quality based effluent limits for the produced water and any wastestreams which may be commingled with it. Water-quality based effluent limits were developed based on data collected as part of the *Cook Inlet Discharge Monitoring Study* (Envirosphere 1988–1990).

For drilling muds and drill cuttings:

- Combined wastestreams: In accordance with the Offshore guidelines, drilling muds, drilling cuttings and washwater are combined and addressed in the proposed permit as a single wastestream (Discharge 001). Previously, washwater and cuttings were considered as a separate wastestream; they are now considered by the Agency to be an intrinsic component of the drilling wastes discharge.
- Toxicity limit for drilling muds: In accordance with the Offshore guidelines, a toxicity limit of 30,000 ppm SPP is proposed.
- Oil content on cuttings: In accordance with the Offshore guidelines, Region 10 has removed the 10% by weight limitation of the oil content of cuttings.
- Barite: In previous permits, Region 10 had an option for a case-by-case waiver for stock barite not meeting mercury and cadmium limits. This waiver has been eliminated to ensure consistency with the Offshore guidelines.
- Mud Plan and Authorized Muds & Specialty Additives: Region 10 is discontinuing the case-by-case evaluation and authorization process developed under previous permits. Subsequently, discussions of authorized muds and additives and tables of approved mud formulations and specialty additives are not included in the proposed permit. The Region is proposing a requirement for operators to develop a Mud Plan to plan for compliance with the toxicity limit. Mud Plan requirements were also part of an individual NPDES permit issued to ARCO Alaska for exploratory operations

in Cook Inlet (EPA 1993b) and in the general NPDES permit for the Arctic (60 FR 27508, May 24, 1995).

For other wastes:

- Elimination of wastestream: In accordance with the Offshore guidelines and the proposed Coastal guidelines, Region 10 is prohibiting the discharge of produced sands. This prohibition is listed with limitations on produced water (Discharge 015).
- Oil and grease: In accordance with the Offshore guidelines, Region 10 is proposing oil and grease limits for produced water discharges of 29 mg/l as a monthly average and 42 mg/l as a daily maximum. (The numerical oil and grease limits are also applied to the discharge of workover, completion, well treatment and test fluids.) Limits in the previous permit were 42 mg/l and 72 mg/l (for all operators except Phillips Petroleum, which has more stringent limits).
- Best Management Practices: The proposed general permit requires permittees to develop and implement a Best Management Practices (BMP) plan which prevents or minimizes the generation of pollutants, their release, and potential release from the permitted facilities to waters of the United States.
- Produced Water: Water-quality based effluent limitations have been added for metals, total aromatic hydrocarbons, total aqueous hydrocarbons, and chronic toxicity. Not all metals are limited at all locations; monthly monitoring for metals for which compliance monitoring will not already be done, is required for one year.
- Produced Water Mixing Zones: The 1986 permit contained produced water mixing zones for Marathon Granite Point (450 m), Marathon Trading Bay (750 m) and Shell East Foreland (750 m); and interim mixing zones for Amoco platforms Anna, Baker Bruce and Dillon (625 m) and Phillips Tyonek-A (150 m). The interim mixing zones were never finalized; and none of the mixing zones was used to calculate wasteload allocations for produced water pollutants.

The State has issued a preliminary mixing zone determination for produced water that specifies mixing zones and dilutions for eight facilities discharging produced water to Cook Inlet. Chemical specific mixing zones are proposed to meet water quality criteria for metals, total aromatic hydrocarbons (TAH), total aqueous hydrocarbons (TAqH), and chronic toxicity.

- Sanitary: Chlorine limits have been changed to more accurately reflect the Alaska water quality standards pending section 401 certification of the final permit.

V. Specific Permit Conditions

A. Approach

The determination of appropriate conditions for each discharge was accomplished through:

(1) Consideration of technology-based effluent limitations to control conventional pollutants under BCT,

(2) Consideration of technology-based effluent limitations to control toxic and nonconventional pollutants under BAT,

(3) For state waters, inclusion of permit terms necessary to ensure compliance with state water quality standards and stipulations of state lease sales.

(4) Evaluation of the Ocean Discharge Criteria for discharges in the Offshore Subcategory (given conditions 1 and 2 are in place), and,

EPA first determines which technology-based limits are required and then evaluates the effluent quality expected to result from these controls. If water quality standards could occur as a result of discharge, EPA must include water quality-based limits in the permit. The permit limits will thus reflect whichever limits (technology-based or water quality-based) are most stringent. Finally, Ocean Discharge Criteria are evaluated to identify any areal or depth-related discharge requirements.

General area and depth related requirements are discussed in section V.B. of this fact sheet. Specific effluent limitations and monitoring requirements derived from 1 through 4 above are discussed separately for each wastestream in sections V.C. through H. Additional monitoring requirements based on 1 and 2 are also discussed in section III., above. For convenience, these conditions and the regulatory basis for each are cross-referenced by discharge in the following table.

Discharge and permit condition	Statutory basis	
	Coastal	Offshore
Drilling Muds and Cuttings (001):		
Flow rate limitations	§ 403	§ 403.
Depth related limits	§ 403	§ 403.
Volume	§ 308	§ 308.
Mud plan	CWA §§ 308, 304, 402, PPA § 107.	CWA §§ 308, 304, 402, PPA § 107.
Toxicity	BPJ/BAT	BAT.
No free oil	BPT, BPJ/BCT, BPJ/BAT	BPT, BCT, BAT.
No oil-based fluids	BPT, BPJ/BCT, BPJ/BAT	BPT, BCT, BAT.
No diesel	BPJ/BAT	BAT.
Mercury and cadmium in barite	BPJ/BAT	BAT.
Monitor metals	§ 308	§ 308.
Inventory of added substances	§ 308	§ 308.
Environmental monitoring requirement	§ 403	§ 403.
Deck Drainage (002):		
No free oil	BPT, BPJ/BCT, BPJ/BAT	BPT, BCT, BAT.
Monitor free oil	§ 308	§ 308.
Monitor whole effluent toxicity (direct discharge only)	§ 308	§ 308.
Sanitary Wastes (003):		
Chlorine (facilities >10 people)	BPJ/BCT	BCT.
Biological oxygen demand (BOD)	§ 401/AK WQS	not applicable.
Suspended solids (SS)	§ 401/AK WQS	not applicable.
Floating solids	BPJ/BAT	BPJ/BAT.
Monitor flow rate	§ 308	§ 308.
Marine Sanitation Devices (fecals, solids, chlorine)	§ 312, § 308	§ 312, § 308.
Domestic Wastes (004):		
No foam	BPJ/BAT	BAT.

Discharge and permit condition	Statutory basis	
	Coastal	Offshore
No floating solids	BPJ/BCT	BCT.
Monitor flow rate	§ 308	§ 308.
Miscellaneous Discharges (005–014):		
Monitor flow rate (all)	§ 308	§ 308.
No free oil (006, 010, 011, 012, 013, 014)	BPJ/BPT	BPJ/BPT.
Inventory chemicals added (005, 009, 014)	§ 308	§ 308.
Produced Water (015)		No Discharge.
Flow rate	§ 308	Do.
Produced sands	BCT, BAT	Do.
Oil and grease	BPJ/BAT	Do.
pH	BPJ/BCT	Do.
Zinc	AK WQS	Do.
Total aromatic hydrocarbons (TAH)	AK WQS	Do.
Whole effluent toxicity (WET)	AK WQS	Do.
Total aqueous hydrocarbons (TAqH)	§ 308	Do.
Completion, Workover, Well Treatment Fluids (016–018)		No Discharge.
Frequency & flow rate	§ 308	Do.
No free oil	BPT, BPJ/BCT	Do.
No oil-based fluids	BPT, BPJ/BCT	Do.
Oil and grease	BPJ/BCT, BPJ/BAT	Do.
pH	AK WQS	Do.
Monitor metals	§ 308	Do.
Test Fluids (019):		
No free oil	BPJ/BPT, BPJ/BCT	BPT, BCT.
Oil and grease limits	BPJ/BAT, BPJ/BCT	BCT, BAT.
No oil-based fluids	BPJ/BCT, BPJ/BAT	BCT, BAT.
pH	BPJ/BPT, BPJ/BCT	BPJ/BPT, BPJ/BCT.
Monitor frequency and flow rate	§ 308	§ 308.
All Discharges (001–019):		
No halogenated phenol compounds, diesel oil trisodium nitrilo-triacetic acid, sodium chromate, or sodium dichromate.	BPJ/BAT	BAT.
Sufactants, detergents, dispersants	BPJ/BAT	BPJ/BAT.
No floating solids, visible foam	BPJ/BCT	BCT.
No oily wastes	BPJ/BCT	BCT.
Area and depth related requirements	§ 403, AK WQS	§ 403, AK WQS.
Best Management Plan	§ 402(a)	§ 402(a).

B. Area and Depth-Related Requirements

The discharge restrictions and requirements listed below are necessary to ensure that unreasonable degradation of these areas will not occur as discussed above in part III.B. of this fact sheet (Ocean Discharge Criteria) and are largely unchanged from the 1986 permit to the proposed permit. Discharge within the area described below for Shelikof Strait is prohibited because of the recent determination by the National Marine Fisheries Service (NMFS) which establishes this area as a special aquatic foraging area for the Stellar Sea Lion (58 FR 45278, September, 27, 1993: 50 CFR 226.12(c)(1)).

Pertaining to all discharges, no discharge is allowed:

- In water depths less than 5 m (as measured from mean lower low water).
- Within the boundaries or within 1000 m of a coastal marsh, river delta, river mouth designated Area Meriting Special Attention (AMSA), game refuge, game sanctuary, or critical habitat area. The seaward edge of a coastal marsh is defined as the seaward edge of emergent wetland vegetation.
- In Kamishak Bay west of a line from Cape Douglas to Chinitna Point.
- In Chinitna Bay inside of the line between the points of the shoreline at latitude 59°52′45″ N, longitude 152°48′18″ W on the north and latitude 59°46′12″ N, longitude 153°00′24″ W on the south (Figure 1).
- In Tuxedni Bay inside of the lines on either side of Chisik Island (Figure 1)

—from latitude 60°04′06″ North, longitude 152°34′12″ West on the mainland to the southern tip of Chisik Island (latitude 60°05′45′ North, longitude 152°33′30″ West).

—from the point on the mainland at latitude 60°13′45″ North, longitude 152°32′42″ West to the point on the north side of Snug Harbor on Chisik Island (latitude 60°06′36″ North, longitude 152°32′54″ West).

- In Shelikof Strait south of a line between Cape Douglas (at 58°51′ North, 153°15′ West) on the west and the northernmost tip of Shuyak Island on the east (at 58°37′ North, 152°22′ West).
- Within 20 nautical miles of Sugarloaf Island as measured from a centerpoint at 58°53′ North and 152°02′ West.

Discharges are prohibited in waters shallower than 5 m because shallow nearshore waters in Lower Cook Inlet are an important habitat for many species. In addition, dilution and dispersion of drilling mud discharges in waters less than 5 m deep is uncertain given that the field data are limited and that the available models of mud dilution and dispersion are not field-verified for shallow depths. Chinitna, Tuxedni, and Kamishak Bays are, or are continuous with, areas of high resource value. In addition, Kamishak Bay is a known net depositional environment where accumulation of drilling mud solids and other pollutants would be likely to occur if allowed to be discharged in this area.

The condition restricting discharges within 1,000 m of coastal marshes, river deltas, and other areas is necessary to comply with local and state Coastal Zone Management Plan prohibitions on discharges of silt materials in these areas, or on activities that may alter the protected biological resources of these areas. The following state game refuges (SGR), game sanctuaries (SGS), critical habitat areas (CHA), and areas meriting

special attention (AMSA) are located in the area covered by this permit.

Palmer Bay Flats SGR
Goose Bay SGR
Potter Point SGR
Susitna Flats SGR
McNeil River SGS
Redoubt Bay CHA
Trading Bay SGR
Kalgin Island CHA
Clam Gulch CHA
Kachemak Bay CHA
Anchorage Coastal Wildlife Refuge
Port Graham/Nanwalek AMSA

The legal descriptions of these state specialty areas are found in Alaska Statute (AS) 16.20. The present boundaries of these state special areas are described in ''State of Alaska Game Refuges, Critical Habitat Areas, and Game Sanctuaries.'' Further information may also be obtained from the Alaska Department of Fish and Game, Habitat Division, Regional Supervisor, 333 Raspberry Road, Anchorage, Alaska 99518–1599; phone (907) 267–2284 or (907) 267–2342.

C. Discharge 001 (Drilling Muds and Cuttings)

The term ''drilling fluid'' generally includes all compositions of fluids used to aid the production and removal of cuttings (particles from geological formations) from a borehole in the earth. The essential function of drilling fluids are:

- to carry cuttings to the surface,
- to cool and clean drill bit & reduce friction in the borehole,
- to maintain pressure balance between formation and borehole in uncased sections of hole, and
- to assist in collection and interpretation of information available from cuttings, cores, electrical logs, etc.

All drilling fluids fall into one of three classes based on their principal components: gas (e.g., mist or foam), water, or oil. When the main component of the drilling fluid is liquid (i.e., water or oil), it is referred to as ''mud.'' All of Region 10's previous permits only cover the discharge of muds because gas fluids are not used for most offshore or coastal drilling operations.

As discussed in subsections 1 and 2 below, the discharge of oil-based muds is limited because they do not comply with the no free oil limitation. Furthermore, the discharge of diesel oil as a mud base or as part of an additive is strictly prohibited. The basis for the diesel prohibition is substitution of mineral oil (which is less toxic) when lubrication is required.

As discussed in section III.A. and as shown on Table 1, the following BCT- and BAT-based permit requirements are based on the Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory, promulgated by the Agency in March, 1993 (40 CFR Part 435, Subpart A). In the absence of promulgated rules for coastal (i.e., upper) Cook Inlet, EPA has used Best Professional Judgement in applying BCT and BAT Offshore requirements to all applicable Coastal operations although the acronyms ''BPJ/BCT'' and ''BPJ/BAT'' are not added in the discussion below. To simplify the discussion, the bases for establishing permit limits are discussed in terms of the applicable Offshore Guidelines, BCT and BAT.

1. BCT Limitations on Drilling Muds and Cuttings

Free oil & oil-based muds: No free oil is permitted from the discharge of drilling mud, drill cuttings, or washwater, based on BPT guidelines. The discharge of oil-based drilling fluids is prohibited since oil-based fluids would violate the BCT effluent limitations of no discharge of free oil. These discharges have been subject to a no free oil limitation in previous permits issued by Region 10 and past practices have not resulted in violations of the limitation. No technology performance data available to Region 10 indicate that more stringent standards are appropriate at this time. Region 10 has, therefore, set BCT limitations equal to the BPT level of control. As such, these limitations impose no incremental costs.

Compliance with the free oil limitation will be monitored by year-round use of the Static Sheen Test daily and before bulk discharges. Region 10 requires use of the Static Sheen Test because visual observation of the discharge for sheen upon the receiving water will not prevent violations of the standard. This test is also appropriate for the harsh weather and extended periods of darkness common in Alaska.

Previous permits issued by Region 10 contained a limit on the oil content of cuttings (not to exceed 10% (wt), based on use of cuttings washers). In the proposed permit, however, the 10% (wt) limit has been rejected in favor of the no free oil limitation contained in the Offshore guidelines (58 FR 12454, March 4, 1993). The Agency rejected an oil content limit because limitations on other pollutant parameters (diesel oil, free oil and toxicity) are sufficient to reduce toxics from drilling wastes (at 56 FR 10682 and 56 FR 10685, March 13, 1991). Because the no free oil limitation is more stringent than the 10% (wt) limitation on the oil content of cuttings, this change does not invoke antibacksliding provisions (see 40 CFR 122.44(1)(2)).

Oil content of cuttings: The proposed permit limits the discharge of oil-contaminated drill cuttings by prohibiting the discharge of free oil, which is BCT (see Part III.B. of the permit). The proposed permit requires an analysis of cuttings for oil content daily when oil-based drilling fluids or mineral oil additives are used. In addition, analysis is required immediately on any sample that has failed the daily Static Sheen Test if a discharge has occurred. Two alternative analytical methods for determining the oil content of drill cuttings are specified in the permit: (1) the soxhlet extraction procedure for oil and grease (as specified in 40 CFR Part 136), and (2) the American Petroleum Institute (API) retort distillation procedure for oil (Recommended Practice 13B, 1990).

2. BAT Limitations on Drilling Muds and Cuttings

Diesel oil: The discharge of drilling muds and cuttings which have been contaminated by diesel oil is prohibited by the Agency, in accordance with the offshore oil and gas effluent guidelines (58 FR 12469, March 4, 1993). The prohibition on the discharge of diesel oil has been part of all of the general NPDES permits issued by Region 10 for the Offshore and Coastal Subcategories. Diesel oil, which is sometimes added to a water-based mud system, is a complex mixture of petroleum hydrocarbons, known to be highly toxic to marine organisms and to contain numerous toxic and nonconventional pollutants. The pollutant ''diesel oil'' is being used as an ''indicator'' of the listed toxic pollutants present in diesel oil which are controlled through compliance with the effluent limitation (i.e., no discharge). The technology basis for this limitation is product substitution of less toxic mineral oil for diesel oil.

Mercury and Cadmium in Barite: In accordance with the offshore oil and gas effluent guidelines (58 FR 12569, March 4, 1993), the proposed permit contains limitations of 1 mg/kg mercury and 3 mg/kg cadmium in barite. Barite is a major constituent of drilling muds. These restrictions are designed to limit the discharge of mercury, cadmium, and other potentially toxic metals which can occur as contaminants in some sources of barite. The justification for the limitation under BAT is product substitution. That is, Alaskan operators can substitute ''clean'' barite, which meets the above limitations, for contaminated barite, which does not meet the limitations. Numerous offshore

exploratory wells and the production wells drilled under permits previously issued by Region 10 have been drilled subject to this requirement. Chemical analyses have shown that the barite used has not exceeded the limitations. Given that ''clean'' barite is available and that operators have been complying with this limitation in previously issued permits, Region 10 believes that this limitation is both technologically feasible and economically achievable.

EPA has eliminated a waiver provision for the barite limits which was in the previous permits. The waiver stipulated that if a permittee was unable to comply with the barite limitations due to the lack of availability of barite which meets the limitation, then the permittee could request a case-by-case waiver allowing the discharge of barite which exceeded the limits (53 FR 37858, September 28, 1988). As a part of the effluent guidelines development, EPA investigated the availability of domestic and foreign supplies of barite to meet the cadmium and mercury limits. The Agency also considered the potential for the increased demand for clean barite stocks resulting from this rule to cause a rise in the cost of barite. (See the Development Document (EPA, 1993a) and the Economic Impact Analysis for detailed discussion on the availability and economic availability.) EPA concluded that ''there are sufficient supplies of barite capable of meeting the limits of this rule to meet the needs of offshore drilling operations (58 FR 12480, March 4, 1993). As a result, the waiver provision was not in the general NPDES permit for the Arctic (60 FR 27508, May 24, 1995), nor is it proposed here.

Discharge Toxicity: Region 10 is proposing a toxicity limit of 30,000 ppm on the suspended particulate phase (''SPP'') (a 96-hour LC50) on discharged drilling muds as a technology-based control on toxicity and toxic and nonconventional pollutants. The numeric effluent limit is based on the BAT as promulgated for the Offshore Subcategory (48 FR 1254, March 4, 1993). Compliance with the drilling mud toxicity limit will be monitored on a monthly basis for each well. When the end-of-well is reached, a final bioassay analysis will be required (see permit Part III.B.2.g.). In cases where mineral oil pills are used near the end-of-well, the Region will accept the bioassay reports required for pills as the end-of-well report (see permit Part III.B.2.g.).

It is important to note the inverse relationship between the 96-hr LC50 value of 30,000 ppm SPP and toxicity. The 30,000 ppm limit is the concentration (of mud in the suspended particulate phase) at which 50% mortality of the tested organisms (*Mysidopsis bahia*) occurs. As the 96-hr LC50 value increases, higher concentrations of mud are required to reach 50% mortality within the 96-hr test period; in other words, toxicity decreases as 96-hr LC50 values increase. Thus, the permit limit of 30,000 ppm SPP (96-hr LC50) is actually a minimum LC50 value used to represent the maximum toxicity allowed for drilling mud discharges.

The toxicity limit is an end-of-pipe discharge limit and represents a different approach to controlling this wastestream than the Region used previously. When the first general permits were issued during development of the Offshore guidelines, Region 10 developed a case-by-case approach to limiting the toxicity of discharged mud/additive systems as BPJ determination of BAT. In this approach, Region 10 used the 96-hr LC50 value of 30,000 ppm SPP value as a criterion in evaluating available bioassay data for the proposed mud/additive discharges. Now, Region 10 is discontinuing the mud preapproval process in favor of the end-of-pipe limitation based on promulgation of BAT for the Offshore subcategory (48 FR 1254, March 4, 1993). The end-of-pipe toxicity limitation for muds/additives was first applied in an individual NPDES permit issued for exploratory drilling in 1993 (EPA 1993d), followed by the general NPDES permit for the Arctic (59 FR 48314, September 20, 1994, and 60 FR 27508, May 24, 1995).

Drilling Mud Formulation: The proposed permit requires permittees to develop and implement a ''Mud Plan'' for each well drilled. The proposed permit does not authorize specific drilling fluid formulations or specialty additives in the way that past general NPDES permits issued for Alaskan operations have done. As discussed above, the discharge of oil-based drilling fluids or diesel oil is prohibited. Region 10 believes that an end-of-pipe toxicity limit for drilling muds in conjunction with implementation of a Mud Plan (containing specific mud/additive formulations) for each well constitutes BAT and ensures that the principles of best management practices and pollution prevention are met. The Mud Plan is discussed below as a permit requirement based on section 308 of the Act.

Oil-based Drilling Muds: As in all previous general oil and gas permits, and is discussed above under BCT for control of free oil, the proposed permit prohibits the discharge of ''oil based muds.'' Previous permits, however, have not defined ''oil-based'' other than in terms of aqueous and dispersed phases. Based on comments Region 10 received on the general NDPES permit for the Arctic (EPA 1995d) and on interagency-industry studies in which EPA is involved, the proposed permit defines ''oil-based'' mud as a drilling mud with fossil-derived petroleum hydrocarbons as the continuous phase, and prohibits discharge of such a fluid. Discharges of ''non-petroleum'' or ''non-fossil-derived'' (hereinafter ''synthetic'') fluids (where the continuous phase consists of non-petroleum hydrocarbons) may be discharged and are required to meet all of the effluent limitations for drilling muds (e.g., toxicity, free oil (sheen), no diesel).

Synthetic-based drilling muds are currently used in offshore drilling outside of the United States and have potential for reducing the amount of cuttings generated and fluids discharged because they are frequently employed with slim-hole or coiled-tube drilling technologies. Preliminary data indicate that the toxicity of synthetic muds compares favorably with drilling fluids discharged under Region 10's various general NPDES permits. At a national level, the Agency is involved in a joint industry-agency group which is reviewing synthetic fluids with respect to toxic and nonconventional pollutants and appropriate analytical methods for monitoring these muds (EPA 1995d). Until such time as the joint industry-agency workgroup completes its evaluation of synthetic fluids and issues findings, Region 10 proposes the revised definition of ''oil-based'' muds to accommodate the discharge of synthetic muds as long as all other effluent limitations are met, including no discharge of free oil determined by the Static Sheen Test.

In cases where the discharge of cuttings from synthetic muds may fail the static sheen test, the Agency has determined such a discharge would not be in accordance with 40 CFR 122.28(2)(ii)(B), (C), and (D) requirements for coverage under the proposed general permit. Specifically, such a discharge may exhibit a higher free oil content (albeit from a non-petroleum based oil) and require unique effluent limitations and monitoring requirements such as those being evaluated by the joint industry-agency workgroup. Dischargers in this situation should contact Region 10 to submit an application for an individual NPDES permit.

3. Section 308 Requirements for Muds and Cuttings

Mud Plan: As mentioned above, Region 10 is discontinuing authorization of individual mud/additive systems. Instead EPA is shifting the responsibility of case-by-case evaluations from the Region to the operator. Resources no longer allow Region 10 to perform case-by-case evaluations or to issue discharge authorizations for each drilling mud/additive system. Hence, the proposed permit contains a requirement that the permittee develop, have on-site, and available upon request a plan for discharge of drilling muds and additives (hereafter called ''Mud Plan''). Permit requirements for the Mud Plan make it analogous to analyses that the Region conducted in the past in development of drilling mud authorizations.

The basis for the Mud Plan requirement is section 308(a)(A) of the Act which provides that EPA may require the permittee to establish and maintain records and/or reports that will assist the Region to determine compliance with other requirements and effluent limitations of the permit. Since the mud plan is one component of the Best Management Practices Plan, additional authority for the mud plan is implicit in the authority to include BMP plans in NPDES permits. Pursuant to sections 304(e) and 402(a) of the Act, BMP plans may be included as conditions in NPDES permits. The mud plan requirement is also based upon the Pollution Prevention Act (section 107(b)(3)) and its policy of prevention, reduction, recycling, and treatment of wastes (PPA section 102(b)) through measures which include process modification, materials substitution, and improvement of management (PPA section 107(b)(3)).

The goal of requiring development of a mud plan is to ensure that personnel on-site are knowledgeable about the information needed and the methods required to formulate the mud/additive systems in order to meet the effluent toxicity limit. Simply put, the mud plan is intended to be a written guide for planning, and using, a mud/additive system in compliance with the permit.

Region 10's case-by-case approach to evaluating discharge of mud/additive systems coupled with use of worst-case cumulative toxicity estimates as bases for authorization, has been conducive to the discharge of muds with lower toxicity than elsewhere in the OCS. To date Alaskan operators have demonstrated that thorough planning and evaluation of mud/additive systems with respect to possible cumulative toxicity does consistently result in discharge of muds that are less toxic than the 30,000 ppm SPP limit.

The mud plan is intended to demonstrate that the discharged mud/additive system for the well in question will meet the effluent limit of 30,000 ppm SPP based on the following decision criteria:

—Estimates of worst case cumulative discharge toxicity (either calculated or actual toxicity test results);
—Estimates of toxicity of discharged mud when a mineral oil pill has been used; and
—Use of less toxic alternatives where possible.

The mud plan shall also include a clearly stated procedure for dealing with situations in which additives not originally planned for are needed at the ''last minute.'' This procedure should enable drilling and mud personnel to determine whether an additive or mud component may be added to the circulating mud system without significant effect upon the discharge toxicity. Criteria for reaching this type of ''last minute'' additive decision shall be clearly specified in the mud plan. In addition to developing the mud plan, the operator is also required to certify that the mud plan is complete, on-site, and available upon request (see Part III.B.1.c. of the permit). Certification is due no later than submission of their written notice of intent to commence discharge (see Parts I.A.3., I.B.3., I.C.3. and II.C.3.c. of the permit).

Region 10 first proposed requirements for a Mud Plan in the individual NPDES permit written and issued for exploratory operations in upper Cook Inlet in 1993 (EPA 1993d). Permit requirements for a Mud Plan were next proposed in the draft general NPDES permit for the Arctic (59 FR 48314, September 20, 1994) and garnered many comments. Region 10 responded to comments on the Mud Plan by modifying the final Arctic general permit (60 FR 27508, May 24, 1995) and by developing an example Mud Plan, which is available upon request.

Other: In addition to the Mud Plan, the discharge monitoring requirements listed below are based on section 308 of the Act and 40 CFR 122.44(i) to determine compliance with, or the possible need for, effluent limitations in the permit. All of the data below have been required in general permits previously issued by Region 10.

(1) Chemical analysis (barium, cadmium, chromium, copper, mercury, zinc and lead).

(2) Chemical inventory (discharged mud composition and toxicity test results).

(3) Volume discharged.

In both the proposed permit and in the final Arctic permit (60 FR 27508, May 24, 1995) permittees must draw a sample of mud of sufficient size to allow for analyses of both total and total recoverable metals; whereas, permits issued prior to 1994 required analyses only for total metals. This requirement will enable the Region to better evaluate the impact of metals in the mud discharge.

4. Section 403(c) Requirements for Muds and Cuttings

Flow rates: In addition to restrictions on all discharges imposed under section 403(c) of the Act and discussed in section III.B. of this fact sheet, muds and cuttings discharges are limited to the following maximum rates. These limitations are identical to those contained in the 1986 general permit.

- 1,000 bbl/hr on total muds and cuttings in waters greater than 40 m deep.
- 750 bbl/hr on total muds and cuttings in waters deeper than 20 m but not deeper than 40 m.
- 500 bbl/hr in waters deeper than 5 m but not deeper than 20 m.
- no discharge in waters shallower than 5 m.

These limits were established because, for any given discharge rate, the dilution of drilling muds and cuttings is not as great in shallow waters as in deeper waters. At any particular water depth, however, dilution near the point of discharge will increase as the rate of discharge decreases. Limiting maximum discharge rates will ensure that acceptable toxicity limits will not be exceeded at the edge of the 100 mixing zone (EPA 1986a, Tetra Tech 1995). (The 100 m mixing zone is defined in regulations for section 403 of the Act at 40 CFR Subpart M, 125.121(c)).

D. Discharge 002 (Deck Drainage)

Deck drainage includes all waste resulting from deck washings, spillage, rainwater, and run-off from gutters and drains including drip pans and work areas. Oil and grease are the primary pollutants identified in deck drainage. In addition to oil, various other chemicals used in drilling operations may be present, as discussed below.

1. BPT, BCT and BAT Limitations on Free Oil in Deck Drainage

As discussed in section III.A. and as shown on Table 1, the following discussion of BCT- and BAT-based permit requirements is based on the Effluent Limitations Guidelines and New Source Performance Standards for

the Offshore Subcategory, promulgated by the Agency in March, 1993 (40 CFR Part 435, Subpart A). In the absence of promulgated rules for coastal (i.e., upper) Cook Inlet, EPA has used Best Professional Judgement in applying BCT and BAT Offshore requirements to all applicable Coastal operations, although the acronyms ''BPJ/BCT'' and ''BPJ/BAT'' are not discussed above.

No free oil is permitted from the discharge of deck drainage. This limit is the current BPT level of control, and is also the appropriate level of control under BCT and BAT. Deck drainage was subject to this limitation in the previous permits issued by Region 10, and past practices have not resulted in violations of this limit. Monitoring of free oil to determine compliance with this limitation is required under section 308 of the Act.

2. Section 308 Requirements for Deck Drainage

Monitoring and analyses of deck drainage is warranted based on the prevalence of both aliphatic and aromatic hydrocarbons, and inorganics, as explained below.

The Cook Inlet Discharge Monitoring Study (CIDMS) required participants to inventory and report the various products that comprise the deck drainage wastestream. The CIDMS addressed deck drainage specifically because little was understood about the wastestream when the 1986 general permit was written. As stated in the response to comments issued with the final 1986 permit, EPA intended to use the chemical information on products contained in deck drainage to determine whether or not further monitoring and analysis of the wastestream was warranted (51 FR 35460, October 3, 1986).

From April 1987 through April 1988, operators reported product names, product uses and estimated application rates (e.g., gal/month). The CIDMS report identifies 35 types of cleaners and solvents, none of which are used more frequently than any other product. Material safety data sheets and product information on all of the identified products are included in the CIDMS report; some product components are not revealed, however, because they have been identified as proprietary trade information. The following product components, identified in CIDMS, are likely to be present in deck drainage and are of particular interest with respect to water quality.

Terpene hydrocarbon
Nonylphenols
Pine oil
Ethylene glycol
Polyglycol
Aromatic naphtha
Heavy aliphatic naphtha
Alkyl & oxyalkyated phenols
(Sodium) hypochlorite
Gluteraldehyde
Butylated Hydroxytoluene
Isopropyl alcohol
Alkyldimethylbenzyl ammonium chlorides
Methanol
Phosphate

In addition, aluminum, barium, iron, manganese, magnesium and titanium may also be found in deck drainage, according to the Agency's Development Documents for both the final Offshore and the proposed Coastal guidelines (EPA 1993a, EPA 1995a).

The proposed permit requires whole effluent toxicity (WET) tests to measure the chronic toxicity of deck drainage using the analytical methods required for produced water (see Part III.F. of permit). The proposed WET monitoring applies only to platforms that do not commingle deck drainage and produced water, because commingled deck drainage/produced water discharges are subject to produced water WET limitations (permit Part III.F.). WET sampling and protocols are discussed in more detail in section V.G.3. of this fact sheet. Monitoring is required twice each year at the beginning of the wettest times of the year during peak deck drainage flow; contaminant concentrations are likely to be highest at these times. Finally, the proposed monitoring requirements do not apply to exploratory platforms because exploratory operations are short-lived and may not occur in the Inlet during wet weather, when deck drainage flows are expected to be highest. The production platforms are permanent and have some existing qualitative data (Envirosphere 1989a) which may be useful when Region evaluates the WET monitoring.

E. Discharges 003 and 004 (Sanitary and Domestic Wastes)

Sanitary and domestic wastestreams include the wastes collected from toilets, urinals, showers, sinks, eye- and hand-wash stations, fish-cleaning stations, galleys and laundries. The pollutants in these wastestreams are: fecal coliforms (FC), residual chlorine (from treatment for coliforms), suspended solids (SS), biochemical oxygen demand (BOD), floating solids and visible foam.

1. BCT, BAT, and Water Quality-based Limitations for Sanitary and Domestic Wastes

As discussed in section III.A. in the absence of promulgated rules for coastal (i.e., upper) Cook Inlet, EPA has used Best Professional Judgement in applying BCT Offshore requirements to all applicable Coastal operations, although the acronym ''BPJ/BCT'' is not added to the discussion below. To simplify the discussion, the bases for establishing permit limits are discussed in terms of the applicable BCT or BAT Offshore Guidelines.

Floating Solids: The BCT prohibition on floating solids is equivalent to the current level of control for sanitary wastes in existing permits. Region 10 has determined that the BCT effluent limitations guideline of no discharge of floating solids from the discharge of sanitary wastes should apply to all other discharges as well. Other discharges have been subject to this limitation in previous permits and past practices have not resulted in violations of this limitation. No technology performance data available to Region 10 indicate that a more stringent standard is appropriate at this time. Therefore, Region 10 has determined that the BCT effluent limitation on floating solids from these discharges is equal to the BPT level of control. As such, the extension of this limitation to all discharges will involve no incremental cost.

Any facility using a marine sanitation devise (MSD) that complies with pollution control standards and regulations under section 312 of the Act in considered to be in compliance with the prohibition of floating solids.

Visible Foam: The promulgated Offshore guidelines set BAT for domestic wastes equal to no discharge of visible foam. Region 10 has determined this limitation is also appropriate for discharges occurring in the Coastal subcategory as well as for the discharge of sanitary wastes.

Chlorine: Chlorine is added to the sanitary waste stream to control fecal coliforms in the discharge, and is regulated by the Agency in the offshore oil and gas effluent guidelines as a conventional pollutant. In the 1986 Cook Inlet and other oil and gas permits, BCT for total residual chlorine (TRC) required that TRC levels be maintained as close as possible to, but no less than, 1 mg/l in sanitary waste discharges for facilities staffed by ten or more people. The intent of this standard is to ensure adequate disinfection of waste through chlorination, while minimizing the addition of excess chlorination to the environment. In the proposed permit,

this BCT limit applies to federal waters. In state waters, the BCT chlorine limit has been proposed, but may be changed by ADEC's application of state water quality standards when the final permit is certified under section 401 of the Act. Water quality-based limits for TRC are discussed in section V.E.2., below. Weekly monitoring for TRC during peak periods of sanitary system flow is proposed. Any facility using a marine sanitation devise (MSD) that complies with pollution control standards and regulations under section 312 of the Act is considered to be in compliance with the TRC limitation.

For state waters, the proposed BCT end-of-pipe limit is based on the assumption that a mixing zone will be added to the final permit by ADEC as part of its certification under section 401 of the Act. If a mixing zone is added to the permit, it is anticipated that the Alaska water quality standard of 2.0 µg/l will apply at the edge of the mixing zone. The ''as close as possible to 1 mg/l'' portion of the BCT standard will still apply end-of-pipe, which effectively places an upper limit on the amount of chlorine that can be added to the sanitary wastestream and limits the size of a mixing zone.

If a mixing zone is not added to the final permit by ADEC, state water quality standards for TRC and fecal coliform will be added to the permit for state waters only. The Alaska water quality standard of 2.0 µg/l is the applicable criterion for a TRC end-of-pipe limitation, since the Alaska water quality standard is more protective than the BCT standard against the toxic effects of chlorine. Based on the method for deriving permit limits recommended in the TSD (EPA 1991b), the TRC limit will be changed in the final permit to a 1.0 µg/l monthly average and 2.0 µg/l daily maximum at the point of discharge. In order to ensure adequate treatment of fecal coliform, a fecal coliform limit of 43 FC/100 ml (daily maximum) and 14 FC/100 ml (monthly median) will also be added to the final permit. The Alaska standard for fecal coliform states that the median ''most probably number'' (MPN) shall not exceed 14 FC/100 ml, and not more than 10% of the samples shall exceed a FC MPN of 43 FC/100 ml. The proposed monthly median limitation of 14 FC/100 ml is derived directly from the Alaska standard. The proposed daily maximum of 43 FC/100 ml reflects the Alaska standard as long as the number of samples collected per month does not exceed ten. Since weekly sampling would be required, Region 10 has determined that 43 FC/100 ml appropriately reflects the Alaska standard.

3. Technology-based Limitation Based on Section 401 Certification of Prior Permit

Suspended Solids (SS) and Biochemical Oxygen Demand (BOD): The following SS and BOD limits are proposed for state waters only.

$SS_{effluent}$ limit	BOD limit	
SS_{intake} + 60 mg/l	60 mg/l	Daily maximum.
SS_{intake} + 45 mg/l	45 mg/l	Weekly average.
SS_{intake} + 30 mg/l	30 mg/l	Monthly average.

The proposed limits for BOD are identical to those contained in the 1986 permit while the proposed SS limits have been changed from the 1986 permit. Monitoring frequency has increased from monthly to weekly.

The 1986 permit contained BOD and SS limitations of 60 mg/l (24-hours), 45 mg/l (7 consecutive days), and 30 mg/l (30 consecutive days). These limits were required by the State in its section 401 certification (for discharges to state waters only), and were more stringent than EPA's BCT-based limitations for the sanitary wastestream. These numeric limits are required by state law under the Alaska definition of secondary treatment (18 AAC 72.990 (42)). In reissuing this permit, EPA must include the State's section 401-based limits on sanitary BOD and SS from the previous permit (40 CFR 122.44(l)). To not include these limits for discharge would constitute backsliding.

Note that the proposed permit addresses these numeric limits in terms of weekly and monthly averages rather than in terms of consecutive days. Standard NPDES reporting for weekly averages (i.e., sum of all daily discharges divided by the number of daily discharges) and monthly averages (i.e., the average of daily discharges calculated over a monitoring month) is different than the reporting required for limits based on −24 ''consecutive days'' (i.e., a rolling average). Region 10 anticipates that using standard NPDES terms in the proposed permit will alleviate some of the confusion and reporting complications generated by use of ''consecutive days'' in the 1986 permit.

The SS standard is technology-based and comes from the State's definition of secondary treatment (18 AAC 72.990(42)). Under 40 CFR 122.45(g)(1)(ii), technology-based effluent limitations may be adjusted to reflect credit for pollutants in the intake water if dischargers demonstrate control systems would meet effluent limits in the absence of pollutants in intake waters. Furthermore, credit for intake pollutants may only be granted under the following conditions:

- Constituents of the generic measure (i.e., SS in this case) in the effluent are substantially similar to constituents of the generic measure in the intake water, and
- intake water comes from the same body of water into which discharge occurs.

A review of past compliance data indicates that operators are not consistently meeting the technology-based SS limits in the current permit. At the request of SWEPI, Marathon, and Unocal, Region 10 has reviewed the nature of sanitary waters, their makeup and treatment prior to use in the system as well as sanitary treatments used on platforms. SS in the effluent is substantially similar to SS in the intake: there is no other source of SS in the effluent except in cases where domestic wastes are commingled with sanitary wastes. In these cases, domestic solids are removed by final sanitary treatment. In all cases, the source of sanitary intake water is Cook Inlet, which is also the discharge receiving water.

Region 10 has determined that high concentrations of SS in effluent are most likely due to high SS concentrations in the intake water used in sanitary systems. To understand how high SS in intake affects SS concentrations in the discharge, the process of taking water onboard and treating it is described as follows. Water is required on platforms for many purposes, of which two tolerate saline water (i.e., waterflood injection and sanitary systems). The general practice to provide water for waterflood and sanitary systems is to take water directly from Cook Inlet and treat it for either application. Primary treatment is solids removal with filters or varying screen sizes. In many cases, water destined for use in sanitary systems is diverted directly to the

system after primary screening and/or filtration. Water used for waterflooding injection receive further treatment to remove both solids and oxygen.

Ideally, sanitary makeup water should also receive further treatment to remove solids before entering the sanitary system. Platforms are capable of removing SS; however, the technology for further solids removal is so closely associated with oxygen stripping for waterflood that considerable retro-fitting would be needed to divert water to the sanitary system before oxygen is removed. (Water with low oxygen is corrosive and not generally suitable for use in sanitary systems.) Furthermore, there is limited space available to install the additional filters and/or screens that would be needed to treat sanitary makeup water for SS to the same degree that waterflood makeup is treated.

Under 40 CFR 122.45(g)(1)(ii), Region 10 has determined that it is appropriate to propose effluent limitations for SS based on intake (or makeup) water plus ADEC's technology-based, secondary treatment limits. The effluent limits proposed for SS are based on the SS concentration of intake water after the water has received primary treatment for SS removal.

Permittees are required to monitor makeup water at a point immediately prior to the water entering the sanitary system. These values shall be reported on DMRs and labelled as SS_{intake}. Effluent shall be monitored and reported as the sums shown above. Eighteen months after the effective date of the permit, Region 10 will evaluate the DMR data to determine whether the SS limits should be modified.

Region 10 proposes to increase monitoring frequency from monthly to weekly in order to address compliance concerns. The overall increased monitoring for SS will enable Region 10 to determine (1) the nature of past noncompliance with numeric limits in the 1986 permit and (2) appropriate numeric SS limits based on the nature of Cook Inlet makeup water. Under section 308 of the Act and 40 CFR 122.44(i), the proposal for increased monitoring of BOD and SS in make-up water and the sanitary discharge is both reasonable and necessary. Region 10 does not propose any change to BOD limits other than monitoring and reporting frequency.

For the discharges to federal waters (i.e., operations on blocks leased under federal sales), any facility using a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with a limit of no floating solids, until the device is replaced or found not to comply with such standards and regulations.

4. Section 308 and Section 312 Requirements for Sanitary and Domestic Wastes

Based on section 308 of the Act, the proposed permit requires Permittees to estimate and report flow for each of these wastestreams. In addition, for platforms using U.S. Coast Guard certified marine sanitation devices (MSDs), the proposed permit requires Permittees to monitor the sanitary wastestream twice each month and submit the following information:

- FC and the estimated number of persons aboard for the 5 days preceding the sample.
- SS.
- TRC.

The information and data on FC and SS will be used for comparison with standards set forth at 40 CFR 140.3(d) for MSDs. (These regulations are based on section 312 of the Act.) As mentioned above, the proposed permit assumes that a Coast Guard certified MSD will comply with the BCT-based limits for TRC of ''as close as possible to but no less than 1 mg/l'' and the requirement for ''no floating solids.'' While these assumptions are consistent with all offshore general permits issued previously by Region 10, TRC monitoring data required by the proposed permit will allow Region 10 to reassess its assumption for this pollutant.

F. Discharges 005–014 (Miscellaneous Discharges)

1. General Descriptions

Miscellaneous discharges are: desalination unit wastes (005); blowout preventer fluid (006); boiler blowdown (007); fire control system test water (008); non-contact cooling water (009); uncontaminated ballast water (010); uncontaminated bilge water (011); excess cement slurry (012); mud, cuttings and cement at seafloor (013); waterflooding discharges (014). The wastestream characterizations below are based on the Development Document for the Offshore guidelines (pp. X–38–42, EPA 1995b and Envirosphere 1989b, 1989c, 1989d), the 1986 general permit, and CIDMS reports.

Desalination unit wastes: This is wastewater associated with the process of creating fresh water from saltwater. The process itself is generally either distillation or reverse osmosis. The wastewater is a high-concentration brine very similar to seawater in composition but with higher concentrations of anions and cations.

Blowout preventer (BOP) fluid: These are fluids used to actuate the hydraulic equipment on blowout preventers. The fluid itself is generally an oil (vegetable or mineral) or antifreeze solution (e.g., glycol). The blowout preventer equipment may be located on the seafloor or on a platform and is designed to maintain the pressure in a well that cannot be controlled by drilling mud. Small quantities of BOP fluid are discharged when BOPs are tested.

Ballast: This is seawater added or removed to maintain proper draft for the purpose of platform stabilization. Unlike tank ballast water, uncontaminated ballast water is taken from waters adjacent to the platform (i.e., Cook Inlet) and will, at worst, be contaminated with oily slop water.

Bilge water: This is seawater which collects in the lower internal parts of a drilling vessel's hull and may be contaminated with oil & grease or rust. Bilge water is directed to an oil/water separator before discharge, which occurs intermittently.

Muds, cuttings and cement at the seafloor: These wastes result from marine riser disconnect and well abandonment and plugging. Compared to discharge of muds and cuttings (Discharge 001), these volumes are small.

Boiler blowdown: The discharge of circulation water and minerals from boilers necessary to minimize solids build-up in the boilers. This is another intermittent discharge.

Excess cement slurry: This wastestream is the result of equipment washdown after a cementing operation.

Waterflooding: These discharges are associated with the treatment of seawater prior to its injection into a hydrocarbon-bearing formation to improve the flow of hydrocarbons from production wells. Seawater is taken aboard and treated to remove solids and dissolved oxygen, additional treatment may include flocculants, scale inhibitors, oxygen scavengers, and biocides. This wastestream also includes strainer and filter backwash water and excess treated water not injected. Of all the miscellaneous wastestreams discussed here, waterflood varies most widely in terms of volumes discharged—ranging from 6,300 to 1,793,820 gallons per day (gpd) (estimated daily averages, (Envirosphere 1989c)).

Fire control system test water: This is treated seawater which is released during the training of personnel in fire protection and the testing and maintenance of fire protection equipment.

Non-contact cooling water: This is water which circulates across crude oil or produced water tanks, power generators or other machinery for the purpose of cooling. As implied by the name, this water does not come in contact with product, produced water or the machinery it cools; although it may be treated with biocide to prevent fouling in heat exchangers.

2. BPJ/BPT Effluent Limitation

Neither the promulgated Offshore guidelines nor the proposed Coastal guidelines address the wastestreams described above. The Agency's basis for not addressing these wastestreams in either guideline is that they are more appropriately controlled by regionally issued NPDES permits such as the one proposed today. As discussed in section III.A., above, Region 10 has used Best Professional Judgement (BPJ) in applying permit limits and requirements for these miscellaneous wastestreams in the absence of promulgated technology-based guidelines.

No free oil: Region 10 has determined that no free oil shall be discharged in those wastestreams that are likely to be oil-contaminated. That is, a no free oil limitation is proposed for bilge water, uncontaminated ballast water, blowout preventer fluid, excess cement slurry and the discharge of muds, cuttings and excess cement at the seafloor. The proposed permit also requires bilge and ballast water to be processed through an oil-water separator prior to discharge. If bilge or ballast water are discharged during broken or unstable ice conditions, or during stable ice conditions, the static sheen test will be used to determine compliance with the no free oil limitation. In addition, the no free oil limit is also proposed for waterflooding discharges in the event that chemicals in preparation of seawater for injection may cause free oil. This limitation is Region 10's best professional judgement determination of BPT controls for these five miscellaneous wastestreams. Compliance with the free oil limitation will be by the visual sheen test. This no free oil limit has been applied in previous permits issued by Region 10 and past practices has not been violated.

The proposed permit does not limit free oil/sheen for desalination unit wastes, boiler blowdown, fire control system test water, or non-contact cooling water because these are ''non-contact'' wastestreams. That is, they do not come in contact with either the production stream (i.e., oil/water/gas from formation) or machinery surfaces where oily wastes are likely to contaminate them.

3. Section 308 Requirements

Flow Rate: Based on section 308 of the Act, the proposed permit requires estimated flow rates to be reported on a monthly basis for all of the miscellaneous wastestreams (Discharges 005–014). In addition, the proposed permit requires permittees to maintain an inventory of the quantities and rates of chemicals (other than fresh or seawater) added to the waterflooding (Discharge 014), noncontact cooling water (Discharge 009), and desalination (Discharge 005) systems. Reports shall be submitted monthly attached to DMRs. This reporting requirement is consistent with previous permits.

G. Discharge 015 (Produced Water)

Produced water is the total water generated from the oil and gas extraction process, and is the highest volume waste source in the offshore oil and gas industry. As discussed in section II of this fact sheet, the discharge of produced water is only authorized in state waters of Upper Cook Inlet, north of the Forelands. Produced water includes: the formation water brought to surface with the oil and gas, the injection water used for secondary oil recovery that has broken through the formation, and various well treatment chemicals added during production and the oil/water separation process. Formation water, which comprises the bulk of produced water, is found in the same rock formation as the crude oil and gas. There are currently five platforms that discharge directly into Cook Inlet (after physical separation of hydrocarbons), while the remaining nine pipe their combined production fluids (hydrocarbon and water) to one of the three shore-based separation/treatment facilities. Effluent flow rates vary from less than 0.2 ft^3 per second at the platforms, to 4 ft^3 per second at the Trading Bay Production Facility. The Cook Inlet Discharge Monitoring Study (''CIDMS'') and the mixing zone application (Parametrix, 1995) identifies numerous organic and inorganic contaminants that are typically found in produced water, as discussed below.

1. BPJ/BCT Limitations for Produced Water

pH: It is proposed that the pH of discharged produced water be limited to a range of 6–9 at the point of discharge. These proposed limits are equal to the pH limitations in the 1986 permit. In the Agency's best professional judgement, this limitation appropriately equals a BPT level of control. No more stringent standard has been identified by the Agency at this time. Therefore, the Agency is setting a BPJ/BCT effluent limitation for the pH of produced water equal to that of BPT. Since previous permits have contained a limitation of pH 6–9, the requirement will not incur an incremental cost. The draft permit requires weekly monitoring of pH.

2. BPJ/BAT Limitations for Produced Water

Oil and Grease: It is proposed that oil and grease concentrations in discharges of produced water from all facilities (except Phillips Tyonek-A) be limited to a 29 mg/l monthly average and a 42 mg/l maximum daily. These oil and grease limits were promulgated as BAT for offshore facilities (40 CFR 435.15) as indicators of toxic and nonconventional pollutants, and are proposed in this permit as BPJ/BAT for coastal facilities (40 CFR 122.43, 122.44, and 125.3). Oil and grease limitations for Phillips Tyonek-A, a gas production platform, will be set at 15 mg/l monthly average and 20 mg/l daily maximum. The limitations for Tyonek-A are equal to those in the 1986 general permit for that facility, and are limitations with which Tyonek-A is currently in compliance. Note that while BPT oil and grease limitations have been promulgated for coastal facilities (40 CFR 435.42), the BPT limitations are less stringent than the limitations proposed above and have therefore not been used to establish permit limitations. The draft permit requires weekly monitoring of oil and grease.

Produced Sands: In the proposed permit, Region 10 prohibits the discharge of produced sands (formerly called ''produced solids'') as BPJ/BCT and BPJ/BAT based on the Agency's guidelines for both Offshore (promulgated) and Coastal (proposed) subcategories. Promulgated BAT (Offshore) for ''produced sand'' is no discharge based on the Agency's determination that these ''sands'' are sent on-shore on barges trips during regularly scheduled maintenance trips. In 1995, the Agency proposed Coastal guidelines in which BPT, BCT, BAT and NSPS are proposed to be equal to no discharge. The proposed Coastal guideline for produced sand is based on information from Cook Inlet operators stating that no produced sand discharges occur in this area (60 FR 9454, February 17, 1995).

The 1986 general permit defined ''produced solids'' as sands and other solids deposited from produced water which collect in vessels and lines and which must be removed to maintain adequate vessel and line capacities. In 1993, the promulgated Offshore rule (40 CFR 435.11(r)) defined ''produced sand''

as slurried particles used in hydraulic fracturing, the accumulated formation sands and scales particles generated during production, desander discharge from the produced water wastestream, and blowdown of the water phase from the produced water treatment system.

3. Water Quality-Based Limitations for Produced Water

The State has issued a preliminary mixing zone determination for produced water that specifies mixing zones and dilutions for eight facilities discharging produced water to Cook Inlet. The State has notified EPA that the mixing zone request submitted by the permittees is adequate for incorporation into the draft permit (ADEC 1995). At each of the eight facilities, individual mixing zones have been proposed for metals (acute, chronic and human health), total aromatic hydrocarbons (TAH), total aqueous hydrocarbons (TAqH), and toxicity.

As part of the mixing zone application (Parametrix 1995), produced water discharges from production facilities in Cook Inlet were sampled at each of 8 facilities currently discharging produced water into Cook Inlet. Samples were analyzed for a broad range of potential pollutants, including metals, monoaromatic hydrocarbons (such as benzene), polynuclear aromatic hydrocarbons (such as naphthalene), and chronic toxicity.

The 1995 sampling effort supplements the 1988–89 sampling effort documented in the CIDMS. The CIDMS provided data for ten organic pollutants, zinc, and acute toxicity for 6 of the 8 facilities currently discharging produced water into Cook Inlet. The way in which available data were used to calculate water quality-based permit limits is discussed in part III.E. of this fact sheet, and below.

Metals: The 1986 permit did not limit metals in produced water. Data submitted by the permittees in the mixing zone application (Parametrix 1995) show exceedances of the water quality criteria for arsenic, copper, zinc and silver at numerous facilities. The following is a summary of the maximum concentrations reported, and applicable aquatic life and human health criteria. The applicable metals criteria for Alaska are written in terms of total recoverable metals; one total recoverable sample was analyzed at each facility.

Pollutant	Criteria			Maximum reported discharge
	Health	Acute	Chronic	
Arsenic	1.4 µg/l	69 µg/l	36 µg/l	230 µg/l (East Forelands).
Silver		2.3 µg/l		80 µg/l (Bruce).
Copper		2.9 µg/l	2.9 µg/l	64 µg/l (Dillon).
Zinc		95 µg/l	86 µg/l	2700 µg/l (Baker).

Acute, chronic and human health mixing zones have been proposed by the Permittees at each of the eight discharge locations. The following is a summary of the proposed acute and chronic mixing zones, and the associated dilution factors at each location. Where modeling results yielded a mixing zone with a radius less than 20 meters, a 20-meter mixing zone is proposed. The dilution factor represents the dilution that is predicted to occur at the edge of the mixing zone.

Location	Proposed acute mixing zone (m)	Dilution factor	Proposed chronic mixing zone (m)	Dilution factor
Granite Point PF	20	82	99	282
Trading Bay	300	4900	300	4900
East Foreland	20	42	109	632
Tyonek A	20	20	20	278
Bruce	37	327	46	336
Baker	22	174	37	300
Dillon	20	84	43	274
Anna	20	65	36	274

Based on the method for deriving permit limits recommended in the TSD (EPA 1991b), individual effluent limitations have been calculated for each of the platforms. If the final mixing zone approved by the state is different from the one used to calculate the limits for the draft permit, the limits in the final permit will reflect these changes. The following is a comparison of wasteload allocations, effluent limits, proposed mixing zone size and dilution factors for each location. Effluent limitations have not been imposed for every metal constituent at every facility. In some cases, the size of the proposed mixing zone diminishes the potential for exceedances of water quality standards at the edge of the mixing zone. In accordance with the TSD, limits are included only when there is a ''reasonable potential'' to exceed water quality criteria. At Trading Bay and Bruce, for example, a reasonable potential to exceed water quality criteria at the edge of the mixing zone was not found; therefore effluent limitations are not proposed.

Location	Pollutant	Wasteload allocation (µg/l)	Effluent limitations	
			Daily max (µg/l)	Monthly average (µg/l)
Granite Point	Copper	238	238	119
East Foreland	Copper	122	122	60.7
	Arsenic	885	1780	885
Tyonek A	Copper	58	58	29
Baker	Arsenic	420	843	420
	Zinc	16500	16500	8240
Dillon	Copper	244	244	121

Location	Pollutant	Wasteload allocation (µg/l)	Effluent limitations	
			Daily max (µg/l)	Monthly average (µg/l)
Anna	Zinc	7980	7980	3980
	Copper	189	189	94

Weekly monitoring for metals is required in the draft permit. Additional monitoring requirements for metals are discussed below in V.G.4.

Total Aromatic Hydrocarbons (TAH) and Total Aqueous Hydrocarbons (TAqH): TAH and TAqH were not limited in the 1986 general permit. The state of Alaska water quality standard for protection of aquatic life is 10 µg/l for TAH, and 15 µg/l for TAqH. TAH is defined as the sum of benzene, toluene, ethylbenzene, and the xylene isomers (usually referred to as BETX). TAqH is defined as the sum of TAH and polynuclear aromatic hydrocarbons (PAHs). All analytical requirements are specified in the Alaska standards (18 AAC 70.020(b).

Data submitted by the permittees in the CIDMS (Envirosphere 1990a) and the mixing zone application (Parametrix 1995) indicate that current TAH and TAqH levels are above the standard at numerous facilities. For example, maximum concentrations of 70,000 µg/l TAH and 70,500 µg/l TAqH were detected at the Bruce platform in 1995. Mixing zones have been proposed for TAH and TAqH at each of the eight discharge locations. The following is a summary of the maximum TAH and TAqH concentrations detected at each location, the proposed mixing zones, and the associated dilution factors. Where a mixing zone with a radius less than 20 meters (Tyonek-A) is needed, a 20-meter mixing zone is proposed. The dilution factor represents the dilution that is predicted to occur at the edge of the mixing zone.

Location	TAH max (µg/l)	TAqH max (µg/l)	Proposed mixing zone (m)	Dilution factor
Granite Point	14,400	15,029	955	3877
Trading Bay	6,970	7,330	300	4900
East Foreland	15,360	16,313	412	3762
Tyonek A	49	68	20	17
Bruce	70,000	70,536	867	18,164
Baker	20,550	21,006	555	5409
Dillon	20,000	13,300	405	3609
Anna	17,510	20,428	363	5233

Based on the method for deriving permit limits recommended in the TSD (EPA 1991b), individual effluent limitations have been calculated for each of the dischargers. The following is a comparison of wasteload allocations and effluent limits for each location. If the final mixing zone approved by the state is different from the one used to calculate the limits for the draft permit, the limits in the final permit will reflect these changes.

Location	Pollutant	Wasteload allocation (µg/l)	Effluent Limitations	
			Daily max (µg/l)	Monthly average (µg/l)
Granite Point	TAH	38,800	38,800	19,300
Prod Facility	TAqH	58,200	58,200	29,000
Trading Bay	TAH	49,000	49,000	24,400
	TAqH	73,500	73,500	36,600
East Forelands	TAH	37,600	37,600	18,800
	TAqH	56,400	56,400	28,100
Tyonek A	TAH	170	170	85
	TAqH	255	255	127
Bruce	TAH	182,000	182,000	90,500
	TAqH	272,000	0272,000	136,000
Baker	TAH	54,100	54,100	27,000
	TAqH	81,100	81,100	40,400
Dillon	TAH	36,100	36,100	18,000
	TAqH	54,100	54,100	27,000
Anna	TAH	52,300	52,300	26,100
	TAqH	78,500	78,500	39,100

The draft permit requires weekly monitoring for TAH and TAqH. Submittal of an annual report summarizing the concentrations of the individual TAH (benzene, toluene, ethylbenzene and xylene isomers) and TAqH components is also required.

The draft permit does not contain individual limitations for benzene, as the total aromatic hydrocarbon (TAH) criterion is significantly more protective than the benzene criterion. The benzene criterion of 710 µg/l is applicable for the protection of human health from potential carcinogenic effects due to benzene exposure through ingestion of contaminated aquatic organisms. This criterion represents an incremental increase of cancer risk of 10^{-5} over a lifetime. Existing data indicates that this criterion is exceeded in the 36 CIDMS samples, and all samples of all discharges (except Tyonek-A) in the mixing zone application; benzene concentrations range from 15 µg/l at Tyonek-A to 53,000 µg/l at Bruce. As part of their mixing zone application to the State, the permittees performed a human health assessment to evaluate potential carcinogenic risks to humans who consume fish and shellfish that inhabit Cook Inlet.

The results of the human health assessment indicate that produced waters are not expected to pose significant risks to human health from the consumption of fish and shellfish in Cook Inlet at the edge of mixing zone.

Whole Effluent Toxicity: Whole effluent toxicity (WET) tests are used to measure the acute and/or chronic toxicity of an effluent. Acute toxicity tests determine the effluent concentration that produces an adverse effect (i.e., death) on a group of test organisms during a short-term exposure. The LC_{50} is the concentration of effluent that would cause death in 50 percent of the organisms exposed. Acute toxicity units (TU_a) are defined as ($100/LC_{50}$).

Chronic toxicity measures a sublethal effect (e.g., reduced growth, reproduction) in an effluent compared to that of the control organism. When conducting a chronic toxicity test, the highest concentration of an effluent at which no adverse effects are observed on the aquatic test organisms is defined as the no observed effect concentration (NOEC). Chronic toxicity units (TU_c) are defined as (100/NOEC).

Alaska's water quality standard for toxicity is expressed as a measure of chronic, rather than acute toxicity. The Alaska standard states that substances must impart no chronic toxicity to aquatic organisms, expressed as 1.0 chronic toxic unit (TU_c) at the edge of the mixing zone, or end of pipe if there is no mixing zone. The relationship between TU_c and TU_a is usually expressed as the acute-to-chronic ratio (ACR). In the absence of site-specific data, the TSD recommends that an ACR of 10 be used.

Produced water toxicity was not limited in the 1986 general permit. Toxicity monitoring was, however, a requirement of the 1986 permit and was discussed in the CIDMS (Envirosphere 1990a). Produced water samples from three platforms and three shore-based facilities were tested for acute toxicity to the marine invertebrate *Mysidopsis bahia* using a 96-hour acute toxicity test. Chronic toxicity was measured at eight facilities currently discharging produced water to Cook Inlet as part of the mixing zone application (Parametrix 1995). For all locations, the mean TU_c exceeds the state water quality standard of 1.0 TU_c.

Mixing zones have been proposed for whole effluent toxicity at each of the eight discharge locations. The 1995 TU_c data (based on NOEC growth and survival), mixing zones and dilution factors are summarized below. Note that while the proposed mixing zones are based on the NOEC (survival), it is anticipated that the mixing zones will be recalculated prior to issuance of the final permit based on the NOEC (growth).

Dilution factor	Location	TU_c (growth)	TU_c (survival)	Proposed chronic mixing zone (m)
	Granite Point PF	21.28	7	2026
	Trading Bay	> 22	10	3004,900
	East Foreland	> 18	11	2040
	Tyonek A	> 5	2	206.2
	Bruce	> 143	21	2082
	Baker	> 17	10	2036
	Dillon	> 28	16	2057
	Anna	77	29	20110

Based on the method for deriving permit limits recommended in the TSD (EPA 1991b), individual effluent limitations have been calculated for each of the dischargers. The following is a comparison of wasteload allocations and effluent limits for each location. If the final mixing zone approved by the state is different from the one used to calculate the limits for the draft permit, the limits in the final permit will reflect these changes. Limitations have not been calculated for the Trading Bay facility. In accordance with the TSD, limits are included only when there is a ''reasonable potential'' to exceed water quality criteria.

Location	Wasteload allocation (TU_c)	Effluent limitations	
		Daily max (TU_c)	Monthly avg (TU_c)
Granite Point	26	43	29
East Forelands	40	66	45
Tyonek A	6	10	7
Bruce	82	135	92
Baker	36	59	40
Dillon	57	94	64
Anna	110	181	124

Monthly chronic toxicity monitoring using grab effluent samples is proposed. The permit requires tests using a vertebrate and two invertebrates, as follows:

Vertebrate: Inland silverside, *Menidia beryllina*

Invertebrate: Atlantic mysid, *Mysidopsis bahia* survival, growth and fecundity test and one of the following two bivalve species tests: *Mytilis sp.* or *Crassostrea gigas* larval development test, depending upon seasonal availability.

The level of chronic toxicity shall be estimated as specified in Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, Second Edition, EPA/600/4–90/003. For the bivalve species, chronic toxicity shall be estimated as specified in Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water To West Coast Marine and Estuarine Organisms (Chapman and Denton 1995)

If chronic toxicity is detected above the permit limits, the permittee shall conduct four more tests, bi-weekly, over an eight-week period. In accordance with EPA/600/2–88/070, a toxicity reduction evaluation (TRE) must be initiated within fifteen days of the exceedance in order to expeditiously locate the source(s) of toxicity and evaluate the effectiveness of pollution control actions and/or inplant modifications toward attaining compliance. If chronic toxicity is detected in any of the four bi-weekly tests, the permittee shall initiate a toxicity identification evaluation (TIE) to identify the specific chemical(s) causing toxicity according to the EPA protocols listed below. If none of the four bi-weekly tests indicate toxicity above the permit limit, then the permittee may return to the normal testing frequency.

- USEPA Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluents, Phase I (EPA/600/6–91/005F),
- USEPA Methods for Aquatic Toxicity Identification Evaluations: Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity (EPA/600/R–92/080), and
- USEPA Methods for Aquatic Toxicity Identification Evaluations, Phase III Toxicity Confirmation Procedures (EPA–600/R–92/081).

4. Section 308 Requirements for Produced Water

In addition to the effluent monitoring discussed above, the draft permit requires additional effluent monitoring of flow rate, metals, and total aqueous hydrocarbons.

Flow Rate: Measurement of the produced water flow rate is required daily. This requirement serves to determine compliance with, or the possible future need for, effluent limitations in the permit. The basis for this requirement is section 308 of the Act.

Metals: Monthly monitoring of total recoverable arsenic, cadmium, copper, lead, nickel, silver and zinc is required for one year. Because weekly effluent limitations for metals are not imposed at Bruce and Trading Bay, monthly monitoring of each of the seven metals is required. The remainder of the facilities discharging produced water to Cook Inlet must submit monthly monitoring results for those metals not limited in the permit at that facility. Method detection levels must be less than one-tenth the aquatic life criteria listed below. The minimum detection level required for arsenic is 1 µg/l.

Pollutant	Aquatic life chronic criteria
Cadmium	9.3 µg/l
Copper	2.9 µg/l
Lead	8.5 µg/l
Nickel	8.3 µg/l
Silver	2.3 µg/l
Zinc	86 µg/l

Existing Cook Inlet data are not sufficient to determine whether or not a reasonable potential to exceed water quality standards exists for these five metals at numerous discharge locations. Baseline effluent characteristics from the Thirty Platform Study (EPA 1993a) conducted in the Gulf of Mexico, however, found each of these priority metal pollutants to be above water quality standards in produced water. The basis for this requirement is section 308 of the Act.

H. Discharges 016–019 (Completion Fluids, Workover Fluids, Well Treatment Fluids, and Test Fluids)

Based on the promulgated Offshore guidelines and proposed Coastal guidelines, Region 10 is proposing the definitions shown below for workover, completion and treatment fluids. The proposed definitions are more specific than those in the 1986 permit.

- Workover fluids: salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow safe repair and maintenance or abandonment procedures. Workover fluids used in drilling are considered to be drilling muds. Packer fluids (low solid fluids between the packer, production string, and well casing) are considered to be workover fluids.
- Completion fluids: salt solutions, weighted brines, polymers, and various additives used to prevent damage to the wellbore during operations which prepare the drilled well for hydrocarbon production.
- Well treatment fluids: any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled.

Workover fluids and completion fluids may be broadly divided into two classes: water-based and oil-based. The proposed permit prohibits the discharge of oil-based fluids. According to the Offshore Development Document (EPA 1993a), water-based workover and completion fluids may be further classified as a brine water solution, a modified drilling fluid or a specialty drilling fluid, depending upon its purpose in the borehole. Brine solutions (e.g., potassium chloride, sodium chloride or bromide, calcium chloride or bromide) are used because they are low solid fluids with densities sufficient to control sub-surface pressures in the well. Modified drilling fluids are typically inorganic brines with polymers acids or oil-soluble materials needed to yield a fluids with properties necessary to inhibit clays, keep solids in suspension, control corrosion, or otherwise control or maintain downhole stability. Note that, as in the 1986 general permit, the proposed permit regulates the discharge of a drilling fluid *as* a drilling fluid, subject to limitations discussed earlier in this fact sheet for Discharge 001, regardless of its use downhole in an existing production well.

Well treatment is a multi-stage process involving a variety of solutions with specialty chemical additives that vary with the chemical reactions desired downhole and in the formation. Well treatment fluids may include: hydrochloric or hydrofluoric acid, EDTA, ammonium chloride, nitrogen, methanol, xylene, toluene or additives for inhibiting corrosion, neutralizing acids, reducing leak off rate, reducing friction, preventing aggregation and deposition of solids (p. X–14–15, EPA 1993a). In Cook Inlet, both acid and non-acid well treatments occur. Treatment, workover and completion fluids may be discharged either directly to the Inlet (in compliance with 1986 permit limits) or commingled with the production stream and discharged with produced water (Envirosphere 1988). In fact, the Agency has determined that

treatment, workover, and completion fluids are routinely commingled with produced water discharges in the Cook Inlet area (60 FR 9457, February 17, 1995).

The proposed permit defines test fluids as shown below. This same definition appeared in the 1986 Cook Inlet and 1995 Arctic general NPDES permits.

- Test Fluids: the discharge which would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content. The discharge consists of fluids sent downhole during testing, and formation water.

The 1986 Cook Inlet permit limited ''well treatment'' (i.e., treatment, workover and completion) fluids in conjunction with test fluids and Region 10 is using the same approach in the proposed permit.

1. BPJ/BCT Limitations for TWC and Test Fluids

pH: For the discharge of test fluids and well treatment, workover and completion fluids, the proposed permit limits pH to a range of 6.5–8.5 at the point of discharge. In Region 10's best professional judgement this appropriately equals a BPT level of control. No more stringent standard has been identified at this time. Therefore Region 10 is setting a BCT effluent limit for pH equal to BPT. This pH limit will ensure that pH changes greater than 0.2 pH unit will not occur beyond the edge of the 100 m mixing zone (40 CFR 125.121(c)). This requirement has been, and is, routinely complied with in previous permits and thus reflects no cost incremental to BPT.

Free oil: No discharge of free oil is permitted from any of the wastestreams authorized by the proposed permit. In the 1986 permit, Region 10 determined that the no free oil limitation and no discharge of oil-based fluids were appropriate levels of BCT control on the discharge of TWC and test fluids, establishing BPJ/BCT based on BPT. In 1993, the Agency promulgated BCT for the Offshore subcategory as no free oil; therefore, the no free oil limit for the discharge of test fluid from exploratory operations in lower Cook Inlet (i.e., Offshore subcategory) is BCT. For TWC and test fluids, the no free oil limit is BPJ/BCT for all operations in upper Cook Inlet (i.e., Coastal subcategory). All previous permits issued by Region 10 for either exploratory or production and development operations contained the no free oil limitation and past practices have not resulted in violations of the limit. In accordance with promulgated Offshore BCT and section 308 of the Act, the static sheen test is required to monitor compliance with the limitation.

2. BPJ/BAT Limitations for TWC and Test Fluids

Oil and grease: Although oil and grease is a conventional pollutant subject to BCT, it is also an indicator of toxic pollutants (thus serving BAT as well). Promulgated (offshore) BAT limitations for oil and grease in TWC are 29 mg/l monthly average and 42 mg/l daily maximum (58 FR 12506, March 4, 1993). It is the best professional judgement of Region 10 that these oil and grease limits are also appropriate levels of control for TWC discharges in the Coastal subcategory of Upper Cook Inlet. These limits in the proposed permit are also consistent with effluent limitations guidelines proposed for the Coastal subcategory (60 FR 9429–9430, February 17, 1995). Note that while BPT oil and grease limitations are promulgated for the Coastal subcategory (no free oil, 40 CFR 435.42), they are less stringent than those proposed and are therefore not used as a basis for the proposed permit. For the discharge of test fluids, the proposed oil and grease limits are Region 10's best professional judgement of BAT because no BAT effluent guidelines are promulgated or proposed for the Offshore or Coastal subcategories. Region 10 is using this same approach in the Arctic general NPDES permit (60 FR 27508, May 24, 1995).

3. Section 308 Requirements for TWC and Test Fluids

Flow Rate: Based on section 308 of the Act, the proposed permit requires estimated flow rates to be reported on a monthly basis for the discharge of each wastestream: this monitoring was required in the 1986 permit as well.

Metals: The proposed permit also requires analyses of each discharge of treatment, workover, and completion that is characterized as an acid job for the following metals (dissolved and total recoverable): cadmium, chromium, copper, lead, nickel and zinc. The CIDMS conducted under the 1986 permit indicates that these metals are likely to be present in TWC jobs involving treatment with acids. If these wastestreams are commingled with produced water prior to discharge, then they need not be monitored because similar monitoring is also required for the produced water discharge. In accordance with section 308 of the Act, and 40 CFR 122.44(i), monitoring for metals and flow are required to determine compliance with, or the possible need for, effluent limitations in the permit.

I. Other Discharge Limitations

1. No Floating Solids, Visible Foam or Oily Wastes

Region 10 has determined that the Offshore BCT effluent limitations of no discharge of floating solids from the discharge of sanitary wastes should apply to all other discharges as well. This requirement is consistent with the recently issued general NPDES permit for the Arctic (60 FR 27508, May 24, 1995). The limitations on discharge of visible foam and oily wastes have been applied (based on BCT) in previous permits issued by the Region and past practices have not resulted in violations.

2. Surfactants, Dispersants and Detergents

The proposed permit requires the discharge of surfactants, dispersants, and detergents to be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the MMS. These products contain primarily nonconventional pollutants. This provision has appeared in general NPDES permits for the Beaufort Sea, Chukchi Sea, Norton Sound, Bering Sea and the Arctic Ocean as well as in the 1986 Cook Inlet permit.

3. Other Toxic and Non-conventional Compounds

Discharge of the following pollutants is prohibited under the proposed permit: halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate, and sodium dichromate. The class of halogenated phenol compounds includes toxic pollutants while sodium chromate and dichromate contain chromium, which is also a toxic pollutant. Trisodium nitrilotriacetic acid is a nonconventional pollutant. Past permits prohibiting the discharge of these compounds are the Beaufort Sea, Chukchi Sea, Norton Sound, Bering Sea, Arctic Ocean and the 1986 Cook Inlet.

J. Best Management Practice Plan Requirement

It is national policy that, whenever feasible, pollution should be prevented or reduced at the source, that pollution which cannot be prevented should be recycled in an environmentally safe manner, and that disposal or release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner (Pollution Prevention Act of 1990, 42 U.S.C. 13101). Section 402(a)(1) authorizes EPA to include miscellaneous requirements in permits on a case-by-case basis which are deemed necessary

to carry out the provisions of the Act. Best Management Practices (BMPs), in addition to numerical effluent limitations, are required to control or abate the discharge of pollutants in accordance with 40 CFR 122.44(k).

Pursuant to section 402(a)(1) of the Clean Water Act and Region 10 policy (EPA 1992), development and implementation of a Best Management Practices Plan is included as a condition of this NPDES general permit.

The proposed general permit requires the development and implementation of a BMP Plan which prevents or minimizes the generation of pollutants, their release, and/or potential release from the facility to the waters of the United States through normal operations and ancillary activities. Relevant operations and activities include material storage areas, site runoff, storm water, in-plant transfer, process and material handling areas, loading or unloading operations, spillage or leaks, sludge and waste disposal, or drainage from raw material storage. EPA does not intend for permittees to duplicate practices more fully described in other documents. Therefore, when a BMP issue is already addressed via a separate regulatory program, the BMP is expected to reference those efforts, not duplicate them.

In addition to developing and implementing the BMP Plan, the operator is also required to certify that the BMP Plan is complete, on-site, and available upon request (see Part III.I.1. of the permit). Certification is required no later than submission of their written notice of intent to commence discharge (see Parts I.A., I.B., and I.C. of the permit). These certification requirements are similar to the requirements for a mud plan.

The BMP Plan must be amended whenever there is a change in the facility or in the operation of the facility which materially increases the potential for an increased discharge of pollutants. The BMP Plan will become an enforceable condition of the permit; a violation of the BMP Plan is a violation of the permit.

VI. Other Legal Requirements

A. Oil Spill Requirements

Oil spill requirements in the proposed permit reflect Executive Order 12777 which implements provisions of the Oil Pollution Act of 1990. EO 12777 removed offshore facilities from jurisdiction under EPA and placed them under the jurisdiction of the Department of Interior (DOI), Minerals Management Service (MMS). Offshore operators are required to submit Oil Spill Contingency Plans to MMS for review. Additionally, operators in state waters are required to submit Oil Discharge Prevention and Contingency Plans to the ADEC for review.

The net effect of the Oil Pollution Act of 1990 and EO 12777 is that operators in state or federal waters are no longer required by section 311 of the Clean Water Act to develop Spill Prevention, Control and Contingency (SPCC) plans.

B. Endangered Species Act

The Endangered Species Act (ESA) allocates authority to, and administers requirements upon, federal agencies regarding endangered species of fish, wildlife, or plants and habitat of such species that have been designated as critical. Its implementing regulations (50 CFR Part 402) require EPA to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized, funded or carried out by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat (40 CFR 122.49(c)).

Implementing regulations for the ESA establish a process by which agencies consult with one another to ensure that the concerns of both the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (''Services'' collectively) are addressed. Briefly, the process is as follows: (a) The Services provide list(s) of species or habitats which coincide with the permit area or activity at the request of the licensing agency (in this case EPA Region 10), (b) the licensing agency develops a scientific or other report addressing listed species and/or habitats, and (c) the Services consult (either formally or informally) with the licensing agency. Region 10 is requesting comments from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service and will consider their comments in making the final permit decision. The Region will initiate consultation should new information reveal impacts not previously considered, should the activities be modified in a manner beyond the scope of the original opinion, or should the activities affect a newly listed species.

In compliance with section 7 of the ESA, Region 10 obtained lists of critical habitat areas and threatened and endangered species from the Alaska regional offices of the Services. The Agency contracted with Avanti, Inc. to prepare a draft/preliminary biological evaluation (BE) for threatened, endangered and candidate species reported in the area covered by the proposed general permit (Avanti 1992). In addition to the preliminary BE prepared by Avanti, Region 10 also considered a BE prepared for ARCO for development of an individual NPDES permit for exploratory drilling in upper Cook Inlet (EPA 1993c). These two BEs address the species listed below:

- Gray whale (Eschrichtius robustus, removed from list but continues to be monitored—USFWS),
- Humpback whale (Megaptera novaengliae, endangered—USFWS),
- Fin whale (Balaenoptera physalus, endangered—USFWS),
- Sei whale (Balaenpetera borealis, endangered—USFWS),
- Steller sea lion (Eumetopias jubatus and habitat, threatened—USFWS),
- American peregrine falcon (Falco peregrinus anatum, threatened—USFWS)
- Arctic peregrine falcon (Falco peregrinus tundrius, threatened—USFWS),
- Beluga whale (Delphinapterus leucas, candidate—NMFS), and
- Steller's eider (Polysticta stelleri, mentioned as Category 1 candidate species—USFWS).

In March of 1995 in response to the Region's request for updated status on species in the area of the permit, USFWS provided additional information as shown below. NMFS had no additional or new information to provide at the time of Region 10's request.

- Short-tailed albatross (Diomeda albatrus, added as endangered),
- Harelquin duck (Histrionicus histrionicus, mentioned as Category 2 candidate species)
- Kittlitz's murrelet (Brachyramphus brevirostris, mentioned as Category 2 candidate species)
- Marbled murrelet (Brachyramphus marmoratus, mentioned as Category 2 candidate species)
- Arctic peregrine falcon (F. p, tundrius, removed from list but continues to be monitored)

Based on BE reports, information in the Preliminary Ocean Discharge Criteria Evaluations (PODCEs) for OCS Sales 55 and 60, the Revised PODCE for Sale 88 and state lease sales in Cook Inlet, the revised PODCE for Sale 149 and on information in the Environmental Impact Statements (EISs) prepared for the federal lease sale areas, EPA has concluded that the discharges authorized by this general permit will not jeopardize the continued existence of any endangered or threatened species. The BEs, PODCEs, and EISs do not address the species added to the Region's list in March of 1995, nor are resources available to modify existing

reports at this time. For the short-tailed albatross, Region 10 references the DEIS for Sale 149 (p. III.B.20 and p. IV.B.1.–60, MMS 1995) which states that this species rarely appears in the area of Sale 149 or state lease sales, and is therefore not likely to be affected by the discharges authorized in the proposed permit. For recently added species of murrelets and the Harelquin duck, Region 10 is deferring a determination until the species are listed, and more information is available.

Region 10's determinations under section 7 of the ESA are discussed below for each wastestream. Pursuant to the ESA, Region 10's determinations are either for *no effect* or *may effect:* findings of *may effect* are further categorized as *may beneficially affect, not likely to adversely affect,* or *may adversely affect.*

1. Muds, Cuttings & Washwater (Discharge 001)

The discharge of muds and cuttings may affect all of the listed species, but is not likely to adversely affect the peregrine falcons or the Steller's eider. Disturbances caused by drilling mud discharge occurring during whale migration through the discharge area or in the critical habitat area designated for Steller's sea lions (Avanti 1992) are beyond the scope of the proposed general permit. Issues such as noise and disturbance are considered twice by MMS (for federal leases) and/or the Alaska Department of Natural Resources Division of Oil and Gas (for state leases). The first time such issues are considered is for the whole sale area as part of the initial environmental impact statement or environmental assessment which requires public and interagency review. The second consideration for the specific location as when a lessee submits plans of exploration and operation required by the lease. These documents also undergo public and inter-agency review. The scope of the proposed NPDES permit is limited to controlling the discharge of pollutants in specific wastestreams rather than the presence or absence of an operation. With respect to the critical habitat designated for Steller sea lions, the proposed permit prohibits any discharge in, or within 1000 m of, the critical habitat area designated by USFWS (58 FR 45269–45285, August 27, 1993).

2. Produced Water (Discharge 015)

The discharge of produced water may affect, but is not likely to adversely affect, all of the considered species except the Beluga whale (a candidate species). This determination is based on the fact that the proposed permit authorizes discharges from production operations (i.e., produced water) to upper Cook Inlet and, since all of the species except Beluga whales occur most frequently in the lower Inlet, potential exposure is therefore reduced. The Beluga whales, which frequent the upper Inlet, may be adversely affected by pollutants in produced water. This species may be affected either directly (through exposure) or indirectly (through ingestion and bioaccumulation) (Avanti 1992). The Beluga whale is a candidate for listing; consequently, Region 10's determination of ''may adversely affect'' is based on lack of conclusive evidence regarding the actual impact of produced water discharges upon the species.

3. All Other Wastestreams

Discharge of the remaining wastestreams addressed by the proposed permit is determined to have either no effect or as not likely to adversely affect the species considered. These determinations are based on the relatively small amounts discharged (e.g., waterflood, completion, workover, treatment and test fluids), the absence of harmful pollutants (e.g., sanitary wastes), or the lack of potential to cause effects (e.g., domestic, desalination, blowout preventer fluid) (Ch.6, Avanti 1992).

C. Coastal Zone Management Act

The State of Alaska will be reviewing this permit to determine consistency with the Coastal Zone Management Act.

D. Maritime Protection, Research, and Sanctuaries Act

No marine sanctuaries, as designated by this Act, exist in the vicinity of the permit area. Since state waters are involved in the proposed general permit area the provisions of section 401 of the Act apply. In accordance with 40 CFR 124.10(c)(1), public notice of the draft permit has been provided to the State of Alaska agencies having jurisdiction over fish, shellfish, and wildlife resources.

E. Annex V of MARPOL (73/78 and 33 CFR 155.73)

Under Annex V of the International Convention for the Prevention of Pollution from Ships, the U.S. Coast Guard (USCG) has issued interim final regulations under 33 CFR 151.73 to control the disposal of garbage and domestic wastes from fixed or floating platforms. These regulations include those platforms involved in the exploration and exploitation of oil and gas resources, such as oil drilling rigs and production platforms. These regulations apply to all such vessels when in navigable waters of the U.S. or within the 200 mile Exclusive Economic Zone. This proposed permit will prohibit the discharge of garbage (as defined at 33 CFR 151) within 12 miles of the nearest land. The term garbage, as it is applied here, includes operational and maintenance wastes. Further amplification of wastes covered under these regulations can be found at 33 CFR 151. Beyond 12 miles from the nearest land, the discharge of food wastes which are ground so as to pass through a 25 millimeter mesh screen, incinerator ash, and non-plastic clinkers will be permitted. Incinerator ash and non-plastic clinkers that can pass through a 25 millimeter mesh screen will be permitted to be discharged beyond 3 miles from the nearest land. These requirements are already part of the Coast Guard regulations and are incorporated into the permit for consistency.

F. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

G. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in the proposed general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Most of the information collection requirements have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act and assigned OMB control numbers 2040–0086 for the NPDES permit application and 2040–0004 for the discharge monitoring report form. In addition, the environmental monitoring requirements pursuant to section 403(c) of the Clean Water Act in Part III.B.3. of the proposed permit are similar to the notice of intent to be covered and monitoring requirements that were approved by OMB for the previously issued Beaufort Sea general permit (49 FR 23734, June 7, 1984) and Norton Sound general permit (50 FR 23578, June 4, 1985). While this permit requires some increased monitoring and reporting of that data, the region estimates that the additional burden will be similar to that projected for discharges covered under the most recent Gulf of Mexico general NPDES permit. The final general permit will explain how the information collection requirements respond to any OMB or public comments.

H. Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5023 *et seq.* (February 9, 1984). These facilities are classified as Major Group 13–Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: September 8, 1995.

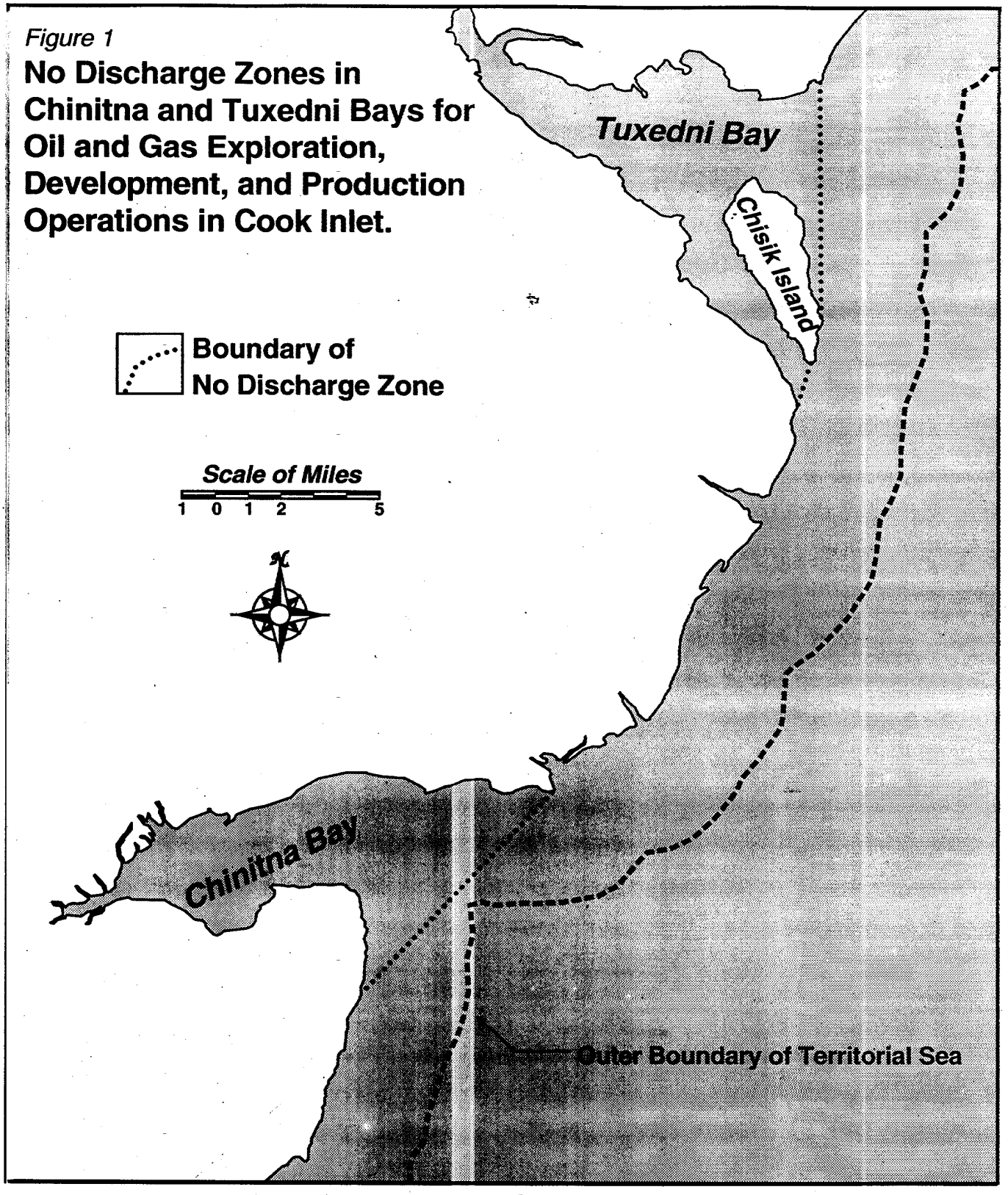
Charles Findley,

Acting Regional Administrator, U.S. EPA, Region 10.

BILLING CODE 6560–50–P

Figure 1

No Discharge Zones in Chinitna and Tuxedni Bays for Oil and Gas Exploration, Development, and Production Operations in Cook Inlet.



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Permit No.: AKG285100

Cook Inlet

United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Oil and Gas Exploration, Development, and Production Facilities

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the ''Act'', the following discharges are authorized in accordance with this National Pollutant Discharge Elimination System (''NPDES''):

Discharge	Discharge No.
Drilling Mud & Cuttings	001
Deck Drainage	002
Sanitary Wastes	003
Domestic Wastes	004
Desalination Unit Wastes	005
Blowout Preventer Fluid	006
Boiler Blowdown	007
Fire Control System Test Water	008
Non-Contact Cooling Water	009
Uncontaminated Ballast Water	010
Bilge Water	011
Excess Cement Slurry	012
Mud, Cuttings, Cement at Seafloor	013
Waterflooding Discharges	014
Produced Water	015
Completion Fluids	016
Workover Fluids	017
Well Treatment Fluids	018
Test Fluids	019

from oil and gas development and production facilities to state waters north of the Forelands in Upper Cook Inlet. These development and production facilities are classified in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category, as defined in 40 CFR Part 435, Subpart D. Discharges are also authorized from exploratory facilities to all state and federal waters addressed by this permit. Exploratory facilities are classified in the Offshore and Coastal Subcategories as defined in 40 CFR Part 435, Subparts A and D. The receiving waters, state and federal, are Cook Inlet. Discharges shall be in accordance with effluent limitations, monitoring and reporting requirements, and other conditions set forth in Parts I through VI herein. The discharge of pollutants not specifically set out in this permit is not authorized.

Permittees who are not granted coverage under this general permit as described in Part I are not authorized to discharge to the specified waters unless an individual permit has been issued to the Permittee by EPA, Region 10. Discharges from facilities in the Onshore Subcategory (40 CFR Part 435, Subpart C), or to wetlands adjacent to the territorial seas and inland coastal waters of the State of Alaska, are not authorized under this permit.

During the effective period of this permit, operators authorized to discharge under the general permit are authorized to discharge the enumerated pollutants subject to the restrictions set forth herein. This permit does not authorize the discharge of any waste streams, including spills and other unintentional or non-routine discharges of pollutants, that are not part of the normal operation of the facility, or any pollutants that are not ordinarily present in such waste streams, unless specifically authorized by EPA prior to discharge.

The authorized discharge sites include all blocks offered for lease by the US Department of the Interior's Minerals Management Service (MMS) in Federal Lease Sales 50 and 149. Additionally, the authorized discharge sites include all Cook Inlet blocks previously offered for lease by the State of Alaska (including blocks offered in Sales 32, 33, 35, 40, 46A, 49, 67A, and 74) or offered under state lease sales held during the effective period of this permit. For the purposes of this permit, the southern boundary of Cook Inlet is defined to the line between Cape Douglas on the west and Port Chatham on the east.

The facilities listed below are authorized to discharge under this permit. The conditions of the previous permit become null and void upon the effective date of this permit.

Operator	Facility	NPDES permit No.
Unocal	Granite Point Treatment Facility (formerly Marathon)	AGK285001
Unocal	Trading Bay Treatment Facility (formerly Marathon)	AKG285002
Shell	East Foreland Treatment Facility	AKG285003
Unocal	Platform Anna (formerly Amoco)	AKG285004
Unocal	Platform Baker (formerly Amoco)	AKG285005
Unocal	Platform Bruce (formerly Amoco)	AKG285006
Unocal	Platform Dillon (formerly Amoco)	AKG285007
Unocal	King Salmon Platform (formerly ARCO)	AKG285008
Unocal	Dolly Varden Platform (formerly Unocal)	AKG285009
Marathon	Spark Platform	AKG285010
Phillips	Platform A (Tyonek Platform)	AKG285011
Shell	Platform A	AKG285012
Shell	Platform C (Middle Ground Shoal)	AKG285013
Marathon	Spurr Platform (formerly Texaco's Superior A Platform)	AKG285014
Unocal	Granite Point Platform	AKG285015
Unocal	Grayling Platform	AKG285016
Unocal	Monopod Platform	AKG285017
ARCO	Fire Island (Exploratory Well)	AKG285018 - INACTIVE
Unocal	Steelhead Platform	AKG285019
Marathon	Steelhead (Blowout Relief Well)	AKG285020 - INACTIVE
ARCO	Sturgeon (Exploratory Well)	AKG285021 - INACTIVE
ARCO	Sunfish (Exploratory Well)	AKG285022 - INACTIVE
ARCO	North Forelands (Exploratory Well)	AKG285023 - INACTIVE

This permit may be modified or revoked at any time if, on the basis of any new data, the Director determines that this information would have justified the application of different permit conditions at the time of issuance. Permit modification or revocation will be conducted in accordance with 40 CFR, sections 122.62, 122.63, and 122.64. In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that

continued discharges may cause unreasonable degradation of the marine environment.

This permit does not authorize discharges from ''new sources'' as defined in 40 CFR 122.2.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight,

Signed this day of

DRAFT

Chuck Clarke,

Regional Administrator, U.S. EPA, Region 10.

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I. Notification Requirements

A. New Exploration Facilities

1. Requests to be Covered by General Permit

Written request to be covered by this permit shall be provided to EPA at least 60 days prior to initiation of discharges. The request shall include the following information:

a. Name and address of the Permittee.

b. General location (lease and block numbers) of operations and discharges.

c. Any discharge or operating conditions which are subject to the special monitoring requirements (Part III.B.3.).

d. Any plans of exploration or operation that are submitted to MMS or the State of Alaska in application to drill.

2. Authorization to Discharge

The Permittee is not authorized to discharge without written notification from EPA that operations at the discharge site have been assigned an NPDES permit number under this general permit. A permit number cannot be assigned until the following information is received. This information shall be provided to EPA in the request for coverage, but in no case less than 30 days prior to commencement of discharges.

a. Name and location of discharge site, including lease block number and latitude and longitude.

b. Range of water depths (below mean lower low water) in the lease block(s), and the depth(s) of discharge(s).

c. Initial date(s) and expected duration of operations.

3. Commencement of Discharges

The Permittee shall notify EPA during the 7-day period prior to initiation of discharges from the platform and from each well. The notification shall include the exact, final latitude and longitude and water depth of the discharge site, as well as written certification that a Mud Plan (Part III.B.1.b.) is complete, on site and available to the Agency upon request. Similar notification is required for a Best Management Practices Plan (Part III.I.1). This notification may be oral or in writing; if notification is given orally, written confirmation must follow within 7 days.

B. New Development and Production Facilities

1. Requests to be Covered by General Permit

Written request to be covered by this permit shall be provided to EPA at least 60 days prior to initiation of discharges. Facilities wishing to start discharging within 60 days of the final effective date of this permit need not comply with the 60-day requirement, but shall provide the request for coverage as soon as possible prior to initiation of discharges. The request shall include the following information:

a. Name and address of the Permittee.

b. Name of facility.

c. Specific location (including latitude and longitude, and section, range, and township) of operations *and* discharges.

d. Water depth at site and depth of discharge(s) with respect to MLLW.

e. Date of commencing discharge and expected duration of operations.

f. Any discharge or operating conditions which are subject to the special monitoring requirements (Part III.B.3)

2. Authorization to Discharge

The Permittee is not authorized to discharge without written notification from EPA that operations at the discharge site have been assigned an NPDES permit number under this general permit.

3. Commencement of Discharges

The Permittee shall notify EPA within the 7-day period prior to initiation of discharges from the new facility. The notification shall include written certification that a Mud Plan (Part III.B.1.b.) is complete, on site and available to the Agency upon request. Drilling operators shall also notify EPA within the 7-day period prior to initiation of discharges from each new well thereafter. Similar notification is required for a Best Management Practices Plan (Part III.I.1). The notification may be oral or in writing: if notification is given orally, written confirmation must follow within 7 days.

C. Existing Facilities

1. Facilities authorized to discharge under the preceding general NPDES permit (AKG285000) are automatically authorized to discharge by this general permit as of its effective date. These facilities are listed on page 2 of the

permit. These permittees need not submit a formal request for authorization to discharge prior to commencement of discharges under this permit.

2. Commencement of Discharges from New Wells

The Permittee shall notify EPA within the 7-day period prior to initiation of discharges from each new well. The notification may be oral or in writing: if notification is given orally, written confirmation must follow within 7 days.

3. Commencement of Discharges from Closed In Platforms

The Permittee shall notify EPA in writing within the times specified below prior to initiation of discharges from a ''closed in'' platform. Notification shall include a list of discharges that will occur (as listed on page 1 of this permit) and information required in Part I.B.1.b–e., above.

a. If discharges have not changed with respect to treatment of wastestreams or effluent limits, written notification shall be provided within 30 days of initiation of discharge.

b. If any discharge is different from the past due to changes in treatment or operations on the platform, the Permittee shall notify EPA, Region 10 as early as possible, but in no case less than 90 days prior to initiation of discharge. *See also* Part V.J. (Planned Changes)

c. If drilling mud discharges are planned, the Permittee shall provide written notification, within 7 days of discharge, that a Mud Plan (Part III.B.1.b.) is complete, on-site and available to the Agency upon request.

d. The Permittee shall provide written notification, within 7 days of discharge, that a Best Management Practices Plan (Part III.I.1.) is complete, on-site, and available to the Agency upon request.

D. All Facilities Covered by the Permit

1. Submission of Plans of Operation, Environmental Reports, and Biological Surveys

The Permittee is responsible for providing EPA with final copies of any plans of operations, environmental reports, and biological surveys required by the Alaska Department of Natural Resources (ADNR), or by the Regional supervisor, Field Operations, of MMS, for the identification and/or protection of biological populations or habitats. The Permittee may provide these directly to EPA or ensure that ADNR or MMS have provided them to EPA. If final plans and environmental reports submitted to MMS are identical to review copies received by EPA, the Permittee need not submit them under this permit provision.

2. Duty To Reapply and/or Notice of Intent To Continue Activity

If the Permittee wishes to discharge under the authority of this permit *after* its expiration date, the Permittee must submit a notice of intent to EPA to do so. The Notice of Intent shall be submitted at least 180 days before the expiration date of this permit. An NPDES permit application (EPA Form 3510–2C, Wastewater Discharge Information, Consolidated Permits Program (revised February 1985)) shall constitute a complete Notice of Intent. Timely receipt of a complete Notice of Intent by EPA shall qualify the Permittee for an administrative extension of its authorization to discharge under this permit pursuant to 5 U.S.C. Section 558(c).

3. Termination of Discharges

The Permittee shall notify EPA within 30 days following cessation of discharges from each well and from the discharge site. The notification may be provided in a Discharge Monitoring Report (DMR) or under separate cover.

4. Submission of Requests To Be Covered and Other Reports

Reports and notifications required herein shall be submitted to the following addresses.

All requests for coverage—Director, Water Division, U.S. EPA, Region 10, Attn: Ocean Programs Section, WD–137, 1200 6th Avenue, Seattle, Washington 98101, Phone: (206) 553–8155

All monitoring reports and notifications of non-compliance—Director, Water Division, U.S. EPA, Region 10, Attn: Water Compliance Section, WD–135, 1200 6th Avenue, Seattle, Washington 98101, Phone: (206) 553–1846

For discharges to state waters only: copies of all requests, reports, and notifications—Regional Environmental Supervisor, South Central Regional Office, Alaska Department of Environmental Conservation, 555 Cordova, Anchorage, Alaska 99501, Phone: (907) 269–7564

E. Changes From Coverage Under General Permit to Coverage Under Individual Permit

1. The Director may require any permittee discharging under the authority of this permit to apply for and obtain an individual NPDES permit when any one of the following conditions exist:

a. The discharge(s), including stormwater, is a significant contributor of pollution.

b. The Permittee is not in compliance with the conditions of this general permit.

c. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

d. Effluent limitation guidelines are promulgated for point sources covered by this permit.

e. The point sources covered by this permit no longer:

(1) Involve the same or substantially similar types of operations,

(2) Discharge the same types of wastewaters,

(3) Require the same effluent limitations or operating conditions, or

(4) Require the same or similar monitoring.

g. In the opinion of the Director, the discharges are more appropriately controlled under an individual permit than under a general NPDES permit.

2. The Director may require any permittee authorized by this permit to apply for an individual NPDES permit only if the Permittee has been notified in writing that an individual permit application is required.

3. Any permittee authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The owner or operator shall submit an application together with the reasons supporting the request to the Director no later than 90 days after the effective date of the permit.

4. When an individual NPDES permit is issued to a permittee otherwise subject to this general permit, the applicability of this general permit to that owner or operator is automatically terminated on the effective date of the individual permit.

II. Prohibited Areas of Discharge and Depth-Related Requirements

Discharges from operations in Cook Inlet are prohibited in the cases listed below. Permit applicants should contact EPA if they are uncertain whether or not their discharges will be located in a prohibited area. The Agency will also provide a map showing the approximate location of prohibited areas upon request.

A. Produced Water

The discharge of produced water from new facilities is prohibited in intertidal areas. New discharges (as defined at 40 CFR 122.2) are also prohibited from discharging produced water shoreward

of the 10 m isobath (as measured from mean lower low water).

B. Other Discharges

The discharge of all effluents other than those discussed in paragraph A, above, is prohibited shoreward of the 5 m isobath (as measured from mean lower low water) including intertidal areas.

All discharges are prohibited in the following areas:

1. Shoreward of the 5.5 m isobath adjacent to a either (1) the Clam Gulch Critical Habitat Area (Sales 32, 40, 46A, and 49) or (2) from the Crescent River northward to a point one-half mile north of Redoubt Point (Sales 35 and 49).

2. Within the boundaries or within 1,000 m of a coastal marsh, river delta, river mouth, designated Area Meriting Special Attention (AMSA), game refuge, game sanctuary, or critical habitat area. (The seaward edge of a coastal marsh is defined as the seaward edge of emergent wetland vegetation.)

The following State Game Refuges (SGR), Game Sanctuaries (SGS), Critical Habitat Areas (CHA), and AMSAs are located in the area covered by this permit:

Palmer Hay Flats SGR
Goose Bay SGR
Potter Point SGR
Susitna Flats SGR
McNeil River SGS
Redoubt Bay CHA
Trading Bay SGR
Kalgin Island CHA
Clam Gulch CHA
Kachemak Bay CHA
Anchorage Coastal Wildlife Refuge
Port Graham/Nanwalek AMSA

The legal descriptions of these state specialty areas are found in AS 16.20 The present boundaries of these state special areas are described in ''State of Alaska Game Refuges, Critical Habitat Areas, and Game Sanctuaries,'' Alaska Department of Fish and Game, Habitat Division, March 1991. Further information can be obtained from the Alaska Department of Fish and Game, Habitat Division, Regional Supervisor, 333 Raspberry Road, Anchorage, Alaska 99518–1599; phone (907) 267–2284 or (907) 267–2342.

3. In Kamishak Bay west of line from Cape Douglas to Chinitna point.

4. In Chinitna Bay inside of the line between the points on the shoreline at latitude 59°52′45″ N, longitude 152°48′18″ W on the north and latitude 59°46′12″ N, longitude 153°00′24″ W on the south (Figure 1).

5. In Tuxedni Bay inside of the lines on either side of Chisik Island (Figure 1).

a. From latitude 60°04′06″ North, longitude 152°34′12″ West on the mainland to the southern tip of Chisik Island (latitude 60°05′45″ North, longitude 152°33′30″ West).

b. From the point on the mainland at latitude 60°13′45″ North, longitude 152°32′42″ West to the point on the north side of Snug Harbor on Chisik Island (latitude 60°06′36″ North, longitude 152°32′54″ West).

4. In Shelikof Strait south of a line between Cape Douglas (at 58° 51′ North, 153° 15′ West) on the west and the northernmost tip of Shuyak Island on the east (at 58° 37′ North, 152° 22′ West) (Figure 2).

5. Within 20 nautical miles of Sugarloaf Island as measured from a centerpoint at 58° 53′ North and 152° 02′ West. (Figure 2)

III. Effluent Limitations and Monitoring Requirements

The operators shall limit discharges as specified in the permit below. All figures represent maximum effluent limits unless otherwise indicated. The Permittee shall comply with the following effluent limits at all times unless provided for by this permit (e.g., unanticipated bypass) regardless of the frequency of monitoring or reporting required by other provisions of this permit.

A. Representative Sampling (Routine and Non-Routine Discharges)

The operators shall collect all effluent samples from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the operators shall collect additional samples at the appropriate outfall(s), and analyze them for the parameters appropriate to that waste stream, limited in Parts III.B.-III.I. of this permit, whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample.

The Permittee shall collect such additional samples as soon as possible after the spill or discharge. The samples shall be analyzed in accordance with the monitoring requirements in Parts III.B.-III.I. of this permit. In the event of an anticipated bypass, as defined in Part V of this permit, the Permittee shall collect and analyze additional samples as soon as the bypassed effluent reaches the outfall. The Permittee shall report all additional monitoring in accordance with Part IV.B., below.

B. Drilling Mud, Drill Cuttings (Discharge 001)

1. Effluent Limitations

In addition to the restrictions set out in Parts III.A., III.B.2–3. and IV, the Permittee shall comply with the following effluent limitations and monitoring requirements.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported values
Flow Rate[1] (Water Depth)				
> 40 m	1,000 bbl/hr	Continuous during discharge	Estimate	Maximum hourly rate.
> 20–40 m	750 bbl/hr.			
5–20 m	500 bbl/hr.			
< 5 m	No discharge.			
Total volume	See note 2	Daily	Estimate	Monthly total.
Mud Plan	Part III.B.1.b	Prior Certification	N/A	N/A.
Toxicity of drilling mud	30,000 ppm SPP minimum	Monthly and End-of-Well	Grab/Drilling Fluids Toxicity Test.	96-hr LC50 (Part III.B.2.g.).
Free oil	No discharge	Daily and before bulk discharges.	Grab/Static Sheen Test Part III.B.2.c.	Number of days sheen observed.
Oil-based fluids	No discharge	N/A	N/A	N/A.
Oil content	N/A	Daily during discharge, prior to bulk discharge.	Parts III.B.2.c., 2.f	N/A.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported values
Diesel oil content	No discharge	N/A	Grab/GC Part III.B.2.b	Presence or absence.
Mercury and cadmium in barite.	1 mg/kg Hg 3 mg/kg Cd	Once per well	AAS	mg/kg dry wt.
Chemical inventory	N/A	Once per mud system	Part III.B.2.a	N/A.
		Once per bioassay	Part III.B.2.g	N/A.
Metal analyses	N/A	Once per mud system	Part III.B.2.e	N/A.

[1] Maximum flow rate of total muds and cuttings includes predilutant water; water depths are measured from mean lower low water.
[2] Report total volumes for all types of operations (exploratory, production and development). For exploratory operations, drilling discharges are limited to no more than five wells at a single drilling site. If a step-out or sidetracked well is drilled from a previously drilled hole, the step-out well is counted as new well. Requests to discharge from more than five wells per site will be considered by the Water Division Director on a case-by-case basis.

a. *Drilling mud and additive formulations.* Only those drilling muds, specialty additives, and mineral oil pills that meet the criteria of this permit and are contained in the operator's Mud Plan (see Part *III.B.1.b.* below) may be discharged. In no case shall toxicity of the discharged mud exceed the toxicity limit of 30,000 ppm SPP (see Part *III.B.1.* above)

b. *Mud Plan—Planned discharge of drilling muds and additives.* The Permittee shall develop and have on-site at all times a written procedural plan for the formulation and control of drilling mud/additive systems (the ''Mud Plan''). The Mud Plan must specify which mud/additive systems will be used. The Mud Plan shall be implemented during drilling operations.

The Mud Plan shall be available to the Agency upon request. Prior to commencement of discharges from a given well, the Permittee shall provide EPA with written certification that a Mud Plan does exist for the well and is available to the Agency. (See Parts I.A.3., I.B.3. and I.C.3.).

At a minimum, the Mud Plan shall provide the following information:

(1) The well name, well number, NPDES permit number, and the types of mud/additive systems proposed for use as basic identification of the Mud Plan for each well drilled.

(2) Specific for use at each well and for each mud/additive system, a list including commercial product names, descriptions of the products, and the maximum proposed discharge concentrations for each product. Concentrations shall be stated in terms of ''lb/bbl'' or ''gal/bbl''; although, ''% (wt)'' or ''% (vol)'' may be appropriate in some instances. Each mud/additive system shall be clearly labelled (e.g., KCl/polymer mud, freshwater lignosulfonate mud, spud mud). Components of the basic mud shall be listed separately from specialty or contingency additives that may be used.

(3) A record of the operator's determination of how discharge is expected to comply with the 30,000 ppm SPP toxicity limitation. Operator's determination must be based upon, but necessarily limited to, the following criteria:

(a) Estimates of worst-case cumulative discharge toxicity (e.g., based on additive toxicity estimates or commercially calculated discharge toxicity estimates).

(b) Estimates of discharge toxicity based on the use of mineral oil pills (and subsequent discharge of residual mineral oil concentrations (see *Part III.B.1.g.* below)) must be shown separately from the estimate for the basic mud with other additives.

(c) Where possible, overall toxicity shall be minimized.

(4) A clearly stated procedure for determining whether or not an additive not originally planned for or included in toxicity estimations discussed above may be used and discharged.

(5) An outline of the mud planning process which shall be consistent with other permit requirements. Names and titles of personnel responsible for the mud planning process shall be included.

c. *Certification of Mud Plan.* For each well the operator shall submit written certification stating that a Mud Plan is complete, on-site, and available upon request. In addition, each certification shall identify the well it pertains to by well name, well number and NPDES permit number. Written certification shall be submitted no later than the written notice of intent to commence discharge (see Parts I.A.3., I.B.3. and I.C.3.).

If the operator elects to use a particular sequence of mud/additive systems on subsequent wells, a previous Mud Plan may be re-used. Information identifying the Mud Plan, however, must reflect use of the plan for the current well (see *Part III.B.1.e(1),* above).

d. *Restrictions on the use of mineral oil pills in drilling muds.* The discharge of residual amounts of mineral oil pills (mineral oil plus additives) is authorized by the permit provided that the mineral oil pill and at least a 50 bbl buffer of drilling fluid on either side of the pill are removed from the circulating drilling fluid system and not discharged to waters of the United States. In the event that more than one pill is applied to a single well, the previous pill and buffer shall be removed prior to application of a subsequent pill. Residual mineral oil concentration in the discharged mud shall not exceed 2% v/v (API Recommended Practice 13–1, 1990) (see *Part III.B.2.b.* below). The discharged mud must comply with all permit conditions, including no discharge of free oil.

Should drilling mud containing residual mineral oil pill (after pill and buffer removal) be discharged the following information shall be reported with 60 days of the discharge:

(1) Dates of pill application, recovery, and discharge;

(2) Results of the Drilling Fluids Toxicity Test on samples of:

(a) the mud *before* each pill is added and

(b) the mud *after removal* of each pill and buffer (taken when residual mineral oil pill concentration is expected to greatest);

(3) Name of spotting compound and mineral oil product used;

(4) Volumes of spotting compound, mineral oil, water, and barite in the pill;

(5) Total volume of mud circulating prior to pill application, volume of pill formulated, and volume of pill circulated;

(6) Volume of pill recovered, volume of mud buffer recovered, and volume of mud circulating after pill and buffer recovery;

(7) Percent recovery of the pill (include calculations);

(8) Estimated concentrations of residual spotting compound and

mineral oil in the sample of mud discharged, as determined from amounts added and total mud volume circulating prior to pill application;

(9) Measured oil content of the mud samples, as determined by the API retort method; and

(10) An itemization of other drilling fluid components and specialty additives contained in the discharged mud with concentrations reported in gal/bbl or lb/bbl.

2. Monitoring Requirements

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures are specified here or elsewhere in this permit. Representative sampling requirements are discussed in *Part III.A.*

a. *Chemical inventory.* For each mud system discharged, the Permittee shall maintain a precise chemical inventory of all constituents added downhole, including all drilling mud additives used to meet specific drilling requirements. The Permittee shall report the following for *each* mud system:

(1) Base mud type (as identified in the Mud Plan);

(2) Name and total amount (volume or weight) of each constituent in discharged mud;

(3) The total volumes of mud created and added downhole; and

(4) The maximum concentration of each constituent in the discharged mud.

In addition, for each mud system discharged, the Permittee shall report the following:

(5) The total volumes of mud discharged; and

(6) The estimated amount of each constituent discharged.

The inventory shall be submitted within 45 days of well completion.

b. *Diesel Oil.* Compliance with the limitation on diesel oil shall be demonstrated by gas chromatography (GC) analysis of drilling mud collected from the mud used at the greatest well depth (''end-of-well'' sample) and of any muds or cuttings which fail the daily Static Sheen Test (Part *III.B.2.c.* below). In all cases, the determination of the presence or absence of diesel oil shall be based on a comparison of the GC spectra of the sample and of diesel oil in storage at the facility. The method for GC analysis shall be that described in ''Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings'' (CENTEC, 1985) available from EPA, Region 10. Gas chromatography/mass spectrometry (GC/MS) may be used if an instance should arise where the operator and EPA determine that greater resolution of the drilling mud ''fingerprint'' is needed for a particular drilling mud sample.

The end-of-well analysis for diesel oil shall be done in conjunction with the end-of-well chemical analyses required in Part *III.B.2.e.* The results and raw data, including the spectra, from the GC analysis shall be provided to the Director by written report (1) within 30 days of a positive result with the Static Sheen Test when a discharge has occurred, or (2) for the end-of-well analysis, within 45 days of well completion.

c. *Static Sheen Test.* The Permittee shall perform the Static Sheen Test on separate samples of drilling muds and cuttings, as required in Appendix 1 to Subpart A of 40 CFR Part 435. Samples shall be collected on each day of discharge and prior to bulk discharges. The test shall be conducted in accordance with ''Approved Methodology: Laboratory Sheen Tests for the Offshore Subcategory, Oil and Gas Extraction Industry'' which is Appendix 1 to Subpart A of 40 CFR Part 435. For discharge below ice or during periods of unstable or broken ice, water temperature for the Static Sheen Test shall approximate surface water temperatures at ice breakup. The discharge of drilling muds or cuttings which fail the Static Sheen Test is prohibited.

Whenever muds or cuttings fail the Static Sheen Test and a discharge has occurred in the past 24 hours, the Permittee is required to analyze an undiluted sample of the material which failed the test to determine the presence or absence of diesel oil. The determination and reporting of results shall be performed according to Part *III.B.2.b.* above.

d. *Mercury and cadmium content of barite.* The Permittee shall analyze a representative sample of stock barite once prior to drilling each well and submit the results for total mercury and total cadmium in the DMR upon well completion. Analyses shall be conducted by absorption spectrophotometry and results expressed as mg/kg (dry weight) of barite.

If more than one well is drilled at a site, new analyses are not required for subsequent wells if no new supplies of barite have been received since the previous analysis. In this case, the DMR should state that no new barite was received since the last reported analysis. Operators may provide certification, as documented by the supplier(s), that the barite meets the above limits. The concentration of mercury and cadmium in stock barite shall be reported on the DMR as documented by the supplier.

e. *Metals analysis.* The Permittee shall analyze each discharged mud system containing a mineral oil lubricity and/or spotting agent in the mud discharge for the following metals: barium, cadmium, chromium, copper, mercury, zinc, and lead. Analyses for total *and* total recoverable concentrations shall be conducted on split samples and reported for each metal utilizing the methods specified in 40 CFR 136. The results shall be reported in ''mg/kg of whole mud (dry weight),'' and the moisture content (percent by weight) of the original drilling mud sample shall be reported.

Samples shall be collected when the residual mineral oil concentration is at its maximum value (see *Part III.B.1.d.*, above). If no mineral oil is used, the analysis shall be done on a drilling mud sample collected from the mud system used at the greatest well depth. All samples shall be collected prior to any predilution. Each drilling mud sample shall be of sufficient size to allow for both the chemical testing described here and toxicity testing described below in Part *III.B.2.g.*

Results of metals analyses shall be submitted within 45 days of well completion. Results shall be submitted with the end-of-well chemical inventory and shall identify the corresponding mud system from the end-of-well inventory.

f. *Oil content.* Permittees shall analyze mud and cuttings samples for oil content (percent by weight and volume) using the retort distillation method for oil (American Petroleum Industry, Recommended Practice 13–B, 1990) or by procedures described at 40 CFR 136 (soxhlet extraction for oil and grease).

g. *Toxicity test for drilling fluids.* If no mineral oil is used (*Part III.B.1.d.*), a toxicity test shall be conducted monthly to determine compliance with the drilling fluid toxicity limit. At the end-of-well, a sample shall be collected for toxicity testing. This sample can also serve as the monthly monitoring sample. The sample shall be a representative subsample of that collected for metals analysis (see Part *III.B.2.e.*, above).

The Permittee shall complete a minimum of two toxicity tests on each mud system where a mineral oil lubricity or spotting agent is used. One sample shall be collected before applying the pill and one after removing the pill (see Part *III.B.1.d.(2)*). The ''after pill'' sample test results can be used as the monthly monitoring sample. If the well is completed within 96 hours of collection of the ''after pill'' drilling mud sample, then these test results can also serve as the end-of-well test.

The testing and reporting of drilling fluid toxicity test results shall be in accordance with Appendix 2 to Subpart A of 40 CFR Part 435 (Drilling Fluids Toxicity Test). Results of drilling fluid toxicity tests (in terms of the 96-hr LC50 value) shall be reported on the DMRs. Complete copies of the test reports shall be attached to the DMR and be accompanied by an inventory of all of the drilling mud components and specialty additives present in the sampled mud (including the concentrations of each).

3. Environmental Monitoring Requirements

a. *Within 1500 m of sensitive areas.* Monitoring of the fate and effects of drilling muds and/or cuttings discharges shall be required for new exploration, development and production facilities or when the location of the discharges is within 1500 m of an area such as a coastal marsh, river delta, river mouth, designated AMSA, game refuge, game sanctuary, or critical habitat area. Discharges are prohibited within 1000 m of sensitive areas (see *Part II.B*).

b. *Environmental Monitoring Study.* The Permittee shall submit a plan of study for environmental monitoring to EPA for review with, or prior to, submission of a written request for authorization to discharge (*Parts I.A.2. and I.B.1–2.).*

The objectives of the monitoring shall be to:

(1) Monitor for discharge-related impacts,

(2) Determine statistically significant changes in sediment pollutant concentrations and sediment toxicity with time and distance from the discharge,

(3) Monitor for discharge related impacts to the benthic community,

(4) Assess whether any impacts warrant an adjustment of the monitoring program, and

(5) Provide information for permit reissuance.

The monitoring shall include, but not be limited to, relevant hydrographic, sediment hydrocarbon, and heavy metal data from surveys conducted before and during drilling mud disposal and up to a least one year after drilling operations cease.

The monitoring plan shall address:

(1) The monitoring objectives,

(2) Appropriate null and alternate test hypotheses,

(3) A statistically valid sampling design,

(4) All monitoring procedures and methods,

(5) A quality assurance/quality control program,

(6) A detailed discussion of how data will be used to meet, test and evaluate the monitoring objectives, and

(7) A summary of the results of previous environmental monitoring as they apply to the proposed program plan.

c. *Reporting and Data Submission Requirements.* The Permittee shall analyze the data and submit a draft report by within 180 days following the completion of sample collection. The report shall address the environmental monitoring objectives by using appropriate descriptive and analytical methods to test for and to describe any impacts of the effluent on sediment pollutant concentrations, sediment quality, water quality and/or the benthic community. The report shall include all relevant quality assurance/quality control (QA/QC) information, including but not limited to instrumentation, laboratory procedures, detection limits/ precision requirements of the applied analyses, and sample collection methodology.

EPA will review the draft report in accordance with the environmental monitoring objectives and evaluate it for compliance with the requirements of the permit. If revisions to the report are required, the Permittee shall complete them and submit the final report to EPA within two months of the Director's request. The Permittee will be required to correct, repeat and/or expand environmental monitoring programs which have not fulfilled the requirements of the permit.

d. *Modification of Monitoring Program.* The monitoring program may be modified if EPA determines that it is appropriate. The modified program may include changes in (1) sampling stations, (2) sampling times, and/or (3) parameters.

e. *Exemption.* Region 10 will grant an exemption to this requirement if the Permittee can satisfactorily demonstrate that information on the fate and effects of the discharge is available and/or the discharge will not have significant impacts on the area of biological significance. An exemption to post-drilling monitoring will be granted if no impact was indicated during drilling.

C. Deck Drainage (Discharge 002)

1. Effluent Limitations.

In addition to the restrictions set out in Parts III.A., III.C.2–4. and IV, the Permittee shall comply with the following effluent limitations and monitoring requirements.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported Values
Exploratory and Production Operations:				
Flow rate (MGD)	N/A	Monthly	Estimate	Monthly avg.
Free oil	No discharge	Daily, during discharge	Visual/Sheen on receiving water[1].	Number of days sheen observed.
Production Operations:				
Whole effluent toxicity[2]	N/A	Twice per year[3]	Part III.F.3.b.	TU_c[4].

[1] If discharge occurs during broken or unstable ice conditions, or during stable ice conditions, the sample type/method shall be ''Grab/Static Sheen Test.''

[2] Applies only to production platforms where deck drainage *is not* commingled with produced water discharges. Contaminated deck drainage shall be processed through an oil-water separator prior to discharge and samples for that portion of the deck drainage collected from the separator effluent and shall be sampled for WET testing. If deck drainage is mixed with produced water flow, then effluent limitations and monitoring requirements for produced water shall apply. (See Part III.F.).

[3] Once during the first significant rainfall (to capture first flush of surfaces after the dry season) and once during snowmelt.

[4] With final report for each test, the following shall also be reported: date and time of sample, the type of sample (i.e., rainfall or snowmelt), estimate of daily flow and basis for the estimate (e.g., turbine meters, monthly precipitation, estimated washdown).

2. Drains.

Area drains for either washdown or rainfall that may be contaminated with oil and grease shall be separated from those area drains that would not be contaminated. The contaminated deck drainage shall be processed through an oil-water separator prior to discharge and samples for that portion of the deck drainage collected from the separator effluent shall be tested for sheen.

3. Commingled Wastestreams.

Any deck drainage which is commingled with other wastes prior to discharge shall be subject at the point of discharge to the most stringent of the limitations on the individual effluents.

4. Monitoring Requirements.

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures are specified here or elsewhere in this permit. Representative sampling requirements are discussed in *Part III.A.*

D. Sanitary Wastes and Domestic Wastes (Discharges 003, 004)

1. Effluent Limitations

In addition to the restrictions set out in Parts III.A., III.D.2–3. and IV, the Permittee shall comply with the following effluent limitations and monitoring requirements.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported values
Sanitary and Domestic Wastes:				
Flow rate (MGD)		Monthly	Estimate	Monthly Average.
Floating solids [1]	No discharge	Daily	Observation [2]	Number of days solids observed.
Sanitary Wastes [3]:				
Total residual chlorine (TRC) [1 4 5].	As close as possible to, but no less than, 1 mg/l [6].	Weekly	Grab	Concentration in mg/l.
BOD (mg/l) [7]	60 mg/l 45 mg/l 30 mg/l	Weekly [8]	Grab	Daily Maximum. Weekly Average. Monthly Average.
SS (mg/l) [1 7]	SS_{intake} + 60 mg/l SS_{intake} + 45 mg/l SS_{intake} + 30 mg/l	Weekly [8]	Grab	Daily maximum. Weekly Average. Monthly Average.
MSDs (FC, SS, TRC) [9]		Twice/month	Grab	Estimated # persons aboard.[8]
Domestic Wastes:				
Foam	No discharge	Daily	Observation [10]	Number of days foam observed.

[1] Any facility using a marine sanitation device (MSD) that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed to be in compliance with these limitations until such time as the device is replaced or found not to comply with such standards and regulations. The MSD shall be tested yearly for proper operations and test results maintained at the facility.

[2] For state waters, permittee shall monitor by observing the surface of the receiving water in the vicinity of the outfall(s) during daylight at the time of maximum estimated discharge. For domestic waste, observations shall follow either the morning or midday meal.

[3] In cases where sanitary and domestic wastes are mixed prior to discharge, and sampling of the sanitary waste component stream is infeasible, the discharge may be sampled after mixing. In such cases, the discharge limitations for sanitary wastes shall apply to the mixed waste stream.

[4] Limit applies only to facilities continuously staffed by ten or more people.

[5] Limit applies to those facilities discharging a chlorinated treatment water in state or federal waters.

[6] If a mixing zone is not designated during the 401 certification, the TRC discharge limit will be changed to 2.0 µg/l (daily maximum) and 1.0 µg/l (monthly average) to reflect Alaska water quality standards; a fecal coliform limit of 43 FC/100 ml (daily maximum) and 14 FC/100 ml (monthly median) will also be added to the permit.

[7] The numeric limits for BOD and SS apply only to discharges to state waters. Influent samples shall be taken with the same frequency that effluent samples are taken. If enough water is taken on-board to create several days' supply for the sanitary system, then the SS value shall be reported as ''carried over'' from the date of intake and sampling.

When reported on DMRs, actual intake SS concentrations shall be labelled SS_{intake}. Actual effluent SS concentrations shall be labelled $SS_{effluent}$. Effluent limits for SS concentrations (SS_{limit}) shall be calculated as the sum of SS_{intake} plus 60, 45, or 30 mg/l to report daily maximum, weekly average, or 30 day maximum effluent concentrations, respectively.

[8] Based on weekly sampling and depending on the length of the calendar month, a total of 3–4 samples will be analyzed per month. The reported monthly average value shall be the average of all weekly samples taken during the month. Each weekly sample value will then be subject to both the daily maximum and weekly average criteria.

[9] Applies to facilities with MSDs only. Sample the effluent twice each month and report the following: date of sample, estimated number of persons aboard for 5 days preceding the sample, the number of FC/100 ml, TRC and SS.

[10] Monitoring by visual observation of the surface of the receiving water in the vicinity of the outfall(s) shall be done during daylight at a time of maximum estimated discharge.

2. Discharge Below Water Surface

Domestic and sanitary wastes shall be discharged below the water surface.

3. Monitoring Requirements

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures are specified here or elsewhere in this permit. Representative sampling requirements are discussed in Part II.B.

a. *Residual Chlorine.* Residual chlorine shall be monitored using a 40 CFR 136 method which obtains an MDL of at least 10 µg/l.

b. *Sanitary Wastes.* Sanitary waste grab samples shall be collected during periods of sanitary system peak flow.

E. Miscellaneous Discharges (Discharges 005–014)

1. Effluent Limitations

In addition to the restrictions set out in Parts III.A., III.E.2–4. and IV, the discharge of desalination unit wastes (005); blowout preventer fluid (006); boiler blowdown (007): fire control system test water (008); non-contact cooling water (009); uncontaminated ballast water (010); bilge water (011); excess cement slurry (012); mud, cuttings, cement at the seafloor (013); and waterflooding (014) shall comply with the following effluent limitations and monitoring requirements.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported values
All Miscellaneous:				
Flow (MGD)	N/A	Monthly	Estimate	Monthly average.
Blowout Preventer, Excess Cement Slurry, Waterflooding:				
Muds, Cuttings and Cement at Seafloor, Ballast, Bilge Free Oil.	No discharge	Once/discharge for discharges lasting < 24 hrs.	Visual/Sheen on receiving water [1].	Number or days sheen is observed.
		Once/24-hrs for discharges lasting < 24 hrs.		
Waterflooding, Non-Contact Cooling Water, Desalination Wastestreams:				
Chemical Inventory	N/A	Monthly	Part III.E.2.	Part III.E.2.

[1] For Uncontaminated Ballast Water (010) and Bilge Water (011) only: uncontaminated ballast and bilge water shall be processed through an oil-water separator prior to discharge. If discharge of bilge water occurs during broken, unstable, or stable ice conditions, the sample type/method used to determine compliance with the no free oil limitation shall be ''Grab Static Sheen Test'' (Appendix 1 to Subpart A of 40 CFR Part 435). For discharges above stable ice, below ice, to unstable or broken ice, a water temperature that approximates surface water temperatures after breakup shall be used.

2. Desalination Unit Wastes (005), Non-Contact Cooling Water (009) and Waterflooding (014)

The Permittee shall maintain an inventory of the quantities and application rates of chemicals (other than fresh or seawater) added to waterflooding, cooling water and desalination systems. The inventory(ies) shall be submitted with the monthly DMR.

3. Monitoring Requirement

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures are specified here or elsewhere in this permit. Representative sampling requirements are discussed in Part III.A.

F. Produced Water (Discharge 015)

1. Effluent Limitations

In addition to the restrictions set out in Parts III.A., III.F.2–3., IV, the Permittee shall comply with the following effluent limitations and monitoring requirements.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported values
Flow rate (MGD)	N/A	Daily	Estimate	Daily avg and monthly average.
Produced sands	No discharge.			
Oil and Grease:				
Phillips A/Tyonek	20 mg/l daily max	Weekly	Composite	Daily Maximum.
	15 mg/l monthly avg			Monthly Average.
All other facilities	42 mg/l daily max	Weekly	Composite	Daily Maximum.
	29 mg/l monthly avg			Monthly Average.
pH	6–9	Weekly	Grab	pH.
Copper:				
Granite Point	238 µg/l	Weekly	Grab	Daily Maximum.
AKG285101	119 µg/l			Monthly Average.
East Forelands	122 µg/l	Weekly	Grab	Daily Maximum.
	60.7 µg/l			Monthly Average.
Anna	189 µg/l	Weekly	Grab	Daily Maximum.
	94 µg/l			Monthly Average.
Dillon	244 µg/l	Weekly	Grab	Daily Maximum.
	121 µg/l			Monthly Average.
Phillips A/Tyonek	58 µg/l	Weekly	Grab	Daily Maximum.
	29 µg/l			Monthly Average.
Arsenic:				
East Forelands	1780 µg/l	Weekly	Grab	Daily Maximum.
	885 µg/l			Monthly Average.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported values
Baker	843 µg/l	Weekly	Grab	Daily Maximum.
	420 µg/l			Monthly Average.
Zinc:				
Baker	16,500 µg/l	Weekly	Grab	Daily Maximum.
	8,240 µg/l			Monthly Average.
Dillon	7,980 µg/l	Weekly	Grab	Daily Maximum.
	3,980 µg/l			Monthly Average.
Total Aromatic Hydrocarbons (TAH) [1]:				
Granite Point PF	38,800 µg/l	Weekly	Grab	Daily Maximum.
AKG285101	29,000 µg/l		Part III.F.3.a	Monthly Average.
Trading Bay	49,000 µg/l	Weekly	Grab	Daily Maximum .
	24,400 µg/l		Part III.F.3.a	Monthly Average.
East Forelands	37,600 µg/l	Weekly	Grab	Daily Maximum.
	18,800 µg/l		Part III.F.3.a	Monthly Average.
Anna	52,300 µg/l	Weekly	Grab	Daily Maximum.
	26,100 µg/l		Part III.F.3.a	Monthly Average.
Baker	54,100 µg/l	Weekly	Grab	Daily Maximum.
	27,000 µg/l		Part III.F.3.a	Monthly Average.
Bruce	182,000 µg/l	Weekly	Grab	Daily Maximum.
	90,500 µg/l		Part III.F.3.a	Monthly Average.
Dillon	36,100 µg/l	Weekly	Grab	Daily Maximum.
	18,000 µg/l		Part III.F.3.a	Monthly Average.
Phillips A/Tyonek	170 µg/l	Weekly	Grab	Daily Maximum.
	85 µg/l		Part III.F.3.a	Monthly Average.
Total Aqueous Hydrocarbons (TAqH) 11:				
Granite Point PF	58,200 µg/l	Weekly	Grab	Daily Maximum.
AKG285101	19,300 µg/l	Monthly	Part III.F.3.a	Monthly Average.
Trading Bay	73,500 µg/l	Weekly	Grab	Daily Maximum.
	36,600 µg/l	Monthly	Part III.F.3.a	Monthly Average.
East Forelands	56,400 µg/l	Weekly	Grab	Daily Maximum.
	28,100 µg/l	Monthly	Part III.F.3.a	Monthly average.
Anna	78,500 µg/l	Weekly	Grab	Daily Maximum.
	39,100 µg/l	Monthly	Part III.F.3.a	Monthly Average.
Baker	81,100 µg/l	Weekly	Grab	Daily Maximum.
	40,400 µg/l	Monthly	Part III.F.3.a	Monthly Average.
Bruce	272,000 µg/l	Weekly	Grab	Daily Maximum.
	136,000 µg/l	Monthly	Part III.F.3.a	Monthly Average.
Dillon	54,100 µg/l	Weekly	Grab	Daily Maximum.
	27,000 µg/l	Monthly	Part III.F.3.a	Monthly Average.
Phillips A/Tyonek	255 µg/l	Weekly	Grab	Daily Maximum.
	127 µg/l	Monthly	Part III.F.3.a	Monthly Average.
Whole Effluent Toxicity:				
Granite Point PF	43 TU_c	Monthly	Grab	Daily Maximum.
AKG285101	29 TU_c		Parts III.F.2., 3.b	Monthly Average Parts III.F.2., 3.b.
East Forelands	66 TU_c	Monthly	Grab	Daily Maximum.
	45 TU_c		Parts III.F.2., 3.b	Monthly Average Parts III.F.2., 3.b.
Anna	181 TU_c	Monthly	Grab	Daily Maximum.
	124 TU_c		Parts III.F.2., 3.b	Monthly Average Parts III.F.2., 3.b.
Baker	59 TU_c	Monthly	Grab	Daily Maximum.
	40 TU_c		Parts III.F.2., 3.b	Monthly Average Parts III.F.2., 3.b.
Bruce	135 TU_c	Monthly	Grab	Daily Maximum.
	92 TU_c		Parts III.F.2., 3.b	Monthly Average Parts III.F.2., 3.b.
Dillon	94 TU_c	Monthly	Grab	Daily Maximum.
	64 TU_c		Parts III.F.2., 3.b	Monthly Average Parts III.F.2., 3.b.
Phillips A/Tyonek	10 TU_c	Monthly	Grab	Daily Maximum.
	7 TU_c	Parts III.F.2., 3.b	Monthly Average	Parts III.F.2., 3.b.
Metals [2]	N/A	Monthly for one year	Part III.F.3.c.	

[1] Submittal of an annual report summarizing the concentrations of the individual TAH components (benzene, toluene, ethylbenzene and xylene isomers) and individual TAqH components is required.

[2] Monthly monitoring of total recoverable arsenic, cadmium, copper, lead, nickel, silver and zinc is required for one year. Because weekly effluent limitations for metals have not been imposed at Bruce and Trading Bay, monthly monitoring of each of the seven metals is required. The remainder of the facilities discharging produced water to Cook Inlet must submit monthly monitoring results for those metals not limited in the permit at that facility.

2. Commingled Wastestreams

If workover, completion, well treatment or test fluids are mixed with produced water, then all of the effluent limitations and requirements applied to produced water shall apply (*Part III.G.2*) and supersede limits for the separate wastestreams. Likewise, if deck drainage is commingled with produced water, then all of the effluent limitations and requirements applied to produced water shall apply (*Part III.C.1*) and supersede limits for the separate discharge of deck drainage.

If deck drainage, workover, completion, well treatment or test fluids are commingled with produced water, ''commingled'' shall be reported on the DMRs for *both* produced water *and* the wastestream mixed with it.

3. Monitoring Requirements

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures are specified here or elsewhere in this permit. Representative sampling requirements are discussed in *Part III.A*.

a. *Total Aromatic Hydrocarbons (TAH) and Total Aqueous Hydrocarbons (TAqH).* For analysis of TAH and TAqH, all analytical requirements cited in the Alaska Standards, 18 AAC 70.020(b) are applicable.

b. *Whole Effluent Toxicity.* Produced water samples shall be collected at least once per month. The Permittee shall conduct tests on grab effluent samples with one vertebrate and two invertebrate species, as follows:

Vertebrate (survival and growth): Inland silverside, *Menidia beryllina* Invertebrate: Atlantic myside *Mysidopsis bahia* (survival, growth and fecundity test) and one of the following two bivalve species tests: *Mytilis sp.* or *Crassostrea gigas* (larval development test, depending upon seasonal availability).

Results shall be reported in TUc, where TUc=100/NOEC.

The presence of chronic toxicity shall be estimated as specified in USEPA Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, Second Edition, EPA/600/4–90/003. For the bivalve species, chronic toxicity shall be estimated as specified in Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to West Coast Marine and Estuarine Organisms (Draft Chapman and Denton, 1995)

The following quality assurance procedures shall be followed:

A series of five dilutions and a control will be tested. The series shall include the instream waste concentration (IWC), two dilutions above the IWC, and two dilutions below the IWC. The IWC is the concentration of effluent at the edge of the mixing zone.

Concurrent testing with reference toxicants shall be conducted. If either of the reference toxicant tests or the effluent tests do not meet all test acceptability criteria as specified in the test methods manual, then the permittee must re-sample and re-test as soon as possible.

Control and dilution water should be receiving water, or salinity adjusted lab water. If the dilution water used is different from the culture water, a second control, using culture water shall also be used.

If chronic toxicity is detected above the permit limits, the permittee shall conduct four more tests, bi-weekly, over an eight-week period. In accordance with EPA/600/2–88/070, a toxicity reduction evaluation (TRE) must be initiated within fifteen days of the exceedance in order to expeditiously locate the source(s) of toxicity and evaluate the effectiveness of pollution control actions and/or inplant modifications toward attaining compliance. If chronic toxicity is detected in any of the four bi-weekly tests, the permittee shall initiate a toxicity identification evaluation (TIE) to identify the specific chemical(s) responsible for toxicity (EPA/600/6–91/005F (Phase I), EPA/600/R–92/080 (Phase II), and EPA–600/R–92/081 (Phase III)). If none of the four bi-weekly tests indicate toxicity above the permit limit, then the Permittee may return to the normal testing frequency *of once per month.*

c. *Metals.* The minimum detection level for arsenic must be 1 µg/l. For the remainder of the metals, method detection levels must be less than one-tenth the aquatic life criteria listed below:

Pollutant	Aquatic life chronic criteria (µg/l)
Cadmium	9.3
Copper	2.9
Lead	8.5
Nickel	8.3
Silver	2.3
Zinc	86

G. Completion Fluids, Workover Fluids, Well Treatment Fluids, and Test Fluids (Discharges 016–019)

1. Effluent Limitations

In addition to the restrictions set out in Parts III.A., III.G.2–3., IV, the Permittee shall comply with the following effluent limitations and monitoring requirements.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported values
All Wastestreams:				
Discharge frequency	N/A	Once/discharge[1]	Count	Type & total number of discharges.[1]
Flow rate (MGD)	N/A	Daily[1]	Estimate	Monthly average.
Oil-based fluids	No discharge	Included in free oil monitoring, below[2].		
Free oil[3]	No free oil	Once/discharge[1]	Grab/Static Sheen Test	Number of times sheen observed.
Oil and grease[3]	42 mg/l max. daily, 29 mg/l monthly avg.	Weekly	Composite	Daily max. and monthly average.
pH	6.5–8.5	Weekly	Grab	pH.
Treatment, Workover, Completion:				
Metals		Once per discharge[1]	Part III.G.2.a.	

[1] The type of discharge (i.e., completion, workover, treatment, test fluid, or any combination) shall be reported. Discharge of individual wastestreams shall reported separately from the discharge of commingled wastestreams.

[2] Discharge of oil-based fluids is prohibited.

[3] No free oil and oil and grease limits apply to each discharge, whether these wastestreams are discharged individually or are commingled. All fluids shall be processed through an oil-water separator prior to discharge. Samples shall be collected after the final step of treatment.

2. Commingled Wastestreams

If workover, completion, well treatment or test fluids are mixed with produced water, then all of the effluent limitations and requirements applied to produced water (*Part III.F.*) shall also apply to these wastestreams.

3. Monitoring Requirements

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures are specified here or elsewhere in this permit. Representative sampling requirements are discussed in *Part III.A.*

Metals. For each discharge of well treatment, completion or workover fluids which is characterized as an acid job (strong or weak, including but not limited to hydrochloric or hydrofluoric acid, EDTA), samples of effluent shall be taken for analyses of the following: cadmium, chromium, copper, lead, nickel and zinc. Analyses for total recoverable concentrations shall be conducted and reported for each metal.

H. Other Discharge Limitations

1. *Floating Solids, Visible Foam, or Oily Wastes.* There shall be no discharge of floating solids or visible foam in other than trace amounts, nor of oily wastes which produce a sheen on the surface of the receiving water.

2. *Surfactants, Dispersants, and Detergents.* The discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service. The discharge of dispersants to marine waters in response to oil or other hazardous spills is not authorized this permit.

3. *Applicable Marine Water Quality Criteria.* There shall be no discharge of any constituent in concentrations which results in an exceedence of applicable marine water quality criteria at the edge of any permitted mixing zone.

4. *Other Toxic and Non-conventional Compounds.* There shall be no discharge of diesel oil, halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate or sodium dichromate.

I. Best Management Practices Plan Requirement

1. *Implementation.* The Permittee shall develop and implement a Best Management Practices (BMP) Plan which achieves the objectives and the specific requirements listed below. The BMP Plan shall be implemented as soon as possible but no later than 7 days prior to initiation of discharges from the facility and from each well.

The Permittee shall certify that its BMP Plan is complete, on-site, and available upon request to EPA. This certification shall identify the well it pertains to by well name, well number, and the NPDES permit number and be signed by an authorized representative of the Permittee. The certification shall be submitted no later than the written notice of intent to commence discharge (*see* Parts I.A.3, I.B.3., and I.C.3.) and the Certification of Mud Plan (*see Part III.B.1.b.*).

2. *Purpose.* Through implementation of the BMP Plan the Permittee shall prevent or minimize the generation and the potential for the release of pollutants from the facility to the waters of the United States through normal operations and ancillary activities.

3. *Objectives.* The Permittee shall develop and amend the BMP Plan consistent with the following objectives for the control of pollutants.

a. The number and quantity of pollutants and the toxicity of effluent generated, discharged or potentially discharged at the facility shall be minimized by the Permittee to the extent feasible by managing each influent waste stream in the most appropriate manner.

b. Under the BMP Plan, and any Standard Operating Procedures (SOPs) included in the Plan, the Permittee shall ensure proper operation and maintenance of the treatment facility.

c. The Permittee shall establish specific objectives for the control of pollutants by conducting the following evaluations.

(1) Each facility component or system shall be examined for its waste minimization opportunities and its potential for causing a release of significant amounts of pollutants to waters of the United States due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc. The examination shall include all normal operations and ancillary activities including material storage areas, site runoff, in-plant transfer, process and material handling areas, loading or unloading operations, spillage or leaks, sludge and waste disposal, or drainage from raw material storage.

(2) Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of pollutants which could be discharged from the facility as a result of each condition or circumstance.

4. *Requirements.* The BMP Plan shall be consistent with the objectives in Part 3 above and the general guidance contained in the publication entitled ''Guidance Document for Developing Best Management Practices (BMP)'' (EPA Document Number EPA 833–B–93–004, U.S. EPA, 1993) or any subsequent revisions to the guidance document. The BMP Plan shall:

a. Be documented in narrative form, and shall include any necessary plot plans, drawings or maps, and shall be developed in accordance with good engineering practices. The BMP Plan shall be organized and written with the following structure:

(1) Name and location of the facility or operation (including identification by latitude/longitude).

(2) Statement of BMP policy.

(3) Description of the person(s) and/or staff position responsible for developing and overseeing implementation of the BMP Plan; and procedures for BMP approval.

(4) Specific management practices and standard operating procedures to achieve the above objectives, including, but not limited to, the following:

(a) modification of equipment, facilities, technology, processes, and procedures,

(b) reformulation or redesign of products,

(c) substitution of materials, and

(d) improvement in management, inventory control, materials handling or general operational phases of the facility.

(5) Risk identification and assessment.

(6) Reporting of BMP incidents.

(7) Materials compatibility.

(8) Good housekeeping.

(9) Preventative maintenance.

(10) Inspections and records.

(11) Security.

(12) Employee training.

b. Include the following provisions concerning BMP Plan review:

(1) Be reviewed by plant engineering staff and the plant manager as warranted by changes in the operation or at the facility which are covered by the BMP.

(2) Be reviewed and endorsed by the individuals responsible for development and implementation of the BMP Plan.

(3) Include a statement that the above reviews have been completed and that the BMP Plan fulfills the requirements set forth in this permit. The statement shall be certified by the dated signatures of the individuals responsible for development and implementation of the BMP Plan.

c. Establish specific best management practices to meet the objectives

identified in Part 3 this section, addressing each component or system capable of generating or causing a release of significant amounts of pollutants, and identifying specific preventative or remedial measures to be implemented.

d. Establish specific best management practices or other measures which ensure that the following specific requirements are met:

(1) Ensure proper management of solid and hazardous waste in accordance with regulations promulgated under the Resource Conservation and Recovery Act (RCRA) and the Alaska Solid Waste Management Regulations (18 AAC 60). Management practices required under RCRA regulations shall be referenced in the BMP Plan.

(2) Reflect requirements within Oil Spill Contingency Plans required by the Minerals Management Service (*see* 30 CFR 254). Permittees in state waters must also reflect the requirements within Oil Discharge Prevention and Contingency Plans as required by ADEC. Permittees may incorporate any part of such plans into the BMP Plan by reference.

(3) Reflect requirements for storm water control under Section 402(p) of the Act and the regulations at 40 CFR 122.26 and 122.44, and otherwise eliminate to the extent practicable, contamination of storm water runoff.

(4) Reflect the development and implementation of the Mud Plan (*see Part III.B.1.b.*) for the formulation and control of drilling mud systems.

5. *Documentation.* The Permittee shall maintain a copy of the BMP Plan at the facility and shall make the plan available to EPA upon request. All offices of the Permittee which are required to maintain a copy of the NPDES permit shall also maintain a copy of the BMP Plan.

6. *BMP Plan Modification.* The Permittee shall amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants or their release or potential release to the receiving waters. The Permittee shall also amend the Plan, as appropriate, when plant operations covered by the BMP Plan change. Any such changes to the BMP Plan shall be consistent with the objectives and specific requirements listed above. All changes in the BMP Plan shall be reviewed by the plant engineering staff and plant manager and shall be reported to EPA in writing.

7. *Modification for Ineffectiveness.* At any time, if the BMP Plan proves to be ineffective in achieving the general objective of preventing and minimizing the generation of pollutants and their release and potential release to the receiving waters and/or the specific requirements above, the permit and/or the BMP Plan shall be subject to modification to incorporate revised BMP requirements.

IV. Recording and Reporting Requirements

A. Reporting of Monitoring Results

The Permittee shall summarize monitoring results each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320–1). The Permittee shall submit reports monthly, postmarked by the 10th day of the following month. The Permittee shall sign and certify all DMRs, and all other reports, in accordance with the requirements of *Part VI.D.* of this permit (''*Signatory Requirements*'').

The Permittee shall submit the legible originals of these documents to the Director, Water Division, with copies to ADEC, at the following addresses:

United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD–135, Seattle, Washington 98101

Alaska Department of Environmental Conservation, Attn: Water Quality & Wastewater Programs, 411 W. 4th Ave., suite 2C, Anchorage, Alaska 99501.

B. Additional Monitoring by Permittee

If the Permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the Permittee shall include the results of this monitoring in the calculation and reporting of the data submitted in the DMR. The Permittee shall indicate on the DMR whenever it has performed additional monitoring, and shall explain why it performed such monitoring.

Upon request by the Director, the Permittee shall submit results of any other sampling, regardless of the test method used.

C. Records Contents

All effluent monitoring records shall bear the hand-written signature of the person who prepared them. In addition, all records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The names of the individual(s) who performed the sampling or measurements;

3. The date(s) analyses were performed;

4. The names of the individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

D. Retention of Records

The Permittee shall retain records of all monitoring information, including, but not limited to, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of DMRs, a copy of the NPDES permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended by request of the Director at any time.

A copy of the final permit shall be maintained at the drilling site.

E. Twenty-four Hour Notice of Noncompliance Reporting

1. The Permittee shall report the following occurrences of noncompliance by telephone within 24 hours from the time the Permittee becomes aware of the circumstances:

a. Any noncompliance that may endanger health or the environment;

b. Any unanticipated bypass that results in or contributes to an exceedance of any effluent limitation in the permit (*see Part V.G., ''Bypass of Treatment Facilities''*);

c. Any upset that results in or contributes to an exceedance of any effluent limitation in the permit (see *Part V.H., ''Upset Conditions''*); or

d. Any violation of a maximum daily discharge limitation for any of the pollutants listed in the permit .

2. The Permittee shall also provide a written submission within five days of the time that the Permittee becomes aware of any event required to be reported under subpart 1 above. The written submission shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected; and

d. Dteps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

e. The results of any monitoring data required under Paragraph III.C., above.

3. The Director may, at her or his sole discretion, waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the

Water Compliance Section in Seattle, Washington, by telephone, (206) 553–1846.

4. Reports shall be submitted to the addresses in *Part IV.A.* (*''Reporting of Monitoring Results''*).

F. Other Noncompliance Reporting

The Permittee shall report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring reports for *Part III.A.* are submitted. The reports shall contain the information listed in *Part IV.E.2.* of this permit.

G. Changes in Discharge of Toxic Substances

The Permittee shall notify the Director as soon as it knows, or has reason to believe:

1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur that would result in any discharge, on a non-routine or infrequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 µg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

V. Compliance Responsibilities

A. Duty to Comply

The Permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. The Permittee shall give reasonable advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions

1. *Civil and Administrative Penalties.* Sections 309(d) and 309(g) of the Act provide that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil or administrative penalty, not to exceed $25,000 per day for each violation.

2. Criminal Penalties:

a. *Negligent Violations.* Section 309(c)(1) of the Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. *Knowing Violations.* Section 309(c)(2) of the Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. *Knowing Endangerment.* Section 309(c)(3) of the Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person that is an organization shall be subject to a fine of not more than $1,000,000.

d. *False Statements.* Section 309(c)(4) of the Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

Except as provided in permit conditions in *Part V.G.,* (*''Bypass of Treatment Facilities''*) and *Part V.H.,* (*''Upset Conditions''*), nothing in this permit shall be construed to relieve the Permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of water and wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters, except as specifically authorized in Part II.

G. Bypass of Treatment Facilities

1. *Bypass not exceeding limitations.* The Permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.

2. Notice.

a. *Anticipated bypass.* If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. *Unanticipated bypass.* The Permittee shall submit notice of an unanticipated bypass as required under *Part IV.E.* (''*Twenty-four Hour Notice of Noncompliance Reporting*'').

3. Prohibition of bypass.

a. Bypass is prohibited, and the Director may take enforcement action against the Permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment shall have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The Permittee submitted notices as required under paragraph 2 of this Part.

b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this Part.

H. Upset Conditions

1. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the Permittee meets the requirements of paragraph 2 of this Part. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. *Demonstration of an upset.* To establish the affirmative defense of upset, the Permittee shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the Permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The Permittee submitted notice of the upset as required under *Part IV.E., Twenty-four Hour Notice of Noncompliance Reporting;* and

d. The Permittee complied with any remedial measures required under *Part V.D., Duty to Mitigate.*

3. Burden of proof. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

J. Planned Changes

The Permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under *Part IV.G.*

The Permittee shall give notice to the Director as soon as possible of any planned changes in process or chemical use whenever such change could significantly change the nature or increase the quantity of pollutants discharged.

K. Anticipated Noncompliance

The Permittee shall also give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

VI. General Provisions

A. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

B. Duty To Provide Information

The Permittee shall furnish to the Director, within the time specified in the request, any information that the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

C. Other Information

When the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to the Director, it shall promptly submit the omitted facts or corrected information.

D. Signatory Requirements

All applications, reports or information submitted to the Director shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director, and

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company.

3. *Changes to authorization.* If an authorization under *Part VI.D.2.* is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph *VI.D.2.* must be submitted to the Regional Administrator prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. *Certification.* Any person signing a document under this Part shall make the following certification:

''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who

manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.''

E. Availability of Reports

Except for data determined to be confidential under 40 CFR 2, all reports prepared in accordance with this permit shall be available for public inspection at the offices of the state water pollution control agency and the Director. As required by the Act, permit applications, permits, Best Management Practices Plans, Mud Plans, and effluent data shall not be considered confidential.

F. Inspection and Entry

The Permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

G. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject under Section 311 of the Act.

H. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

I. Severability

The provisions of this permit are severable. If any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

J. Transfers

This permit may be automatically transferred to a new Permittee if:

1. The current Permittee notifies the Director at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement between the existing and new Permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The Director does not notify the existing Permittee and the proposed new Permittee of his or her intent to modify, or revoke and reissue the permit.

If the notice described in paragraph 3 above is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.

K. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

L. Reopener Clause

1. This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act, as amended, if the effluent standard, limitation, or requirement so issued or approved:

a. Contains different conditions or is otherwise more stringent than any condition in the permit; or

b. Controls any pollutant or disposal method not addressed in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

2. This permit may be reopened to adjust any effluent limitations if future water quality studies, waste load allocation determinations, or changes in water quality standards show the need for different requirements.

VII. Definitions

1. ''AAS'' means atomic absorption spectrophotometry.

2. ''Acute toxic unit (TU_a)'' is a measure of acute toxicity. The number of acute toxic units in the effluent is calculated as 100/LC50, where the LC50 is measured in percent effluent.

3. ''ADEC'' means the Alaska Department of Environmental Conservation.

4. ''Average monthly discharge limitation'' means the highest allowable average of ''daily discharges'' over a calendar month, calculated as the sum of all ''daily discharges'' measured during a calendar month divided by the number of ''daily discharges'' measured during that month.

5. ''Ballast water'' means harbor or seawater added or removed to maintain the proper ballast floater level and ship draft.

6. ''bbl/hr'' means barrels per hour. One barrel equals 42 gallons.

7. ''Bilge water'' means water which collects in the lower internal parts of the drilling vessel hull.

8. ''Biocide'' means any chemical agent used for controlling the growth of or destroying nuisance organisms (e.g., bacteria, algae, and fungi).

9. ''Blowout preventer fluid'' means fluid used to actuate hydraulic equipment on the blowout preventer.

10. ''BOD'' means biochemical oxygen demand.

11. ''Boiler blowdown'' means the discharge of water and minerals drained from boiler drums.

12. ''Bulk discharge'' means the discharge of more than 100 barrels in a one-hour period.

13. ''Bypass'' means the intentional diversion of waste streams from any portion of a treatment facility.

14. ''Cd'' means cadmium.

15. ''Chronic toxic unit (TU_c)'' is a measure of chronic toxicity. The number of chronic toxic units in the effluent is calculated as 100/NOEC, where the NOEC is measured in percent effluent.

16. ''COD'' means chemical oxygen demand.

17. ''Completion fluid'' means salt solutions, weighted brines, polymers, and various additives used to prevent damage to the wellbore during operations which prepare the drilled well for hydrocarbon production.

18. ''Composite sample'' for oil and grease analysis means a set of four individual grab samples taken a minimum of two hours apart within a 24-hour period. The samples shall be of equal size and of not less than 100 ml each. They shall be collected and stored

in accordance with procedures in 40 CFR 136. Samples shall be analyzed separately and the results of the four analyses averaged to provide a single value for the composite sample.

19. ''Cooling water'' means once-through non-contact cooling water.

20. ''Daily discharge'' means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the ''daily discharge'' is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the ''daily discharge'' is calculated as the average measurement of the pollutant over the day.

21. ''Deck drainage'' means all waste resulting from platform washings, deck washings, spillage, rainwater, and runoff from curbs, gutters, and drains including drip pans and wash areas within facilities subject to this permit.

22. ''Desalination unit wastes'' means wastewater associated with the process of creating freshwater from seawater.

23. ''Development'' operations are those operations that are engaged in the drilling and completion of production wells. These operations may occur prior to or simultaneously with production operations.

24. ''Diesel oil'' means the grade of distillate fuel, as specified in the American Society for Testing and Materials Standard Specifications D975–81, that is typically used as the continuous phase in conventional oil-based drilling fluids, which contains a number of toxic pollutants. For the purpose of this permit, ''diesel oil'' includes the fuel oil present at the facility.

25. ''Director'' means the Regional Administrator or delegated authority for administration of the NPDES program in EPA, Region 10.

26. ''Domestic wastes'' means materials discharged from showers, sinks, safety showers, eye-wash stations, hand-wash stations, fish-cleaning stations, galleys and laundries.

27. ''Drill cuttings'' means particles generated by drilling into subsurface geological formations and carried to the surface with the drilling fluid.

28. ''Drilling fluid'' means the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. A water-based drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspended medium for solids, whether or not oil is present. See also ''oil-based drilling mud'', below.

29. ''Drilling Fluids Toxicity Test'' means a toxicity test conducted and reported in accordance the following approved toxicity test methodology: ''Drilling Fluids Toxicity Test,'' as defined in Appendix 2 to Subpart A of 40 CFR 435, or other methods approved in advance by Region 10 that produce results which will assure equivalent protection levels.

30. ''Drilling mud'' means any fluid sent down the hole, including any specialty products, from the time a well is begun until final cessation of drilling in that hole. It also includes fluids used in workover operations involving drilling. A water-base drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspending medium for solids, whether or not oil is present. For the purposes of this permit, an oil-based drilling fluid has a petroleum-based hydrocarbon oil as its continuous phase with water as the dispersed phase. See ''oil-based drilling mud'', below.

31. ''Excess cement slurry'' means the excess cement and wastes from equipment washdown after a cementing operation.

32. ''Exploratory'' operations are limited to those operations involving drilling to determine the nature of potential hydrocarbon reserves and does not include drilling of wells once a hydrocarbon reserve has been defined. Discharges from exploratory operations are limited to five wells per site.

33. ''Fire control system test water'' means the water released during the training of personnel in fire protection and the testing and maintenance of fire protection equipment.

34. ''GC'' means gas chromatography. ''GC/MS'' means gas chromatography/mass spectrometry.

35. A ''Grab'' sample is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.

36. ''Hg'' means mercury.

37. ''lb/bbl'' means pounds per barrel.

38. ''LC_{50}'' means the concentration of effluent that is acutely toxic to 50 percent of the test organisms exposed.

39. ''Maximum daily discharge limitation'' means the highest allowable ''daily discharge.''

40. ''Maximum hourly rate'' as applied to drilling mud, cuttings, and washwater means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

41. ''Method Detection Limit (MDL)'' means the minimum concentration of an analyte that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero as determined by a specific laboratory method.

42. ''MGD'' means million gallons per day.

43. ''mg/kg'' means milligrams per kilogram.

44. ''mg/l'' means milligrams per liter.

45. ''Mineral oil'' means a class of low volatility petroleum product, generally of lower aromatic hydrocarbon content and lower toxicity than diesel oil.

46. ''Mineral oil pills'' (also called mineral oil spots) are formulated and circulated in the mud system as a slug in attempt to free stuck pipe. Pills generally consist of two parts: a spotting compound and mineral oil.

47. ''Minimum daily'' discharge limitation means the lowest allowable ''daily discharge.

48. ''Monitoring month'' means the period consisting of the calendar weeks which end in a given calendar month.

49. ''Monthly average'' means the average of ''daily discharges'' over a monitoring month, calculated as the sum of all ''daily discharges'' measured during a monitoring month divided by the number of ''daily discharges'' measured during that month.

50. ''MSD'' means marine sanitation device.

51. ''Muds, cuttings, cement at sea floor'' means the materials discharged at the surface of the ocean floor in the early phases of drilling operations, before the well casing is set, and during well abandonment and plugging.

52. ''NAA'' means neutron activation analysis.

53. ''No discharge of free oil'' means that waste streams may not be discharged when they would cause a film or sheen upon or a discoloration of the surface of the receiving water or fail the static sheen test defined in Appendix 1 to 40 CFR 435, Subpart A.

54. ''No discharge of diesel oil'' in drilling mud means a determination that diesel oil is not present based on a comparison of the gas chromatogram from an extract of the drilling mud and from diesel oil obtained from the drilling rig or platform. GC/MS may also be used.

55. ''NOEC'' means no observable effect concentration. The NOEC is the highest tested concentration of an effluent at which no adverse effects are observed on the test organisms at a specific time of observation.

56. ''Non-contact cooling water''—see ''cooling water.''

57. ''Oil-based drilling mud'' means a drilling mud with fossil-derived petroleum hydrocarbons as the continuous phase.

58. ''Open water'' means less than 25 percent ice coverage within a one mile radius of the discharge site.

59. ''Produced solids'' means sands and other solids deposited from produced water which collect in vessels and lines and which must be removed to maintain adequate vessel and line capacities

60. ''Produced water'' means fluid extracted from a hydrocarbon reserve during development or production. The fluid is generally a mixture of oil, water, and natural gas. This may include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

61. ''Production'' operations are those operations involving active recovery of hydrocarbons from production formations. These operations may occur simultaneously with or following development operations.

62. ''Sanitary wastes'' means human body waste discharged from toilets and urinals.

63. ''Severe property damage'' means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

64. ''Site'' means the single, specific geographical location where a mobile drilling facility (jackup rig, semi-submersible, or arctic mobile rig) conducts its activity, including the area beneath the facility, or to a location of a single gravel island.

65. ''Slush ice'' occurs during the initial stage of ice formation when unconsolidated individual ice crystals (frazil) form a slush layer at the surface of the water column.

66. ''Stable ice'' means ice that is stable enough to support discharged muds and cuttings.

67. ''Static Sheen Test'' means the standard test procedures that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in Appendix 1 to Subpart A of 40 CFR 435.

68. ''Test fluid'' means the discharge which would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content. This would consist of fluids sent downhole during testing along with water from the formation.

69. ''TOC'' means total organic carbon.

70. A ''24-hour composite'' sample shall mean a flow-proportioned mixture of not less than 8 discrete aliquots. Each aliquot shall be a grab sample of not less than 100 ml and shall be collected and stored in accordance with procedures prescribed in the most recent edition of *Standard Methods for the Examination of Water and Wastewater.*

71. ''Unstable or broken ice conditions'' means greater than 25% ice coverage within a one mile radius of the discharge site after spring breakup or after the start of slush ice formation in the fall, but not stable ice.

72. ''Upset'' means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

73. ''Waste stream'' means any non-de minimus stream of pollutants within the Permittee's facility that enters any permitted outfall or navigable waters. This includes spills and other unintentional, non-routine or unanticipated discharges.

74. ''Waterflooding discharges'' means discharges associated with the treatment of seawater prior to its injection into a hydrocarbon-bearing formation to improve the flow of hydrocarbons from production wells. These discharges include strainer and filter backwash water, and treated water in excess of that required for injection.

75. ''Weekly average'' means the average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week. For fecal coliform bacteria, the weekly average is calculated as the geometric mean of all daily discharges measured during a calendar week.

76. ''Well completion fluids'' are salt solutions, weighted brines, polymers and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production. These fluids move into the formation and return to the surface as a slug with the produced water.

77. A ''well treatment fluid'' is any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon bearing strata after a well has been drilled.

78. ''Workover fluids'' are salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow for maintenance, repair of abandonment procedures. Drilling fluids used during workover operations are not considered workover fluids by definition. Packer fluids (low solid fluids between the packer, production string, and well casing) are considered to be workover fluids.

79. ''XFA'' means x-ray fluorescence analysis.

80. ''96-hour LC50'' means the concentration of a test material that is lethal to 50 percent of the test organisms in a toxicity test after 96 hours of constant exposure.

81. ''µg/l'' means micrograms per liter.

BILLING CODE 6560–50–P

Figure 2

No Discharge Zone in Lower Cook Inlet and Shelikof Strait for Oil and Gas Exploration, Development, and Production Operations

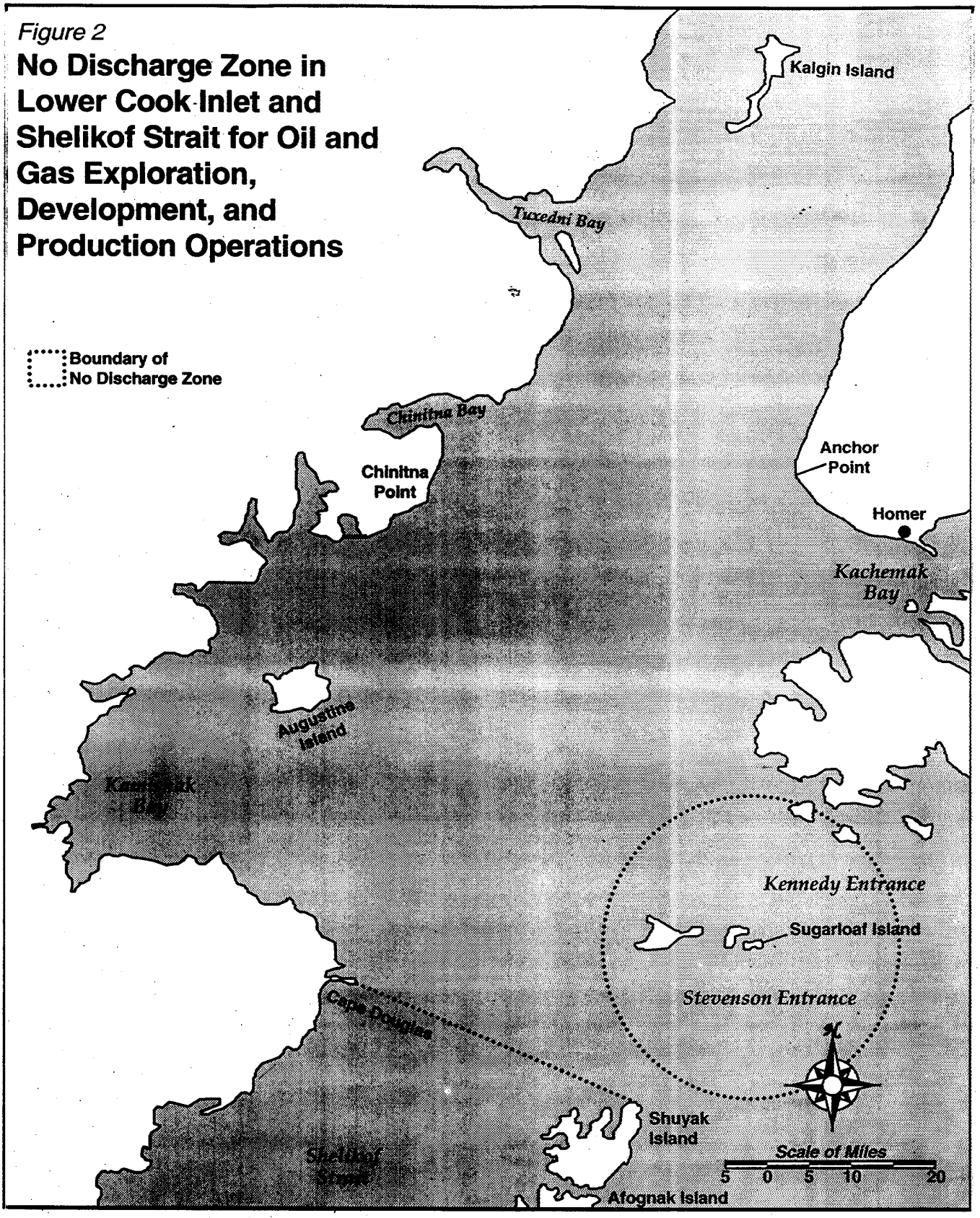
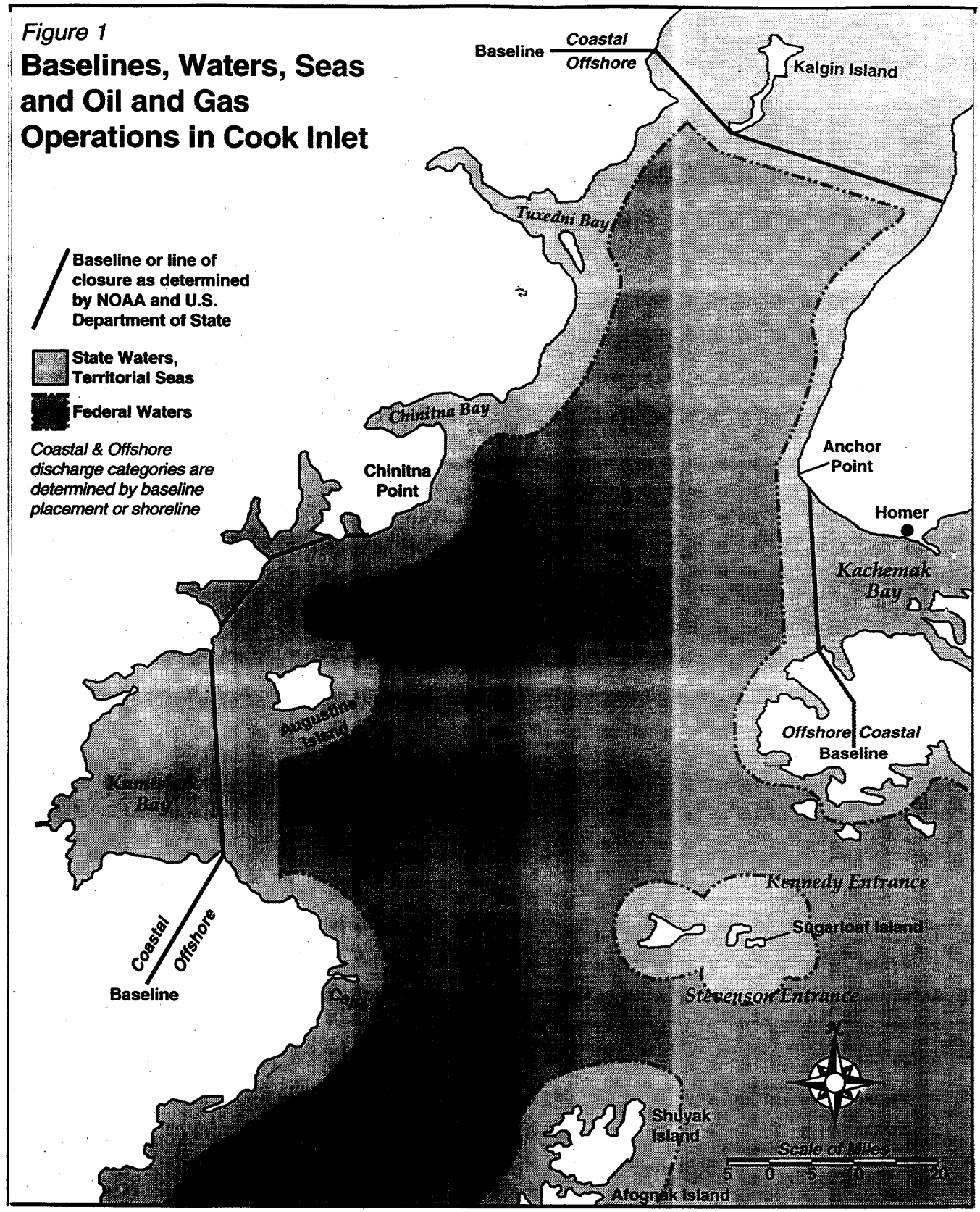


Figure 1



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[FR Doc. 95–23207 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday
September 20, 1995

Part VI

Department of Education

34 CFR Part 75
Direct Grant Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1880–AA61

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) governing the deadline date for submitting discretionary grant award applications and the selection of applications for new grants. These amendments are in response to a National Performance Review recommendation to streamline and improve the Department of Education's discretionary grants award process. The amendments would change the way the Department interprets the deadline date for receipt of discretionary grant applications and also expand the bases for rejecting applications for new grants to include consideration of a recipient's previous performance under any Department of Education grant program as well as its failure to submit a final performance report or its submission of a report of unacceptable quality. These amendments are expected to reduce the processing time of discretionary grants, provide at least as much time for applicants to prepare their applications as they have now, improve the quality of final performance reports and increase the ability of the Department to ensure that qualified applicants receive grants.

DATES: Comments must be received on or before November 20, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mary P. Liggett, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3636, ROB–3, Washington, D.C. 20202–4700. Comments may also be sent through Internet to Dead__Line@ed.gov.

FOR FURTHER INFORMATION CONTACT: Ronelle Holloman, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3636, ROB–3, Washington, D.C. 20202–4700. Telephone: (202) 205–3501. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In December 1993 the National Performance Review (NPR) issued its Accompanying Report for the Department of Education. The Accompanying Report included recommendations to streamline and improve the Department of Education's discretionary grants award process. One of the areas identified as a concern was the grant application review process. The discretionary grants process, including proposal preparation time, takes approximately 26 weeks. Of these 26 weeks, six to eight weeks are allowed for the grant applicant to develop a proposal. The remaining time is used by the Department to process and award discretionary grants. Under the current rule, applications must be postmarked or hand delivered to the Department by the deadline date. The NPR recommended the Department change this rule so that all applications must be received in the Department by the deadline date, as is already the case for contract proposals, unless certain circumstances exist.

Consistent with the governmentwide requirement for contracts, there will be certain reasonable exceptions to this standard. For instance, under this proposed regulation, a grant application may be accepted after the deadline if it carries a legible proof-of-mailing date assigned by the U.S. Postal Service or a commercial carrier, which shows the application was mailed not later than the fifth calendar day (for applications sent by mail) or the second calendar day (for applications sent by commercial carrier) before the date specified for receipt of applications.

The new regulation would require an applicant to send its application by mail or commercial carrier to the Department earlier than is now required. However, the Department would add the review time saved by the new procedures to the time that applicants have to prepare applications by increasing the time between publication of the program announcement and the deadline date.

The NPR report also identified the failure to receive final performance reports once Federal funds are spent as a priority issue to be addressed in the grant process. The final performance report is due within 90 days after the completion of a grant and provides the Department the opportunity to review a project in its entirety for its strengths and accomplishments. Additionally, the final step in managing a grant, 'grant closeout,' cannot begin without the final report. The Department begins to officially close out a grant after the expiration or termination of the grant. During closeout, the Department determines whether all required work of a grant project has been completed and Federal funds have been properly accounted for. In addition to providing the Department with conclusive information about the achievements of a project, these missing performance reports contain valuable information on ways to raise education standards and further improve education. These reports, if received, could be disseminated and successful project activities replicated.

The recommendation of the NPR is to amend the regulations to allow the Secretary of Education, when making future funding decisions, to consider a recipient's past performance under any Department program, including the failure to submit a final performance report or the submission of a report of unacceptable quality. Currently, the Department can only consider an applicant's performance under the program from which it is seeking a new grant. Therefore, a recipient could, under the Department's current regulations, misuse Federal monies or perform poorly under one program, and still be considered for funding under another program.

So that the proposed regulations do not impede the Department's goal of awarding timely FY 1995 discretionary grants, they would not take effect until FY 1996 competitions.

Executive Order 12866

Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Department's programs effectively and efficiently. As stated under the heading Paperwork Reduction Act of 1995 in this preamble, this proposed rule contains no paperwork burdens.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential

costs or increase potential benefits resulting from these proposed regulations.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. For the most part these revisions are adopted to streamline and improve the discretionary grant process. The proposed revisions would not have a significant economic impact on the entities affected.

Paperwork Reduction Act of 1995

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3636, Regional Office Building No. 3, Seventh and D Streets S.W., Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 75

Education department, Discretionary grant programs—education, Continuation funding, Grant administration, Incorporation by reference, Reporting and recordkeeping requirements, Performance reports, Unobligated funds.

Dated: July 20, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary proposes to amend part 75 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Section 75.102 is amended by revising paragraphs (a) and (b) and adding new paragraph (c), to read as follows:

§ 75.102 Deadline date for applications.

(a) The application notice for a program sets a deadline date for applications to be received in the Department.

(b) (1) The Department of Education only accepts a direct grant application if it is received on or before the deadline date unless one of the exceptions in paragraph (c) of this section applies.

(2) If an applicant hand delivers a direct grant application to the Department, the applicant shall deliver the application to the address specified in the application notice by 2:00 p.m. (Washington, D.C., time) on the deadline date.

(c) The Department accepts a direct grant application received after the deadline date only if—

(1) The applicant can show proof that the application was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., if an announcement requires receipt of applications by the 20th of the month, the late application must have been mailed by the 15th); or

(2) The applicant can show proof that the application was sent by commercial carrier not later than the second calendar day before the date specified for receipt of applications (e.g., if an announcement requires receipt of applications by the 20th of the month, the late application must have been sent by the 18th).

* * * * *

3. Section 75.103 is amended by revising paragraph (b) to read as follows:

§ 75.103 Deadline date for preapplications.

* * * * *

(b) An applicant shall submit its preapplication in accordance with the procedures for applications in § 75.102 (b), (c), and (d).

* * * * *

4. Section 75.158 is amended by revising paragraph (c) to read as follows:

§ 75.158 Deadlines for State comments.

* * * * *

(c) The appropriate State official shall submit comments to the Secretary by the deadline date for State comments. The procedures in § 75.102 (b), (c), and (d) (how to meet a deadline) of this part apply to this submission.

* * * * *

5. Section 75.217 is amended by revising paragraph (d)(3) to read as follows:

§ 75.217 How the Secretary selects applications for new grants.

* * * * *

(d) * * *

(3) Any other information—

(i) Relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants;

(ii) Concerning the applicant's performance and use of funds under a previous award under any Department program; and

(iii) Concerning the applicant's failure under any Department program to submit a performance report or submission of a performance report of unacceptable quality.

* * * * *

[FR Doc. 95–23301 Filed 9–19–95; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday
September 20, 1995

Part VII

Department of Education

34 CFR Part 685

William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC19

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes to amend provisions of the income contingent repayment plan under the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The Secretary is amending these provisions to provide benefits to borrowers and protect the taxpayers' interests.

DATES: Comments on the proposed regulations must be received on or before October 31, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Rachel Edelstein, U.S. Department of Education, P.O. Box 23272, Washington, D.C. 20026–3272. Comments may also be sent via the internet to: direct ____ loans@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Edelstein, telephone: (202) 708–9406. (Internet address: direct __loans@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1994, the Secretary published final regulations that included provisions for the income contingent repayment plan during Year One of the Direct Loan Program. The Higher Education Act of 1965, as amended (HEA), directed the Secretary, to the extent practicable, to develop proposed rules for the Direct Loan Program through a negotiated rulemaking process for the second and subsequent years of the program (1995–1996 and beyond). Therefore, following negotiated rulemaking, the Secretary published a Notice of Proposed Rulemaking on August 18, 1994, and final regulations on December 1, 1994, both of which included new provisions for the income contingent repayment plan of the Direct Loan Program. On December 22, 1994, the Secretary published regulations that revised the July 1, 1994, regulations to provide that provisions for income contingent repayment would be identical for Year One and Year Two of the Direct Loan Program. After a year of administering the Direct Loan Program, the Secretary proposes to make improvements to the existing income contingent repayment plan.

Provisions Proposed

These proposed regulations include policies and procedures that would apply to borrowers who initially select the income contingent repayment plan under the Director Loan Program when they enter repayment on or after July 1, 1996 and borrowers who switch into the income contingent repayment on or after July 1, 1996. To improve the existing income contingent repayment plan, the Secretary proposes the following: To revise the income contingent repayment formula so that payments will increase more significantly as debt increases than under the current formula; to eliminate the minimum payment amount currently allowed under regulations so that more borrowers will be in the habit of repaying regularly; to alter the treatment of married borrowers when calculating the repayment amount by always including the income of the borrower and the borrower's spouse so that the Secretary may more accurately assess the married borrower's ability to repay; and to require alternative documentation of income for most borrowers in their first and second years of repayment, because, for most of these borrowers, the previous year's adjusted gross income (AGI) will not accurately reflect current income.

Summary of Contents

Revised Repayment Formula

After administering the current income contingent loan repayment plan, the Secretary is proposing several ways to improve the repayment formula. The Statement of Managers language included in the Conference Report on the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) stated that payments should generally be directly proportional to the amount borrowed in order to discourage over-borrowing. The current income contingent repayment plan increases borrowers' payments by only 0.2 percent of income per $1,000 borrowed; therefore, increased borrowing affects monthly repayment amounts only negligibly. For example, a student who has borrowed $5,000 could continue to borrow until his or her loan balance reaches almost six times that amount ($29,000) before the repayment amount doubles, and almost 11 times that amount ($53,000) before the repayment amount triples. Because payments do not increase significantly with the amount borrowed, the Secretary believes the current income contingent repayment plan may encourage over-borrowing.

Under the proposed formula, borrowers' payments would equal the 12-year amortization repayment amount for their outstanding loans multiplied by an income percentage factor that varies with annual income; however, borrowers would never pay more than 20 percent of their discretionary income. Discretionary income for single borrowers and single head of household borrowers is defined as adjusted gross income (AGI) minus $7,087; discretionary income for married borrowers is AGI minus $8,517. Therefore, under the revised formula, no payment will be required of single borrowers or single head of household borrowers with incomes of $7,087 or less, and no payments will be required of married borrowers with income of $8,517 or less. The Secretary believes that the threshold income levels discussed above are reasonable measures for determining discretionary income.

Except for the protection that borrowers never pay more than 20 percent of their discretionary income under the proposed formula, the formula increases payment amounts directly in proportion to the amount borrowed. Therefore, payments required under the proposed formula increase more significantly in relation to amounts borrowed than under the current formula, and this proposed plan is more likely to discourage over-borrowing than the current plan.

Under the current formula, payments are a flat percentage of income for any given debt. Thus, as annual income rises from $10,000 to $100,000, the expected repayment amount increases by a factor of 10. This variance is too wide and results in a plan that is not useful for many borrowers because the monthly repayment amount is too large for higher income borrowers. The Secretary believes that it would be more

appropriate to structure a plan so that, for any given debt level, the highest repayment amounts should be no more than four times the lowest payments for most borrowers.

Because the new formula uses a factor relative to income and takes debt into greater consideration, payments are no longer a flat percentage of income. Under the proposed plan, while payments increase significantly in relation to amounts borrowed, the highest repayment amount at any debt level is no more than four times the lowest payment for that debt level. Limiting the variance in repayment amounts results in some borrowers at higher income levels repaying a smaller percentage of total income than borrowers at lower income levels with the same level of debt; however, the borrowers with higher income levels will make larger monthly payments than the borrowers with lower income levels. The income percentage factors ensure that payments increase with income, that borrowers pay what they can afford to pay, and that borrowers repay their loans within a reasonable period of time.

Under the existing income contingent repayment plan, borrowers choose between two repayment formulas. The choice of two repayment calculation options may have confused borrowers. In addition, under one of these options, the ''capped amount,'' borrowers repay under an income contingent repayment plan that does not take income into account. Under the proposed plan, there is only one repayment formula. This change would reduce borrower confusion and simplify administration of the income contingent repayment plan.

In addition to the improvements listed above, for many low- to middle-income borrowers the proposed formula plan offers lower monthly payment amounts. For borrowers with annual incomes between $15,000 and $35,000 and average levels of debt, the revised repayment formula offers lower monthly repayment amounts than the current plan. However, the proposed formula does not significantly increase the number of borrowers who have not paid in full after 25 years. In fact, for medium- and high-income borrowers, who represent 75 percent of total borrowers, the percentage who repay within 25 years increases.

Finally, the current plan has been criticized for allowing borrowers to make monthly payments that are less than interest accrued (that is, borrowers may go into negative amortization). Recognizing that borrowers cannot always afford to make payments to cover interest, the Secretary also understands the importance of avoiding negative amortization whenever possible. Under the proposed plan, the overall percentage of borrowers who experience a period of negative amortization is expected to decrease slightly.

Examples of the calculation of monthly repayment amounts, together with tables showing the repayment amounts for borrowers at various income and debt levels, are included in Appendix A to the regulations.

Minimum Payments

Under the current plan, borrowers with a calculated monthly payment below $15 are not required to make any payment. The Secretary proposes to change this provision. Instead, all borrowers with a calculated repayment amount greater than zero would be required to make payments. Further, the Secretary proposes requiring borrowers with a calculated repayment amount that is at least 1 cent but less than $2.00 to make a two dollar payment. The Secretary believes that removing the minimum payment threshold promotes responsible repayment practices. Even if borrowers are required to repay only a small amount each month, this requirement will ensure that borrowers are in the habit of repaying and remain in contact with the Direct Loan Servicing Center. Under this approach, borrowers with very low incomes may still have a calculated monthly payment of zero.

The Secretary also requests comments on establishing a policy whereby borrowers who are repaying under the income contingent repayment plan (and who are not in deferment or forbearance) would always make a monthly payment, even if their calculated monthly repayment amount is $0. The Secretary solicits comments and supporting arguments on whether requiring monthly payments of all borrowers would promote responsible repayment practices and help to prevent defaults. The Secretary also solicits comments and supporting evidence about what an appropriate minimum repayment level would be, if one were to be required.

Treatment of Married Borrowers

Under the current regulations, a married borrower who files a Federal income tax return separately from his or her spouse is not required to provide any income information concerning his or her spouse (unless the spouses are repaying their loans jointly). The Secretary has determined that this policy may prevent an accurate assessment of the borrower's ability to repay the loan and may allow for uneven treatment of married borrowers, depending upon whether they file their income tax separately or jointly. Section 455(e)(3) of the HEA provides the Secretary with the authority to obtain additional information concerning a borrower's income when AGI does not reasonably reflect the borrower's income. Therefore, in order to assess accurately the borrower's ability to repay, the Secretary proposes requiring married borrowers who do not file joint tax returns with their spouses and who choose to repay under the income contingent repayment plan to obtain a consent to disclosure of tax information from their spouses. This policy will ensure that the Secretary obtains the AGI of both the borrower and the borrower's spouse; the couple's joint AGI will be used to calculate the borrower's repayment amount. However, the Secretary would not require a spouse's tax return information if the spouses are legally separated.

In addition, under the current regulations, for married borrowers who each have loans and who choose to repay their loans jointly under the income contingent repayment plan, the Secretary assumes that the AGI for each married borrower is proportionate to the relative size of the borrower's individual debt. The Secretary proposes to eliminate the assumption that the AGI for each married borrower is proportionate to debt in order to assess more accurately borrowers' ability to repay. Under the proposed repayment formula, the repayment amounts for married borrowers who repay jointly are based on their combined AGIs and their combined debts. A step-by-step calculation of a combined amount is included as Example 2 in Appendix A.

Married borrowers who each have outstanding balances on Direct Loans are not required to repay their loans jointly. However, even if only one borrower chooses to repay under the income contingent repayment plan, the Secretary will use the AGI of both spouses to determine the payback rate of the borrower who is repaying under the income contingent repayment plan.

Cohort of Borrowers Affected by New Plan

When these regulations become effective, this new formula will apply to borrowers who select the income contingent repayment plan when they enter repayment and to borrowers who are in other repayment plans and switch into the income contingent repayment plan on or after July 1, 1996. Borrowers

who are already in repayment under the income contingent repayment plan will continue under the current formula, although they will be given the option of converting to the new formula.

Borrowers in Their First and Second Years of Repayment

The Secretary proposes requiring borrowers who are in their first and second years of repayment and who are repaying under the income contingent repayment plan to submit alternative documentation of their income (that is, other than IRS-reported AGI) to the Secretary, when, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income. Under current regulations, the previous year's IRS-reported AGI is used to calculate the monthly payment amount for all borrowers. However, borrowers in their first year of repayment have recently left school, and their incomes while in school were likely lower than their incomes after leaving school. Therefore, if these borrowers filed taxes while they were in school, the AGI representing the year prior to the year they entered repayment would not, in most cases, reflect their current income and their current ability to repay their loans. In addition, borrowers may need some time to find their first job after graduation. Therefore, the AGI the secretary would obtain for the borrower's second year of repayment still might not reflect current income. As discussed above, the HEA provides the Secretary with the authority to obtain additional information concerning a borrower's income when the AGI does not reasonably reflect the borrower's income (see section 455(e)(3) of the HEA). The Secretary believes that, for the majority of borrowers, the AGI will not accurately reflect a borrower's income or ability to repay during the first and second years of repayment. Therefore, the Secretary proposes to request alternative documentation of income from these borrowers under the statutory authority provided in the HEA, when, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this proposed regulatory action.

The plan does not impose unacceptable new costs; it would increase costs of the Federal Government by an estimated $145 million over 5 years. This increase in costs represents only a 2 percent increase in overall program costs. Costs increase under this proposed plan because low-income borrowers make lower payments than under the current formula and some do not fully repay; in addition, high-income high-debt borrowers repay their loans more quickly than under the current formula and, therefore, pay less in interest. Although not reflected in the cost estimate, this proposal may actually reduce long-term costs because under the income contingent repayment plan, defaults may decrease. Defaults may decrease because payments will be more affordable under the income contingent repayment plan than under other available repayment plans. The Secretary has determined that the potential costs associated with the proposed regulations are necessary for administering the income contingent repayment plan effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are explained elsewhere in the preamble under the heading of Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs. A further discussion of the benefits and costs of the proposed regulations is contained in the summary of the provisions proposed.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the title IV, HEA programs.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 685.209 *Income Contingent Repayment Plan.*) (4) Is the description of the proposed regulations in the ''Supplementary Information'' section of this preamble helpful in the understanding of the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW., (Room 5442 FOB–10), Washington, DC. 20202–2110.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The regulations will affect borrowers who are in repayment. They will not have a significant economic impact on any small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

Section 685.209 contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information

Income Contingent Repayment Plan Consent to Disclosure of Tax Information form from spouses of married borrowers who file separately and select the income contingent repayment plan and collection of alternative documentation of income from borrowers in their first and second years of repayment, when in the opinion of the Secretary, AGI does not reasonably reflect a borrower's current income.

Married Borrowers

Under the current regulations, a married borrower who is not repaying jointly with his or her spouse is not required to provide any income information concerning his or her spouse unless the couple files their taxes jointly. The Secretary proposes requiring all spouses of married borrowers who choose to repay under income contingent repayment to complete the Income Contingent Repayment Plan Consent to Disclosure of Tax Information form. This policy will ensure that the Secretary obtains the AGI of both the borrower and the borrower's spouse and will enable to the Secretary to assess more accurately a borrower's ability to repay.

First and Second Year Borrowers

The Secretary proposes requiring borrowers who are in their first and second years of repayment and who are repaying under the Income Contingent Repayment Plan to complete the Income Contingent Repayment Plan Request of Alternative Documentation of Income Form when, in the Secretary's opinion, AGI does not reasonably reflect the borrower's current income.

Spouses of married borrowers would be required to provide consent to tax disclosure only once every five years. The Secretary estimates that all first and most second year borrowers would be required to provide alternative documentation of income annually, while in the first two years of repayment.

Annual public reporting burden for this collection of information is estimated to average .32 hours for each of the estimated 230,288 individuals providing information regarding Income Contingent Repayment Information (total annual reporting burden equals 73,692 hours).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4624, Regional Office Building 3, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: September 13, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.268, William D. Ford Federal Direct Loan Program)

The Secretary proposes to amend Part 685 of Title 34 of the Code of Federal Regulations as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*

2. Section 685.209 is amended by revising paragraphs (a) and (b); removing paragraph (c) and redesignating paragraph (d) as paragraph (c); in newly designated paragraph (c), redesignating paragraphs (c)(2) through (5) as (c)(4) through (7), respectively; and adding new paragraphs (c)(2) and (c)(3) to read as follows:

§ 685.209 Income contingent repayment plan.

(a) *Repayment amount calculation.* (1) The amount the borrower would repay is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment, and this basis for calculation does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (b)(2) of this section. If the borrower obtains another Direct Loan, the amount the borrower would repay is based on the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower's spouse repay the loans jointly, the amount the borrowers would repay is based on both borrowers' Direct Loan debt at the time they enter joint repayment.

(2) The annual amount payable under the income contingent repayment plan by a borrower is the lesser of—

(i) The amount the borrower would repay annually over 12 years using standard amortization multiplied by an income percentage factor that corresponds to the borrower's adjusted gross income (AGI) as shown in the income percentage factor table in Appendix A; or

(ii) 20 percent of discretionary income.

(3) For purposes of this section, *discretionary income* is AGI minus—

(i) For a single borrower, the lowest amount shown in the income percentage factor table in Appendix A for single borrowers;

(ii) For a single head of household borrower, the lowest amount shown in the income percentage factor table in Appendix A for head of household borrowers; or

(iii) For a married borrower, the lowest amount shown in the income percentage factor table in Appendix A for married borrowers.

(4) For exact incomes not shown in the income percentage factor table in

Appendix A, an income percentage factor is calculated, based upon the intervals between the incomes and income percentage factors shown on the table.

(5) Each year, the Secretary recalculates the borrower's annual payment amount based on changes in the borrower's AGI, the variable interest rate, and the income percentage factors in Table A.

(6) For purposes of the annual recalculation described in paragraph (a)(4), after periods in which a borrower makes payments that are less than interest accrued on the loan, the payment amount is recalculated based upon unpaid accrued interest and the highest outstanding principal loan amount (including amount capitalized) calculated for that borrower while paying under the income contingent repayment plan.

(7) For each calendar year after calendar year 1996, the Secretary publishes in the Federal Register a revised income percentage factor table reflecting changes based on inflation. This revised table is developed by changing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage changes in the Consumer Price Index (as determined by the Secretary) between December 1995 and the December next preceding the beginning of such calendar year.

(8) Examples of the calculation of monthly repayment amounts and tables that show monthly repayment amounts for borrowers at various income and debt levels are included in Appendix A to this part.

(b) *Treatment of married borrowers.* (1) A married borrower who wishes to repay under the income contingent repayment plan and who has filed an income tax return separately from his or her spouse must provide his or her spouse's written consent to the disclosure of certain tax return information under paragraph (c)(5) of this section (unless the borrower is legally separated from his or her spouse). The AGI for both spouses is used to calculate the monthly repayment amount.

(2) Married borrowers may repay their loans jointly. The outstanding balance on the loans of each borrower are added together to determine the borrowers' payback rate under (a)(1) of this section.

(3) The amount of the payment applied to each borrower's debt is the proportion of the payments that equals the same proportion as that borrower's debt to the total outstanding balance, except that the payment is credited toward outstanding interest on any loan before any payment is credited toward principal.

(c) * * *

(2) *First and second year borrowers.* The Secretary requires alternative documentation of income from borrowers in their first and second years of repayment, when in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income.

(3) *Adjustments to repayment obligations.* The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment to the borrower's repayment obligations.

* * * * *

3. Appendix A to part 685 is revised to read as follows:

Appendix A Income Contingent Repayment

Examples of the Calculation of Monthly Repayment Amounts

Example 1. A single borrower with $12,500 of Direct Loans, 8.25 percent interest and an AGI of $25,000.

Step 1: Determine annual payments based on what the borrower would pay over 12 years using standard amortization. To do this, multiply the principal balance by the constant multiplier for 8.25% interest (0.1315452). The constant multiplier is a factor used to calculate amortized payments at a given interest rate over a fixed period of time. (See the constant multiplier chart below to determine the constant multiplier you should use for the interest rate on the loan. If the exact interest rate is not listed, choose the next highest rate for estimation purposes.)

■ 0.1315452×12,500=1,644.315

Step 2: Multiply the result by the income percentage factor shown in the income percentage factor table that corresponds to the borrower's income (if the income is not listed, you can ''interpolate'' by following the instructions under the *interpolation* heading below):

■ 85.55% (0.8555)×1,644.315=1,406.7115

Step 3: Determine 20 percent of discretionary income. To do this, subtract the lowest income for single borrowers shown in the income percentage factor table from the borrower's income and multiply the result by 20%:

■ $25,000 − $7,087=$17,913
■ $17,913×0.20=$3,582.60

Step 4: Compare the amount from *step 2* with the amount from *step 3.* The lower of the two will be the borrower's annual payment amount. This borrower will be paying the amount calculated under *step 2.* To determine the monthly repayment amount, divide the annual amount by 12.

■ 1,406.7115÷12=$117.23

Example 2. Married borrowers both repaying under the income contingent repayment plan with a combined Adjusted Gross income (AGI) of $30,000. The husband has a Direct Loan balance of $5,000, and the wife has a Direct Loan balance of $15,000.

Step 1: Add the Direct Loan balances of the husband and wife together to determine the aggregate loan balance.

■ $5,000+$15,000=$20,000

Step 2: Determine the annual payments based on what the couple would pay over 12 years using standard amortization. To do this, multiply the aggregate principal balance by the constant multiplier for 8.25% interest (0.1315452). (See the constant multiplier chart to determine the constant multiplier you should use for the interest rate on the loan. If the exact interest rate is not listed, choose the next highest rate for estimation purposes.)

■ 0.1315452×20,000=2630.904

Step 3: Multiply the result by the income percentage factor shown in the income percentage factor table that corresponds to the couple's income (if the income is not listed, you can ''interpolate'' by following the instructions under the *interpolation* heading below):

■ 82.74% (0.8274)×2,630.904=2,176.80997

Step 4: Determine 20 percent of the couple's discretionary income. To do this, subtract the lowest income for married borrowers shown in the income percentage factor table from the couple's income and multiply the result by 20%:

■ $30,000 − $8,517=$21,483
■ $21,483×0.20=$4,296.60

Step 5: Compare the amount from *step 3* with the amount from *step 4.* The lower of the two will be the annual payment amount. The married borrowers will be paying the amount calculated under *step 3.* To determine the monthly repayment amount, divide the annual amount by 12.

■ $2,176.80997÷12=$181.40

Interpolation: If your income does not appear on the income percentage factor table, you will have to calculate the income percentage factor through interpolation. For example, let's say you are single and your income is $26,000. To interpolate, you must first find the interval between the closest income listed that is less than $26,000 and the closest income listed that is greater than $26,000 (for this discussion, we'll call the result ''the income interval''):

■ $27,122 − $25,000=$2,122

Next, find the interval between the two income percentage factors that are given for these incomes (for this discussion, we'll call the result, the ''income percentage factor interval''):

■ 88.77 − 85.55=3.22

Subtract the income shown on the chart that is immediately less than $26,000 from $26,000:

■ $26,000 − $25,000=1,000

Divide the result by the number representing the income interval:

■ 1,000÷2,122=0.4713

Multiply the result by the income percentage factor interval:

■ 0.4713×3.22=1.52

Add the result to the lower income percentage factor used to calculate the income percentage factor interval for $26,000 in income:

■ 1.52+85.55=87.07%

INCOME PERCENTAGE FACTORS

[Based on annual income]

Single		Married		Head of Household	
Income	Percent factor	Income	Percent factor	Income	Percent factor
7,087	55.00	8,517	50.52	7,087	50.52
9,752	57.79	10,000	52.72	10,000	54.90
10,000	58.03	12,678	56.68	11,183	56.68
12,548	60.57	15,000	59.29	13,328	59.56
15,000	65.42	18,139	62.83	15,000	62.92
15,409	66.23	20,000	64.98	17,424	67.79
18,139	71.89	23,536	69.07	20,000	72.39
20,000	76.44	25,000	72.31	21,585	75.22
21,585	80.33	29,127	81.46	25,000	82.87
25,000	85.55	30,000	82.74	27,112	87.61
27,112	88.77	35,000	90.09	30,000	92.80
30,000	93.48	35,434	90.73	34,003	100.00
34,003	100.00	40,000	96.87	35,000	100.00
35,000	100.00	42,325	100.00	40,000	100.00
40,000	100.00	50,000	100.00	40,895	100.00
40,895	100.00	52.663	100.00	50,000	108.28
49,152	111.80	60,000	106.92	51,233	109.40
50,000	112.52	68,787	115.20	60,000	117.34
60,000	121.01	70,000	115.76	68,462	125.00
62,935	123.50	80,000	120.40	70,000	125.99
70,000	128.27	90,000	125.04	80,000	132.46
80,000	135.03	94,663	127.20	90,000	138.93
89,137	141.20	100,000	128.73	92,583	140.60
90,000	141.78	126,822	136.40	100,000	142.49
100,000	148.52	150,000	142.02	129,481	150.00
102,205	150.00	176,713	148.50	150,000	162.50
150,000	179.93	200,000	162.71	200,000	192.95
182,045	200.00	250,000	193.23	211,581	200.00
		261,096	200.00		

CONSTANT MULTIPLIER CHART

Interest Rate	7.00%	7.25%	7.43%	7.50%	7.75%	8.00%	8.25%	8.38%	8.50%	8.75%	9.00%
Annual Constant Multiplier	0.1234056	0.1250112	0.126174	0.1266276	0.1282548	0.129894	0.1315452	0.132408	0.1332072	0.123488	0.1365636

BILLING CODE 4000–01–M

Income Contingent Repayment Plan
Sample First-year Monthly Repayment Amounts for a Single Borrower at Various Income and Debt Levels

	Initial Debt																						
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15
9,000	16	31	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32
10,000	16	32	48	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49
12,500	17	33	50	66	83	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90
15,000	18	36	54	72	90	108	126	132	132	132	132	132	132	132	132	132	132	132	132	132	132	132	132	132
17,500	19	39	58	77	97	116	135	155	174	174	174	174	174	174	174	174	174	174	174	174	174	174	174	174
20,000	21	42	63	84	105	126	147	168	189	210	215	215	215	215	215	215	215	215	215	215	215	215	215	215
22,500	22	45	67	90	112	134	157	179	202	224	257	257	257	257	257	257	257	257	257	257	257	257	257	257
25,000	23	47	70	94	117	141	164	188	211	234	281	299	299	299	299	299	299	299	299	299	299	299	299	299
30,000	26	51	77	102	128	154	179	205	231	256	307	359	382	382	382	382	382	382	382	382	382	382	382	382
35,000	27	55	82	110	137	164	192	219	247	274	329	384	438	465	465	465	465	465	465	465	465	465	465	465
40,000	27	55	82	110	137	164	192	219	247	274	329	384	438	493	548	549	549	549	549	549	549	549	549	549
45,000	29	58	87	116	145	174	203	232	261	290	348	406	464	522	580	632	632	632	632	632	632	632	632	632
50,000	31	62	93	123	154	185	216	247	278	308	370	432	493	555	617	678	715	715	715	715	715	715	715	715
55,000	32	64	96	128	160	192	224	256	288	320	384	448	512	576	640	704	768	799	799	799	799	799	799	799
60,000	33	66	99	133	166	199	232	265	298	332	398	464	531	597	663	730	796	862	882	882	882	882	882	882
65,000	34	68	103	137	171	205	240	274	308	342	411	479	548	616	685	753	821	890	958	965	965	965	965	965
70,000	35	70	105	141	176	211	246	281	316	352	422	492	562	633	703	773	844	914	984	1,049	1,049	1,049	1,049	1,049
75,000	36	72	108	144	180	216	253	289	325	361	433	505	577	649	722	794	866	938	1,010	1,082	1,132	1,132	1,132	1,132
80,000	37	74	111	148	185	222	259	296	333	370	444	518	592	666	740	814	888	962	1,036	1,110	1,184	1,215	1,215	1,215
85,000	38	76	114	152	190	228	266	303	341	379	455	531	607	683	759	834	910	986	1,062	1,138	1,214	1,290	1,299	1,299
90,000	39	78	117	155	194	233	272	311	350	389	466	544	622	699	777	855	933	1,010	1,088	1,166	1,243	1,321	1,382	1,382
95,000	40	80	119	159	199	239	278	318	358	398	477	557	636	716	796	875	955	1,034	1,114	1,193	1,273	1,352	1,432	1,465
100,000	41	81	122	163	204	244	285	326	366	407	488	570	651	733	814	895	977	1,058	1,140	1,221	1,302	1,384	1,465	1,549

Sample repayment amounts are based on an interest rate of 8.25%.

Income Contingent Repayment Plan

Sample First-year Monthly Repayment Amounts for a Head of Household Borrower at Various Income and Debt Levels

	Initial Debt																						
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	14	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15
9,000	15	29	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32
10,000	15	30	45	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49
12,500	16	32	48	64	80	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90
15,000	17	34	52	69	86	103	121	132	132	132	132	132	132	132	132	132	132	132	132	132	132	132	132	132
17,500	19	37	56	74	93	112	130	149	168	174	174	174	174	174	174	174	174	174	174	174	174	174	174	174
20,000	20	40	60	79	99	119	139	159	179	198	215	215	215	215	215	215	215	215	215	215	215	215	215	215
22,500	21	42	64	85	106	127	148	169	191	212	254	257	257	257	257	257	257	257	257	257	257	257	257	257
25,000	23	45	68	91	114	136	159	182	204	227	273	299	299	299	299	299	299	299	299	299	299	299	299	299
30,000	25	51	76	102	127	153	178	203	229	254	305	356	382	382	382	382	382	382	382	382	382	382	382	382
35,000	27	55	82	110	137	164	192	219	247	274	329	384	438	465	465	465	465	465	465	465	465	465	465	465
40,000	27	55	82	110	137	164	192	219	247	274	329	384	438	493	548	549	549	549	549	549	549	549	549	549
45,000	28	57	85	114	142	171	199	227	256	284	341	398	455	512	569	625	632	632	632	632	632	632	632	632
50,000	30	59	89	119	148	178	208	237	267	297	356	415	475	534	593	653	712	715	715	715	715	715	715	715
55,000	31	62	93	124	155	185	216	247	278	309	371	433	495	556	618	680	742	799	799	799	799	799	799	799
60,000	32	64	96	129	161	193	225	257	289	322	386	450	515	579	643	707	772	836	882	882	882	882	882	882
65,000	33	67	100	134	167	200	234	267	301	334	401	468	534	601	668	735	802	868	935	965	965	965	965	965
70,000	35	69	104	138	173	207	242	276	311	345	414	483	552	622	691	760	829	898	967	1,036	1,049	1,049	1,049	1,049
75,000	35	71	106	142	177	212	248	283	319	354	425	496	567	637	708	779	850	921	992	1,062	1,132	1,132	1,132	1,132
80,000	36	73	109	145	182	218	254	290	327	363	436	508	581	653	726	799	871	944	1,016	1,089	1,162	1,215	1,215	1,215
85,000	37	74	112	149	186	223	260	298	335	372	446	521	595	669	744	818	893	967	1,041	1,116	1,190	1,264	1,299	1,299
90,000	38	76	114	152	190	228	267	305	343	381	457	533	609	685	761	838	914	990	1,066	1,142	1,218	1,295	1,371	1,382
95,000	39	77	116	155	194	232	271	310	348	387	464	542	619	697	774	851	929	1,006	1,084	1,161	1,238	1,316	1,393	1,465
100,000	39	78	117	156	195	234	273	312	351	390	469	547	625	703	781	859	937	1,015	1,093	1,171	1,250	1,328	1,406	1,549

Sample repayment amounts are based on an interest rate of 8.25%.

Income Contingent Repayment Plan
Sample First-year Monthly Repayment Amounts for a Married Borrower at Various Income and Debt Levels

	Initial Debt																							
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9,000	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
10,000	14	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25
12,500	15	31	46	62	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66
15,000	16	32	49	65	81	97	108	108	108	108	108	108	108	108	108	108	108	108	108	108	108	108	108	108
17,500	17	34	51	68	85	102	119	136	150	150	150	150	150	150	150	150	150	150	150	150	150	150	150	150
20,000	18	36	53	71	89	107	125	142	160	178	191	191	191	191	191	191	191	191	191	191	191	191	191	191
22,500	19	37	56	74	93	112	130	149	167	186	223	233	233	233	233	233	233	233	233	233	233	233	233	233
25,000	20	40	59	79	99	119	139	159	178	198	238	275	275	275	275	275	275	275	275	275	275	275	275	275
30,000	23	45	68	91	113	136	159	181	204	227	272	317	358	358	358	358	358	358	358	358	358	358	358	358
35,000	25	49	74	99	123	148	173	198	222	247	296	346	395	441	441	441	441	441	441	441	441	441	441	441
40,000	27	53	80	106	133	159	186	212	239	265	319	372	425	478	525	525	525	525	525	525	525	525	525	525
45,000	27	55	82	110	137	164	192	219	247	274	329	384	438	493	548	603	608	608	608	608	608	608	608	608
50,000	27	55	82	110	137	164	192	219	247	274	329	384	438	493	548	603	658	691	691	691	691	691	691	691
55,000	28	56	84	112	140	168	196	224	252	280	336	392	448	504	560	616	672	728	775	775	775	775	775	775
60,000	29	59	88	117	147	176	205	234	264	293	352	410	469	527	586	645	703	762	820	858	858	858	858	858
65,000	31	61	92	122	153	184	214	245	275	306	367	428	489	551	612	673	734	795	857	918	941	941	941	941
70,000	32	63	95	127	159	190	222	254	286	317	381	444	508	571	634	698	761	825	888	952	1,015	1,025	1,025	1,025
75,000	32	65	97	129	162	194	227	259	291	324	388	453	518	582	647	712	777	841	906	971	1,036	1,100	1,108	1,108
80,000	33	66	99	132	165	198	231	264	297	330	396	462	528	594	660	726	792	858	924	990	1,056	1,122	1,188	1,191
85,000	34	67	101	135	168	202	235	269	303	336	404	471	538	605	673	740	807	874	942	1,009	1,076	1,143	1,211	1,275
90,000	34	69	103	137	171	206	240	274	308	343	411	480	548	617	685	754	822	891	959	1,028	1,097	1,165	1,234	1,358
95,000	35	70	105	140	174	209	244	279	314	349	419	488	558	628	698	767	837	907	977	1,047	1,116	1,186	1,256	1,395
100,000	35	71	106	141	176	212	247	282	318	353	423	494	564	635	706	776	847	917	988	1,058	1,129	1,199	1,270	1,411

Sample repayment amounts are based on an interest rate of 8.25%.

[FR Doc. 95–23299 Filed 9–19–95; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Wednesday
September 20, 1995

Part VIII

Department of Education

34 CFR Part 685

William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC22

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes to amend the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The proposed regulations would apply to loans under the Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) Program, the Federal Direct Unsubsidized Stafford/Ford Loan (Direct Unsubsidized Loan) Program, the Federal Direct PLUS Loan (Direct PLUS Loan) Program, and the Federal Direct Consolidation Loan (Direct Consolidation Loan) Program, collectively referred to as the Direct Loan Program. These proposed regulations would provide schools with more flexibility in performing origination functions, and clarify the date of loan origination. These proposed regulations also would set timelines for the submission of promissory notes, disbursement records, and origination records. Finally, the regulations being proposed would address the repayment plans available for the consolidation of a single Federal Family Education (FFEL) Loan Program loan into the Direct Loan Program.

DATES: Comments on the proposed regulations must be received on or before October 31, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Katrina Ingalls, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. Comments may also be sent via the internet to: direct–loans@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Ms. Katrina Ingalls. Telephone: (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary proposes to amend the Direct Loan Program regulations (34 CFR Part 685), to improve the program based on experience gained during the first year of operation. These regulations propose programmatic changes that the Secretary believes would improve services to student and parent borrowers, increase institutional flexibility, and enhance the Department's administrative and fiscal oversight capabilities.

The Secretary proposes to revise the current definitions of school origination option 1, school origination option 2, and standard origination found in § 685.102 to increase program flexibility for schools and the Secretary. Under the proposed rules, with the approval of the Secretary, schools would be permitted to customize the origination process based on individual needs.

These proposed regulations would also clarify the date on which a Direct Loan is originated. For schools originating under school origination option 1 or option 2, the date of loan origination would be the earlier of: The date the promissory note is printed or the date the origination record is accepted by the Secretary. For a school that participates under standard origination, the date of loan origination would be the date the origination record is accepted by the Secretary. Beginning with the 1996–1997 loan year, originating schools will be able to generate a print date on the promissory note. This print date on the promissory note is a new step intended to establish an alternative method to document the loan origination date. This change will increase program flexibility. If a school originates a loan and prints the promissory note showing the print date and the student's eligibility changes before the loan origination record is transmitted to the Secretary, the school may make a disbursement to the borrower following the late disbursement guidelines. This change promotes flexibility in processing loans near the end of a student's period of enrollment.

As a result of administering the program for one year, the Secretary is convinced that services to borrowers would be substantially improved by requiring the timely submission of certain program data by schools to the Direct Loan Servicer. In particular, it is imperative that borrowers receive disclosure information and loan servicing information shortly after the loan is disbursed. Further, Direct PLUS Loan borrowers enter repayment when the loan is fully disbursed and the Department must receive disbursement information in a timely manner in order to establish repayment terms. Therefore, in these regulations, the Secretary proposes to require schools to submit origination records, promissory notes, and disbursement records (both initial and subsequent), to the Direct Loan Servicer no later than 30 days following the disbursement of a Direct Loan. Further, this change would also serve to improve the Department's administrative and fiscal oversight capabilities of the program.

While program experience now indicates that establishing firm deadlines for the submission of origination records, promissory notes, and disbursement records is necessary, the Secretary is sensitive to the potential need for flexibility in this area. During the first year of a school's participation in the Direct Loan Program, the school must make changes to its administrative functions, implement new computer systems, and become familiar with Direct Loan Program requirements. At times, the transition to Direct Loans may seem complex to these schools, particularly in the initial stages of the transition. The Secretary assures schools that, during their first year of participation in the Direct Loan Program, these obstacles will be considered in determining the Secretary's position regarding an institution's compliance with program regulations. However, the proposed regulation to require schools to submit origination records, promissory notes, and initial and subsequent disbursement records to the Direct Loan Servicer no later than 30 days following the disbursement of a Direct Loan is particularly critical at the end of the Federal fiscal year (September 30th). To ensure program integrity and facilitate audit review, the Secretary will require that all documents for loans made during a fiscal year be submitted no later than 30 days following the end of the Federal fiscal year.

The Secretary is proposing to revise the repayment plan regulations to reflect the Secretary's current operational practice regarding the repayment plans available to a FFEL Program loan borrower consolidating only one FFEL Program loan into the Direct Loan Program. Under the proposed regulations, borrowers who consolidate only one FFEL Program loan into the

Direct Loan Program would be required to initially choose a repayment plan other than the standard repayment plan.

The Secretary is considering establishing requirements for foreign school participation in the Direct Loan Program. Due to the nature of the Direct Loan Program, the Secretary believes that additional fiscal oversight and administrative requirements may be warranted for foreign schools. The Direct Loan Program is unique among the financial aid programs with respect to its funds disbursement processes and requirements. Because there is no authorized limit to the amount of funds that schools may draw down in the Direct Loan Program, the Department must rigorously oversee the funds disbursement process. To prevent potential program abuse, the Secretary is committed to the careful monitoring of the drawdown of funds to schools and then disbursement to students. To minimize potential risks to borrowers and taxpayers, the Secretary is considering additional school participation requirements for those foreign schools interested in participating in the Direct Loan Program. Therefore, the Secretary solicits comments and supporting arguments on what, if any, additional standards should be established for foreign schools that participate in the Direct Loan Program. The Secretary invites comments and supporting arguments on the potential financial risks, as well as benefits of admitting foreign schools into the Direct Loan Program. Finally, the Secretary requests comments and supporting statements concerning the potential losses or benefits to students related to foreign school participation in the Direct Loan Program.

Proposed Regulatory Changes

The following sections summarize the major changes in this notice of proposed rulemaking:

Section 685.102 Definitions

School origination option 1, School origination option 2, and Standard origination: The Secretary proposes to modify the definition of the specific functions that a school must perform for school origination option 1, school origination option 2 and standard origination. While the functions for the three levels would generally remain unchanged, in certain circumstances schools would have some flexibility in selecting the functions they would perform. Any request to modify the functions must be approved by the Secretary. Further, the regulations would specify that the Secretary has the authority to modify the functions a school performs to best meet the needs of the program.

Section 685.201 Obtaining a Loan

Paragraphs (a)(2) and (b) of this section, which describe the school's responsibility to perform certain functions to process a Direct Loan, would be modified to provide the flexibility needed by schools to allow them, with the concurrence of the Secretary, to tailor the process to accommodate their individual needs.

Section 685.208 Repayment Plans

For purposes of consolidating one FFEL Program loan into a Federal Direct Consolidation Loan, the Secretary proposes to modify the available repayment plan options. Borrowers consolidating one FFEL Program loan would not be permitted to initially choose the standard repayment plan; however, they could choose the extended, graduated, or income contingent repayment plan. This proposed change appears in § 685.208(a)(1) and (2), and § 685.215(h)(2).

Section 685.210 Choice of Repayment Plans

In § 685.210(a), a new paragraph would be added advising the borrower that the Secretary will designate the extended repayment plan if a FFEL Program loan borrower consolidating only one FFEL Program loan into the Direct Loan Program does not select a repayment plan.

Section 685.215 Consolidation

The Secretary proposes that § 685.215(h), which discusses repayment plans available to borrowers of Direct Consolidation Loans, be amended by adding a new paragraph. This new paragraph would provide that, for purposes of consolidating only one FFEL Program loan into a Federal Direct Consolidation Loan, borrowers may not initially choose the standard repayment plan.

Section 685.301 Origination of a Loan by a Direct Loan Program School

The Secretary proposes to add a new paragraph to this section to clarify the date of origination. A school may only originate a loan while the student meets the borrower eligibility requirements. Through the origination process, a school certifies a borrower's eligibility for a loan, the loan amount, and anticipated disbursement dates. The proposed rule provides that the date of loan origination would be the earlier of the date that the school prints the promissory note or the date that the origination record is accepted by the Secretary.

The Secretary also proposes to amend the regulations to require schools to submit the promissory note, disbursement record (original and subsequent), and origination record no later than 30 days of the date of disbursement of loan funds. Requiring the timely submission of program data would result in improved services to borrowers and would also enhance the Department's administrative and fiscal oversight capabilities.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Title IV, HEA programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are explained elsewhere in this preamble under the heading of *Paperwork Reduction Act of 1995.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Title IV, HEA programs.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations

clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 685.215 *Consolidation*.) (4) Is the description of the proposed regulations in the ''Supplementary Information'' section of this preamble helpful in the understanding of the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW., (Room 5100 FB–10), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are institutions of higher education. Certain reporting, recordkeeping, and compliance requirements are imposed on schools by the regulations. These requirements, however, would not have a significant impact on these institutions and would not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

Section 685.301 contains an information collection requirement. As required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of information: Reporting loan origination and disbursement records, and submitting promissory notes.

The Department collects information regarding Direct Loan Program loan origination. These regulations require postsecondary institutions participating in the Direct Loan Program to submit student and parent loan origination records, promissory notes, and disbursement records to the Secretary within 30 days of disbursement. Direct Loan Program loans are usually made once each academic year to eligible parent and student borrowers. Promissory notes and origination records are submitted once for each loan; funds are disbursed in at least two installments. This Loan origination information is needed to establish that a legally-enforceable loan exists and to service and collect that loan.

Annual reporting burden for this collection of information is estimated to average 0.3 burden hours for each of the projected 1,986,857 loans. The total annual reporting burden equals 59,606 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3053, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary requests comments on whether the proposed regulations would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number: 84.268, William D. Ford Federal Direct Loan Program)

Dated: September 13, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend part 685 of title 34 of the Code of Federal Regulations to read as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1078a *et seq.*, unless otherwise noted.

2. Section 685.102, paragraph (b) is amended by revising the definitions of ''School origination option 1,'' ''School origination option 2,'' and ''Standard origination.''

§ 685.102 Definitions.

* * * * *

(b) * * *

School origination option 1: In general, under this status the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Servicer initiates the drawdown of funds for schools participating in school origination option 1. The Secretary may

modify the functions performed by a particular school.

School origination option 2: In general, under this status the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, determines funding needs, initiates the drawdown of funds, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Secretary may modify the functions performed by a particular school.

* * * * *

Standard origination: In general, under this status the school performs the following functions: creates a loan origination record, transmits the record to the Secretary, receives funds electronically, disburses funds, creates a disbursement record, transmits the disbursement record to the Secretary, and reconciles on a monthly basis. The Secretary prepares the promissory note, obtains a completed and signed promissory note from a borrower, and initiates the drawdown of funds for schools participating in standard origination. The Secretary may modify the functions performed by a particular school.

(Authority: 20 U.S.C. 1087a *et seq.*)

3. Section 685.201 is amended by revising paragraph (a)(2)introductory text, and paragraph (b) to read as follows:

§ 685.201 Obtaining a loan.

(a) * * *

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the Secretary or the school in which the student is enrolled shall perform specific functions. Unless a school's agreement with the Secretary specifies otherwise, the school shall perform the following functions:

* * * * *

(b) *Application for a Direct PLUS Loan.* To obtain a Direct PLUS Loan, the parent shall complete the application and promissory note and submit it to the school at which the student is enrolled. The school shall complete its portion of the application and promissory note and submit it to the Servicer, which makes a determination as to whether the parent has an adverse credit history. Unless a school's agreement with the Secretary specifies otherwise, the school shall perform the following functions: A school participating under school origination option 2 shall draw down funds and disburse the funds. For a school participating under school origination option 1 or standard origination, the Servicer initiates the drawdown of funds, and the school disburses the funds.

* * * * *

(Authority: 20 U.S.C. 1087 a *et seq.*, 1091a)

4. Section 685.208 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 685.208 Repayment plans.

(a) *General.* (1) Except as provided in § 685.215, a borrower may repay a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, or the income contingent repayment plan.

(2) Except as provided in § 685.215, a borrower may repay a Direct PLUS Loan or a Direct PLUS Consolidation Loan under the standard repayment plan, the extended repayment plan, or the graduated repayment plan.

* * * * *

(Authority: 20 U.S.C. 1087a *et seq.*)

5. Section 685.210 is amended by revising paragraph (a)(2) and by adding a new paragraph (a)(3) to read as follows:

§ 685.210 Choice of repayment plan.

(a) * * *

(2) If a borrower does not select a repayment plan, the Secretary designates the standard repayment plan described in § 685.208(b) for the borrower, unless the borrower is consolidating only one FFEL Program loan.

(3) If a borrower consolidating only one FFEL Program loan into the Direct Loan Program does not initially select a repayment plan offered by the Secretary, the Secretary will designate the extended repayment plan described in § 685.208(c) for the borrower.

* * * * *

(Authority: 20 U.S.C. 1087a *et seq.*)

6. Section 685.215 is amended by revising paragraph (h)(1), redesignating paragraph (h)(2) as paragraph (h)(3) and adding a new paragraph (h)(2) to read as follows:

§ 685.215 Consolidation.

* * * * *

(h) * * *

(1) A borrower may not repay a Direct PLUS Consolidation Loan under the income contingent repayment plan;

(2) A borrower consolidating only one FFEL Program loan into the Direct Loan Program may not initially select the standard repayment plan (described in § 685.208(b).

* * * * *

7. Section 685.301 is amended by redesignating paragraphs (a)(5) and (a)(6) as paragraph (a)(6)and (a)(7), respectively, adding a new paragraph (a)(5) and by adding a new paragraph (d) to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

(a) * * *

(5) The date of loan origination is the earlier of—

(i) The date the promissory note is printed; or

(ii) The date the origination record is accepted by the Secretary.

* * * * *

(d) *Reporting to the Secretary.* (1) A school that originates a loan must submit the promissory note, loan origination record, and initial and subsequent disbursement record to the Secretary no later than 30 days following the date of disbursement. A school must submit the loan origination record and disbursement record to the Secretary no later than 30 days following the date of disbursement for each subsequent disbursement.

(2) A school that participates under standard origination must submit the initial and subsequent disbursement record to the Secretary no later than 30 days following the date of disbursement. A school must submit the disbursement record to the Secretary no later than 30 days following the date of disbursement for each subsequent disbursement.

(Authority: 20 U.S.C. 1087a *et seq.*)

[FR Doc. 95–23300 Filed 9–19–95; 8:45 am]

BILLING CODE 4000–01–P

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Wednesday, September 20, 1995

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