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WASHINGTON, DC

[Three Sessions]

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Presidential Documents

Title 3—

The President

Presidential Determination No. 96–4 of November 1, 1995

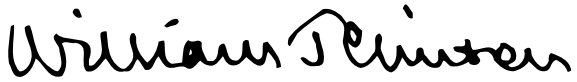
Presidential Determination on the Proposed Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community (EURATOM)

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the Federal Register.



THE WHITE HOUSE,
Washington, November 1, 1995.

[FR Doc. 95–28082
Filed 11–8–95; 2:59 pm]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 60, No. 218
Monday, November 13, 1995

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

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 406

General Crop Insurance Regulations; Various Endorsements; Nursery Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby amends the crop insurance provisions of the wheat endorsement, the winter coverage option for wheat, the barley endorsement, the winter coverage option for barley, the oat endorsement, the rye endorsement, the corn endorsement, the corn silage option, the grain sorghum endorsement, the flaxseed endorsement, the soybean endorsement, the cotton endorsement, the ELS cotton endorsement, the sunflower seed crop endorsement, the fig endorsement, and the malting barley option of 7 CFR part 401, General Crop Insurance Regulations, to restrict their application effective for the 1995 and succeeding crop years. The crop insurance provisions of the sugarcane endorsement of 7 CFR part 401, General Crop Insurance Regulations are also amended to restrict their application effective for the 1996 and succeeding crop years. The FCIC further amends the crop insurance provisions of the nursery crop insurance regulations of 7 CFR part 406 to restrict their application effective for the 1996 and succeeding crop years. These sections and 7 CFR part 406 have been replaced by policy provisions added to the Common Crop Insurance Regulations located at 7 CFR part 457.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

This rule has been determined to be exempt for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (''OMB''). Since this rule relates solely to internal agency management, and will have no effect on the public, this rule is exempt from regulatory review under Executive Order 12866, and good cause is shown for publishing this rule as a final rule without the customary opportunity for notice and comment.

In accordance with the Paperwork Reduction Act of 1985 (44 U.S.C. chapter 35), no information collection or record-keeping requirements are found in this rule.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. This action does not increase the paperwork burden on the insured producer or the reinsured company. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions promulgated by the National Appeals Division under Pub. L. 103–354 must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

The intended effect of this rule is to provide a standard set of policy provisions and a master policy for insuring most of the crops insured under the provisions of the Federal Crop Insurance Act, as amended, to substantially reduce: (1) The time involved for future amendment or revision of policy provisions; (2) the necessity of the repeated policy review process; and (3) the volume of paperwork processed by the FCIC, the Consolidated Farm Service Agency (''CFSA''), and the reinsured insurance companies.

The sections restricted by this rule include: the wheat endorsement, the winter coverage option for wheat, the barley endorsement, the winter coverage option for barley, the oat endorsement, the rye endorsement, the corn endorsement, the corn silage option, the grain sorghum endorsement, the flaxseed endorsement, the soybean endorsement, the cotton endorsement, the ELS cotton endorsement, the sunflower seed endorsement, the malting barley option, the fig endorsement, the nursery crop insurance regulations, and the sugarcane endorsement. These crop insurance policies have been replaced by the small grains crop insurance provisions, the winter wheat coverage option, the malting barley option, the

cotton crop insurance provisions, the ELS cotton crop insurance provisions, the coarse grains crop insurance provisions, the sunflower seed crop insurance provisions, the fig crop insurance provisions, the nursery crop insurance provisions and the nursery frost, freeze, and cold damage exclusion option, and the sugarcane crop insurance provisions located at 7 CFR 457.101, 457.102, 457.103, 457.104, 457.105, 457.108, 457.110, 457.113, 457.114, 457.115, and 457.116. Such policy provisions, as endorsements to the General Crop Insurance Regulations, are no longer effective for the 1995 and succeeding crop years (1996 and succeeding crop years for the nursery crop insurance provisions and the sugarcane endorsement). FCIC will later publish a regulation to remove and reserve these sections and part.

List of Subjects

7 CFR Part 401

Crop insurance, barley, corn, corn silage, cotton, ELS cotton, fig, flaxseed, grain sorghum, oat, rye, soybean, sugarcane, sunflower seed, and wheat.

7 CFR Part 406

Crop insurance, nursery.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR parts 401 and 406) as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 is revised to read as follows:

Authority: 7 U.S.C. 1506(l).

2. The introductory text of § 401.101 is revised to read as follows:

§ 401.101 Wheat endorsement.

The provisions of the Wheat Crop Insurance Endorsement for the 1988 through the 1994 crop years are as follows:

* * * * *

3. Section 401.102 is amended by revising the introductory text and the undesignated paragraph immediately following the listing of counties under SOUTH DAKOTA to read as follows:

§ 401.102 The winter coverage option for wheat.

The Winter Coverage Option for wheat is available in the following counties and states beginning in the 1988 through 1994 crop years:

* * * * *

The provisions of the Winter Coverage Option for Wheat for the 1988 through 1994 crop years are as follows:

* * * * *

4. The introductory text of § 401.103 is revised to read as follows:

§ 401.103 Barley endorsement.

The provisions of the Barley Crop Insurance Endorsement for the 1988 through the 1994 crop years are as follows:

* * * * *

5. Section 401.104 is amended by revising the second undesignated paragraph to read as follows:

§ 401.104 Winter coverage option for barley.

* * * * *

The provisions of the Winter Coverage Option for Barley for the 1988 through 1994 crop years are as follows:

* * * * *

6. The introductory text of § 401.105 is revised to read as follows:

§ 401.105 Oat endorsement.

The provisions of the Oat Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

7. The introductory text of § 401.106 is revised to read as follows:

§ 401.106 Rye endorsement.

The provisions of the Rye Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

8. The introductory text of § 401.111 is revised to read as follows:

§ 401.111 Corn endorsement.

The provisions of the Corn Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

9. Section 401.112 is amended by revising the introductory text and the undesignated paragraph immediately following the *Corn Silage Option* chart to read as follows:

§ 401.112 Corn silage option.

The provisions of the Corn Silage Crop Insurance Option to the Corn Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

Upon our approval, this amendment is applicable for the 1988 through 1994 crop years.

* * * * *

10. The introductory text of § 401.113 is revised to read as follows:

§ 401.113 Grain sorghum endorsement.

The provisions of the Grain Sorghum Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

11. The introductory text of § 401.116 is revised to read as follows:

§ 401.116 Flaxseed endorsement.

The provisions of the Flaxseed Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

12. The introductory text of § 401.117 is revised to read as follows:

§ 401.117 Soybean endorsement.

The provisions of the Soybean Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

13. The introductory text of § 401.119 is revised to read as follows:

§ 401.119 Cotton endorsement.

The provisions of the Cotton Crop Insurance Endorsement for the 1990 through 1994 crop years are as follows:

* * * * *

14. The introductory text of § 401.121 is revised to read as follows:

§ 401.121 ELS cotton endorsement.

The provisions of the ELS Cotton Crop Insurance Endorsement for the 1990 through 1994 crop years are as follows:

* * * * *

15. The introductory text of § 401.124 is revised to read as follows:

§ 401.124 Sunflower seed crop endorsement.

The provisions of the Sunflower Seed Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

16. The introductory text of § 401.125 is revised to read as follows:

§ 401.125 Fig endorsement.

The provisions of the Fig Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

17. The introductory text of § 401.133 is revised to read as follows:

§ 401.133 Sugarcane endorsement.

The provisions of the Sugarcane Crop Insurance Endorsement for the 1991 through 1995 crop years are as follows:

* * * * *

18. The introductory text of § 401.135 is revised to read as follows:

§ 401.135 Malting barley option.

The provisions of the Malting Barley Option for the 1989 through 1994 crop years are as follows:

* * * * *

PART 406—[AMENDED]

19. The authority citation for 7 CFR part 406 is revised to read as follows:

Authority: 7 U.S.C. 1506(l).

20. Section 406.7 is amended by revising the introductory text of paragraph (d) of the Nursery Crop Insurance Regulations to read as follows:

§ 406.7 The application and policy.

* * * * *

(d) The application for the 1989 through 1995 crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Nursery Crop Insurance Policy for the 1989 through 1995 crop years are as follows:

* * * * *

Done in Washington, DC, on November 2, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–27875 Filed 11–9–95; 8:45 am]

BILLING CODE 3410–FA–P

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV95–915–1FIR]

Avocados Grown in South Florida; Revision of Grade Requirements for Certain Florida Avocados

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule without change, the provisions of an interim final rule which revised grade requirements for fresh Florida avocados shipped in certain containers to destinations within the production area in Florida. The marketing order regulates the handling of avocados grown in South Florida and is administered locally by the Florida Avocado Administrative Committee (committee). This rule enables Florida growers and handlers to market a larger percentage of their crop in the production area, in response to demand.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: 813–299–4770; or Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–8139.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 915 (7 CFR Part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the Act.

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

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

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

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

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

There are approximately 65 handlers of avocados who are subject to regulation under the marketing order and approximately 95 producers of avocados in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of South Florida avocados may be classified as small entities.

An interim final rule was issued on August 11, 1995, and published in the Federal Register (60 FR 42770, August 17, 1995), with an effective date of August 17, 1995. That rule provided a 30-day comment period which ended September 18, 1995. No comments were received.

This rule finalizes an interim final rule which revised the order's rules and regulations by removing all grade requirements for fresh avocados shipped to destinations within the production area in Florida packed in containers other than those authorized under § 915.305. The committee met July 12, 1995, and unanimously recommended this action.

Sections 915.50 and 915.52 provide the authority for the committee to recommend various regulations and modifications, suspension, or termination of regulations to the Secretary. Section 915.306 of the regulations specifies grade, pack, and container marking regulations for fresh shipments of avocados grown in Florida. Currently § 915.306 of the order specifies that all fresh Florida avocados must grade at least U.S. No. 2, when shipped in any container.

This rule revises § 915.306 by removing all grade requirements for fresh avocados shipped to destinations within the Florida production area packed in containers other than those authorized under § 915.305. Section 915.306 was amended through a proposed rule published at 56 FR 4953 on February 7, 1991, and finalized at 56 FR 36079 on July 31, 1991. That amendment established a minimum grade requirement of U.S. No. 2 and container marking and sealing requirements for Florida avocados handled to points within the production area (South Florida). This rule was established prior to Hurricane Andrew when avocados were plentiful. Shipments of poorer quality avocados to the markets within the production area

depressed prices for better quality avocados and resulted in lower overall returns to producers. Plentiful supplies of avocados had allowed for higher quality avocados to be offered at a relatively lower cost, encouraging consumption by presenting a higher quality product.

However, Hurricane Andrew, in August of 1992, reduced production acreage from approximately 9,000 acres to less than 6,000 acres with many non-producing trees in the remaining acreage. Production in the 1991–92 season was 1,110,105 bushels. In the 1992–93 season, production fell to 283,666 bushels and in the 1993–94 season it was at 174,712 bushels. In response to this reduced production the committee requested and was granted a temporary suspension of grade requirements for fresh avocados shipped in certain containers to destinations within the production area in Florida. The relaxation for the 1993–94 season was published as a final rule at 58 FR 34684, on June 29, 1993, and for the 1994–95 season by a final rule published at 59 FR 33417 on June 29, 1994. These temporary relaxations were requested and granted under the assumption that production would return to pre-Hurricane Andrew levels.

Although the 1994–95 season recovered to 778,951 bushels, it is still well below the levels reached prior to the hurricane. Also, changing economic and environmental priorities of the South Florida area are capping the growth on Florida avocado production. Future production is expected to remain flat at approximately 700,000 bushels annually, or to increase only slightly. The committee considers production levels set prior to Hurricane Andrew as unattainable.

The temporary grade relaxations of the last two seasons were successful in making additional supplies of fruit available to meet consumer needs consistent with crop and market conditions. The relaxations demonstrated that there is a market for lower quality avocados in the production area. Also, better quality avocados did not suffer depressed prices due to the availability of the lower quality fruit.

The container and marking requirements clearly identify graded avocados from non-graded avocados. Those avocados sold in the production area which are not subject to grade cannot be packed in regulated containers. This allows customers to readily identify graded versus those not meeting grade.

This continued relaxation provides Florida avocado growers and handlers with an opportunity to sell, in the production area, fresh avocados which would otherwise be culled during the packing process, thus making additional avocados available to consumers. This rule is expected to facilitate the movement of fresh market avocados sold within the production area.

This relaxation only applies to Florida avocados shipped to destinations within the production area. Thus, the U.S. No 2 grade requirement will continue to apply unchanged to avocados shipped to destinations outside the production area, as well as to all avocados shipped to any destination in those containers whose size and type are specified in § 915.305. Also unchanged by this action are current maturity, container, pack, and inspection requirements for all fresh Florida avocado shipments under the avocado marketing order.

Avocados imported into the United States must grade at least U.S. No. 2, as provided in § 944.28 (7 CFR 944.28). Since this rule does not change the minimum grade requirement of U.S. No. 2 specified in § 915.306 for avocados handled to points outside the production area, there is no need to change the avocado import regulation. Section 8e of the Act (7 U.S.C. 608e–1) requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

This rule reflects the committee's and the Department's appraisal of the need to relax the grade requirements for certain avocados grown in Florida. The Department's view is that this action will have a beneficial impact on producers and handlers since it will permit avocado handlers to make additional supplies of fruit available to meet consumer needs consistent with crop and market conditions.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (60 FR 42769, August 17, 1995), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

Accordingly, the interim final rule amending 7 CFR part 915 which was published at 60 FR 42769 on August 17, 1995, is adopted as a final rule without change.

Dated: November 3, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–27813 Filed 11–9–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 287

[INS No. 1717–95]

RIN 1115–AE15

Subpoena Issuance Authority

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends existing Immigration and Naturalization Service (Service) regulations by adding the Assistant Chief Patrol Agency Officer position to the lists of those immigration officers who may issue and designate service of subpoenas under this section. These changes will reduce unnecessary delay in the processing of criminal and civil investigations by reducing the need to transfer case files between offices for signatures. These changes will allow the Service to maximize its use of personnel and resources. The rule is in keeping with current organizational command structure and program responsibility within a Border Patrol sector.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Alan R. Conroy, Assistant Chief Border Patrol, Immigration and Naturalization Service, 425 I Street, N.W., Washington, DC 20536, Telephone: (202) 514–3073.

SUPPLEMENTARY INFORMATION: The Service is modifying section 287.4(a)(1) and 287.4 (c) of its existing regulations to add Assistant Chief Patrol Agent positions to those immigration officials authorized to issue and designate service of subpoenas. One of the Service

priorities is the apprehension and removal of criminal aliens. The authority for Assistant Chief Patrol Agents to issue subpoenas will allow for greater flexibility in the processing of these aliens. The subpoena is issued in criminal or civil investigations to require the production of documentary evidence, for use in a Service-related case. Currently employees above and below the Assistant Chief level have the power to issue subpoenas. Implementation of the rule will add continuity to the Immigration and Naturalization Service and the Border Patrol chains of command. The Service's implementation of this rule as a final rule, without provision for public comment, is based upon the exception found in 5 U.S.C. 553(b)(B). This rule related to agency management and is administrative in nature. Thus, the comment period and noticed are deemed unnecessary and contrary to the public interest.

Executive Order 12612

The regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), had reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. The regulation is administrative in nature and the rule relates only to agency management.

List of Subjects in 8 CFR Part 287

Immigration, Law enforcement officers.

For the reasons set forth in the preamble, part 287 in chapter I of title 8 of the Code of Federal Regulations, is amended as set forth below.

PART 287—FIELD OFFICERS; POWERS AND DUTIES

1. The authority citation for Part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357, 8 CFR part 2.

2. In Section 287.4 paragraphs (a)(1) and (c) are revised to read as follows:

§ 287.4 Subpoena.

(a) * * *

(1) *Criminal or civil investigations.* All District Directors, Deputy District Directors, Chief Patrol Agents, Deputy Chief Patrol Agents, Assistant Chief Patrol Agents, Officers-in-Charge, Patrol Agents in Charge, Assistant District Directors, Investigations, Supervisory Criminal Investigators (Anti-Smuggling), Regional Directors, Office of Professional Responsibility, Service Center Directors, and Assistant District Directors for Examinations, may issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations.

* * * * *

(c) *Service.* A subpoena issued under this section may be served by any person, over 18 years of age not a party to the case, designated to make such service by the District Director, Deputy District Director, Chief Patrol Agent, Deputy Chief Patrol Agent, Assistant Chief Patrol Agent, Patrol Agent in Charge, Officer in Charge, Assistant District Director, Investigations, Supervisory Criminal Investigator (Anti-Smuggling), Regional Director, and Office of Professional Responsibility, having administrative jurisdiction over the office in which the subpoena is issued. Service of the subpoena shall be made by delivering a copy thereof to the person named therein and by tendering to him/her the fee for one day's attendance and the mileage allowed by law by the United States District Court for the district in which the testimony is to be taken. When the subpoena is issued on behalf of the Service, fee and mileage need not be tendered at the time of service. A record of such service shall be made and attached to the original copy of the subpoena.

* * * * *

Dated: October 10, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–27919 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–28–AD; Amendment 39–9430; AD 95–23–10]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737 series airplanes, that requires revising the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with additional procedures for shutting down the auxiliary power unit (APU) when an APU fire is indicated. This amendment is prompted by reports indicating that a latent electrical failure exists in the fire extinguishing system for the APU; this failure could prevent the APU from shutting down and fire extinguishant from discharging into the APU compartment in the event of an APU fire. The actions specified by this AD are intended to ensure that the flightcrew is provided with procedures for shutting down the APU in the event of an APU fire.

EFFECTIVE DATE: December 13, 1995.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Bray, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; 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 all Boeing Model 737 series airplanes was published in the Federal Register on June 2, 1995 (60 FR 28763). That action proposed to require revising the Emergency Procedures and Limitations Sections of the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with these additional procedures for shutting down the APU when an APU fire is indicated.

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the comments received.

Three commenters support the proposed rule.

One commenter requests that the requirements of the proposed AD be made a reference procedure found both in the AFM and the Quick Reference Handbook, rather than ''recall items'' in the Limitations section of the AFM. The commenter does not provide justification for its request. The FAA concurs partially. The FAA finds that the operational procedure should be included in the Emergency Procedures Section of the AFM; however, the procedure should not be included in the Limitations Section. Further, the FAA finds that inclusion of the procedure in the Quick Reference Handbook, as suggested by the commenter, will not adequately address the recall requirement of this AD. The FAA has determined that any hesitation on the part of the flightcrew with regard to taking action to shut down the APU in the event of an APU fire could jeopardize safe flight and landing of the airplane. The FAA finds it critical that the flightcrew commit such procedures to memory; therefore, these procedures must be considered recall items. Paragraph (a) of the final rule has been revised to remove the requirement to include the operational procedure in the Limitations Section of the AFM.

One commenter agrees that the AFM should be revised to incorporate the additional procedures specified in the proposed rule. However, the commenter states that the unsafe condition addressed by the proposal does not warrant issuance of an AD. The commenter suggests that Boeing revise the AFM to incorporate the proposed additional procedures, which would negate the cost of AD compliance paperwork for both the FAA and operators while providing an equivalent level of safety. The commenter adds that incorporation of the additional procedures into operators' manuals (through Boeing issuing a revision to the master AFM) would be more expeditious than the FAA issuing an AD with a 6-month compliance period.

The FAA does not concur with the commenter's position that issuance of an AD is not warranted. As stated in the preamble of the proposed rule, the FAA received reports indicating that a latent electrical failure exists in the fire extinguishing system of the APU on the affected airplanes. This electrical failure presents an unsafe condition in airplanes, since it could eventually prevent the APU from shutting down and fire extinguishant from discharging when the flight crew pulls and rotates the fire handle. Consequently, the flightcrew would be unable to extinguish an APU fire. The FAA has determined that this unsafe condition could exist or eventually develop on Model 737 series airplanes, and that revision of the AFM must be mandated to ensure that safety is not degraded. The appropriate vehicle for mandating such action to correct an unsafe condition is the airworthiness directive. However, the FAA has confirmed that Boeing intends to update the AFM for the affected airplanes in the next revision, which is scheduled for December 1995.

One commenter, Boeing, requests that the FAA reevaluate the cost-benefit analysis of the proposed rule. The commenter states that simply changing the AFM to add a recall item, as proposed in this AD, will not fully accomplish the intent of the rule; flightcrews must be retrained to commit the recall item to memory. The commenter states that the cost benefit analysis should account for such training (including flightcrew training time, instructors, and updated materials). The commenter points out that the FAA is required by Executive Order 12866 to do an analysis to show that benefits outweigh costs before imposing new regulations. The commenter adds that, in calculating the total cost impact of the proposed AD, the FAA is stating that industry will be incurring a cost in implementing this rule that it would otherwise not be liable for if the rule was not issued.

The FAA acknowledges the concerns of this commenter. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with retraining flightcrews, as suggested by the commenter. (The commenter does not provide an estimate of such costs.)

Further, because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain and operate aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining and operating safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD. In any case, the FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

In addition, the FAA is not required to do a full cost-benefit analysis for each AD, since an AD typically does not meet the criteria of a ''significant regulatory action'' under Executive Order 12866. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost beneficial. When the FAA later makes a finding of an unsafe condition in an aircraft and issues an AD, it means that the original cost beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost beneficial, and because the AD does not add an additional regulatory requirement that increases the level of safety *beyond* what has been established by the type design, a full cost-benefit analysis for each AD would be redundant and unnecessary.

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 change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 2,602 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,072 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required

actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $64,320, or $60 per airplane.

The 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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–23–10 Boeing: Amendment 39–9430. Docket 95–NM–28–AD.

Applicability: All Model 737 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is provided with additional procedures necessary for shutting down the auxiliary power unit (APU) in the event of an APU fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, revise the Emergency Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures, which will ensure that the flightcrew is able to shut down the APU when an APU fire is indicated. This may be accomplished by inserting a copy of this AD in the AFM.

''APU FIRE WARNING

RECALL	
APU Fire Warning Switch.	PULL AND ROTATE
APU Switch	OFF
REFERENCE	
Master Fire Warning.	RESET''

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

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

(d) This amendment becomes effective on December 13, 1995.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27914 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–217–AD; Amendment 39–9424; AD 95–23–04]

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11 400 series airplanes. This action requires an inspection of the rod ends of the lift dumper to detect drill holes; a dye penetrant inspection to detect any cracking of drilled holes; and replacement of the rod end with an undrilled rod end, if necessary. This amendment is prompted by a report that, during a routine examination of the operating mechanism of the lift dumper, two cracked aft rod ends were found. Investigation revealed that holes had been drilled in the rod ends for grease nipples during manufacturing, and that cracking had developed at the holes. The actions specified in this AD are intended to prevent asymmetric deployment and subsequent lateral control problems due to cracking of either pair of aft rod ends of the operating mechanism of the lift dumper.

DATES: Effective November 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–217–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

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 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: 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: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAC 1–11 400 series airplanes. The CAA advises that, during a routine examination of the operating mechanism of the lift dumper, cracking was found on two aft rod ends (one per wing) on a British Aerospace Model BAC 1–11 500 series airplane. Investigation revealed that, during manufacture, holes had been drilled in

the rod ends for grease nipples. The cracking had developed at the point where an external grease nipple had been fitted to the eye-end of the rods, and caused the failure of the rod ends. This condition, if not corrected, could result in uncontrolled asymmetric deployment and subsequent lateral control problems, particularly at low speeds with the flaps extended.

The subject aft rod ends installed on Model BAC 1–11 500 series airplanes are similar to those installed on Model BAC 1–11 400 series airplanes. Therefore, Model BAC 1–11 400 series airplanes are subject to this same unsafe condition. (The Model BAC 1–11 500 is not type certificated for operation in the United States.)

British Aerospace has issued Alert Service Bulletin 27–A–PM6034, Issue 1, dated October 6, 1995, which describes procedures for visual inspection to detect drill holes for a grease nipple in the housing of the rod ends. If drill holes are detected, the alert service bulletin also describes procedures for a dye penetrant inspection to detect any cracking of the drill holes, and eventual replacement of the rod end with an undrilled rod end. The CAA classified this alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent asymmetric deployment and subsequent lateral control problems, particularly at low speeds with the flaps extended, due to failure of either pair of aft rod ends of the lift dumper operating mechanism. This AD requires a visual inspection of the lift dumper to detect drill holes in the rod ends. This AD also requires a dye penetrant inspection to detect any cracking if drill holes are detected, and eventual replacement of the rod ends with rod ends that have not been drilled for a grease nipple. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–217–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–23–04 British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39–9424. Docket 95–NM–217–AD.

Applicability: All Model BAC 1–11 400 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 (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an

assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Inspections and replacement of the rod ends in accordance with British Aerospace Campaign Wire 27–CW–PM6034, dated May 18, 1995, are considered to be acceptable for compliance with the actions specified in this AD.

To prevent asymmetric deployment and subsequent lateral control problems, particularly at low speeds with the flaps extended, due to cracking of either pair of aft rod ends of the lift dumper operating mechanism, accomplish the following:

(a) Within 100 flight hours or 30 days after the effective date of this AD, whichever occurs first: Perform a visual inspection to detect drill holes for a grease nipple in the housing of the rod ends of the lift dumper, in accordance with British Aerospace Alert Service Bulletin 27–A–PM6034, Issue 1, dated October 6, 1995.

(b) If no drill holes for a grease nipple are found, no further action is required by this AD.

(c) If any drill hole for a grease nipple is found, prior to further flight, perform a dye penetrant inspection to detect cracking of the rod eye-end, in accordance with British Aerospace Alert Service Bulletin 27–A–PM6034, Issue 1, dated October 6, 1995. Pay particular attention to the area surrounding the grease nipple hole.

(1) If no cracking is found, accomplish the requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Repeat the inspection required by paragraph (c) of this AD thereafter at intervals not to exceed 100 flight hours until the rod ends are replaced in accordance with paragraph (c)(1)(ii) of this AD.

(ii) Within 60 days after the effective date of this AD, replace the drilled rod end with an undrilled rod end, in accordance with the alert service bulletin. Accomplishment of this replacement constitutes terminating action for the inspections required by paragraph (c)(1)(i) of this AD.

(2) If any cracking is found, prior to further flight, replace the rod end with an undrilled rod end, in accordance with British Aerospace Alert Service Bulletin 27–A–PM6034, Issue 1, dated October 6, 1995.

(d) As of the effective date of this AD, no person shall install on any airplane a rod end, part number RMX 7GUE, having any holes drilled for a grease nipple; nor shall any person drill any holes for a grease nipple in a rod end having part number RMX 7GUE on any airplane.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

(g) The inspections and replacement of the rod ends shall be done in accordance with British Aerospace Alert Service Bulletin 27–A–PM6034, Issue 1, dated October 6, 1995. This incorporation by reference was approved by the Director of the Rederal 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.

(h) This amendment becomes effective on November 28, 1995.

Issued in Renton, Washington, on November 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27786 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–ANE–34; Amendment 39–9402, AD 95–21–15]

Airworthiness Directives; Teledyne Continental Motors Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Teledyne Continental Motors (TCM) reciprocating engines installed on certain aircraft identified by registration numbers. This action supersedes priority letter AD 94–14–12 that currently requires engines certified to operate on 91 octane or higher aviation gasoline (avgas) to undergo a teardown and analytical inspection for detonation damage, and engines certified to operate on 80 octane avgas to undergo inspection for evidence of possible internal engine damage. This action revises incorrect engine model numbers and aircraft registration numbers listed in the priority letter AD. This amendment is prompted by the Federal Aviation Administration (FAA) receiving more accurate information concerning which aircraft were fueled with the contaminated mixture at the affected airports. The actions specified by this AD are intended to prevent detonation due to low octane, which can result in severe engine damage and subsequent failure.

DATES: Effective November 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 1995. Comments for inclusion in the Rules Docket must be received on or before January 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95- ANE–34, 12 New England Executive Park, Burlington, MA 01803- 5299.

The service information referenced in this AD may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438–3411. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Locke Easton, Aerospace Engineer, Engine and Propeller Standards Staff, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (617) 238–7113, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On June 23, 1994, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 94-14–12, applicable to Teledyne Continental Motors (TCM) A–65-8, C–85–12, E–185–11, O–200, O–300–D, GO–300, IO–360–G, IO-360–K, TSIO–360, O–470–L, O–470–R, O–470–U, IO–470–C, IO–470-E, IO–470–F, IO–470–L, IO–470–N, IO–470–S, IO–470–V, IO–520-A, IO–520–B, IO–520–C, IO–520–D, IO–520–F, IO–520–K, IO–520- M, TSIO–520, TSIO–520–C, TSIO–520–M, TSIO–520–N, TSIO–520-UB, GTSIO–520, IO–550–C, and R–670 reciprocating engines, installed on the following U.S. registered aircraft: N101G, N101JB, N101PQ, N1077B, N11PT, N111MK, N114R, N1162D, N1167J, N1208U, N121LG, N124WN, N13159, N1344V, N1360L, N140NL, N1503S, N1556T, N1584V, N16165, N166AU, N1672R, N1680R, N172CB, N1724T, N17793, N179SV, N1806F, N1818L, N182MC,

N186Q, N19193, N19346, N207X, N200BD, N2051S, N2083S, N210KC, N21179, N2168N, N22FG, N2248Z, N2281T, N231KQ, N24FG, N2616N, N26560, N27G, N27326, N2841W, N2854W, N2881M, N2928B, N2995F, N3DX, N30C, N30CA, N300RS, N3097D, N31CU, N313TM, N3145Y, N3153B, N323K, N3397Q, N340VV, N3499G, N35MX, N35840, N35964, N3599L, N3603L, N36319, N3639D, N3700J, N39545, N4008F, N4088V, N41CU, N41032, N4105C, N4154Y, N421CW, N421EM, N421SM, N4218L, N4259B, N46GS, N4302L, N4354K, N4354W, N444BJ, N4562D, N4568D, N4591S, N4598S, N4672B, N476KE, N4761K, N47964, N4812F, N4884B, N4895E, N5089V, N51EN, N5204C, N5314T, N5357A, N5377J, N5453J, N550DF, N5517A, N555YT, N5591D, N57032, N5732X, N58BS, N5808F, N58689, N60DM, N60062, N619B, N6108F, N6158R, N6169N, N6193X, N62121, N6222F, N6278V, N6281F, N6285H, N6341X, N6363K, N6421P, N65WW N65031, N6527P, N6579M, N6664L, N6669X, N6670G, N66909, N6706G, N67249, N677PC, N6789R, N6800R, N6822R, N6837Q, N68937, N6915F, N6951M, N6952M, N6992E, N704GY, N704NQ, N7125E, N714BD, N7208V, N721X, N724BE, N7248H, N7303Y, N7309Q, N732DD, N735DV, N739JG, N7405S, N758JF, N777E, N7981D, N800WB, N8103Z, N8107D, N8150Q, N8160Q, N8168U, N8210, N8241N, N8307D, N8308Z, N836BQ, N8426S, N8432Z, N8465L, N8491S, N85WB, N8501S, N8532R, N8579H, N8579M, N85797, N86VS, N8660M, N8669A, N8867T, N9099G, N9114A, N9124U, N9151M, N9157S, N91603, N91860, N922DK, N92465, N9410S, N9434N, N9435U, N9516Y, N9547U, N9597T, N9606Y, N96134, N9613Y, N9673L, N96761, N9764E, N9777R, N97799, N9833H, N984BC, and N9992G. That action requires teardown and analytical inspection for engines certified to operate on 91 or higher octane aviation gasoline (avgas), and differential compression test and examination of the oil filter for engines certified to operate on 80 octane avgas. That action was prompted by reports of aviation gasoline (avgas) being contaminated by Jet A fuel. After investigation, the source of the contamination has been determined to be the refiner of the avgas. Through its distribution system, the refiner inadvertently caused Jet A fuel to be loaded into distribution tanks intended for avgas. Contaminated avgas from these distribution tanks was then shipped to local fuel distributors. The FAA has determined that aircraft with certain TCM engines installed were fueled with this contaminated mixture between May 22 and June 2, 1994, at Sacramento Executive (SAC) airport, or between May 18 and June 2, 1994, at Sacramento Metro (SMF) airport. The list of U.S. registered aircraft specified in the applicability paragraph of this AD is based on investigation of fueling records secured from the two affected airports, which the FAA has determined to represent the population of affected engines. That condition, if not corrected, could result in detonation due to low octane, which can result in severe engine damage and subsequent failure.

This AD requires engines certified to operate on 91 octane or higher avgas to undergo a teardown and analytical inspection for detonation damage, and engines certified to operate on 80 octane avgas to undergo inspection for evidence of possible internal engine damage. Engineering analysis of operating these engines with avgas contaminated with Jet A fuel indicates that actual damage to the engine may range from unnoticeable to very severe, according to the duration of run, engine power level, and level of contamination. Damage may be characterized by increased operating temperatures resulting in damaged intake valves and burned pistons, and excessive loads imposed by detonation. Since internal damage may not be assessed by any other method, engines certified to operate on 91 octane or higher avgas must undergo a teardown and analytical inspection and any parts showing signs of detonation damage must be replaced. Investigation revealed the lowest octane level of the contaminated fuel to be 83 octane, therefore engines certified to operate on 80 octane avgas need not undergo a teardown and analytical inspection unless evidence of internal engine damage is present by the required differential compression test and examination of the oil filter for metal particles. The refiner has advised the FAA that it may pay for any reasonable expense associated with the inspection and/or disassembly in accordance with the mechanic's and manufacturer's recommendations.

Since the issuance of that priority letter AD, the FAA has received more accurate information concerning which aircraft were fueled with the contaminated mixture at the affected airports. This AD therefore corrects certain engine model numbers and aircraft registration numbers for aircraft that were fueled with the contaminated mixture.

The FAA has reviewed and approved the technical contents of TCM Service Bulletin (SB) No. M88–10, dated August 24, 1988, that specifies that reciprocating engines operated with lower octane than that approved for the engine or contaminated with Jet A fuel should undergo a teardown and analytical inspection as the engine could sustain damage that cannot be assessed by any other method; and TCM SB No. M84–15, dated December 21, 1984, that describes procedures for differential compression tests.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes priority letter AD 94–14–12 to revise incorrect engine model numbers and aircraft registration numbers listed in the priority letter AD. The actions are required to be accomplished in accordance with the SB's described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–34.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–21–15 Teledyne Continental Motors: Amendment 39–9402. Docket No. 95–ANE–34.

Applicability: Teledyne Continental Motors (TCM) A–65–8, C–85–12, E–185–11, O–200, O–300–D, GO–300, IO–360–G, IO–360–K, TSIO–360, O–470–L, O–470–R, O–470–U, IO–470–C, IO–470–E, IO–470–F, IO–470–L, IO–470–N, IO–470–S, IO–470–V, IO–520–A, IO–520–B, IO–520–C, IO–520–D, IO–520–F, IO–520–K, IO–520–M, TSIO–520, TSIO–520–C, TSIO–520–M, TSIO–520–N, TSIO–520–UB, GTSIO–520, IO–550–C, and R–670 reciprocating engines, installed on the following U.S. registered aircraft: N101G, N101JB, N101PQ, N1077B, N11PT, N111MK, N114R, N1162D, N1167J, N1208U, N121LG, N124WN, N13159, N1344V, N1360L, N140NL, N1503S, N1556T, N1584V, N16165, N166AU, N1672R, N1680R, N172CB, N1724T, N17793, N179SV, N1806F, N1818L, N182MC, N186Q, N19193, N19346, N207X, N200BD, N2051S, N2083S, N210KC, N21179, N2168N, N22FG, N2248Z, N2281T, N231KQ, N24FG, N2616N, N26560, N27G, N27326, N2841W, N2854W, N2881M, N2928B, N2995F, N3DX, N30C, N30CA, N300RS, N3097D, N31CU, N313TM, N3145Y, N3153B, N323K, N3397Q, N340VV, N3499G, N35MX, N35840, N35964, N3599L, N3603L, N36319, N3639D, N3700J, N39545, N4008F, N4088V, N41CU, N41032, N4105C, N4154Y, N421CW, N421EM, N421SM, N4218L, N4259B, N46GS, N4302L, N4354K, N4354W, N444BJ, N4562D, N4568D, N4591S, N4598S, N4672B, N476KE, N4761K, N47964, N4812F, N4884B, N4895E, N5089V, N51EN, N5204C, N5314T, N5357A, N5377J, N5453J, N550DF, N5517A, N555YT, N5591D, N57032, N5732X, N58BS, N5808F, N58689, N60DM, N60062, N619B, N6108F, N6158R, N6169N, N6193X, N62121, N6222F, N6278V, N6281F, N6285H, N6341X, N6363K, N6421P, N65WW N65031, N6527P, N6579M, N6664L, N6669X, N6670G, N66909, N6706G, N67249, N677PC, N6789R, N6800R, N6822R, N6837Q, N68937, N6915F, N6951M, N6952M, N6992E, N704GY, N704NQ, N7125E, N714BD, N7208V, N721X, N724BE, N7248H, N7303Y, N7309Q, N732DD, N735DV, N739JG, N7405S, N758JF, N777E, N7981D, N800WB, N8103Z, N8107D, N8150Q, N8160Q, N8168U, N8210, N8241N, N8307D, N8308Z, N836BQ, N8426S, N8432Z, N8465L, N8491S, N85WB, N8501S, N8532R, N8579H, N8579M, N85797, N86VS, N8660M, N8669A, N8867T, N9099G, N9114A, N9124U, N9151M, N9157S, N91603, N91860, N922DK, N92465, N9410S, N9434N, N9435U, N9516Y, N9547U, N9597T, N9606Y, N96134, N9613Y, N9673L, N96761, N9764E, N9777R, N97799, N9833H, N984BC, and N9992G.

Note: This airworthiness directive applies to each engine 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 engines 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) to request approval from the Federal Aviation Administration (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 engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent detonation due to low octane, which can result in severe engine damage and subsequent failure, accomplish the following:

(a) For engines that are certified to operate on only 91 or higher octane aviation gasoline (avgas) within the next 2 hours time in service (TIS) after the effective date of this AD perform an engine teardown and analytical inspection, and replace with serviceable parts as necessary in accordance with TCM Service Bulletin (SB) No. M88–10, dated August 24, 1988.

(b) For engines that are certified to operate on 80 octane avgas, within the next 2 hours TIS after the effective date of this AD conduct a differential compression test on all cylinders in accordance with TCM SB No. M84–15, dated December 21, 1984, and examine the oil filter by cutting the oil filter apart and spreading the filter paper out to look for metal particles. If metal particles are present, or if one or more cylinders shows unacceptable compression as specified in TCM SB No. M84–15, dated December 21, 1984, perform an engine teardown and analytical inspection, and replace with serviceable parts as necessary in accordance with TCM SB No. M88–10, dated August 24, 1988.

(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, Engine and Propeller Standards Staff. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine and Propeller Standards Staff.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine and Propeller Standards Staff.

(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 aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following SB's:

Document No.	Page	Date
TCM SB No. M88–10.	1	August 24, 1988.
Total Pages: 1		
TCM SB No. M84–15.	1–6 .	December 21, 1984.
Total Pages: 6		

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 Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438–3411. Copies may be inspected at the FAA,

New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment supersedes priority letter AD 94–14–12, issued June 23, 1994.

(g) This amendment becomes effective on November 28, 1995.

Issued in Burlington, Massachusetts, on October 30, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–27887 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 97

[Docket No. 28378; Amdt. No. 1693]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on November 3, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 utc on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LOA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs identified as follows:

Effective December 7, 1995

Wilmington, DE, New Castle County, VOR RWY 9, Amdt 5
Cocoa, FL, Merritt Island, NDB–A, Orig
Cocoa, FL, Merritt Island, NDB RWY 11, Orig
Des Moines, IA, Des Moines Intl, LOC RWY 5, Orig
Bad Axe, MI, Huron County Memorial, VOR OR GPS RWY 3, Amdt 10
Bad Axe, MI, Huron County Memorial, VOR OR GPS RWY 21, Amdt 9
Bad Axe, MI, Huron County Memorial, VOR OR GPS RWY 35, Orig
Youngstown, OH, Youngstown Executive, VOR/DME OR GPS–A Amdt 10, Cancelled
Youngstown, OH, Youngstown Executive, VOR OR GPS RWY 11 Amdt 6, Cancelled

Effective January 4, 1996

Little Rock, AR, North Little Rock Muni, VOR RWY 35, Amdt 4, CANCELLED
North Little Rock, AR, North Little Rock Muni, VOR RWY 35 Orig
Chico, CA, Chico Muni, NDB RWY 13L, Amdt 5 CANCELLED
Chico, CA, Chico Muni, ILS RWY 13L, Amdt 9
Madera, CA, Madera Muni, GPS RWY 30, Orig
Charles City, IA, Charles City Muni, NDB–A, Orig
Charles City, IA, Charles City Muni, NDB OR GPS RWY 30, Amdt 2C, CANCELLED
Pocahontas, IA, Pocahontas Muni, VOR/DME OR GPS RWY 29, Amdt 3
Pocahontas, IA, Pocahontas Muni, NDB OR GPS RWY 11, Amdt 4
Webster City, IA, Webster City Muni, VOR/DME OR GPS RWY 14, Amdt 4
Webster City, IA, Webster City Muni, NDB OR GPS RWY 32, Amdt 8
Wichita, KS, Wichita Mid-Continent, GPS RWY 19L, Orig
Wichita, KS, Wichita Mid-Continent, GPS RWY 32, Orig
Lexington, KY, Blue Grass, NDB or GPS RWY 4, Amdt 20
Lexington, KY, Blue Grass, ILS RWY 4, Amdt 15
Lexington, KY, Blue Grass, ILS RWY 22 Amdt 16
Lexington, KY, Blue Grass, RADAR–1M Amdt 10
Eastport, ME, Eastport Muni, GPS RWY 15, Orig
Orange, MA, Orange Muni, VOR or GPS–A, Amdt 6
Orange, MA, Orange Muni, NDB or GPS–B Amdt 4
Worcester, MA, Worcester Muni, GPS RWY 33, Orig
Grenada, MS, Grenada Muni, ILS RWY 13, Orig
Falls City, NE, Brenner Field, GPS RWY 32, Orig
Reno, NV, Reno/Tahoe Intl, GPS RWY 16R, Orig
Readington, NJ, Solberg-Hunterdon, VOR RWY 4, Orig
Hudson, NY, Columbia County, GPS RWY 3, Orig
White Plains, NY, Westchester County, COPTER ILS/DME 162, Orig
Ada, OK, Ada Muni, VOR/DME–A Orig
Ada, OK, Ada Muni, NDB OR GPS–A, Amdt 3, CANCELLED
Goldsby, OK, David Jay Perry, GPS RWY 31, Orig
Guthrie, OK, Guthrie Muni, NDB OR GPS RWY 16, Amdt 4
Guthrie, OK, Guthrie Muni, GPS RWY 34, Orig
Norman, OK, University of Oklahoma Westheimer Airpark, GPS RWY 17, Orig
Pauls Valley, OK, Pauls Valley Muni, NDB RWY 35, Amdt 3
Pauls Valley, OK, Pauls Valley Muni, GPS RWY 35, Orig
Weatherford, OK, Thomas P. Stafford, NDB OR GPS RWY 17, Amdt 2
Woodward, OK, West Woodward, GPS RWY 35, Orig
York, PA, York, NDB or GPS RWY 16, Amdt 3
Burlington, VT, Burlington Intl, GPS RWY 33, Orig

Note: The FAA published an Amendment in Docket No. 28340, Amdt. No. 1686 to Part 97 of the Federal Aviation Regulations (Vol. 60 FR No. 191 Page 51718; dated Tuesday, Oct 3, 1995) under Section 97.33 eff 12 October 95, which is hereby amended as follows:

Charleston, SC, Charleston Executive, GPS RWY 9, Orig * * * change eff date to * * * 9 Nov 95. * * *

Note: The FAA published an Amendment in Docket No. 28364, Amdt. No. 1692 to Part 97 of the Federal Aviation Regulations (Vol. 60 FR, No. 209, Page 55195; dated Monday, October 30, 1995) under Section 97.27 Effective 4 Jan 96, which is hereby amended as follows:

Caddo Mills, TX, Caddo Mills Muni, GPS RWY 35L, Orig. EFFECTIVE DATE should read PROPOSED 10 OCT 1996.

[FR Doc. 95–27924 Filed 11–9–95; 8:45 am]
BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'') amends its Appliance Labeling rule by publishing new ranges of comparability to be used on required labels for refrigerators, refrigerator-freezers, and freezers, and by issuing corrections to its ranges of comparability for room air conditioners, which were published on August 21, 1995.[1] The Commission also announces that the ranges of comparability for central air conditioners and heat pumps, which were published on August 5, 1994,[2] will remain in effect until further notice. Finally, the Commission is amending the portions of Appendices H (Cooling Performance and Cost for Central Air Conditioners) and I (Heating Performance and Cost for Central Air Conditioners) to part 305 that contain cost calculation formulas. These amendments change the figures in the formulas to reflect the current Representative Average Unit Cost of electricity that was published in January by the Department of Energy (''DOE'').

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION:

Background

Section 324 of the Energy Policy and Conservation Act of 1975 (''EPCA'')[3] requires the Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption

[1] 60 FR 43367.
[2] 59 FR 39951.
[3] 42 U.S.C. 6294.

information for at least thirteen categories of appliances. Refrigerators, refrigerator-freezers, room air conditioners, central air conditioners, and heat pumps are included in those categories. The statute also requires DOE to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued the Appliance Labeling Rule (''Rule''), which covered seven of the thirteen appliance categories that were then covered by DOE test procedures: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners and furnaces (this category includes boilers).[4] The Commission has extended the coverage of the Rule five times since it originally issued the Rule: in 1987 (central air conditioners, heat pumps, and pulse combustion and condensing furnaces [5]); 1989 (fluorescent lamp ballasts [6]); 1993 (certain plumbing products [7] and certain lighting products [8]), and in 1994 (pool heaters, instantaneous water heaters, and heat pump water heaters [9]).

On July 1, 1994, the Commission amended the Rule to make certain improvements, including making the label format more ''user-friendly,'' changing the energy usage descriptors required on labels, and adopting new product sub-categories for ranges of comparability purposes.[10] The amendment prescribing a new label format affects the labels for all products. Labels for refrigerators, refrigerator-freezers, and freezers also are affected by the amendments requiring a new energy use descriptor and revised product sub-categories. More specifically, the amendments change the principal energy usage descriptor on labels for refrigerators, refrigerator-freezers, and freezers from an estimated annual operating cost to an estimated annual energy consumption. In addition, the amendments eliminate the cost grid from the labels and add a secondary disclosure of energy usage in the form of an estimated annual operating cost in a box at the bottom of the label, with an expanded disclosure of the usage assumptions and electrical cost upon which the operating cost is based. The original effective date of these amendments was December 28, 1994, but, on December 8, 1994, the Commission granted a partial delay of compliance dates for these products.[11] The Commission announces today that manufacturers of refrigerators, refrigerator-freezers, and freezers must begin using the new labels (and ranges of comparability published herein) on all covered products manufactured on or after the effective date of today's notice.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[12] These reports contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information on labels up to date, the Commission is empowered, under Section 305.10 of the Rule, to publish new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior ranges remain in effect for the next year.

New Ranges of Comparability for Refrigerators, Refrigerator-freezers, and Freezers

The Commission has analyzed annual submissions of data for refrigerators, refrigerator-freezers, and freezers. The submissions have resulted in new ranges of comparability figures for these products. In compiling these ranges of comparability, the Commission did not include the estimated annual energy consumption of models with energy consumption in excess of DOE's current maximum energy use standards for this category, which became effective on January 1, 1993.[13] After that date, it became illegal to distribute in commerce products that exceed those standards. Because the standards have been in place for almost three years, the number of legally produced, but nonconforming, products still in the marketplace is likely to be small. Therefore, it is no longer appropriate to include those products in the ranges. The new ranges will supersede the current ranges for refrigerators, refrigerator-freezers, and freezers, which were published on January 12, 1994.[14]

Corrections to Ranges of Comparability for Room Air Conditioners That Were Published on August 21, 1995

Energy efficiency figures for 1995 for room air conditioners were submitted earlier this year by manufacturers and analyzed by the Commission. New ranges of comparability based upon them were published in the Federal Register on August 21, 1995.[15] The Commission staff has learned since publication that there were inadvertent errors in the ranges. The new ranges published today contain the corrected numbers. In preparing these corrections and in compiling the earlier ranges of comparability for these products, the Commission did not include the energy efficiency of models with efficiencies below DOE's current minimum efficiency standards for room air conditioners, which became effective on January 1, 1990.[16] The Commission's reasoning is the same as in the case of the new ranges for refrigeration products, discussed above. For the sake of clarity, the Commission is republishing the complete set of ranges for room air conditioners in their corrected form.

Although these corrected ranges of comparability for room air conditioners are being published prior to the effective date of the August 21, 1995 notice, which is hereby rescinded, manufacturers need not relabel any room air conditioners already labeled and may use any labels that were ordered or printed before the date of this notice in good faith reliance on the August 21 notice. After this initial stock of labels is exhausted, however, manufacturers must use labels based on today's notice.

Changes Applicable to Disclosures for Central Air Conditioner and Heat Pumps

The 1995 data submission for central air conditioners and heat pumps has been completed, and the Commission has determined that the upper and lower limits of the ranges of comparability for these products, which

[4] FR 66466, 16 CFR Part 305 (Nov. 19, 1979). The Statement of Basis and Purpose for the final Rule describes the reasons the Commission declined to cover the other categories of covered products. *Id.* at 66467–69.

[5] 52 FR 46888 (Dec. 10, 1987).

[6] 54 FR 28031 (July 5, 1989).

[7] 58 FR 54955 (Oct. 25, 1993).

[8] 59 FR 25176 (May 13, 1994).

[9] 59 FR 49556 (Sept. 28, 1994).

[10] 59 FR 34014.

[11] 59 FR 63688.

[12] Reports for central air conditioners and heat pumps are due July 1; reports for refrigerators, refrigerator-freezers, and freezers are due August 1.

[13] 16 CFR 430.32(a) (1995).

[14] 59 FR 1626.

[15] *See* note 1, above.

[16] 16 CFR 430.32(b) (1995).

were published on August 5, 1994,[17] have not changed by more than 15%. Therefore, the Commission is announcing that those ranges will remain in effect until further notice.

The Commission is amending in this Notice, however, the cost calculation formulas appearing in the Appendices (H and I) to Part 305 that contain, for central air conditioners and heat pumps, heating and cooling performance costs and the ranges of comparability. These formulas must be provided on fact sheets and in directories so consumers can calculate their own costs of operation for the central air conditioners and heat pumps that they are considering purchasing. This amendment changes the figures in the formulas to reflect the current Representative Average Unit Cost of Electricity—8.67 cents per kilowatt-hour—that was published on January 5, 1995, by DOE [18] and by the Commission on February 17, 1995.[19]

Amendments

In consideration of the foregoing, the Commission amends Appendices A1 through A8, B1 through B3, E, H, and I of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and catalog sales of refrigerators, refrigerator-freezers, and freezers, the following corrected ranges of comparability for room air conditioners, and the following amendments to the cost calculation formulas that manufacturers of central air conditioners and heat pumps and must include on fact sheets and in directories, beginning February 12, 1996.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix A1 to Part 305 is revised to read as follows:

Appendix A1 to Part 305—Refrigerators With Automatic Defrost

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 2.5	327	331
2.5 to 4.4	331	369
4.5 to 6.4	331	457
6.5 to 8.4	(*)	(*)
8.5 to 10.4	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	588	588
16.5 and over	438	668

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

3. Appendix A2 to Part 305 is revised to read as follows:

Appendix A2 to Part 305—Refrigerators and Refrigerator—Freezers With Manual Defrost

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 2.5	285	321
2.5 to 4.4	270	351
4.5 to 6.4	270	381
6.5 to 8.4	378	407
8.5 to 10.4	376	431
10.5 to 12.4	433	457
12.5 to 14.4	496	496
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

4. Appendix A3 to Part 305 is revised to read as follows:

Appendix A3 to Part 305—Refrigerators—Freezers With Partial Automatic Defrost

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	419	489
10.5 to 12.4	454	522
12.5 to 14.4	562	562
14.5 to 16.4	573	573
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

5. Appendix A4 to Part 305 is revised to read as follows:

Appendix A4 to Part 305—Refrigerator-Freezers With Automatic Defrost With Top-Mounted Freezer Without Through-the-Door Ice Service

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	511	741
10.5 to 12.4	525	572
12.5 to 14.4	496	624
14.5 to 16.4	514	653
16.5 to 18.4	518	697
18.5 to 20.4	533	732
20.5 to 22.4	555	767
22.5 to 24.4	680	800
24.5 to 26.4	609	834
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

6. Appendix A5 to Part 305 is revised to read as follows:

[17] *See* note 2, above.

[18] 60 FR 1773. This figure, along with national average cost figures for natural gas, propane, heating oil and kerosene, is published annually by DOE for the industry's use in calculating, among other figures, the cost figures required by the Commission's Rule.

[19] 60 FR 9295.

Appendix A5 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer Without Through-the-Door Ice Service

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	579	579
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	702	796
20.5 to 22.4	724	821
22.5 to 24.4	750	848
24.5 to 26.4	776	876
26.5 to 28.4	(*)	(*)
28.5 and over	920	950

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

7. Appendix A6 to Part 305 is revised to read as follows:

Appendix A6 to Part 305—Refrigerator-Freezers With Automatic Defrost With Bottom-Mounted Freezer Without Through-the-Door Ice Service

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	463	463
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	666	666
16.5 to 18.4	709	709
18.5 to 20.4	612	612
20.5 to 22.4	524	789
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

8. Appendix A7 to Part 305 is revised to read as follows:

Appendix A7 to Part 305—Refrigerator-Freezers With Automatic Defrost With Top-Mounted Freezer With Through-the-Door Ice Service

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	557	557
16.5 to 18.4	769	769
18.5 to 20.4	(*)	(*)
20.5 to 22.4	727	840
22.5 to 24.4	789	915
24.5 to 26.4	814	917
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

9. Appendix A8 to Part 305 is revised to read as follows:

Appendix A8 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer With Through-the-Door Ice Service

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	710	935
20.5 to 22.4	561	967
22.5 to 24.4	750	1008
24.5 to 26.4	641	1041
26.5 to 28.4	658	1059
28.5 and over	956	1144

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

10. Appendix B1 to Part 305 is revised to read as follows:

Appendix B1 to Part 305—Upright Freezers With Manual Defrost

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 5.5	250	347
5.5 to 7.4	(*)	(*)
7.5 to 9.4	322	414
9.5 to 11.4	459	459
11.5 to 13.4	469	474
13.5 to 15.4	509	534
15.5 to 17.4	562	565
17.5 to 19.4	(*)	(*)
19.5 to 21.4	615	627
21.5 to 23.4	(*)	(*)
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

11. Appendix B2 to Part 305 is revised to read as follows:

Appendix B2 to Part 305—Upright Freezers With Automatic Defrost

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 5.5	504	516
5.5 to 7.4	(*)	(*)
7.5 to 9.4	(*)	(*)
9.5 to 11.4	(*)	(*)
11.5 to 13.4	704	704
13.5 to 15.4	738	774
15.5 to 17.4	791	821
17.5 to 19.4	876	876
19.5 to 21.4	896	909
21.5 to 23.4	(*)	(*)
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

12. Appendix B3 to Part 305 is revised to read as follows:

Appendix B3 to Part 305—Chest Freezers and All Other Freezers

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 5.5	250	260
5.5 to 7.4	291	293
7.5 to 9.4	322	322
9.5 to 11.4	347	347
11.5 to 13.4	369	399
13.5 to 15.4	431	437
15.5 to 17.4	(*)	(*)
17.5 to 19.4	493	493
19.5 to 21.4	529	529
21.5 to 23.4	552	588
23.5 to 25.4	629	629
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

13. Appendix E to Part 305 is revised to read as follows:

Appendix E to Part 305—Room Air Conditioners

Range Information

Manufacturer's rated cooling capacity in Btu's/yr.	Range of Energy Efficiency Ratios (EERs)	
	Low	High
Without Reverse Cycle and with Louvered Sides:		
Less than 6,000 Btu	8.0	10.0
6,000 to 7,999 Btu	8.5	10.3
8,000 to 13,999 Btu	9.0	12.0
14,000 to 19,999 Btu	8.8	10.7
20,000 and more Btu	8.2	10.0
Without Reverse Cycle and without Louvered Sides:		
Less than 6,000 Btu	(*)	(*)
6,000 to 7,999	8.5	9.6
8,000 to 13,999 Btu	8.5	9.2
14,000 to 19,999 Btu	(*)	(*)
20,000 and more Btu	(*)	(*)
With Reverse Cycle and with Louvered Sides	8.5	11.5
With Reverse Cycle, without Louvered Sides	8.0	9.0

*No data submitted for units meeting Federal Minimum Efficiency Standards effective January 1, 1990.

14. In section 2 of Appendix H of Part 305, the text and formulas are amended by removing the figure ''8.41¢'' wherever it appears and by adding, in its place, the figure ''8.67¢''. In addition, the text and formulas are amended by removing the figure ''12.62¢'' wherever it appears and by adding, in its place, the figure ''13.01¢''.

15. In section 2 of Appendix I of Part 305, the text and formulas are amended by removing the figure ''8.41¢'' wherever it appears and by adding, in its place, the figure ''8.67¢''. In addition, the text and formulas are amended by removing the figure ''12.62¢'' wherever it appears and by adding, in its place, the figure ''13.01¢''.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–27889 Filed 11–9–95; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 435

Trade Regulation Rule: Mail or Telephone Order Merchandise

AGENCY: Federal Trade Commission.

ACTION: Technical amendments to rule.

SUMMARY: The Federal Trade Commission (''Commission'') makes three non-substantive, minor, technical corrections to the definition of ''prompt refund'' in the Commission's Mail or Telephone Order Merchandise Trade Regulation Rule (''MTOR'' or ''Rule''), 16 CFR 435.2(f). The two cross-references in section 435.2(f) of the Rule are corrected to refer to section 435.2(e) of the Rule instead of to section 435.2(c). Additionally, a comma is added to section 435.2(f)(1) to parallel the punctuation in section 435.2(f)(2). Because these corrections are non-substantive, the Commission has determined that Magnuson-Moss rulemaking proceedings are not required by section 18(d)(2)(B) of the FTC Act. Additionally, because these are minor technical changes correcting inadvertent editing errors, the Commission has also determined that notice and public procedure are not required under section 553 of the Administrative Procedure Act because they would be unnecessary.

EFFECTIVE DATE: November 13, 1995.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joel N. Brewer, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, (202) 326–2967.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the FTC Act, 15 U.S.C. 57a, on September 21, 1993, the Commission adopted proposed amendments to the Commission's Mail Order Merchandise Trade Regulation Rule (the ''MOR''), 16 C.F.R. Part 435, including renaming the rule ''Mail or Telephone Order Merchandise'' (the ''MTOR'').[1] Two new definitions, ''mail or telephone order sales'' and ''telephone,'' were added as sections 435.2 (a) and (b) of the MTOR. The addition of these definitions resulted in all other definitions being renumbered. Thus, the definition for ''shipment,'' which formerly appeared as section 435.2(a) of the MOR, was renumbered section 435.2(c) of the MTOR; the definition for ''receipt of a properly completed order,'' which formerly appeared as section 435.2(b) of the MOR, was renumbered section 435.2(d) of the MTOR, etc.

In making these changes, two cross-references to the definition of ''refund'' in the definition of ''prompt refund'' in section 435.2(d) of the MOR (now renumbered section 435.2(f) of the MTOR) were inadvertently overlooked. The Commission has accordingly determined to correct the two cross-references in section 435.2(f) to refer to section 435.2(e), the MTOR's definition of ''refund.''

Additionally, a comma is being inserted in section 435.2(f)(1) of the MTOR to parallel the punctuation of section 435.2(f)(2). This error was in the text of the MOR originally and was carried from the MOR to the MTOR.

Section 18(d)(2)(B) of the FTC Act provides that the procedures for making any ''substantive'' amendment to a trade regulation rule shall be the same as the procedures for promulgating a rule under section 18(a)(1)(B). In this case, the changes, which are necessary to correct inadvertent editorial errors in the recently concluded rulemaking proceedings, are non-substantive; thus, section 18(d)(2)(B) is inapplicable. Accordingly, section 553 of the Administrative Procedure Act (the ''APA''), 5 U.S.C. 553, applies to these amendments.[2] Section 553(b)(B) of the APA provides that rulemaking procedures are not required where the agency determines that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Because the changes here are minor and technical, the Commission has determined that notice and public procedure are unnecessary in this case, and that rulemaking procedures are accordingly not required.

[1] 58 FR 49095.

[2] See, 15 U.S.C. 57a(b)(1).

List of Subjects in 16 CFR Part 435

Advertising, Mail or telephone order Merchandise: Trade Practices.

Based on the foregoing analysis, the Commission makes non-substantive, minor, technical amendments to title 16, part 435 of the Code of Federal Regulations.

PART 435—MAIL OR TELEPHONE ORDER MERCHANDISE

1. The authority citation for part 435 continues to read as follows:

Authority: 5 U.S.C. 553; 15 U.S.C. 41 *et seq.*

2. Section 435.2(f) is revised to read as follows:

§ 435.2 Definitions.

* * * * *

(f) ''Prompt refund'' shall mean:

(1) Where a refund is made pursuant to paragraph (e) (1) or (2)(iii) of this section, a refund sent to the buyer by first class mail within seven (7) working days of the date on which the buyer's right to refund vests under the provisions of this part;

(2) Where a refund is made pursuant to paragraph (e)(2) (i) or (ii) of this section, a refund sent to the buyer by first class mail within one (1) billing cycle from the date on which the buyer's right to refund vests under the provisions of this part.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–27890 Filed 11–9–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

U.S. Virgin Islands State Plan for Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: This document announces the Occupational Safety and Health Administration's (OSHA) decision to suspend the U.S. Virgin Islands State Plan ''final approval'' determination under Section 18(e) of the Occupational Safety and Health Act. OSHA is reinstating concurrent Federal enforcement authority over occupational safety issues in the private sector which issues have been solely covered by the State Plan in the U.S. Virgin Islands since 1984. (OSHA currently exercises authority over occupational health issues in the private sector, which issues are excluded from the State plan.) The scope of the exercise of this concurrent Federal enforcement authority is further defined in this document under ''Level of Federal Enforcement.''

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

A. Background

The Virgin Islands operates a State Plan to develop and enforce occupational safety standards for private sector employers and occupational safety and health standards for public sector (State and local government) employers, pursuant to the provisions of Section 18 of the Occupational Safety and Health Act of 1970 (the Act). Pursuant to Section 18(e) of the Act, OSHA granted the Virgin Islands ''final approval'' (which is also referred to as an 18(e) determination) and relinquished concurrent Federal enforcement jurisdiction effective April 17, 1984. As a result of more recent Federal monitoring of the U.S. Virgin Islands State Plan, OSHA has now found that the State plan, in actual operation, is no longer ''at least as effective as'' Federal OSHA and that other 18(e) requirements are no longer being met. In response to this finding, in August 1995, Lisa Harris-Moorehead, the newly appointed Virgin Islands' Commissioner of Labor, indicated the Virgin Islands' agreement to voluntarily relinquish the State Plan's final approval status under Section 18(e). The Commissioner also agreed to the reassertion of concurrent Federal enforcement jurisdiction. On behalf of the Governor, the Commissioner pledged to accomplish the necessary corrective action to regain final approval status by December, 1995. Subsequently, as a result of the intervening devastation inflicted by Hurricane Marilyn on September 15, 1995, the Virgin Islands, by letter dated September 22, 1995, requested Federal technical assistance and indicated that the necessary corrective action of the State Plan may now be somewhat delayed.

Pursuant to the procedures set forth in 29 CFR 1902.47 *et seq.*, OSHA published notice of its reconsideration of the Virgin Islands' 18(e) determination; proposed reassumption of concurrent Federal enforcement authority; and a request for written comments and opportunity to request an informal hearing on September 11, 1995 (60 FR 47131). That notice also contains a more detailed description of the Virgin Islands' State plan and the identified deficiencies. Similar notice was published in two newspapers in the Virgin Islands on September 25, 1995. The 35 day comment period closed on October 16, 1995, and OSHA received no written comments or requests for a hearing.

B. Decision

Pursuant to the procedures set forth in 29 CFR 1902.47 *et seq.*, the Assistant Secretary for Occupational Safety and Health has made a final decision to suspend the 18(e) final approval status of the Virgin Islands' State Plan and to reinstate concurrent Federal enforcement authority over occupational safety issues in the U.S. Virgin Islands pending the necessary corrective action by the State Plan to again meet the criteria for an 18(e) final approval determination. Concurrent Federal enforcement authority will be exercised in the U.S. Virgin Islands effective November 13, 1995.

The Assistant Secretary's decision is based upon the facts determined by OSHA in the monitoring of the State Plan and after opportunity for public comment. OSHA did not receive any written comments. The applicable evaluation reports and the State's letters and Corrective Action Plan may be inspected and copied during normal business hours at the OSHA Technical Data Center (TDC), Room N2625, 200 Constitution Avenue, NW., Washington, DC [Docket #T030]; at the Office of the Regional Administrator, Occupational Safety and Health Administration, 201 Varick Street, Room 670, New York, New York 10014; Puerto Rico Area Office, Occupational Safety and Health Administration, U.S. Courthouse & FOB, Carlos Chardon Avenue, Room 555, Hato Rey, Puerto Rico, 00918; or at the Virgin Islands Department of Labor, Occupational Safety and Health Division, 3012 Golden Rock, Christiansted, St. Croix, Virgin Islands 00820.

C. Effect of the Decision

The Assistant Secretary's decision to suspend the State Plan's final approval under section 18(e) restores the state

Plan to ''initial'' approval status and permits the resumption of concurrent Federal enforcement activity. The Assistant Secretary's decision does not terminate Federal approval of the State Plan and does not affect the legal authority of the Virgin Islands to carry on enforcement activities under the State Plan. Federal OSHA or joint State and Federal OSHA inspections may result in the issuance of appropriate Federal citations and penalties. Federal OSHA compliance officers may issue citations effective immediately. Contested Federal citations and penalties will be reviewed by the Federal Occupational Safety and Health Review Commission (OSHRC). In addition to enforcement actions, Federal and State OSHA will provide as much technical assistance and voluntary compliance assistance as possible to assure worker protection during the extensive cleanup and rebuilding effort that is occurring on the Virgin Islands as a result of Hurricane Marilyn. (The Virgin Islands suffered significant property damage with most businesses requiring substantial or complete reconstruction.) Joint Federal/State seminars and other training and outreach activities have been and will continue to be conducted to assist employers and employees in understanding their compliance obligations.

Reverting the State Plan's Federal approval status from ''final'' to ''initial'' allows Federal OSHA to exercise discretionary concurrent enforcement authority to compensate for the current deficiencies in the State Plan's enforcement, while allowing the Virgin Islands sufficient time and assistance to improve its performance. Federal OSHA will provide technical assistance to the Virgin Islands in the form of staff training for compliance officers and administrative, legal, and operational guidance.

Immediate Effective Date: November 13, 1995.

OSHA finds that good cause exists for making this rule effective immediately upon publication in the Federal Register. Monitoring of the State plan indicates the immediate need for supplementary Federal enforcement of safety requirements for the protection of workers in the Virgin Islands. In addition, today's action essentially imposes no new compliance obligations on affected employers since standards enforced under the Virgin Islands State plan are for the most part identical to Federal standards.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Accordingly, 29 CFR Part 1952 is amended as set forth below.

Signed in Washington, D.C. this 6th day of November, 1995.

Joseph A. Dear,

Assistant Secretary.

PART 1952—[AMENDED]

1. The authority citation for 29 CFR Part 1952 continues to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

Subpart S—Virgin Islands

2. Section 1952.253 is amended by adding the following sentence to the end of paragraph (a) to read as follows:

§ 1952.253 Final approval determination.

(a) * * *. *Note:* The Virgin Islands final approval status under Section 18(e) of the Act was suspended and Federal concurrent enforcement authority reinstated on November 13, 1995.

* * * * *

3. Section 1952.253 is amended by adding the following sentence to the end of paragraph (b) to read as follows:

§ 1952.253 Final approval determination.

* * * * *

(b) * * *. *Note:* The Virgin Islands final approval status under Section 18(e) of the Act was suspended and Federal concurrent enforcement authority reinstated on November 13, 1995.

* * * * *

4. Section 1952.253 is amended by adding paragraph (d) to read as follows:

§ 1952.253 Final approval determination.

* * * * *

(d) As a result of Federal monitoring of the U.S. Virgin Islands State Plan and after opportunity for public comment, the Assistant Secretary for Occupational Safety and Health has determined that the State Plan no longer meets the criteria for final approval under Section 18(e). As a result the final approval status has been suspended and the State Plan reverts to ''initial approval'' status effective November 13, 1995. Concurrent Federal enforcement authority over occupational safety issues in the U.S. Virgin Islands has been reinstituted pending the necessary corrective action by the State Plan to again meet the criteria for an 18(e) final approval determination. Concurrent Federal enforcement authority will be exercised in the U.S. Virgin Islands effective November 13, 1995, and will continue until further notice.

5. Section 1952.254 is revised to read as follows:

§ 1952.254 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination to suspend the final approval determination under section 18(e) for the Virgin Islands state plan, effective November 13, 1995, Federal occupational safety standards which have been promulgated under section 6 of the Act now apply to all covered employers in the Virgin Islands. Until subsequent determinations are made by Federal OSHA affecting the level of Federal enforcement in the Virgin Islands, discretionary Federal concurrent enforcement authority will be exercised in the following manner. Federal OSHA will exercise the full range of enforcement authority available under the Act, including but not limited to, issuance of citations under section 9 for violations of any requirement of section 5, of any standard, rule or order promulgated pursuant to section 6, or of any regulation prescribed pursuant to the Act; conduct of inspections and investigations under section 8; conduct of enforcement proceedings in contested cases under section 10; institution of proceedings to correct imminent dangers under section 13; and proposal of civil penalties or initiation of criminal proceedings for violations of the Act under section 17 with regard to occupational safety issues in the private sector. The Virgin Islands retains full authority under its approved State plan to continue to adopt and enforce occupational safety standards including issuing citations for violations thereof, proposing penalties and adjudicating contested cases under State law. Where State and Federal compliance officers conduct joint inspections, enforcement actions may be either Federal or State.

(b) Federal OSHA also continues to retain full authority over issues which have not been subject to State enforcement under the Virgin Islands plan. Thus, OSHA retains authority to enforce all provisions of the Act, Federal standards, rules or orders which relate to occupational health in private sector employment in the Virgin Islands. OSHA also retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders and all Federal standards, current or future, specifically directed to maritime employment (e.g., 29 CFR part 1915, shipyard employment; 29 CFR part 1917, marine terminals; 29 CFR part 1918, longshoring; 29 CFR part 1919, gear

certification), as well as provisions of general industry (29 CFR part 1910) standards appropriate to hazards found in these employments. Federal jurisdiction also remains in effect with respect to Federal government employers and employees.

(c) The Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees. Any Federal standards, including any standards promulgated or modified during the period of the Virgin Islands final approval under section 18(e), are now enforceable by Federal OSHA.

(d) The Assistant Secretary also retains authority to continue to conduct investigations and inspections for the purpose of the evaluation of the Virgin Islands State plan under section 18 (e) and (f) of the Act. The Regional Administrator will closely monitor State performance and corrective action and make prompt recommendation to the Assistant Secretary for either reinstatement of the Virgin Islands final approval status or initiation of plan withdrawal action. Federal enforcement authority will continue to be exercised to the extent necessary to assure occupational safety and health protection to employees in the Virgin Islands until further notice.

[FR Doc. 95–27915 Filed 11–9–95; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, and 271

[FRL–5328–4]

RIN 2060–AB94

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of postponed effective date.

SUMMARY: This document postpones the effective date of the final rule on Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers until June 6, 1996.

EFFECTIVE DATE: The final rule will be effective as of June 6, 1996. The EPA specified in the final rule a schedule that established the compliance dates by which different requirements of the final rule must be met. These compliance dates and requirements are explained further in the final rule (59 FR 62896, December 6, 1994) under **SUPPLEMENTARY INFORMATION.** This document changes only the effective date of the standards. The effective date will be June 6, 1996 for all provisions of the standards, including the applicability of 40 CFR part 265 subparts AA, BB, and CC to 90-day accumulation units at hazardous waste generators, the applicability of 40 CFR part 265 subparts AA, BB, and CC to Resource Conservation and Recovery ACT (RCRA) permitted units, and the applicability of the final standards to tanks in which waste stabilization activities are performed. All other compliance dates for the final rule remain as published in the final rule (59 FR 62896.)

ADDRESSES: Docket. The supporting information used for the final rule is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to the final rule are F–91–CESP–FFFFF, F–92–CESA–FFFFF, F–94–CESF–FFFFF, F–94–CE2A–FFFFF, and F–95–CE3A–FFFFF. The docket is available for inspection at the EPA RCRA Docket Office (5305), Room 2616, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone (202) 260–9327.

FOR FURTHER INFORMATION CONTACT: For information about this postponement contact the RCRA Hotline at (800) 424–9346 toll-free, or (703) 920–9810.

SUPPLEMENTARY INFORMATION:

1. Postponement of December 6, 1995 Effective Date

This notice announces the postponement of the effective date for the final Air Emission Standards published under the RCRA. These final standards were published on December 6, 1994 (59 FR 62896) and were originally scheduled to become effective as of June 5, 1995. On May 19, 1995 (60 FR 26828) the EPA postponed the effective date until December 6, 1995 to allow time for the EPA to identify provisions of the final standards that require clarification, and to publish a Federal Register notice to clarify such provisions. The EPA expects to publish that notice in the near future.

Subsequently, on August 14, 1995 the EPA published a Federal Register document entitled, ''Proposed rule; data availability'' (60 FR 41870) and opened RCRA docket F–95–CE3A–FFFFF to accept comments on revisions that the EPA is considering for the final standards. The provisions of the final rule that these revisions would affect are the waste determination procedures, the standards for containers, and the applicability of the final standards to units that operate air emission controls in accordance with certain Clean Air Act standards. In addition, these revisions would reduce the monitoring, record keeping, and reporting requirements for affected tanks, surface impoundments, and containers.

The EPA accepted public comments on the appropriateness of these revisions through October 13, 1995. The EPA is now reviewing the comments received by the docket and will determine whether to revise the final rule to incorporate the described revisions. The incorporation of these revisions would provide certain compliance options for waste determination procedures and for container standards that are not currently available in the published final rule. By January of 1996, the EPA expects to complete its review of the public comments, and publish a Federal Register notice explaining the EPA's decision if and how to amend the rule.

Given that the EPA intends to clarify provisions of the rule and is actively considering amending the rule in ways that would increase compliance flexibility and possibly reduce certain regulatory requirements, the EPA considers it appropriate to delay the December 6, 1995 effective date for six months. This delay will both allow the ongoing administrative review process to be completed successfully, and allow ample time for facilities to make any necessary alterations to their compliance plans before the effective date of the standards.

The EPA has received a request that it stay the rule, from a party that has brought a judicial challenge to the published rule. In taking this action to postpone the rule's effective date, the EPA is not concurring that the criteria for a stay (such as likelihood of irreparable harm or likelihood that these parties will ultimately prevail should the rule be litigated) are met. Rather, as a prudential matter, the EPA believes that a six month delay is appropriate for the reasons explained above.

2. Retention of Final Compliance Date of December 8, 1997

The December 6, 1994 published rule set a final compliance date of December 8, 1997, by which time all required air emission control equipment must be operating (59 FR 62897). The EPA does not believe that postponing the effective date of this rule necessitates any postponement of the December 8, 1997 compliance date. The final compliance date was chosen to allow time for facility modifications that may be involved in the compliance approach of certain facilities. The EPA believes that, for many air emission control applications, the required control devices can be installed and in operation within several months. However, the EPA agrees that under some circumstances, the owner's or operator's approach to complying with the air emission control requirements under the subpart CC standards may involve a major design and construction project which requires a longer time to complete. In recognition of these cases, the EPA decided that it is reasonable to allow up to December 8, 1997 for affected facilities to install and begin operation of air emission controls required by the supbart CC standards. (Hazardous Waste TSDF Background Information Document for Promulgated Organic Air Emission Standards, EPA–453/R–94–076b, page 9–7.)

The final rule requirements that may necessitate a major modification, as described above, for tanks are paragraphs (b) through (d) of 40 CFR parts 264.1084 and 265.1085. These paragraphs specify air emission control equipment that must be operated on tanks receiving affected hazardous waste. Similarly, the requirements that may necessitate such a major modification for surface impoundments are paragraphs (b) through (e) of 40 CFR parts 264.1085 and 265.1086. These paragraphs specify air emission control equipment that must be operated on surface impoundments receiving affected hazardous waste. To comply with these requirements for tanks and surface impoundments, facilities may choose to construct new hazardous waste management units to replace existing units, or may choose to modify existing hazardous waste management units. Examples of facility equipment modifications that could require an extended period of compliance would be replacing a large open surface impoundment with a series of covered tanks, or fitting an existing open tank with a fixed roof vented to a control device. The EPA recognizes that such major modifications or new construction can require several months or more, and therefore allows until December 8, 1997 for facilities to comply with the air emission control requirements of the final subpart CC standards.

In addition, certain States may require that a facility obtain a permit modification prior to performing a major modification such as those described above. The EPA recognizes that such permit modifications can be a lengthy process, and therefore felt it was appropriate to afford an extended compliance period to allow such modifications to be obtained (59 FR 62919). The EPA does not expect that such a lengthy period of implementation would be required in circumstances other than those described above, although such a period is available if necessary.

The final rule provisions that justified a compliance date of December 8, 1997 are not among those that are potentially affected by the revisions currently under the EPA's consideration. Specifically, the EPA is not considering changes to the requirements for covers and air emission controls on tanks and surface impoundments. All affected facilities have been on notice of the final rule air emission control requirements for these units since the final rule publication on December 6, 1994. Therefore, the EPA does not consider it appropriate to postpone the compliance date of December 8, 1997, by which all required air emission control equipment must be operating.

3. Conclusion

The EPA is postponing the effective date of the final rule until June 6, 1996. The final rule text affected by this postponement is amended as follows.

Dated: October 31, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, parts 264, 265, and 271 of the Code of Federal Regulations are amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

2. Section 264.1080 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 264.1080 Applicability.

* * * * *

(b) * * *

(1) A waste management unit that holds hazardous waste placed in the unit before June 6, 1996, and in which no hazardous waste is added to the unit on or after this date.

* * * * *

(c) For the owner and operator of a facility subject to this subpart and who received a final permit under RCRA section 3005 prior to June 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 of this chapter or reviewed in accordance with the requirements of 40 CFR 270.50(d) of this chapter. Until such date when the owner and operator receives a final permit incorporating the requirements of this subpart, the owner and operator is subject to the requirements of 40 CFR part 265, subpart CC.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

4. Section 265.1080 is amended by revising paragraph (b)(1) and paragraph (c) introductory text to read as follows:

§ 265.1080 Applicability.

* * * * *

(b) * * *

(1) A waste management unit that holds hazardous waste placed in the unit before June 6, 1996, and in which no hazardous waste is added to the unit on or after this date.

* * * * *

(c) For the owner and operator of a facility subject to this subpart who has received a final permit under RCRA section 3005 prior to June 6, 1996, the following requirements apply:

* * * * *

5. Section 265.1082 is amended by revising paragraphs (a) introductory text, paragraph (a)(1), (a)(2), (a)(2)(iii), and (a)(2)(iv) to read as follows:

§ 265.1082 Schedule for implementation of air emission standards.

(a) Owners or operators of facilities existing on June 6, 1996, and subject to subparts I, J, and K of this part shall meet the following requirements:

(1) Install and begin operation of all control equipment required by this subpart by June 6, 1995, except as provided for in paragraph (a)(2) of this section.

(2) When control equipment required by this subpart cannot be installed and in operation by June 6, 1996, the owner or operator shall:

* * * * *

(iii) For facilities subject to the recordkeeping requirements of § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in the operating record no later than June 6, 1996.

(iv) For facilities not subject to § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in a permanent, readily available file located at the facility no later than June 6, 1996.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

6. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

7. Section 271.1(j) is amended by revising the December 6, 1994 entry in Table 1 to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	FEDERAL REGISTER reference	Effective date
*	* * * * *	*	*
December 6, 1994.	Air Emission Standards for Tanks, Surface Impoundments, and Containers	59 FR 62896–62953	June 6, 1996.

8. Section 271.1(j) is amended by revising the December 6, 1995 entry in Table 2 to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	FEDERAL REGISTER reference
*	* * * * *	*	*
June 6, 1996	Air Emission Standards for Tanks, Surface Impoundments, and Containers	3004(n)	59 FR 62896–62953

[FR Doc. 95–27950 Filed 11–9–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 766 and 799

[OPPTS–40028; FRL–4956–3]

Technical Amendments to Test Rules and Consent Orders; Republication

Editorial Note: This document was originally published at 60 FR 50432, September 29, 1995, and is being reprinted in its entirety because of typesetting errors.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has approved by letter certain modifications to test standards and schedules for chemical testing programs under section 4 of the Toxic Substances Control Act (TSCA). These modifications, requested by test sponsors, will be incorporated and codified in the respective test regulation or consent order. Because these modifications do not significantly alter the scope of a test or significantly change the schedule for its completion, EPA approved these requests without seeking notice and comment. EPA annually publishes a notice describing all of the modifications granted by letter for the previous year.

EFFECTIVE DATE: This rule is effective on September 29, 1995.

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

SUPPLEMENTARY INFORMATION: EPA issued a rule published in the Federal Register of September 1, 1989 (54 FR 36311), amending procedures for modifying test standards and schedules for test rules and testing consent orders under section 4 of TSCA. The amended procedures allow EPA to approve requested modifications which do not alter the scope of a test or significantly change the schedule for its completion. These modifications are approved by letter without public comment. The rule also requires immediate placement of these letters in EPA's public files and publication of these modifications in the Federal Register. This document includes modifications approved from January 1, 1994, through December 31, 1994. For a detailed description of the rationale for these modifications, refer

to the submitters' letters and EPA's responses in the public record for this rulemaking.

I. Discussion of Modifications

Each chemical discussed in this rule is identified by a specific CAS number and docket number. Copies of correspondence relating to specific chemical modifications may be found in docket number (OPPTS–40028) established for this rule. The following table lists all chemical-specific modifications approved from January 1, 1994, through December 31, 1994.

MODIFICATIONS TO TEST STANDARDS AND CONSENT ORDERS JANUARY 1, 1994 THROUGH DECEMBER 31, 1994

Chemical/CAS Number	Chemical FR Cite	Test	Modifications	Docket No.
Final Rule Chemicals				
Dioxins.				
Pentabromodiphenyloxide	766.35	Analytical testing	5	40028/83002M
Octabromodiphenyloxide	766.35	Analytical testing	5	40028/83002M
Tetrabromobisphenol-A	766.35	Analytical testing	5	40028/83002M
Decabromodiphenyloxide	766.35	Analytical testing	5	40028/83002M
2,3,5,6-tetrachloro-2,5-cyclohexadiene-1,4-dione.	766.35	Analytical testing	5	40028/83002M
1,2-bis(tribromophenoxy)ethane	766.35	Analytical testing	5	40028/83002M
Isopropanol	799.2325	Vapor inhalation oncogenicity study in rats	5	40028/42097B
Office of Drinking Water.				
Chloroethane	799.5075	Subacute and subchronic testing	5	40028/42111F
1,1-dichloroethane	799.5075	Subacute and subchronic testing	5	40028/42111F
1,1,2,2-tetrachloroethane	799.5075	Subacute and subchronic testing	2, 5	40028/42111F
1,3,5-trimethylbenzene	799.5075	Subacute and subchronic testing	5	40028/42111F
Consent Order Chemicals				
Refactory ceramic fibers	799.5000	Submission of raw data by June 29, 1994; submission of report with data analysis by July 18, 1994; bi-annual meeting rescheduled for August 12, 1994..	3	40028/42166B
Sodium cyanide	799.5000	Plant uptake and translocation study	5	40028/42118

Modifications

1. Modify sampling schedule.
2. Change to test substance (form/purity).
3. Change in non-critical test procedure or condition.
4. Add satellite group for further testing.
5. Extend test or protocol deadline, delete test initiation date.
6. Clarify and/or add specific guideline requirement.
7. Alternate specific guideline requirement approved for certain test(s).
8. CAS No. correction.
9. Test standard amendment.

Note: In § 766.35(b)(4)(i) changes have been made to four existing chemicals and one new submitter is added to the table; however, for the convenience of the user, the entire table is being revised.

II. Public Record

EPA has established a public record for this rulemaking (Docket number OPPTS–40028). The record includes the information considered by EPA in evaluating the requested modifications.

The record is available for inspection from 12:00 noon to 4 p.m., Monday through Friday, except legal holidays, in Rm. NEB–607, 401 M St., SW., Washington, DC 20460.

III. Regulatory Assessment Requirements

A. Analyses Under E.O. 12866, and the Unfunded Mandates Act of 1995

Because the modifications to the subject testing actions do not impose any additional requirements, this action is not ''significant'' within the meaning of Executive Order 12866 (58 FR 51735, October 4, 1993), and does not impose any Federal mandate on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

B. Regulatory Flexibility Act

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.

C. Paperwork Reduction Act

The information collection requirements associated with this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C 3501, and have been assigned OMB control number 2070-0033. EPA has determined that this rule does not change existing recordkeeping or reporting requirements nor does it impose any additional recordkeeping or reporting requirements.

List of Subjects

40 CFR Part 766

Dibenzo-para-dioxins/dibenzofurans, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Testing.

Dated: September 25, 1995.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR parts 766 and 799 are amended as follows:

1. In part 766:

PART 766—[AMENDED]

a. The authority citation for part 766 continues to read as follows:

Authority: 15 U.S.C. 2603 and 2607.

b. In § 766.35, by revising paragraph (a)(2)(i)(B)(*3*), the table to paragraph (a)(2)(ii)(A), and the table to paragraph (b)(4)(i) and paragraph (f) to read as follows:

§ 766.35 Dibenzo-para-dioxins/dibenzofurans.

(a) * * *

(2) * * *
(i) * * *
(B) * * *
(*3*) The deadline for submitting protocols for pentabromodiphenyloxide (CAS No. 32534–81–9) is February 6, 1995. The deadline for submitting tetrabromobisphenol-A-bisethoxylate (CAS No. 4126–45–2) is January 31, 1991.
* * * * *

(2) * * *
(ii) * * *
(A) * * *

CAS No.	Submitter	Chemical	Due date
118–75–2 ..	Rhone-Poulenc	2,3,5,6-tetrachloro-2,5-cyclohexaniene-1,4-dione	March 4, 1994

* * * * *
(b) * * *
(4) * * *
(i) * * *

CAS No.	Submitter	Chemical	Due Date	Effective Date
79–94–7	Great Lakes	Tetrabromobisphenol-A	May 26, 1992	May 28, 1993
79–94–7	Ethyl	Tetrabromobisphenol-A	August 10, 1992	May 28, 1993
79–94–7	Ameribrom	Tetrabromobisphenol-A	April 15, 1994	September 29, 1995
87–10–5	Pfister	3,4',5-tribromosalicylanilide	45 days after protocol approval	May 28, 1993
118–79–6	Great Lakes	2,4,6-Tribromophenol	May 26, 1992	May 28, 1993
1163–19–5	Ameribrom	Decabromodiphenyloxide	April 15, 1994	September 29, 1995
1163–19–5	Ethyl	Decabromodiphenyloxide	May 26, 1992	May 28, 1993
1163–19–5	Great Lakes	Decabromodiphenyloxide	May 26, 1992	May 28, 1993
4162–45–2	Great Lakes	Tetrabromobisphenol-A-bisethoxylate	June 2, 1993	September 8, 1994
25327–89–3	Great Lakes	Allyl Ether of Tetrabromobisphenol-A	August 10, 1992	May 28, 1993
32534–81–9	Great Lakes	Pentabromodiphenyloxide	March 22, 1993	September 8, 1994
32534–81–9	Akzo Chemicals Inc.	Pentabromodiphenyloxide	February 6, 1995	September 29, 1995
32534–81–9	Ameribrom	Pentabromodiphenyloxide	March 22, 1993	September 8, 1994
32536–52–0	Ameribrom	Octabromodiphenyloxide	January 8, 1993	September 29, 1995
32536–52–0	Ethyl	Octabromodiphenyloxide	May 15, 1994	May 28, 1993
32536–52–0	Great Lakes	Octabromodiphenyloxide	May 26, 1992	May 28, 1993
37853–59–1	Great Lakes	1,2-bis(tribromophenoxy)ethane	January 24, 1995	September 29, 1995

* * * * *

(f) *Effective date.* (1) The effective date of this final rule is July 6, 1987, except for paragraphs (a)(2)(i)(B) introductory text, (a)(2)(i)(B)(*1*), (a)(2)(i)(B)(*2*), (a)(2)(i)(B)(*3*), (a)(2)(i)(B)(*4*), the table in paragraph (a)(2)(ii)(A), and the table in paragraph (b)(4)(i) of this section.

(2) The effective date for paragraph (a)(2)(i)(B) introductory text, (a)(2)(i)(B)(*1*), (a)(2)(i)(B)(*2*), and (a)(2)(i)(B)(*4*), is May 21, 1991. The effective date of paragraphs (a)(2)(i)(B)(*3*), and the table in paragraph (a)(2)(ii)(A) is September 29, 1995. The effective date of paragraph (b)(4)(i) introductory text is May 28, 1993, and the effective date of the entries in the table in paragraph (b)(4)(i) is shown in the effective dates column of the table.

(3) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

2. In part 799:

PART 799—[AMENDED]

a. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. In § 799.2325 by revising paragraphs (c)(8)(ii)(A) and (d) to read as follows:

§ 799.2325 Isopropanol

* * * * *
(c) * * *
(8) * * *
(ii) * * * (A) The oncogenicity test shall be completed and the final report submitted to EPA by July 5, 1994.
* * * * *

(d) *Effective date.* (1) The effective date of this final rule is December 4, 1989, except for the provisions of paragraphs (c)(5)(i)(C)(*1*), (c)(5)(ii)(A)(*3*), (c)(6)(i)(D), and (c)(8)(ii)(A), of this section. The effective date for paragraphs (c)(5)(i)(C)(*1*), and (c)(5)(ii)(A)(*3*) of this section is May 21, 1990. The effective date for paragraphs (c)(6)(i)(D) of this section is May 21, 1991. The effective date of paragraph (c)(8)(ii)(A) is September 29, 1995.

(2) The guidelines and other test methods cited in this rule are references as they exist on the effective date of the final rule.

c. In § 799.5075 by revising paragraphs (a)(2), (c)(1)(ii)(A), (c)(1)(ii)(B), (c)(2)(ii)(A) and paragraph (d) to read as follows:

§ 799.5075 Drinking water contaminants subject to testing.

(a) * * *
(2) A test substance of at least 99 percent purity shall be used for Chloroethane, 1,1-dichloroethane, and 1,3,5-trimethylbenzene. A test substance of at least 98 percent purity shall be used for 1,1,2,2-tetrachloroethane.
* * * * *
(c) * * *
(1) * * *
(ii) * * * (A) The subacute testing for chloroethane shall be completed and the final report submitted to EPA by March 27, 1995. The subacute testing for

1,1-dichloroethane and 1,1,2,2-tetrachlorethane shall be completed and the final report submitted to EPA by April 27, 1995. The subacute testing for 1,3,5-trimethylbenzene shall be completed and the final report submitted to EPA by February 11, 1995.

(B) Except for 1,3,5-trimethylbenzene, a progress report shall be submitted to EPA for each test beginning 6 months after the date specified in paragraph (d)(1) of this section and at 6–month intervals thereafter until the final report is submitted to EPA . The progress report for 1,3,5-trimethylbenzene shall be submitted to EPA by April 10, 1995.

(2) * * *

(ii) * * * (A) The subchronic testing for chloroethane shall be completed and the final report submitted to EPA by June 27, 1995. The subchronic testing for 1,1-dichloroethane and 1,1,2,2-tetrachlorethane shall be completed and the final report submitted to EPA by August 27, 1995. The subchronic testing for 1,3,5-trimethylbenzene shall be completed and the final report submitted to EPA by April 10, 1995.

* * * * *

(d) *Effective date.* (1) This section is effective on December 27, 1993 except for paragraphs (a)(2), (c)(1)(ii)(A), (c)(1)(ii)(B), and (c)(2)(ii)(A). The effective date for paragraphs (a)(2), (c)(1)(ii)(A), (c)(1)(ii)(B), (c)(2)(ii)(A) is September 29, 1995.

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

[FR Doc. 95–24211 Filed 9–28–95; 8:45 am]

BILLING CODE 1505–01–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket HM–215A; Amdt. No. 173–242]

RIN 2137–AC42

Implementation of the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Response to petition for reconsideration.

SUMMARY: On December 29, 1994, RSPA published a final rule which amended the Hazardous Materials Regulations to maintain alignment with corresponding provisions of international standards. A final rule correcting errors in the December 29, 1994 final rule and responding to petitions for reconsideration was published on May 18, 1995. This final rule denies a petition for reconsideration to the May 18, 1995 final rule concerning adoption of certain testing provisions for plastic aerosol containers.

EFFECTIVE DATE: The effective date for the final rules published under Docket HM–215A on December 29, 1994 (59 FR 67390), and May 18, 1995 (60 FR 26796), remains October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Machado, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street S.W., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On July 18, 1994, RSPA published a Notice of Proposed Rulemaking (NPRM) (59 FR 36488) proposing changes to the Hazardous Materials Regulations (HMR) in order to maintain alignment with corresponding provisions of the recently revised International Maritime Dangerous Goods Code (IMDG Code), International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). On December 29, 1994, RSPA published a final rule under Docket HM–215A (59 FR 67390). A final rule published on May 18, 1995 (60 FR 26796), incorporated editorial and technical revisions to the December 29, 1994 final rule based on the merit of petitions and other revisions RSPA determined to be necessary to correct or clarify the final rule.

One of these editorial revisions entailed deleting all references in § 173.306(a)(3)(v) to testing procedures for certain non-specification plastic aerosol containers. (Section 173.306(a)(3)(v) enumerates one of the five different conditions that must be met in order to ship limited quantities of compressed gas in *metal* containers.) Language in the preamble to the July 18, 1994 NPRM and in the December 29, 1994 final rule suggested that RSPA intended to add *testing provisions* for plastic aerosol containers. However, the HMR do not authorize the *use* of plastic aerosol containers, and both documents were silent on any intent to authorize the *use* of plastic aerosol containers. In proposing and adopting revisions to § 173.306(a)(3)(v), RSPA inadvertently incorporated UN Recommendation language regarding testing procedures for plastic containers. (*See*, UN Recommendations, Eighth Ed. ¶¶9.8.1 and 9.8.2 entitled ''Leakproofness Test for Aerosols and Small Receptacles for Gas.'')

This drafting error was brought to RSPA's attention by a member of petitioner Winston & Strawn's staff during a telephone conversation with a RSPA staff member, and in a subsequent letter dated January 10, 1995, seeking clarification of the origin and intent of the amendments to § 173.306(a). On May 16, 1995, RSPA responded to petitioner's letter and stated that

> Based on a provision in the UN Recommendations, RSPA proposed and incorporated a hot water bath test for aerosol containers in § 173.306(a)(3)(v). By adopting provisions identical to those contained in the UN Recommendations, RSPA failed to remove wording referring to certain non-specification plastic aerosol containers. It was not RSPA's intent in amending § 173.306 to authorize the use of plastic containers, and the final rule made no revisions to paragraphs (a)(3) and (a)(3)(ii), which specify only metal containers. We plan to amend paragraph (a)(3)(v) to remove all reference to plastic containers in order to clarify that they are not authorized for use under the HMR.

On May 18, 1995, RSPA published a final rule and amended § 173.306(a)(3)(v) to remove all references to plastic containers. RSPA explained that in adopting provisions identical to those contained in the UN Recommendations regarding metal containers, it had failed to remove wording referring to testing of certain non-specification plastic aerosol containers. Because plastic containers are not authorized for use under § 173.306(a)(3), RSPA removed all references to the hot water immersion test for plastic containers from § 173.306(a)(3)(v).

On June 16, 1995, Winston & Strawn filed a petition for reconsideration of this issue, on behalf of an unnamed client, on the grounds that adequate notice and an opportunity to comment were not given for this change, as required under the Administrative Procedure Act, 5 U.S.C. 553, and that RSPA's actions were arbitrary and capricious. The petitioner asked RSPA to reinstate § 173.306(a)(3)(v) as originally promulgated in the December 29, 1994 final rule. The petitioner also asked that RSPA make several ''editorial revisions'' in paragraphs (a)(3) and (a)(3)(ii) so as to authorize the use of plastic containers for aerosols. A copy of this petition for reconsideration is on file in the Dockets Unit (DHM–30),

Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington DC and may be reviewed between the hours of 8:30 a.m. and 5 p.m. Monday through Friday, except for Federal holidays.

In its May 18, 1995 final rule, RSPA stated that it was making an editorial correction to § 173.306(a)(3)(v) to remove all references to plastic containers because those containers are not authorized for use under § 173.306(a)(3). In treating this amendment as a routine editorial correction, RSPA reasoned that: (1) There would be no public interest in retaining testing procedures for containers that are not authorized for use; (2) removing the language would have no impact on the industry because the containers are not authorized for use; and (3) removing the language would avoid confusion. Consequently, RSPA determined that notice and comment were unnecessary.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, sets forth the requirement for public notice and an opportunity to comment on rulemaking proceedings. Section 553(b) requires that an NPRM be published in the Federal Register, unless persons subject to the requirements of the rulemaking are named and either personally served or otherwise have actual notice. Section 553(b)(3) states that publication of an NPRM is not required when

> the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, *unnecessary,* or contrary to the public interest. (Emphasis added.)

Section 553(b)(3) makes clear that ''there is no need for giving the public an opportunity to participate in minor amendments to rules * * *.'' *Texaco v. Federal Power Commission,* 412 F.2d 740, 743 (3rd Cir. 1969). The court in *Texaco,* quoting *National Motor Freight Traffic Ass'n v. U.S.,* 268 Fed. Supp. 90, 95–96 (D.D.C. 1967), *aff'd* 393 U.S. 18, found the language of 5 U.S.C. 553(b)(3) to apply to situations where an agency rule is ''a routine determination,'' ''insignificant in nature and impact,'' and unimportant ''to the industry and to the public.'' *Texaco* at 743. The *Texaco* court also quoted the Attorney General's Manual on Administrative Procedure Act (1947), pp. 12–13, which contains the following language: '' 'Unnecessary' refers to the issuance of a minor rule or amendment in which the public is not particularly interested. Senate Hearings (1941, p. 882.'' *Id.*

As evidenced by petitioner's telephone call and January 10, 1995 letter, the petitioner itself recognizes that, standing alone, the language as adopted in the December 29, 1994 final rule does not authorize the use of plastic aerosol containers. In fact, the December 29, 1994 language regarding testing for plastic aerosol containers conflicts with § 173.306(a) which makes clear that only metal containers are authorized. In its petition for reconsideration, Petitioner not only asked that the language from the December 29, 1994 rule be reinstated but also that several additional revisions be made to § 173.306 (a)(3)(v) in order to authorize the use of plastic aerosol containers. Specifically, petitioner requests that the limiting reference to metal containers be removed from §§ 173.306 (a)(3) and (a)(3)(ii)) so that plastic containers would also be authorized. The revisions requested by petitioner are exactly the type that would be subject to the notice and comment requirements of 5 U.S.C. 553(b) in that they propose a significant change to the regulations that would have a substantial impact on the regulated industry. For example, RSPA is not aware of any proposed industry standards for the manufacture and use of aerosol containers other than those made of metal.

With respect to petitioner's statement that compliance with the May 18, 1995 final rule is ''unreasonable,'' the final rule merely makes clear that no new containers are authorized under § 173.306(a)(3); it neither imposes new requirements, burdens, restrictions or costs on the industry nor eliminates any rights or benefits.

Petitioner also argues that the record does not support RSPA's contention that the language regarding testing standards for plastic aerosol containers was mistakenly inserted into the NPRM and final rule by RSPA staff because of (1) the specificity of the language with regard to the testing procedures; (2) the preamble language suggesting that RSPA intended to propose the testing procedures; and (3) RSPA's stated intent to harmonize the HMR with the various international standards. Consequently, petitioner argues that RSPA's May 18, 1995 action in revising the language of § 173.306(a)(3)(v) was arbitrary and capricious. In support of this contention, petitioner cites three cases which stand for the propositions that: (1) There must be a rational connection between the facts found and the choice made by an agency, *see Motor Vehicle Mfrs. Ass'n of the United States* v. *State Farm Mut. Automobile Insurance Co.,* 463 U.S. 29, 42 (1983) (in rescinding requirement, agency failed to consider other viable options); and (2) the reason for an agency's action must be satisfactorily articulated, *see Kent County, Delaware Levy Court* v. *U.S. Environmental Protection Agency,* 963 F.2d 391, 397 (D.C. Cir 1992) (agency failed to offer *any* reason why it was infeasible to follow its own experts' recommendations); *HLI Lordship Industries, Inc.* v. *The Committee for Purchase from the Blind and Other Severely Handicapped,* 791 F.2d 1136, 1141 (5th Cir. 1981) (agency provided no basis for its decision).

As discussed both above and below, RSPA's action in rescinding the erroneously adopted testing provisions for plastic containers was rational and well articulated. First, as noted above, the NPRM and final rule language regarding testing procedures for plastic aerosol containers is virtually identical to the language in paragraphs 9.8.1 and 9.8.2 of the Eighth edition of the UN Recommendations. In preparing the NPRM, RSPA staff failed to note that it had incorporated the testing procedure for plastic aerosol containers into the language it borrowed ''wholesale'' from paragraphs 9.8.1. and 9.8.2. of the UN Recommendations. Consequently, the specificity of the language in the NPRM and final rule shows only that RSPA did indeed copy the language from the UN Recommendations. The identical language appears in both the NPRM and final rule because no comments were received regarding the proposed changes to § 173.306 and, as a result, the erroneous language in the NPRM was simply carried over, without change, into the final rule.

The language in the preamble of the NPRM and final rule regarding the proposed addition of testing provisions for plastic containers was drafted after RSPA staff had identified the provisions of the various international standards it would propose to adopt in the NPRM. The preamble language merely reflected the contents of the proposed regulatory text for § 173.306(a)(3)(v). It is not logical that RSPA would have intentionally proposed to adopt (and subsequently adopted) testing provisions for containers that are not authorized for use, or that RSPA would have chosen this confusing manner in which to authorize plastic aerosol containers. Specifically, §§ 173.306(a)(1), (a)(2), and (a)(3) clearly identify, in the first line of each text, the three packagings that are authorized for the transportation of limited quantities of compressed gas. The subparagraphs that follow each of those three paragraphs set forth the limitations or conditions that apply to those three packagings. It would be illogical for RSPA to have buried an authorization for plastic containers in the last of five

subparagraphs that relate to a paragraph authorizing metal containers.

Finally, petitioner asserts that RSPA's failure to adopt an authorization for plastic aerosol containers is directly contrary to RSPA's statement in the NPRM and final rule that the purpose of the rulemaking was to maintain alignment with corresponding provisions of international standards. Petitioner repeatedly argues that RSPA's statement regarding its desire to keep the HMR in alignment with international standards obligated the agency not to deviate from those standards. Petitioner fails to note, however, that language throughout the preamble to the NPRM and to the final rule indicated that the intent of the rulemaking was not to incorporate every term of the international standards, but to ''*more fully align* the HMR with the seventh and eighth revised editions of the UN Recommendations. These proposed changes to the HMR will provide *consistency* with the international air and sea requirements * * *.'' (Emphasis added.) *See* 59 FR 36488 and 59 FR 67390. RSPA further stated in the NPRM that the proposed regulatory changes are ''proposed to ensure a *basic consistency* with *many* changes contained in the [international standards].'' (Emphasis added.) 59 FR 36489.

The above statements demonstrate that RSPA did not intend to adopt, verbatim, every provision of international standards. Furthermore, evidence of RSPA's intent can be found in the NPRM statement that ''although the eighth revised edition of the UN Recommendations adopted a quality assurance program for the manufacture of performance packagings, RSPA is not proposing a formal quality assurance program in this document.'' 59 FR 36489. There are numerous examples of U.S. variations from international standards, such as retention of the combustible liquid hazard classification and exceptions, adoption of a vibration standard for package testing, the establishment of inhalation toxicity criteria, and the authorization to continue using plastic packagings beyond five years from date of manufacture. Consequently, RSPA's stated desire to maintain general alignment with international standards does not negate the agency's ability to exercise its own discretion in certain areas.

In short, RSPA accidentally adopted testing procedures for a plastic aerosol packaging that is not authorized for use under the HMR. When RSPA realized its mistake, it acted reasonably and quickly to ensure that the regulated industry understood that the packaging still was not authorized. It did so by removing the superfluous language from the HMR and explaining in a concise general statement the reason for its action. RSPA's action was rational and well articulated and, therefore, was not arbitrary and capricious. To grant the petitioner's request would result in a regulation that would include certain testing procedures for plastic aerosol containers that are not authorized for use. The result would be illogical and contrary to our efforts to clarify the HMR and eliminate obsolete or redundant rules. To grant the petitioner's request to authorize use of plastic aerosol containers would require public comment.

Based on the above, RSPA denies petitioner's June 16, 1995 petition for reconsideration.

Issued in Washington, DC on November 6, 1995, under authority delegated in 49 CFR part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–27953 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

[I.D. 103195D]

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

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

ACTION: Inseason orders.

SUMMARY: NMFS publishes the inseason orders regulating fisheries in U.S. waters that were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by the Secretary of Commerce (Secretary) during the 1995 sockeye and pink salmon fisheries within the Fraser River Panel Area (U.S.)(Panel Area). These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1995 orders are therefore being published in this document as a composite of the year's inseason orders.

DATES: Each of the following inseason orders was effective upon announcement on telephone hotline numbers as specified at 50 CFR 371.21(b)(1).

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

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, Federal regulations at 50 CFR part 371 provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Panel Area that apply during the period each year when the Commission exercises jurisdiction over these fisheries.

The regulations close the Panel Area to sockeye and pink salmon fishing unless opened by Panel regulations or by inseason orders of the Secretary that give the effect of Panel orders, unless such orders are determined not to be consistent with domestic legal obligations. During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Secretary issues inseason orders through his delegate, the Northwest Regional Director of NMFS. Official notice of these inseason actions of the Secretary is provided by two telephone hotline numbers described at 50 CFR 371.21(b)(1). Inseason orders of the Secretary must be published in the Federal Register as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. The 1995 orders are therefore being published in this document as a composite of the year's inseason actions.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by the Secretary during the 1995 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Order No. 1995–1: Issued 5:40 p.m., August 1, 1995

Treaty Indian Fishery

Areas 4B, 5 and 6C: Open for drift gillnets from 12 p.m., August 2 to 12 p.m., August 5.

Areas 6, 7 and 7A: Open to net fishing from 6 p.m., August 2 to 9 p.m., August 3.

All-Citizen Fishery

Areas 7, 7A: Reefnets open from 5 a.m. to 9 p.m., August 2 and 3.

Order No. 1995–2: Issued 4:30 p.m., August 2, 1995

All-Citizen Fishery

Areas 7, 7A: Gillnets open 9 p.m., August 3 to 8 a.m., August 4.

Purse seines open 5 a.m. to 9 p.m., August 4.

Order No. 1995–3: Issued 2 p.m., August 4, 1995

Treaty Indian Fishery

Areas 4B, 5 and 6C: Drift gillnets open 12 p.m., August 6 to 12 p.m., August 9.

All-Citizen Fishery

Areas 4 and 3 north of 48°00′15″ N. lat.: Commercial trolling open 12:01 a.m., August 5 to 11:59 p.m., August 8.

Order No. 1995–4: Issued 2:30 p.m., August 9, 1995

All-Citizen Fishery

Areas 4 and 3 north of 48°00′15″ N. lat.: Commercial trolling open 12:01 a.m., August 12 to 11:59 p.m., August 15.

Order No. 1995–5: Issued 6:30 p.m., August 15, 1995

Treaty Indian Fishery

Areas 6, 7, and 7A: Net fishing open 6 p.m., August 16 to 9 p.m., August 17.

All-Citizen Fishery

Areas 7, 7A: Gillnets open 6 a.m. to 6 p.m., August 16. Purse seines open 5 a.m. to 9 p.m., August 18.

Areas 4 and 3 north of 48°00′15″ N. lat.: Commercial trolling open 12:01 a.m., August 19 to 11:59 p.m., August 22.

Order No. 1995–6: Issued at 3 p.m. August 18, 1995

Treaty Indian Fishery

Areas 4B, 5, and 6C: Drift gillnets open 12 p.m., August 21 to 12 p.m., August 23.

Areas 6, 7, and 7A: Net fishing open 5 a.m., August 21 to 9 a.m., August 22 southerly of a line from Iwersen's Dock on Point Roberts to the Georgina Point Light at the entrance to Active Pass.

All-Citizen Fishery

Areas 7 and 7A southerly of a line from Iwersen's Dock on Point Roberts to the Georgina Point Light at the entrance to Active Pass: Gillnets open 9 a.m., August 22 to 5 a.m., August 23.

Purse seines open 5 a.m. to 9 p.m., August 23.

Reefnets open 5 a.m. to 9 p.m., August 24.

Order No. 1995–7: Issued 11:30 a.m., August 21, 1995

Referred only to fishing in Canadian area Panel Waters.

Order No. 1995–8: Issued 4:45 p.m., August 22, 1995

Treaty Indian Fishery

Areas 4B, 5, and 6C: Drift gillnets open 12 p.m., August 23 to 12 p.m., August 26.

Areas 6, 7, and 7A: Open for net fishing 5 a.m., August 24 to 12 p.m., August 25 southerly of a line from Iwersen's Dock on Point Roberts to the Georgina Point Light at the entrance to Active Pass.

All-Citizen Fishery

Areas 7 and 7A: Reefnets open 5 a.m. to 9 p.m., August 24, August 25, and August 26 southerly of a line from Iwersen's Dock on Point Roberts to the Georgina Point Light at the entrance to Active Pass with non-retention of sockeye salmon.

Order No. 1995–9: Issued 3:10 p.m., August 25, 1995

Treaty Indian Fishery

Areas 6 and 7: Open to net fishing 5 a.m., August 28 to 9 a.m., August 29.

All-Citizen Fishery

Area 7: Reefnets open 5 a.m. to 9 p.m., August 27, August 28, August 29, and August 30 with the retention of pink salmon only.

Area 4 and 3 north of 48°00′15″ N. lat.: Commercial trolling open 12:01 a.m., August 26 to 11:59 p.m., August 29.

Order No. 1995–10: Issued 4:20 p.m., August 25, 1995

All-Citizen Fishery

Area 7: Gillnet open 9 p.m., August 31 to 9 a.m., September 1.

Purse seines open 5 a.m. to 9 p.m., August 31.

Reefnets open 5 a.m. to 9 p.m. August 30, August 31, September 1, and September 2 with the retention of pink salmon only.

Order No. 1995–11: Issued 4 p.m., September 1, 1995

Treaty Indian Fishery

Areas 6, 7, and 7A: Net fishing open 6 p.m., September 2 to 9 p.m., September 4 southerly and easterly of a line from the low water range marker in Boundary Bay on the International Boundary, through the east tip of Point Roberts, to the East Point Light on Saturna Island.

All-Citizen Fishery

Areas 7 and 7A southerly and easterly of a line from the low water range marker in Boundary Bay on the International Boundary, through the east tip of Point Roberts, to the East Point Light on Saturna Island: Gillnets open 8 p.m., September 5 to 8 a.m., September 6, and 8 p.m., September 6 to 7 a.m., September 7.

Purse seines open 5 a.m. to 9 p.m., September 5 and September 6.

Reefnets open 5 a.m. to 9 p.m., September 3, September 4, September 5, September 6, and September 7 to the retention of pink salmon only.

Area 4 and 3 north of 48°00′15″ N. lat.: Commercial trolling open 12:01 a.m., September 2 to 11:59 p.m., September 4.

Order 1995–12: Issued 12:10 p.m., September 8, 1995

Referred only to fishing in Canadian area Panel Waters.

Order 1995–13: Issued at 11:10 a.m., September 15, 1995

Referred only to fishing in Canadian area Panel Waters.

Classification

This action is authorized by 50 CFR 371.21, and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 3636(b).

Dated: November 7, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–27955 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 218
Monday, November 13, 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 STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 2284]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act as Amended

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Notice of proposed rule.

SUMMARY: This notice proposes certain amendments to the regulations implementing the Diversity Immigrant Visa Program provided for in sections 201(a)(3), 201(e), 203(c), and 204(a)(1)(G) of the Immigration and Nationality Act, as amended. In order to enhance the Department's ability to combat fraudulent practices in this program, the Department proposes to require aliens seeking to compete for immigration under the program to sign their petitions for consideration and to furnish a photograph with their petitions. Also the Department is adding a provision to authorize collection of a processing fee from those petitioners selected for further processing.

DATES: Written comments must be received on or before December 13, 1995.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, DC, 20522–0113.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, Bureau of Consular Affairs, Department of State, (202) 663–1184.

SUPPLEMENTARY INFORMATION: During the processing of the immigrant visa applications of aliens selected to compete for an immigrant visa in the Fiscal Year 1995 Diversity Immigrant Visa Program, several consular sections encountered cases in which the visa applicant was proven, or strongly suspected, to be an impostor—that is, not the individual who had submitted the petition which had been selected. In order to deter such abuses, the Department proposes to modify the provisions of § 42.33(b)(1), Form of Petition, to require aliens competing for immigration under the Diversity Immigrant Visa Program to sign their petitions and affix thereto a photograph of the kind which is required to be affixed to Form OF–156, the Nonimmigrant Visa Application.

The photograph must be recent and must be 1 and ½ inches square (37mm x 37mm). The petitioner must clearly print his or her name on the reverse of the photograph.

This proposed new requirement is intended to apply to petitions submitted early in Calendar Year 1996 by aliens seeking consideration to compete for visa issuance under the Diversity Immigrant Visa Program during Fiscal Year 1997 (October 1, 1996 to September 30, 1997).

The Department also proposes to add to § 42.33 a new paragraph (i) to authorize collection of a processing fee from each Diversity Immigrant visa applicant, in addition to the immigrant visa application and issuance fees which are collected from all immigrant visa applicants to cover the cost of the visa lottery. The Department has not yet determined the amount of the fee to be charged which will depend on a thorough cost analysis. The Department, however, seeks to amend the applicable regulations to permit collection of the fee should the decision be made that charging such a fee is necessary. If it should be so decided to do so, there will be a separate rulemaking process in the form of a proposal to amend the Department's Tariff of Fees set forth in Part 22 of this Title.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule would not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required under E.O. 12778 and certified to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 42

Aliens, Documentation, Immigrants, Passports and visas.

It is proposed to amend 22 CFR Part 42 as follows:

PART 42 —[AMENDED]

1. The authority citation for Part 42 would continue to read:

Authority: 8 U.S.C. 1104.

2. Section 42.33 is amended by revising paragraph (b)(1) and, by adding paragraph (i) to read as follows:

§ 42.33 Diversity immigrants.

* * * * *

(b) *Petition for Consideration.*– (1) *Form of Petition.* An alien claiming to be entitled to compete for consideration under INA 203(c) shall file a petition for such consideration. The petition shall consist of a sheet of paper on which shall be typed or legibly printed in the Roman alphabet the petitioner's name; date and place of birth (including city and county, province or other political subdivision, and country); the country of which the alien claims to be a native, if other than the country of birth; name(s) and date(s) and place(s) of birth of spouse and child(ren), if any, a current mailing address and location of consular office nearest to current residence or, if in the United States, nearest to last foreign residence prior to entry into the U.S. The alien shall affix his or her signature to the sheet of paper, using his or her usual signature. The alien shall also affix to the sheet of paper a recent photograph of himself or herself. The photograph shall be 1 and 1/2 inches square (37mm x 37mm) and the alien shall clearly print his or her name on the reverse of the photograph before affixing the photograph to the sheet of paper.

* * * * *

(i) *Processing Fee.* In addition to collecting the immigrant visa application and, if applicable, issuance fees, as provided in § 42.71(b) of this part, the consular officer shall also collect from each applicant for a visa under the Diversity Immigrant Visa Program such processing fee as the Secretary of State shall prescribe.

Dated: November 5, 1995.
Mary A. Ryan,
Assistant Secretary for Consular Affairs.
[FR Doc. 95–27871 Filed 11–9–95; 8:45 am]
BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 668

[FHWA Docket No. 95–25]

RIN 2125–AD60

Emergency Relief Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA proposes to amend its regulation on the emergency relief (ER) program in order to incorporate changes made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The time period in which the Federal share payable for certain eligible emergency repairs is 100 percent would be extended from 90 days to 180 days; the limit for total obligations for ER projects in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands would be increased from $5 million to $20 million; and the term ''Federal-aid highway systems'' would be replaced with the term ''Federal-aid highways'' to conform with terminology now used to describe highways eligible for Federal-aid ER assistance. In addition, various statements clarifying eligible uses of ER funding would be incorporated into the regulation.

DATES: Written comments are due on or before January 12, 1996. Comments received after that date will be considered to the extent practicable.

ADDRESSES: All written, signed comments should refer to the docket number that appears at the top of this document and should be submitted to Room 4232, HCC–10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mohan P. Pillay, Office of Engineering, 202–366–4655, or Wilbert Baccus, Office of the Chief Counsel, 202–366–0780, FHWA, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Background

The current FHWA regulations implementing the emergency relief program are found primarily in 23 CFR part 668. Subpart A of part 668 sets forth the procedures for the administration of ER funds for the repair or reconstruction of Federal-aid highways. The FHWA intends to amend these regulations in the following manner and for the reasons indicated below.

In subpart A, the terms ''Federal-aid system'' and ''Federal-aid highway system'' would be replaced with the term ''Federal-aid highways.'' The revision is in accordance with The Dire Emergency Supplemental Appropriations Act (Pub. L. 102–302, 106 Stat. 248) which amended 23 U.S.C. 125(b) by replacing the term ''Federal-aid highway systems including the Interstate System'' with the term ''Federal-aid highways.''

In section 668.101, the second sentence would be amended by replacing ''Federal roads not on the Federal-aid system'' with ''roads on Federal lands.'' This modification reflects the change in terminology used to describe highways eligible for Federal assistance and clarifies the cross reference to emergency relief funding for roads on Federal lands which is contained in subpart B of part 668.

Section 668.105(e) would be amended by adding the phrase ''or by a toll authority for repair of the highway facility'' after the words ''political subdivision'' in the last sentence. This amendment would require that an ER project receive a credit for that portion of insurance proceeds recovered by a toll authority that are attributable to the cost of capital improvements.

In section 668.107, the last sentence in paragraph (a) would be amended to extend to 180 days the current 90-day time period following a natural disaster or catastrophic failure in which the Federal share payable for certain eligible emergency repair costs may amount to 100 percent. This amendment would be made to conform section 668.107(a) to 23 U.S.C 120(e) (as amended by section 1022 of the ISTEA).

In section 668.107, the second sentence of paragraph (b) would be amended to raise to $20 million the current $5 million limit on the total amount of obligations for emergency relief projects in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. This amendment would parallel an amendment made to 23 U.S.C. 125(b)(2) by section 1022(b) of the ISTEA.

Section 668.109 would be amended to expand and clarify the eligible uses for ER funds based on recent experiences in administering the ER program. ER funds would be eligible to participate in:

1. Repair of traffic damage to roadway surfaces, including those on designated detours, attributable to emergency relief work.

2. Repair of damage to the surface of Federal-aid highways caused by traffic making necessary repairs to other transportation facilities (for example, trucks hauling materials to repair a damaged railroad facility).

3. Raising of roadway grades temporarily to maintain essential traffic service during flooding.

4. Raising grades of critical Federal-aid highways faced with long-term loss of use due to an unprecedented rising in basin water level.

5. Repair of toll facilities when the provisions of 23 U.S.C. 129 are met.

Section 668.109 (c)(1) would be amended to clarify the extent to which certain activities listed under heavy maintenance are eligible for ER participation. The amendment would amend the policy that slope damage that does not extend into the travelled way is not eligible for ER participation. It is FHWA's current policy to consider repair of significant slip-outs of cut or fill slopes, even if the slip-outs do not extend into the travelled way, as an activity potentially eligible for ER funding.

Section 668.109 (c)(2) would be amended to cross-reference the newly added Section 668.109(b)(7) which discusses the extent to which ER funding can participate in the repair of damage to roadway surfaces caused by traffic.

Section 668.109 (c)(6) would be amended to cross-reference the newly added section 668.109(b)(9) which discusses the extent to which ER funding can participate in raising grades of Federal-aid highways due to an unprecedented rise in basin water levels.

Section 668.109(c)(7) would be amended to redefine the term ''scheduled.'' As currently defined, the term refers to an approved Federal-aid program, which is a program incorporating various projects submitted by a State to the FHWA for approval in accordance with the requirements of 23 U.S.C. 105; however, 23 U.S.C. 105 has been superseded by the new requirements of 23 U.S.C. 135 and, as a

result, State now is required to develop a Statewide transportation improvement program which is to be submitted to the FHWA for approval. The existing definition of ''scheduled'' also refers to the current or next fiscal year's Highway Bridge Replacement and Rehabilitation Program or to a determination if contract plans are prepared. To update and simplify the definition of ''scheduled,'' the proposed definition would refer only to the approved Statewide transportation improvement program.

A new paragraph (c)(10) would be added to Section 668.109 to make clear that the loss of toll revenue is not eligible for reimbursement.

Section 668.113(a) would be amended to remove the outdated reference to the program requirements of 23 CFR part 630. The requirements for a program of ER projects are adequately described in section 668.113 and therefore cross-reference to 23 CFR part 630 is no longer needed.

Section 668.113(b)(1) would be amended to reflect the current policy on project review, oversight, and administration as applicable to ER projects. In those cases where a regular Federal-aid project (in a State) similar to the ER project would be handled under the certification acceptance procedures found in 23 U.S.C. 117 or the project oversight exceptions found in 23 U.S.C. 106, the ER project can be handled under these alternate procedures subject to the following two conditions: (1) Any betterment to be incorporated into the project and for which ER funding is requested must receive prior FHWA approval, and (2) the FHWA reserves the right to conduct final inspections on ER projects as deemed appropriate.

A few minor editorial changes in sections 668.109(b)(3) and 668.11(b)(2) would be made for clarity.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. These proposed changes will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This rulemaking merely amends current regulations implementing the emergency relief program to incorporate changes made to this program by Congress in the ISTEA. It is not anticipated that these proposed changes would affect the total Federal funding available under the ER program. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. These amendments would only clarify and simplify procedures used for providing emergency relief assistance to States in accordance with the existing laws, regulations and guidance. The ER funds received by the States would not be significantly affected by these proposed amendments. States are not included in the definition of ''small entity'' set forth in 5 U.S.C. 601. Therefore, this action will not have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. These proposed amendments would not preempt any State law or State regulation, and no additional costs or burdens would be imposed on the States thereby. In addition, this rule would not affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

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.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purpose of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3500.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 668

Disaster assistance, Grant programs-transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: October 23, 1995.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, code of Federal Regulations, part 668 as set forth below.

PART 668—EMERGENCY RELIEF PROGRAM

1. The authority citation for part 668 is added to read as set forth below and the authority citations for subparts A and B are removed:

Authority: 23 U.S.C. 101, 120(e), 125 and 315; 49 CFR 1.48(b).

Subpart A—Procedures for Federal-Aid Highways

§ 668.101 [Amended]

2. In § 668.101, the second sentence is amended by removing the words ''Federal roads not on the Federal-aid system'' and adding in their stead the words ''roads on Federal lands''.

§ 668.103 [Amended]

3. Section 668.103 is amended by removing the paragraph designations (a) through (i) from the definitions; in the definition for ''Applicant'' by removing the words ''Federal-aid highway system'' and adding in their place the words ''Federal-aid highways''.

§ 668.105 [Amended]

4. In § 668.105, the last sentence of paragraph (e) is amended by adding the words ''or by a toll authority for repair of the highway facility'' after the words ''political subdivision''.

§ 668.107 [Amended]

5. Section 668.107, is amended in paragraph (a) by removing the words ''within 90 days'' and adding in their place the words ''within 180 days'' and in paragraph (b) by removing the figure ''$5 million'' and adding in its place the figure ''$20 million''.

6. Section 668.109, is amended in paragraph (b)(3) by revising the misspelled word ''Actural'' to read ''Actual''; in paragraph (b)(5) by removing the word ''and'' after the semicolon; by removing the period at the end of paragraph (b)(6) and adding a semicolon in its place; by adding paragraphs (b)(7), (b)(8), (b)(9), and (b)(10); by republishing the introductory text of paragraph (c); by revising paragraphs (c)(1), (c)(2), (c)(6), and (c)(7); by removing the period at the end of paragraph (c)(8) and adding ''; and'' in its place; and by adding paragraph (c)(9) to read as follows:

§ 668.109 Eligibility.

* * * * *

(b) * * *

(7) Repair of traffic damage to roadway surfaces, including those on designated detours, caused by the movement of traffic during or following the incident period attributable to emergency relief work; and repair of damage to surface of Federal-aid highways caused by traffic making necessary repairs to Federal-aid highways as well as traffic making repairs to other transportation facilities, i.e., railroads, airports, ports, etc.;

(8) Temporary work to maintain essential traffic, such as, raising a roadway grade during a period of flooding by placing fill and temporary surface material;

(9) Raising the grades of critical Federal-aid highways faced with long-term loss of use due to basin flooding as defined by an unprecedented rise in basin water level both in magnitude and time frame; and

(10) Repair of toll facilities when the provisions of 23 U.S.C. 129 are met. If a toll facility does not have an executed toll agreement with the FHWA at the time of the disaster, a toll agreement may be executed after the disaster to qualify for that disaster.

(c) ER funds may not participate in:

(1) Heavy maintenance such as repair of minor damages consisting primarily of eroded shoulders, filled ditches and culverts, pavement settlement, mud and debris deposits, slope sloughing, slides, and slip-outs in cut or fill slopes. In order to simplify the inspection and estimating process, heavy maintenance may be defined using dollar guidelines developed by the States and Divisions with Regional concurrence;

(2) Repair of surface damage caused by traffic whether or not the damage was aggravated by saturated subgrade or inundation, except for traffic damage repair as noted in paragraph (b)(7) of this section;

* * * * *

(6) Repair or reconstruction of facilities affected by long-term, pre-existing conditions or predictable developing situations, such as, gradual, longterm rises in water levels in basins or slow moving slides;

(7) Permanent repair or replacement of deficient bridges scheduled for replacement with other funds. A project is considered scheduled if the construction phase is included in the FHWA approved Statewide Transportation Improvement Program (STIP);

* * * * *

(9) Reimbursing loss of toll revenue.

* * * * *

§ 668.111 [Amended]

7. In § 668.111, paragraph (b)(2) is amended by removing the words ''receipt of''.

8. In § 668.113, paragraph (a) is amended by revising the first and second sentences, and paragraph (b)(1) is revised to read as follows:

§ 668.113 Program and project procedures.

(a) Immediately after approval of an application, the FHWA Division Administrator will notify the applicant to proceed with preparation of a program which defines the work needed to restore or replace the damaged facilities. It should be submitted to the FHWA Division Administrator within 3 months of receipt of this notification.

* * *

(b) *Project procedures.* (1) Projects for permanent repairs shall be processed in accordance with regular Federal-aid procedures, except in those cases where a regular Federal-aid project (in a State) similar to the ER project would be handled under the certification acceptance procedures found in 23 U.S.C. 117 or the project oversight exceptions found in 23 U.S.C. 106, the ER project can be handled under these alternate procedures subject to the following two conditions:

(i) Any betterment to be incorporated into the project and for which ER funding is requested must receive prior FHWA approval; and

(ii) The FHWA reserves the right to conduct final inspections on ER projects as deemed appropriate.

* * * * *

[FR Doc. 95–27502 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–22–P

Coast Guard

33 CFR Part 110

[CGD08–95–019]

RIN 2115–AA98

Anchorage Grounds, Mississippi River Below Baton Rouge, LA., Including South and Southwest Passes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to revise the anchorage regulations for the Mississippi River below Baton Rouge, La., including South and Southwest Passes in order to expand seven anchorages and establish four new anchorages in response to revetment work along the banks of the Mississippi River by the Army Corps of Engineers which has reduced the available space within existing anchorages.

DATES: Comments must be received by January 12, 1996.

ADDRESSES: Comments should be mailed to: Commander (oan), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130–3396. The comments and other material related to this notice will be available for inspection and copying in Room 1211 at the above address. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. M. M. Ledet, Project Officer, Commander (oan), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130–3396. Telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice, [CGD08–95–019], the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before the final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information. The drafters of this regulation are Mr. M. M. Ledet, Project Officer, Eighth Coast Guard District Aids to Navigation Branch, and LCDR C.D. Michel, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The Army Corps of Engineers conducts revetment work along the banks of the Mississippi River to protect against erosion and caving. The work is essential to preserve the levee system. Current articulated concrete mattress revetment is used in a number of designated anchorages serving the Lower Mississippi River below Baton Rouge, LA. Federal regulations prohibit vessels from anchoring over this revetment. Because usable space in these designated anchorages was reduced due to the placement of this revetment, members of the maritime community have expressed concerns regarding the devastating impact on the amount of available space within the designated anchorages. To alleviate these concerns, and provide for safe and efficient use of the waterway, the Coast Guard is proposing the expansion of certain anchorages where practical and the establishment of new anchorage ground where available.

The lower limit of Ostrica Anchorage will be moved down to mile 23.0 providing an additional 0.5 mile of anchorage ground. The Davant Anchorage lower limit will be moved down to mile 52.8 providing an additional 0.7 mile of anchorage ground. The lower limit of New Orleans General Anchorage will be moved to mile 90.1 to accommodate the establishment of the New Orleans Emergency Anchorage. The lower limit of Lower Kenner Bend Anchorage will be moved down to mile 113.3 adding an additional 0.5 mile to this anchorage. The upper limit of lower Grandview Reach Anchorage will be moved to mile 147.2 adding 0.1 mile to this anchorage. The lower limit of Upper Grandview Reach Anchorage will be moved down to mile 147.5 adding 0.2 of a mile to this anchorage. The Lower Sunshine and Upper Sunshine Anchorage will be combined to form one anchorage with limits of mile 165.0 to mile 167.0. The pipeline at mile 166.1 has been removed allowing for the addition of 0.3 of a mile.

Four new anchorages will be established, the Point Celeste Anchorage will extend from mile 49.8 to mile 52.0 with a width of 800 feet along the right descending bank, New Orleans Emergency anchorage will be established from mile 89.6 to mile 90.1 extending 800 feet along the right descending bank, the Geismar Anchorage from mile 184.0 to mile 185.0 with a width of 700 feet along the right descending bank and the White Castle Anchorage from mile 190.6 to mile 191.3 with a width of 700 feet along the right descending bank. The establishment of these four anchorages will provide an additional 4.4 mile of safe anchorage for deep draft vessels on the Lower Mississippi river.

Regulatory Evaluation

This rule is not significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulation will in fact have a positive impact on steamship companies and shipping support activities. The regulation will also enhance safe navigation on the Lower Mississippi River by providing additional safe anchorage space outside the navigation channel for large vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons specified in the Regulatory Evaluation section of this rule, the Coast Guard has determined that this rule will have minimal, if not a positive, impact on non-participating small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Assessment

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

Environmental Assessment

This proposed rule has been thoroughly reviewed by the Coast Guard. It has been determined not to have a significant effect on the human environment or environmental conditions and to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B. The Coast Guard welcomes comments on potential environmental impacts of this proposal.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulations

For the reasons set forth in the preamble, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.195 is revised to read as follows:

§ 110.195 Mississippi River Below Baton Rouge, LA., including South and Southwest Passes.

(a) *The anchorage grounds.* Unless otherwise specified, all anchorage widths are measured from the average low water plane (ALWP).

(1) *Pilottown Anchorage.* An area 5.2 miles in length along the right descending bank of the river from mile 1.5 to mile 6.7 above Head of Passes, extending in width to 1,600 feet from the left descending bank of the river.

Caution: A wreck is located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

(2) *Lower Venice Anchorage.* An area 1.6 miles in length along the left descending bank of the river from mile 8.0 to mile 9.6 above Head of Passes with the west limit 1,200 feet from the ALWP of the right descending bank.

Caution: A pipeline crossing exists at mile 9.8 above Head of Passes. Mariners are urged to use caution between mile 9.6 and mile 10.0 above Head of Passes.

(3) *Upper Venice Anchorage.* An area 1.2 miles in length along the left descending bank of the river from mile 10.0 to mile 11.2 above Head of Passes with the west limit 1,200 feet from the ALWP of the right descending bank.

(4) *Boothville Anchorage.* An area 6.3 miles in length along the right descending bank of the river, 1,000 feet wide, extending from mile 12.2 to mile 18.5 above Head of Passes. A 250 foot wide revetment as measured from the Low Water Reference Plane (LWRP) extends from mile 12.2 to mile 17.9 above Head of Passes within this anchorage.

(5) *Ostrica Anchorage.* An area 1.4 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 23.0 to mile 24.4 above Head of Passes.

(6) *Port Sulphur Anchorage.* An area 2.2 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 37.5 to mile 39.7 above Head of Passes.

(7) *Magnolia Anchorage.* An area 2.1 miles in length along the right descending bank of the river, 1,100 feet wide, extending from mile 45.5 to mile 47.6 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 45.5 to mile 45.7 above Head of Passes within this anchorage. Additional revetment, 400 feet wide as measured from the LWRP, extends from mile 47.1 to mile 47.6 above Head of Passes within this anchorage area.

(8) *Point Celeste Anchorage.* An area 2.2 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 49.8 to mile 52.0 above Head of Passes. A 400 foot wide revetment as measured from the LWRP extends from mile 51.6 to mile 52.0 above Head of Passes within this anchorage.

(9) *Davant Anchorage.* An area 1.1 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 52.8 to mile 53.9 above Head of Passes.

(10) *Alliance Anchorage.* An area 2.0 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 63.8 to mile 65.8 above Head of Passes. A 400 foot wide revetment as measured from the LWRP extends from mile 65.1 to mile 65.8 above Head of Passes within this anchorage.

(11) *Wills Point Anchorage.* An area 1.1 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 66.5 to mile 67.6 above Head of Passes. A 200 foot wide revetment as measured from the LWRP extends from mile 66.5 to mile 66.9 above Head of Passes within this anchorage.

(12) *Cedar Grove Anchorage.* An area 1.2 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 69.9 to mile 71.1 above Head of Passes. A 200 foot wide revetment as measured from the LWRP extends from mile 69.9 to mile 70.4 above Head of Passes within this anchorage.

(13) *Belle Chasse Anchorage.* An area 2.1 miles in length along the right descending bank of the river, 1,000 feet wide, extending from mile 73.1 to mile 75.2 above Head of Passes. A 250 foot wide revetment as measured from the LWRP extends from mile 73.1 to mile 74.4 above Head of Passes within this anchorage. Additional revetment, 425 feet wide as measured from the LWRP, extends from mile 74.9 to mile 75.2 above Head of Passes within this anchorage.

(14) *Lower 12 Mile Point Anchorage.* An area 2.2 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 78.6 to mile 80.8 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 78.6 to mile 79.0 above Head of Passes within this anchorage.

(15) *Lower 9 Mile Point Anchorage.* An area 2.3 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 82.7 to mile 85.0 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 82.7 to mile 84.4 above Head of Passes within this anchorage.

Caution: A wreck is located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

(16) *New Orleans Emergency Anchorage.* An area 0.5 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 89.6 to mile 90.1 above Head of Passes. A 250 foot wide revetment as measured from the LWRP extends from mile 89.6 to mile 90.1 above Head of Passes within this anchorage.

Note: No vessel shall occupy this anchorage unless expressly authorized by the Captain of the Port. No vessel may anchor in this anchorage exceeding 24 hours without the authorization of the Captain of the Port.

(17) *New Orleans General Anchorage.* An area 0.8 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 90.1 to mile 90.9 above Head of Passes. A 250 foot wide revetment as measured from the LWRP extends from mile 90.1 to mile 90.3 above Head of Passes within this anchorage.

(18) *Quarantine Anchorage.* An area 0.7 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 90.9 to mile 91.6 above Head of Passes.

Caution: A wreck is located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

Note: a. Vessels carrying cargoes of particular hazard as defined in 33 CFR 126.10 or cargoes of petroleum products in bulk may not be anchored in the New Orleans General Anchorage or the Quarantine Anchorage without permission from the Captain of the Port.

b. Except when required by the United States Public Health Service for quarantine inspection, the Quarantine Anchorage may be used as a general anchorage.

(19) *Lower Kenner Bend Anchorage.* An area 1.0 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 113.3 to mile 114.3 above Head of Passes. A 350 foot wide revetment as measured from the LWRP extends from mile 113.3 to mile 114.3 above Head of Passes within this anchorage.

(20) *Kenner Bend Anchorage.* An area 0.9 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 114.7 to mile 115.6 above Head of Passes.

(21) *Ama Anchorage.* An area 1.8 miles in length along the left descending bank of the river, 700 feet wide,

extending from mile 115.5 to mile 117.3 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 115.5 to mile 116.8 above Head of Passes within this anchorage.

Caution: A wreck is located at mile 115.4 left descending bank above Head of Passes marked by Mississippi River Wreck Lighted Buoy WR4. Mariners are urged to use caution when anchoring in the lower end of this anchorage.

(22) *Bonnet Carre Anchorage.* An area 1.5 miles in length along the left descending bank of the river, 600 feet wide, extending from mile 127.3 to mile 128.8 above Head of Passes. This area is located adjacent to the river end of the Bonnet Carre Spillway.

Note: When the Bonnet Carre Spillway is open, no vessel may be anchored in the Bonnet Carre Anchorage.

(23) *La Place Anchorage.* An area 0.7 miles in length along the left descending bank of the river, 600 feet wide, extending from mile 134.7 to mile 135.4 above Head of Passes.

(24) *Reserve Anchorage.* An area 0.5 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 137.0 to mile 137.5 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 137.0 to mile 137.3 above Head of Passes within this anchorage.

(25) *Lower Grandview Reach Anchorage.* An area 0.7 miles in length along the left descending bank of the river, 700 feet wide, extending from mile 146.4 to mile 147.2 above Head of Passes. A 200 foot wide revetment as measured from the LWRP extends from mile 146.4 to mile 147.2 above Head of Passes within this anchorage.

(26) *Upper Grandview Reach Anchorage.* An area 1.3 miles in length along the left descending bank of the river, 700 feet wide, extending from mile 147.5 to mile 148.8 above Head of Passes. A 200 foot wide revetment as measured from the LWRP extends from mile 147.5 to mile 148.1 above Head of Passes within this anchorage.

(27) *Sunshine Anchorage.* An area 2.0 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 165.0 to mile 167.0 above Head of Passes. A 350 foot wide revetment as measured from the LWRP extends from mile 166.1 to mile 167.0 above Head of Passes within this anchorage.

(28) *Geismar Anchorage.* An area 1.0 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 184.0 to mile 185.0 above Head of Passes.

(29) *White Castle Anchorage.* An area 0.7 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 190.4 to mile 191.1 above Head of Passes. A 400 foot wide revetment as measured from the LWRP extends from mile 190.4 to mile 191.1 above Head of Passes within this anchorage.

(30) *Baton Rouge General Anchorage.* An area 1.5 miles in length along the right descending bank of the river, 1,400 feet wide, extending from mile 225.8 to mile 227.3 above Head of Passes.

Caution: Two wrecks are located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

(31) *Lower Baton Rouge Anchorage.* An area 0.5 miles in length near mid-channel between mile 228.5 and mile 229.0 above Head of Passes with the west limit 1,100 feet off the right descending bank and having the width of 700 feet at both the upper and lower limits.

(32) *Middle Baton Rouge Anchorage.* An area 0.2 miles in length near mid-channel between mile 229.6 and mile 229.8 above Head of Passes with the west limit 1,100 feet off the right descending bank and having a width of 700 feet at both the upper and lower limits.

(33) *Upper Baton Rouge Anchorage.* An area 0.4 miles in length near mid-channel between mile 230.6 and mile 231.0 above Head of Passes with the west limit 1,100 feet off the right descending bank and having a width of 1,075 feet at the upper limit and 1,200 feet at the lower limit.

(b) *Temporary anchorages.* (1) Temporary anchorages are non-permanent anchorages established by the Commander, Eight Coast Guard District to provide additional anchorage space. Establishment of temporary anchorages is based on recommendations by the Captain of the Port.

(2) Each vessel using temporary anchorages shall anchor as prescribed by the Captain of the Port.

(3) Establishment of each temporary anchorage and any requirement for the temporary anchorage will be published in the Local Notice to Mariners.

(4) Each person who has notice of any requirement prescribed for a temporary anchorage shall comply with that requirement.

(c) *The regulations.* (1) Anchoring in the Mississippi River below Baton Rouge, LA., including South and Southwest Passes is prohibited outside of established anchorages except in cases of emergency. In an emergency, if it becomes necessary to anchor a vessel outside an established anchorage, the vessel shall be anchored so that it does not interfere with or endanger any facility or other vessel. The master of person in charge of the vessel shall notify the Captain of the Port of the location of the emergency anchoring by the most expeditious means and shall move the vessel as soon as the emergency is over.

(2) In an emergency, if it becomes necessary to anchor a vessel in South Pass or Southwest Pass, the vessel shall be positioned as close to the left descending bank as possible.

(3) No vessel may be anchored unless it maintains a bridge watch, guards and answers Channel 16 FM (or the appropriate VTS New Orleans sector frequency), maintains an accurate position plot and can take appropriate action ensure the safety of the vessel, structure, and other vessels.

(4) When anchoring individually, or in fleets, vessels shall be anchored with sufficient anchors, or secured with sufficient lines, to ensure their remaining in place and withstanding the actions of winds, currents and the suction of passing vessels.

(5) No vessel may be anchored over revetted banks of the river or within any cable or pipeline area. The locations of revetted areas and cable and pipeline areas may be obtained from the District Engineer, Corps of Engineers, New Orleans, LA.

(6) The intention to transfer any cargo while in an anchorage shall be reported to the Captain of the Port, giving particulars as to name of ships involved, quantity and type of cargo, and expected duration of the operation the Captain of the Port shall be notified upon completion of operations. Cargo transfer operations are not permitted in the New Orleans General or Quarantine Anchorages. Bunkering and similar operations related to ship's stores are exempt from reporting requirements.

Note: Activities conducted within a designated anchorage (e.g. cargo transfer, tank cleaning, stack blowing, etc.) may be restricted by other Federal, State or local regulations. Owners, or persons in charge of any vessel should consider all safety and/or environmental regulations prior to engaging in any activity within designated anchorages.

(7) Nothing in this section relieves the owner or person in charge of any vessel from the penalties for obstructing or interfering with navigational aids or for failing to comply with the navigation laws for lights, day shapes, or fog signals and any other applicable laws and regulations.

Dated: October 24, 1995.

R.C. North,

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

[FR Doc. 95–27868 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–141]

RIN 2115–AA97

Safety Zone: Sunken Vessel M/V EMPIRE KNIGHT, Boon Island, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone encompassing those waters of the Atlantic Ocean within 1,000 yards of the approximate position 43°06′19″ N, 70°27′09″ W (datum NAD 83) and from the water's surface to the seabed floor. This rulemaking is being undertaken to ensure that the stern portion of the sunken vessel M/V EMPIRE KNIGHT, and its cargo of mercury, is not disturbed by dredging, diving, salvage, anchoring, fishing, or other activity. This proposed rule is necessary to protect the environment, and the commercial fishery, and the general public from any adverse effects of contamination from mercury which could result from the disturbance of the stern section of the wreck.

DATES: Comments must be received on or before January 12, 1996.

ADDRESSES: Comments may be mailed to Chief, Response & Planning Department, U.S. Coast Guard Marine Safety Office, P.O. Box 108, Portland, ME 04112–0108. Comments may also be hand delivered to the Response & Planning Office at 312 Fore Street, Portland, Maine between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (207) 780–3251, extension 153.

FOR FURTHER INFORMATION CONTACT: Lieutenant Al Echols, Response & Planning Department, U.S. Coast Guard Marine Safety Office, Portland, Maine at (207) 780–3251, extension 153.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD01–95–141) and the specific section of this proposal to which each comment applies, and give a reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″ × 11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES.** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information. The principal persons involved in drafting this document are Lieutenant Al Echols, Project Manager, Marine Safety Office Portland, Maine, and Lieutenant Commander Sam Watkins, Project counsel, First Coast Guard District Legal Office, Boston, MA.

Background and Purpose

In February of 1944, the M/V EMPIRE KNIGHT, a 428 foot British freight ship ran aground on Boon Island Ledge, Maine, and later broke into two sections. The stern section, which includes the ship's cargo holds, sank in approximately 260 feet of water, one and one half miles from Boon Island Ledge. In August of 1990, the Coast Guard Captain of the Port, Portland, Maine (COTP) became aware of the existence of a ''Proposed'' Plan of Stowage for the wreck of the M/V EMPIRE KNIGHT which indicated that 221 flasks containing mercury may have been loaded into cargo hold number 5. The COTP issued a Captain of the Port Order to a company then conducting salvage operations, requiring them to refrain from further salvage activity until the situation could be more thoroughly assessed.

Over the next year, the COTP convened an Incident Specific Regional Response Team (RRT) consisting of representatives from the Maine Department of Environmental Protection, the New Hampshire Department of Environmental Services, the Maine Department of Marine Resources, the New Hampshire Department of Fish and Game, the U.S. Environmental Protection Agency, the U.S. National Oceanic and Atmospheric Administration, and the U.S. Coast Guard to gather information about the M/V EMPIRE KNIGHT and its cargo, and to identify the possible courses of action.

During the summer of 1992, the Maine Department of Marine Resources collected samples of bottom sediment around the stern portion of the EMPIRE KNIGHT to determine if mercury was present and, if so, to what extent. Laboratory analyses of the samples revealed levels of mercury consistent with the background levels with some exceptions, rendering them inconclusive on whether mercury had been on board the M/V EMPIRE KNIGHT at the time of its sinking.

In the spring of 1993, the COTP, in consultation with the RRT, determined that the possible presence of mercury on board the M/V EMPIRE KNIGHT constituted an imminent and substantial threat to the environment. The RRT agreed that an on site assessment of the stern section of the M/V EMPIRE KNIGHT was necessary to determine the presence of the mercury, and to assess whether it would be necessary, feasible, and safe to remove it if on board.

In August, 1993, the COTP, as the Federal On Scene Coordinator, initiated a $6.8 million emergency site assessment and removal operation. The presence of mercury on board was quickly confirmed. All 221 manifested mercury flasks were located in cargo hold number 5 and were recovered, but were found in badly deteriorated condition and were nearly empty. Loose mercury was discovered throughout cargo hold number 5, and approximately 1,230 pounds were recovered. Nearly 2,200 pounds of mercury-contaminated debris and cargo residue were also recovered.

Extensive sampling and analysis was conducted throughout the operation. Samples included bottom sediments in the vicinity of the stern section of the wreck and various species of fish and shellfish from the area around the vessel. From within cargo hold number 5, samples of the sediment, scrapings off the cargo, and fish and shellfish were taken.

In October, 1993, the operation was suspended due to deteriorating weather conditions. At that time, an estimated 16,000 pounds of mercury remained unaccounted for and is believed to be spread throughout the cargo residue of cargo hold number 5.

In February, 1994, the RRT was reconvened by the COTP to consider the results of the sample analyses and to determine the best course of action. The sample analysis results showed that concentrations of mercury were elevated inside cargo hold number 5, but

dropped off quickly to background levels in the bottom sediments outside the hold. No contamination of fish or shellfish was identified with the exception of those specimens collected from within cargo hold number 5. The key issue then became the long term fate of mercury in a marine environment. The RRT decided to submit the sample results to NOAA and an independent scientist with a request for an analysis of the available data and scientific literature and to develop a forecast of the long term behavior of the mercury on site.

In August, 1994, a commercial salvage company that had remained prohibited from conducting salvage operations by the Captain of the Port Order, submitted to the COTP a request to lift the order. The company also submitted a proposal to conduct salvage operations on the wreck of the M/V EMPIRE KNIGHT.

In September, 1994, the RRT was again reconvened to consider the reports submitted by NOAA and the independent scientist.

While the reports differed in details, they concurred in concluding that the site was currently stable and that the mercury did not pose a substantial threat to the environment. Both reports were written, however, under the presumption that the wreck of the M/V EMPIRE KNIGHT would remain essentially undisturbed with the exception of its gradual decomposition from natural forces. Both reports further agreed that the probability of a catastrophic release of mercury to the environment as a result of activity on or near the M/V EMPIRE KNIGHT was low. The RRT reached the conclusion that the wreck of the M/V EMPIRE KNIGHT did not meet the condition of ''imminent and substantial'' threat under CERCLA and that additional emergency response operations would not be conducted. The RRT further agreed to develop a plan for long-term monitoring of the site with the intent of detecting any changing conditions.

In August, 1995, the RRT reconvened to discuss the issue of allowing any type of activity on or near the wreck of the M/V EMPIRE KNIGHT. Consensus was reached that all information currently before the RRT indicated that the predictable risk of activity on the wreck resulting in mercury contamination of the environment was low. It was further agreed that, although the risk of a release was low, the foreseeable consequences of that release could be devastating to the local environment, the public health, and the economy of the region's fisheries. The unanimous recommendation of the RRT was to prohibit any activity on or near the stern section of the wreck of the M/V EMPIRE KNIGHT. This safety zone is being proposed as a result of that meeting.

Discussion of Proposed Amendments

This Safety Zone is proposed to protect the environment, the local economy, and the public health and welfare from the possible adverse consequences associated with the voluminous mercury cargo that remains on board the M/V EMPIRE KNIGHT. The United States Coast Guard, in consultation with the Incident Specific Regional Response Team, has determined that, although the current level of threat from the mercury cargo is low, any disturbance of the wreck site, whether intentional or unintentional, poses an unacceptable risk to the environment and to human health. The safety zone will prohibit all vessels and persons from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations within 1000 yards of the stern portion of the wreck of the M/V EMPIRE KNIGHT from the water's surface to the seabed floor except as authorized by the Captain of the Port, Portland, Maine.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the proposal has no significant effect on shipping, and its impact on fishing is minimal as it removes a small portion (less than one square mile) of the available fishing grounds from active fishing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.(e) of the Coast Guard's procedures for implementing the National Environmental Policy Act (Commandant Instruction M16474.1B), this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

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

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

PART 165—[AMENDED]

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

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

2. Section 165.141 is added to read as follows:

§ 165.141 Safety Zone; Sunken vessel M/V EMPIRE KNIGHT, Boon Island, ME.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean within 1,000 yards of the stern section of the sunken vessel EMPIRE KNIGHT, in approximate position 43°06′19″ N, 70°27′09″ W, and extending from the water's surface to the seabed floor. (Datum: NAD 83)

(b) *Regulations.* In accordance with the general regulations governing safety zones contained in § 165.23, all vessels

and persons are prohibited from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Captain of the Port, Portland, Maine. Innocent transit through the area within the safety zone is not affected by this section and does not require the authorization of the Captain of the Port.

Dated: September 15, 1995.

Burton S. Russell,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 95–27866 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3170

Coalbed Methane

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice that it is extending the public comment period on a Notice of Proposed Rule, which was published in the Federal Register on September 15, 1995 (60 FR 47920). The proposed rule would add a new part to the oil and gas leasing regulations. This regulation is intended to encourage the production of coalbed methane in States where production has been impeded by conflicts in ownership. In response to public requests for additional time, BLM extends the comment period 15 days from November 14, 1995, to November 29, 1995.

DATES: Comments should be submitted by November 29, 1995. Comments received or postmarked after the above date may not be considered in the decision making process on the final rule.

ADDRESSES: Comments should be sent to: Director (420), Bureau of Land Management, Room 401 LS, 1849 C Street NW., Washington, DC 20240. Comments can also be sent to internet!WO140@attmail.com. Please include ''attn:AC27'' and your name and address in your internet message. Comments will be available for review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David R. Stewart, Bureau of Land Management, Eastern States Office at (703) 440–1728.

Dated: November 6, 1995.

W. Hord Tipton,

Assistant Director, Resource Use and Protection.

[FR Doc. 95–27966 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 12, and 15

[CGD 95–062]

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Revised by the 1995 Amendments to It

AGENCY: Coast Guard, DOT.

ACTION: Notice of inquiry.

SUMMARY: The Coast Guard seeks information that may be useful in calculating the costs and benefits of implementing the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978. This information will be useful in evaluating alternative regulatory approaches, especially where the 1995 Amendments allow some flexibility in how particular new requirements can be implemented to improve the training and assessment of candidates for merchant mariners' licenses and endorsements.

DATES: Comments must be received on or before January 12, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 95–062], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the 1995 Amendments to STCW may be obtained by writing Commandant (G–MOS), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or by calling (202) 267–0214, between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays. Requests may also be submitted by facsimile at (202) 267–4570.

FOR FURTHER INFORMATION CONTACT: Mr. Randall N. Crenwelge, Standards Evaluation and Development Division (G–MES), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–6220.

SUPPLEMENTARY INFORMATION:

Request for Information

The Coast Guard encourages interested persons to participate in this inquiry by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this inquiry [CGD 95–062] and the specific section or question of this document to which each comment or question applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period.

The Coast Guard held a public meeting on August 31, 1995, in Washington, DC. Persons may request additional public meetings by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that another opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold another public meeting at a time and place announced by a later notice in the Federal Register.

Drafting Information. The principal persons involved in drafting this document are Mr. Randall N. Crenwelge, Project Manager, Standards Evaluation and Development Division (G–MES), and Mr. Patrick J. Murray, Project Counsel, Regulations and Administrative Law Division (G–LRA).

Background and Purpose

On July 7, 1995, a Conference of Parties to STCW, meeting at the headquarters of the International Maritime Organization (IMO) in London, adopted a package of amendments to STCW. The amendments will enter into force on February 1, 1997, unless a third of the

parties to the Convention, or parties representing over 50 percent of the world's shipping tons, subject to them by August 1, 1996. Because they were adopted unanimously by the Conference, no objections are expected.

The Coast Guard held a public meeting on August 31, 1995 [60 FR 39306 (August 2, 1995)], to discuss the outcome of the 1994 Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW).

Discussion of Prospective Rules

The Coast Guard must consider how to revise the current rules on licensing and documentation, as well as those on workhours and watchkeeping [46 CFR parts 10, 12, and 15], to reflect the requirements of the 1995 Amendments to STCW. The most important changes for implementation are these:

1. All candidates for STCW certificates (for instance, licenses and documents for service on seagoing ships) will have to undergo approved training and assessment of competence.

2. Mariners engaged in training, whether aboard ship or at shore-side facilities, will have to meet standards of IMO. All training will have to meet standards, which will be subject to a system of approval and independent monitoring. Many mariners will have to use training-record books.

3. Assessment of competence [section A–I/6 of the STCW Code] will involve both examination, to verify knowledge and understanding of essential subjects, and demonstration, to verify practical skills. Either kind of assessment will require documented proof. Persons engaged in either kind, whether aboard ship or at shore-side facilities, will themselves undergo assessment against standards.

4. Simulators used in training or assessment will have to meet certain standards of performance.

5. Mariners employed or engaged on seagoing ships (all persons aboard except passengers) will have to undergo familiarization training to ensure that they can safely handle themselves in an emergency or a life-threatening situation. Persons responsible for safety or for preventing pollution—whether or not part of the required complement—will have to acquire further basic training in safety, including fire-fighting. Persons responsible for medical care must also meet certain standards.

6. All persons employed or engaged aboard seagoing ships must meet standards of medical fitness.

7. Ratings for members of navigational watches on ships of 500 gross tons or more, or for members of engine-room watches or for those designated to perform duties in periodically unmanned engine-rooms on seagoing ships powered by propulsion machinery of 750 kW [1,000 hp] or more, must come into line with the 1995 Amendments to STCW. This revises current rules and their standards respecting even unlicensed mariners.

8. Watch-standing personnel must receive a minimum of rest. Masters must arrange watch-rotations adequate for safety.

9. Suspension-and-revocation procedures must enable the taking of appropriate action against a license or document whose holder has either (a) allowed the performance of a shipboard function by a non-holder of a required STCW certificate or (b) certified that a non-holder has properly demonstrated a skill when either (i) the non-holder has not properly demonstrated a skill or (ii) the holder has not observed the non-holder properly demonstrate a skill.

10. Companies must ensure that new crewmembers are familiar with ship-specific equipment, procedures, and other arrangements necessary for performing their jobs.

11. Tankers and roll-on/roll-off (ro-ro) passenger ships needs renewed scrutiny, through the prism of STCW.

12. New policy will be necessary to implement expanded port-state control.

Beyond the above, specific revisions will be necessary to ensure that requirements for being issued a license or document under domestic regulations fully meet those of the 1995 Amendments to STCW. For example, officers of the navigational watch will need training in the use of Automatic Radar Plotting Aids (ARPA) for service on ships fitted with ARPA. Also, such officers will have to hold radio operators' certificates valid under the Global Maritime Distress and Safety System (GMDSS) for service in ships operating in the GMDSS.

Likewise, in revising domestic requirements, the Coast Guard should consider harmonizing the license categories with structure outlined in the 1995 Amendments to STCW, which is as follows:

Deck Department

1. Officers of the navigational watch on ships of 500 gross tons or more.

2. Officers of the navigational watch on ships of less than 500 gross tons not engaged on near-coastal voyages.

3. Officers of the navigational watch on ships of less than 500 gross tons engaged on near-coastal voyages.

4. Masters and Chief Mates on ships of 3,000 gross tons or more.

5. Master and Chief Mates on ships of between 500 and 3,000 gross tons.

6. Masters on ships of less than 500 gross tons not engaged on near-coastal voyages.

7. Masters on ships of less than 500 gross tons engaged on near-coastal voyages.

Engine Department

1. Officers in charge of the engineering watch in manned engine-rooms of more than 750 kW [1,000 hp].

2. Designated duty engineers in periodically unmanned engine-rooms of more than 750 kW [1,000 hp].

3. Chief engineer officers of ships powered by main propulsion machinery of 3,000 kW [4,000 hp] or more.

4. Second engineer officers of ships powered by main propulsion machinery of 3,000 kW [4,000 hp] or more.

5. Chief engineer officers of ships powered by main propulsion machinery of between 750 kW [1,000 hp] and 3,000 kW [4,000 hp].

6. Second engineer officers of ships powered by main propulsion machinery of between 750 kW [1,000 hp] and 3,000 kW [4,000 hp].

Questions

To adequately address the cost and benefits of these issues, the Coast Guard needs more information. Public response to the questions contained in this notice will assist the Coast Guard in developing a more complete and carefully considered rulemaking. Responses to the following questions would be particularly useful in determining the economic impact in terms of costs and benefits of a future rulemaking.

What *new* costs would be imposed on you as employee, employer, training institution, union, or other affected member of the maritime industry, if you had to comply with the following conditions?

1. If all candidates for a license and upgrade as master or mate on a seagoing (e.g., ocean or near-coastal) ship were required to—

a. Hold a GMDSS radio-operator certificate, unless they were serving on ships not required to participate in the GMDSS (i.e., less than 300 gross tons);

b. Complete simulator training in the use of ARPA, if they were serving on ships fitted with ARPA;

c. Complete training in techniques of personal survival;

d. Complete training in personal safety and social responsibility;

e. Demonstrate competence in bridge-teamwork procedures; and

f. Demonstrate familiarity with the contents of the IMO Merchant Ship Search and Rescue Manual (MERSAR).

2. If all seafarers (i.e., all persons employed on board other than passengers) were required to receive familiarization training or instruction on what to do in an emergency?

3. If all seafarers with responsibility for safety or for preventing pollution (including all subject to manning requirements or members of fire parties) had to receive basic safety-training in fire-fighting, first aid, personal survival, and personal safety?

4. If all candidates for engineering licenses and upgrades for service on seagoing ships were required to demonstrate competence in electronic an control engineering (some training institutions or schools call this ''automated-process-control engineering'')?

5. If all candidates for deck and engineer licenses and upgrades were required to demonstrate competence in first aid aboard ship?

6. If all instructors were required to receive guidance in instructional techniques?

7. If all candidates' competence and proficiency in a skill or area of knowledge had to be evaluated by an ''assessor'' (one that evaluates a candidate's competence and proficiency in a skill or area of knowledge)?

8. If all assessors were required to receive guidance in assessment methods and practice?

9. If all training and assessment were subject to a qualify-standards system that included independent monitoring and evaluation to ensure that stated objectives were being achieved? (Please address costs of development, implementation, and operating, as well as other costs you consider important.)

10. If companies that own or operate seagoing ships were required to (a) maintain records on their seafarers' experience, training, medical fitness, and competency; (b) ensure that those persons newly assigned to their ships were familiarized with their specific duties there, the ships' arrangements, and their equipment; and (c) ensure that the ships' complements can coordinate their activities in an emergency?

11. If watchkeeping personnel on seagoing ships had to get not less than 10 hours of rest a day, including not less than 6 continuous hours, with only strictly limited exceptions?

12. If simulator training were required or necessary for compliance with the 1995 Amendments to STCW? (Please address costs of acquisition and operating, and costs to modify existing programs.)

13. If new training courses needed development to meet some requirements? (Please estimate the complete cost of development and state a range of costs.)

The above list may not be complete. It should suggest the scope and nature of requirements that must be addressed in the implementation of the 1995 Amendments to STCW. The Coast Guard also seeks comments on the impacts associated with requiring practical demonstration in addition to an exam.

The Coast Guard would also appreciate having a breakdown of costs, beyond these costs, associated with courses that currently offer training in the areas mentioned in questions 1 through 11.

The Coast Guard also requests views on the distribution of new costs that may result from implementation of the 1995 Amendments to STCW. For example, to what degree might training costs be borne by employers, schools, employees, unions, or individuals as prospective future employees?

In responding to the above questions, please identify your status or affiliation in the marine industry (e.g., owner-operator, union, maritime school, seafarer), and please explain the basis on which your costs were calculated.

Dated: November 1, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–27869 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

48 CFR Parts 216, 217, 233, 237, 247, 250, and 252

[DFARS Case 95–D703]

Defense Federal Acquisition Regulation Supplement; Multiyear Contracting and Other Miscellaneous Provisions

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify guidance on multiyear contracting; implement sections of the Federal Acquisition Streamlining Act of 1994 pertaining to payment of claims and Civil Reserve Air Fleet Contractors; and conform the DFARS to recent revisions to the FAR pertaining to determinations and findings and personal services contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 12, 1996 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D703 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, at (703) 602–0131. Please cite DFARS Case 95–D703.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. This proposed rule implements the following sections of the Act:

Section 2301, Certification of Contract Claims—This section of the Act repeals 10 U.S.C. 2410e and revises 10 U.S.C. 2410. The new statutory language aligns DoD claims certification requirements with those for civilian agencies (as implemented in the FAR at 33.207), thereby eliminating the need for DFARS Subpart 233.70 and the associated clause at DFARS 252.233–7000, both of which are deleted by this proposed rule. The rule also amends DFARS 233.205 and 250.102 to add references to 10 U.S.C. 2410(b), which places restrictions on legislative payment of claims.

Section 3031, Definitions; Section 3032, Consolidation of Provisions Relating to Contractual Commitment of Aircraft; and Section 3033, Use of Military Installations by Contractors—These sections of the Act expand upon existing coverage in United States Code governing the use of Civil Reserve Air Fleet (CRAF) Contractors, principally upon the relationship between the DoD and CRAF contractors. The proposed rule adds a new DFARS subpart at 247.70 to address the Act's definition of a CRAF contractor, the obligations of a CRAF contractor to the Government, and how the CRAF program impacts the Government's choice of air transportation sources.

This proposed rule also reorganizes and clarifies DFARS guidance pertaining to multiyear contracting in Subpart 217.1. The revised coverage

contains DoD-unique statutory multiyear contracting requirements applicable to services, supplies, weapon systems, and economic order quantity procurements.

In addition, the proposed rule amends the DFARS as follows to conform to recent revisions to the FAR: (1) The rule deletes DFARS coverage at 216.301–3 which addresses a determination and findings requirement for the use of the cost-reimbursement contracts that was eliminated from the FAR by Item IV of Federal Acquisition Circular 90–30 (60 FR 37772, July 21, 1995); (2) The rule amends DFARS coverage on personal services contracts at 237.104 to remove the reference to ''GS–18,'' Although ''GS–18'' pay rates now correlate to ''SES 6'' under current Federal grade structures, recent changes to 5 CFR 304.105(a) do not allow increased payments to certain professional categories. The proposed change to DFARS 237.104 is related to the FAR revisions pertaining to expert services published as Item II of Federal Acquisition Circular 90–31 (60 FR 42648, August 16, 1995), as DFARS 237.104 establishes a ''cap'' on the rates that can be paid such experts.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule primarily reorganizes existing DFARS coverage on multiyear contracting for clarity; adds a new subpart which only applies to the acquisition of air transportation; and makes minor revisions to conform the DFARS to statutory or regulatory requirements. An initial regulatory flexibility analysis, therefore, has not been performed. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D703 in correspondence.

C. The Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 216, 217, 233, 237, 247, 250, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Parts 216, 217, 233, 237, 247, 250, and 252 be amended as follows:

PART 216—TYPES OF CONTRACTS

1. The authority citation for 48 CFR Parts 216, 217, 233, 237, 247, 250, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

216.301 and 216.301–3 [Removed]

2. Sections 216.301 and 216.301–3 are removed.

PART 217—SPECIAL CONTRACTING METHODS

3. Subpart 217.1 is revised to read as follows:

Subpart 217.1—Multiyear Contracting

Sec.

217.101 Definitions.
217.170–1 All multiyear contracts.
217.170–2 Multiyear contracts used to purchase services.
217.170–3 Multiyear contracts used to purchase supplies.
217.170–4 Multiyear contracts for weapon systems.
217.170–5 Multiyear contracts that employ economic order quantity procurement.

217.101 Definitions.

Advance procurement, as used in this subpart, means an exception to the full funding policy which allows acquisition of long leadtime items (advance long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance procurements may include materials, parts, and components as well as costs associated with the further processing of those materials, parts, and components.

217.170–1 All multiyear contracts.

(a) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items procured (10 U.S.C. 2306b(j)).

(b) Before a multiyear contract is awarded, the cost of that contract shall be compared against the cost of an annual procurement approach, using a present value analysis. The multiyear contract shall not be awarded unless the analysis shows it results in the lower cost (Section 9021, Public Law 101–165, and similar sections in subsequent Defense appropriations acts).

(c) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 10 days before termination of any multiyear contract authorized by Congress (Section 9021, Public Law 101–165, and similar sections in subsequent Defense appropriations acts.)

217.170–2 Multiyear contracts used to purchase services.

(a) *Limitations.*

(i) *10 U.S.C. 2306(g).*

(A) DoD may enter into multiyear acquisitions for the following services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated:

(1) Operation, maintenance, and support of facilities and installations;

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(3) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training); and

(4) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(B) This authority may be used as long as the contract—

(1) Does not extend beyond five years;

(2) Complies with FAR 17.101 through 17.105; and

(3) Performance years do not extend beyond the end of any fiscal year.

(ii) *10 U.S.C. 2829.*

(A) DoD may enter into multiyear contracts for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year out of annual appropriations for that year.

(B) This authority may be used as long as the contract—

(1) Does not extend beyond four years;

(2) Complies with FAR 17.101 through 17.105; and

(3) Performance years do not extend beyond the end of any fiscal year.

(iii) Award of a multiyear contract for services requires a written determination by the head of the agency (10 U.S.C. 2306(g)(1)) that—

(A) There will be a continuing need for the services and incidental supplies;

(B) Furnishing the services and incidental supplies will require—

(1) A substantial initial investment in plant or equipment; or

(2) The incurrence of substantial contingent liabilities for the assembly, training or transportation of a specialized work force; and

(C) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations (e.g., economic-lot purchases and more efficient production rates).

217.170–3 Multiyear contracts used to purchase supplies.

(a) *Applicability.* This subsection applies to all multiyear contracts for supplies, including weapon systems. For policies that apply only to multiyear contracts for weapon systems, see 217.107–4.

(b) A multiyear contract for supplies may be used if, in addition to the conditions listed in FAR 17.105–1 (b)(1) through (5), the use of such contract will promote the national security of the United States.

(c) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before the contracting officer awards—

(1) A multiyear contract containing a cancellation ceiling in excess of $100 million (10 U.S.C. 2306b(g)); or

(2) A multiyear contract including an unfunded contingent liability in excess of $20 million (section 9021, Public Law 101–165, and similar sections in subsequent Defense appropriations acts).

(d) Agencies shall establish reporting procedures to meet the requirements of paragraph (c) of this subsection. Submit copies of the notifications to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology) (OUSD(A&T)/DP), and to the Deputy Assistant Secretary of Defense (Comptroller) (Program/Budget) (OASD(C)(P/B)).

217.170–4 Multiyear contracts for weapon systems.

(a) As authorized by 10 U.S.C. 2306b(a), and subject to the conditions in paragraph (b) of this subsection, the head of the agency may enter into a multiyear contract for—

(1) A weapon system, associated items and services, and logistics support for that weapon system; and

(2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates. See 217.170–5 regarding economic order quantity procurement.

(b) The following conditions must be satisfied before a multiyear contract may be awarded under the authority described in paragraph (a) of this subsection:

(1) The Secretary of Defense certifies to Congress that the current five-year defense program fully funds the support costs associated with the multiyear program (10 U.S.C. 2306b(i)(1)(A));

(2) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities (10 U.S.C. 2306b(i)(1)(B));

(3) If the value of the multiyear contract exceeds $500,000,000, the applicable DoD appropriations act specifically provides that a multiyear contract may be used to procure the particular system or system component (Section 9021, Public Law 101–165, and similar sections in subsequent Defense appropriations acts); and

(4) All other requirements of law are met and there are no other statutory restrictions on the use of a multiyear contract for the specific system or component, or statute provides for award of multiyear contracts (Section 9021, Public Law 101–165, and similar sections in subsequent Defense appropriations acts). One such restriction may be achieving specified cost savings. If the agency finds, after negotiations with the contractor(s) that the specified savings cannot be achieved, the head of the agency shall assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request shall—

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details about the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD(A&T)/DP for transmission to Congress via the Secretary of Defense and the President (10 U.S.C. 2306b(i)(2)).

217.170–5 Multiyear contracts that employ economic order quantity procurement.

The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before awarding—

(a) A multiyear contract providing for economic order quantity purchases in excess of $20 million in any year; or

(b) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20 million in any year (Section 9021, Public Law 101–165 and similar sections in subsequent Defense appropriations acts).

PART 233—PROTESTS, DISPUTES, AND APPEALS

4. Section 233.205 is added to read as follows:

233.205 Relationship of the Act to Public Law 805–804.

Limitation on payment. For payment of either a claim under the Contract Disputes Act of 1978 or equitable adjustment or other particular relief under Public Law 85–804, see 10 U.S.C. 2410(b).

Subpart 233.70—[Removed]

5. Subpart 233.70 is removed.

PART 237—SERVICE CONTRACTING

6. Section 237.104 is amended by revising paragraph (f)(i) to read as follows:

237.104 Personal services contracts.

* * * * *

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS–15 (see 5 CFR 304.105(a)).

* * * * *

PART 247—TRANSPORTATION

7. Subpart 247.70 is added to read as follows:

Subpart 247.70—Air Transportation by Civil Reserve Air Fleet Contractors

Sec.

247.7000 Scope of subpart.
247.7001 Definitions.
247.7002 Applicability.
247.7003 Air transportation of DoD passengers and cargo.
247.7004 Civil Reserve Air Fleet.

247.7000 Scope of subpart.

This subpart implements the National Security Decision Directive Number 280, National Airlift Policy, dated June 24, 1987, DoD Policy Memorandum on Transportation and Traffic Management, dated June 16, 1994, and 10 U.S.C. 9513, Use of Military Installations by Civil Reserve Air Fleet (CRAF) Contractors. The national defense airlift objective is to ensure that military and civil airlift

resources will be able to meet defense mobilization and deployment requirements in support of U.S. defense and foreign policy commitments. In support of this objective, DoD requirements shall be satisfied by the procurement of airlift from commercial air carriers participating in the CRAF program.

247.7001 Definitions.

As used in this subpart—

CRAF contractor means a U.S. civilian air carrier holding a certificate under Title 49 United States Code, Section 41102, which participates in the CRAF program. This definition complies with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, Fly American Act), as implemented in FAR subpart 47.4.

CRAF participation means acceptance of the aircraft offered by the contractor into the CRAF program prescribed by the Commander-in-Chief, U.S. Transportation Command, and contractor satisfaction of the other requirements of that program.

CRAF Program means a cooperative plan developed by DoD with the U.S. civilian air carrier industry to augment DoD organic airlift capability during national emergencies and defense-oriented situations.

247.7002 Applicability.

This subpart applies to all contracting methods used to acquire air transportation for DoD passengers or property. The contract methods affected include agreements (freight forwarding agreements), bills of lading, transportation requests, tenders, and other transportation forms as well as more traditional contract methods such as contracts and purchase orders.

247.7003 Air transportation of DoD passengers and cargo.

(a) CRAF contractors shall be used to transport DoD passengers and cargo by air unless the contracting officer determines—

(1) Available CRAF contractor airlift is not suitable and responsive to the requirement;

(2) Law, regulation, or international agreement precludes the use of a CRAF contractor; or

(3) The cost of transportation by a CRAF contractor is unreasonable.

(b) If the total transportation charge exceeds $500,000, the contracting officer shall obtain the concurrence of U.S. Transportation Command (USTRANSCOM/TCJA) and furnish a copy of the determination described in paragraph (a) of this section to USTRANSCOM/TCJA before using a non-CRAF carrier.

(c) Each contract or agreement shall provide for immediate termination in the event a contractor fails to maintain CRAF membership.

247.7004 Civil Reserve Air Fleet.

Contractor's requests for membership in the CRAF program are processed by the Assistant for Civil Air, Air Mobility Command (AMC), Scott AFB IL 62225–5001. Participation requires the offer and commitment of contractor owned or controlled aircraft, suitable and responsive to military requirements, to the CRAF program and the execution of a CRAF contract. The Assistant for Civil Air, AMC, maintains a current list of CRAF contractors and may be contacted regarding contractor eligibility and membership.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

8. Section 250.102 is added to read as follows:

250.102 Policy.

Limitation on payment. Prior to payment of either an equitable adjustment or other particular relief under Public Law 85–804, see 10 U.S.C. 2410(b).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.233–7000 [Removed]

9. Section 252.233–7000 is removed.

[FR Doc. 95–27724 Filed 11–9–95; 8:45 am]
BILLING CODE 5000–04–M

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48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; Ground and Flight Risk

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify who approves flight crew members, increase the amount of the contractor's financial responsibility for loss or damage to the aircraft from $1,000 to $25,000, and make other minor changes in the clauses entitled ''Ground and Flight Risk'' and ''Aircraft Flight Risks.''

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 12, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D028 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the clauses at DFARS 252.228–7001, Ground and Flight Risk, and 252.228–7002, Aircraft Flight Risks, based on the recommendations of a Tri-Service Process Review Team, which conducted an intensive 4-month study of contractor flight operations. The most substantive issues relate to approval of the flight crew members and the amount of the contractor's financial responsibility for loss or damage to the aircraft. Procedures for authorizing contractor's flight crew members and flight are clearly delegated to the Government Flight Representative in the combined, tri-service regulation entitled ''Contractor's Flight and Ground Operations.'' With regard to the contractor's financial responsibility for loss or damage to the aircraft, the proposed rule increases the amount from $1,000 to $25,000, because $1,000 does not adequately compensate the Government for the processing costs required to recover the $1,000, and $1,000 does not operate as an economic incentive for the contractor to adhere to prudent care of property.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because there are only a limited number of defense aviation contractors to which these DFARS clauses apply, and few of those contractors are small businesses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D028 in correspondence.

C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements which require OMB approval under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Part 252 be amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 252.228–7001 is amended by revising paragraphs (d)(2), (e), (i) introductory text, (i)(1), (i)(2) introductory text, and (k) to read as follows:

252.228–7001 Ground and flight risk.

* * * * *

(d) * * *

(2) Is sustained during flight if the flight crew members have not been approved in writing as delineated in the combined, tri-service regulation entitled ''Contractor's Flight and Ground Operations'' (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1C; and Defense Logistics Agency Manual 8210.1);

* * * * *

(e) With the exception of damage, loss, or destruction in flight, the Contractor assumes the risk and shall be responsible for the first $25,000 of loss or damage to the aircraft in the open or during operation resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $25,000 (or the amount of the loss, if less) as directed by the Contracting Officer.

* * * * *

(i) If prior to delivery and acceptance by the Government, the aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

(1) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or

(2) Terminate this contract with respect to the aircraft. If this contract is terminated with respect to the aircraft, the Contractor shall be paid the contract price for the aircraft (or if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

* * * * *

(k) The Contractor agrees to be bound by the operating procedures contained in the combined, tri-service regulation entitled ''Contractor's Flight and Ground Operations'' in effect on the date of contract award.

3. Section 252.228–7002 is amended by revising paragraphs (c) introductory text and (e) to read as follows:

252.228–7002 Aircraft flight risks.

* * * * *

(c) Unless the flight crew members previously have been approved in writing as delineated in the combined, tri-service regulation entitled ''Contractor's Flight and Ground Operations'' (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1C; and Defense Logistics Agency Manual 8210.1), the Contractor shall not be—

* * * * *

(e) The Contractor agrees to be bound by the operating procedures contained in the combined, tri-service regulation entitled ''Contractor's Flight and Ground Operations'' in effect on date of contract award.

[FR Doc. 95–27723 Filed 11–9–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Extension of Comment Period on Reports and Other Data Pertaining to the Listing of the Bruneau Hot Springsnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on reports and other data pertaining to the listing of the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) is extended. The notice of availability opening the public comment period was published on September 12, 1995 (60 FR 47339), which opened the comment period until November 13, 1995. This document extends the comment period until December 15, 1995.

DATES: The comment period is extended until December 15, 1995. Any comments and materials received by the closing date will be considered in the final determination.

ADDRESSES: Comments and materials concerning the reports and other information pertaining to the listing of the Bruneau hot springsnail should be submitted to the U.S. Fish and Wildlife Service, Snake River Basin Office, 4696 Overland Road, Room 576, Boise, Idaho 83705. Reports and other data cited in this notice, and public comments and other materials received will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the address listed above (telephone 208/334–1931, facsimile 208/334–9493).

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1993, the U.S. Fish and Wildlife Service (Service) published a final rule in the Federal Register determining the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) to be an endangered species (58 FR 5946). In its decision to list the springsnail the Service relied, in part, on a provisional draft of a U.S. Geological Survey (USGS) report (Berenbrock 1992) analyzing the hydrology of the geothermal aquifer in the Bruneau Valley area. The USGS provided the Service with the draft report, but did not release it to the public and requested that the Service not release the report to the public, pending agency review and approval.

On May 7, 1993, the Idaho Farm Bureau Federation Owyhee County Farm Bureau, Idaho Cattleman's Association, and Owyhee County Board of Supervisors challenged the listing decision on several grounds in a lawsuit filed in United States District Court for the District of Idaho. The plaintiffs argued that the Service committed a number of procedural violations during the listing process, including not allowing the public to review the draft USGS report. On December 14, 1993,

the district court determined that the Service committed several procedural errors and set aside the final rule listing the springsnail as an endangered species.

The district court decision was appealed to the United States Court of Appeals for the Ninth Circuit by two intervening conservation groups, the Idaho Conservation League and Committee for Idaho's High Desert. On June 29, 1995, the appellate court overturned the district court decision and reinstated the Bruneau hot springsnail to the endangered species list. However, the appellate court concluded that the Service should have made the draft USGS report (i.e., Berenbrock 1992) available for public review, as the Service relied largely on this report to support the final listing rule. The appellate court directed the Service to provide an opportunity for public comment on the USGS report and other relevant information, and to reconsider its listing decision. The notice of availability complied with the court's direction.

On October 24, 1995, Susan E. Buxton requested on behalf of her client (John B. Urquidi, J & J Ranches, Bruneau, Idaho) an extension in the comment period until November 24, 1995. Ms. Buxton requested the extension in order that she and her client may review all available data. Because the Service has no objection to this short extension, the comment period is extended until December 15, 1995.

Available Reports and Data

In addition to the draft USGS report, which was finalized in August 1993 (i.e., Berenbrock 1993), the Service has additional reports and information pertinent to the listing decision received since the original listing rule was published January 25, 1993. The following reports, plans, and letters contained in Service files, including other non-cited information, are available for public review and comment:

Berenbrock, C. 1992. Effects of well discharges on hydraulic heads in and spring discharges from the geothermal aquifer system in the Bruneau area, Owyhee County, southwestern Idaho. U.S. Geological Survey, Water-Resources Investigations, Boise, Idaho. Preliminary report.

Berenbrock, C. 1993. Effects of well discharges on hydraulic heads in and spring discharges from the geothermal aquifer system in the Bruneau area, Owyhee County, southwestern Idaho. U.S. Geological Survey, Water-Resources Investigations Report 93–4001, Boise, Idaho.

Bruneau Valley Coalition, Inc. 1995. Habitat maintenance and conservation plan for the Bruneau hot springsnail, January, 1995. Unpublished plan.

Bruneau Valley Coalition, Inc. 1995. Proposed amendment to the ''Threatened and Endangered Species'' section of the Interim Comprehensive Land Use Plan for the federally and state managed lands in Owyhee County. Unpublished amendment.

Idaho Water Resources Research Institute. 1994, Bruneau hot springs aquifer restoration report: a proposal. Unpublished report, University of Idaho, Moscow, Idaho.

Lee, J.A. 1994. Summary report for the control survey of the Bruneau hot springsnail. Unpublished report, Bureau of Land Management, Boise District Office, Boise, Idaho.

Mladenka, G.C. 1993. Report on the 1993 Bruneau hot springsnail site survey. Unpublished report.

Mladenka, G.C. 1995. Bruneau Hot Springs invertebrate survey. Unpublished report, Stream Ecology Center, Idaho State University, Pocatello, Idaho.

Royer, T.V. and G.W. Minshall. 1993. 1993 Annual Monitoring Report: Bruneau hot springsnail (*Pyrgulopsis bruneauensis*). Unpublished report, Stream Ecology Center, Idaho State University, Pocatello, Idaho.

U.S. Geological Survey. 1993. Unpublished letter addressing error in estimating natural recharge to geothermal aquifer system, and status of Bruneau-area ground water-levels and spring discharges. Boise, Idaho.

U.S. Geological Survey. 1995a. Unpublished letter summarizing results of Bruneau-area ground water-level and spring discharge monitoring data through December 1994. Boise, Idaho.

U.S. Geological Survey. 1995b. Unpublished letter commenting on Idaho Water Resources Research Institute's report and summarizing provisional, spring discharge data collected from June 1994 through July 1995 from three hot springs above Hot Creek, Idaho.

Varricchione, J.T. and G.W. Minshall. 1995. 1994 Monitoring Report: Bruneau hot springsnail (*Pyrgulopsis bruneauensis*). Technical Bulletin No. 95–14, Idaho Bureau of Land Management.

Varricchione, J.T. and G.W. Minshall. 1995. Gut content analysis of wild *Gambusia* and *Tilapia* in Hot Creek, Bruneau, Idaho. Unpublished report, Idaho State University, Pocatello, Idaho.

Authority

The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531–1544.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: November 6, 1995.

H. Dale Hall,

Acting Regional Director, Region I, U.S. Fish and Wildlife Service.

[FR Doc. 95–27961 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 60, No. 218
Monday, November 13, 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

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held December 7, 1995, 2:00 p.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 6800, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 27, 1995, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: November 6, 1995.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 95–27937 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On October 26, 1995, Rancho El Aguaje, Rancho El Toro and Rancho Guacatay filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of Antidumping Duty Administrative Review made by the International Trade Administration respecting Fresh Cut Flowers from Mexico. This determination was published in the Federal Register on September 26, 1995 (60 FR 49569). The NAFTA Secretariat has assigned Case Number USA–95–1904–05 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedures for Article 1904 Binational Panel Reviews (''Rules''). These Rules were published in the Federal Register on February 23, 1994 (59 FR 8686). The panel review in this matter will be conducted in accordance with these Rules.

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 the Agreement, on October 26, 1995, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 27, 1995);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is December 11, 1995); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: November 6, 1995.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 95–27965 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Final Certification for the Consolidation of Galveston Weather Service Office and Los Angeles Residual Weather Service Office

ACTION: Notice.

SUMMARY: On June 26, 1995 (60 FR 32943), the National Weather Service (NWS) published proposed consolidation certifications for the consolidations of:

(1) The Galveston Weather Service Office (WSO) into the future Houston/ Galveston Weather Forecast Office (WFO); and

(2) The residual Los Angeles WSO into the future Los Angeles WFO in accordance with Pub. Law 102–567. The public had 60-days in which to comment on these proposed certifications. After considering comments received and consulting with the Modernization Transition Committee (MTC), the NWS has determined that these actions will not result in any degration of service to the affected areas and has so certified. In accordance with Pub. Law 102–567,the Secretary of Commerce transmitted these certifications to the Congress, and the NWS is now publishing the final certifications together with a summary of the supporting documentation.

EFFECTIVE DATE: November 13, 1995.

ADDRESSES: Requests for copies of the final consolidation certification package(s) should be sent to Janet Gilmer, Room 12316, 1325 East-West Highway, Silver Spring, ME 20910.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1413.

SUPPLEMENTARY INFORMATION: The National Weather Service is consolidating its Galveston WSO with the future Houston/Galveston WFO and its Residual Los Angeles WSO with the future Los Angeles WFO. Based on the recommendations of the respective Meteorologist-in-Charge (MIC), on September 26, 1995, the Assistant Administrator of the NWS certified that these consolidations will not result in any degradation of service to the affected service areas as required by section 706 of the Pub. Law 102–567. On October 23, 1995 the Secretary of Commerce transmitted these certifications to Congress. The NWS is now completing the certification requirements by publishing the final consolidation Certifications in the Federal Register.

Published with this notice are (1) the Certifications by the Assistant Administrator of the NWS; (2) memorandum from Bill Read, MIC of future WFO Houston/Galveston, endorsed by Harry S. Hassel, Director, Southern Region; and (3) memorandum from Todd Morris, MIC of future WFO Los Angeles, endorsed by Dr. Thomas D. Potter, Director, Western Region. These memoranda recommend certification, summarize the basis for the recommendation, and set forth the supporting documentation required by the Pub. Law 102–567. However, this supporting documentation is too voluminous to publish with this notice and can be obtained through the contact listed in **ADDRESSES.** For each certification this material includes:

(1) A Description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(2) A detailed comparison of services provided within the service area and the services to be provided after such action;

(3) A description of any recent or expected modernization of NWS operations which enhance services in the service area;

(4) An identification of any area within Texas or California which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(5) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report, User Confirmation of Services Report, and the radar Decommissioning Readiness Report;

(6) A letter appointing the liaison officer; and

(7) The recommendations of the MTC made at its June 14, 1995 meeting and the final consultation made at the September 14, 1995 MTC meeting.

The memoranda recommending certification considered the public comment received on the proposed certification during the 60-day comment periods. One comment was received. This comment and response is set forth here for reference:

Comment: Mr. Peter J. Nuhn objected to the proposed consolidation certifications of the Galveston and residual Los Angeles Weather Service Offices (WSO). The comment set forth three concerns as the basis for this objection:

(1) These proposed consolidations violate the Weather Service Modernization Act, Public Law 102–567, and the *Strategic Plan for Modernization and Associated Restructuring of the National Weather Service* by proceeding with these consolidation certifications before all new technologies (ASOS, NEXRAD, GOES-Next and AWIPS) have been deployed, made operational, and demonstrated to not cause a degradation of service.

(2) It is premature to recommend consolidation certifications before it can be demonstrated that the NEXRADs involved are meeting availability requirements.

(3) It is premature to recommend consolidation certifications until staff at future WFOs Houston and Los Angeles have been fully trained on new satellite products being generated by GOES-Next.

Response: The NWS is in compliance with the Weather Service Modernization Act. The NWS proposes these consolidation certifications in full compliance with the agency regulations implementing the Act that were published in the Federal Register on December 3, 1993, and final modernization criteria for consolidation certification that were published in the Federal Register on March 2, 1994. Specific responses to the above three concerns are:

(1) The NWS is implementing the modernization in a two stage transition as described in agency regulations and the *Strategic Plan for Modernization and Associated Restructuring of the National Weather Service,* as well as in the annual *National Implementation Plan*. In these documents the NWS describes its' intent and rationale for proceeding with automation, consolidation, and relocation certifications for WSO Galveston and residual WSO Los Angeles satisfy all of the final modernization criteria for this type of action. The NWS consulted with the National Research Council's Modernization Committee and the Modernization Transition Committee. The NWS also invited the public to submit comments during the process of establishing modernization criteria. These criteria envision that the availability of AWIPS (Mr. Nuhn's particular concern) will be a prerequisite for closure but not consolidation.

(2) The NWS has demonstrated that the NEXRADs involved are meeting availability requirements. The NWS has complied with the modernization criteria for a consolidation certification by the commissioning of the NEXRAD(s) (i.e. WSR–88D (s)) which will be providing radar coverage for the affected service area. As part of this WSR–88D commissioning process, the NWS

requires ''at least 96 percent availability of the radar coded message for a period of at least 30 consecutive days prior to commissioning'' to demonstrate that the WSR–88D is meeting the availability requirements. See modernization criteria I.2.d., ''Satisfactory Support of Associated NWS Forecasting and Warning Services''.

The NWS commissioned the WSR–88D covering the WSO Galveston affected service area on March 23, 1994. The Meteorologist-In-Charge of NWSO Houston determined that the radar did in fact meet NWS Modernization Criteria I.2.d. (item 4a on the WSR–88D Site Component Commissioning Checklist) as indicated by a check mark in the satisfactory column and his approval signature. This approval was based on radar coded message availability statistics for this WSR–88D collected between January 10, 1994 and February 23, 1994 which showed greater than 96 percent availability.

The NWS commissioned the WSR–88D covering the residual WSO Los Angeles affected service area on December 16, 1994. The Meteorologist-In-Charge of NWSFO Los Angeles determined the NWS had met Modernization criteria I.2.d. (item 4a on the WSR–88D Site Component Commissioning Checklist) as indicated by a check mark in the satisfactory column and his approval signature. The NWS based its' approval on the radar coded message availability statistics for this WSR–88D collected between February 12, 1994 and December 16, 1994, which showed greater than 96 percent availability.

(3) The NWS has taken all prerequisite steps to comply with modernization criteria for consolidation certifications including: WSR–88D commissioning, user confirmation of services, and existing radar decommissioning. These criteria do not require staff training on new satellite products being generated by GOES-Next. GOES-Next will eventually provide enhanced and new satellite products to WFOs during Stage 2 of the modernization. During Stage 1, NWSO Houston and NWSFO Los Angeles will continue to receive existing GOES satellite products on which staff at these offices have already been trained.

Dated: November 3, 1995.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

Certification

Weather Service Office Consolidation

I hereby certify that there will be no degradation in weather services to the Galveston service area as a result of the consolidation of the Galveston Weather Service Office with the future Houston/Galveston Weather Forecast Office. I have considered the recommendation of the responsible Meteorologist in Charge, Bill Read, as endorsed by Southern Region Director Harry Hassel and have reviewed the attached documentation provided in compliance with the Weather Service Modernization Act that supports this recommendation.

Susan F. Zevin for Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

Attachments

September 18, 1995.

Memorandum For: Harry S. Hassel, Director, Southern Region

From: Bill Read, MIC, NWSO Houston/ Galveston, TX

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgment, consolidation of the Galveston Weather Service Office (WSO) with the future Houston/Galveston Weather Forecast Office (WFO) will not result in any degradation in weather services to the Galveston service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. Dr. Friday, in turn, will forward the certification to the Secretary for transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Galveston service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from Houston/ Galveston WFO will not degrade these services.

2. A detailed list of the services currently provided within the Galveston service area from the Galveston WSO location and a list of services to be provided from the Houston/ Galveston WFO location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Galveston Area of Responsibility (i.e. ''Affected Service Area'') and the future WFO Houston/Galveston Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Galveston service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Texas is included as attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services, attachment F, documents that only two negative comments were received. Both of the negative comments have been answered to the satisfaction of the commentors as stated in the Service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Galveston WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Galveston service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the one public comment received during the comment period (attachment J). On September 14, 1995, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

Dated: September 20, 1995

Harry S. Hassel

Attachments

Certification

Weather Service Office Consolidation

I hereby certify that there will be no degradation in weather services to the Los Angeles service area as a result of the consolidation of the Residual Los Angeles Weather Service Office with the future Los Angeles Weather Forecast Office. I have considered the recommendation of the responsible Meteorologist in Charge, Todd Morris, as endorsed by Western Region Director Thomas D. Potter, and have reviewed the attached documentation provided in compliance with the Weather

Service Modernization Act that supports this recommendation.

Susan F. Zevin for Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

Attachments

September 14, 1995.

Memorandum For: Thomas D. Potter, Director, Western Region

From: Todd Morris, AM/MIC NWSFO Los Angeles

Subject: Recommendation for Consolidation Certification

A change of operations occurred at the Los Angeles Weather Service Forecast Office (WSFO) in October 1993 when most personnel were transferred to the facility of the future Los Angeles Weather Forest Office (WFO) in Oxnard, California to operate the WSR–88D and assume forecast and warning responsibility for the Los Angeles service area. At the same time this office has been designated a Residual Weather Service Office (RWSO) at the original WSFO location to continue operating the existing WSR–74C radar.

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Los Angeles Residual Weather Service Office (RWSO) with the future Los Angeles/Oxnard Weather Forecast Office (WFO) will not result in any degradation in weather services to the Los Angeles service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending that you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the pre-modernized Los Angeles service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the Los Angeles/Oxnard WFO will not degrade these services.

2. A detailed list of the services currently provided from the Los Angeles RWSO location and comparable services to be provided from the Los Angeles/Oxnard WFO location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the pre-modernized Los Angeles service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for California is included as attachment D. NWS operational radar coverage for the Los Angeles service area will be vastly increased and will not degrade services.

It should be noted that neither the old radar network nor the NEXRAD include coverage of a small mountainous area in the northeast corner of the service area. Therefore this does not represent a degradation of radar coverage or services.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. the WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed. There were two national work-arounds. One of these has been satisfied while the other one remains in effect.

B. The User Confirmation of Services, attachment F, documents that only two negative comments were received. Both of the negative comments have been answered to the satisfaction of the commentors as stated in the service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Los Angeles WSR–74C radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Los Angeles service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (attachment I) and the one public comment received during the comment period (attachment J). On September 14, 1995, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Thomas D. Potter, Director, Western Region, endorse this consolidation certification.

Dated: September 15, 1995.

James L. Campbell for Thomas D. Potter.

[FR Doc. 95–27745 Filed 11–9–95; 8:45 am]

BILLING CODE 3310–12–M

National Technical Information Service

Notice of Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 C.F.R. 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in Australia to practice the invention embodied in Australian Patent No. 609689 to Shelljet Pty Ltd, Trading as Anderson Drilling, having a place of business in Orange NSW, Australia. The counterpart U.S. patent is No. 5,196,401. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 C.F.R. 404.7. The prospective exclusive license may be granted unless, within 3 months from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 C.F.R. 404.7.

While the primary purpose of this notice is to announce NTIS' intent to grant an exclusive license to practice the noted foreign patent, it also serves to publish said patient's availability for licensing in accordance with law.

The invention expressed in the cited patent describes a method of enhancing the fragmentation and excavation of hard, solid materials such as rock formations which comprises adding to the rock surface an aqueous solution including a high molecular weight nonionic polymer such as polyethylene oxide which is capable of hydrogen bonding with water the produce charge-neutralizing positive charge dipoles. The nonionic polymeric solution is thus capable of neutralizing the rock surface charge and obtaining a condition of zero surface charge (ZSC) so that the drilling, tunneling, cutting or other similar operation can be conducted with the substantial increases in drilling performance and penetration rate. The method is also extremely effective in extending the lives of drill bits, cutting tools, grinding media, or other polishing or drilling tools such that an enormous savings in terms of replacing equipment can be achieved. The method of the present invention is particularly advantageous in that the nonionic polymer solutions of the invention are effective over a wide range of concentrations in neutralizing the rock surface charge, which has not been the

case with previously used methods involving cationic compounds which were only effective at very specific concentrations. The method of the present invention provides a means for enhancing performance and achieving substantial cost savings in a wide variety of drilling, tunneling, cutting and other similar operations.

Copies of the instant Australian patent are available from the Australian Patent Office or the Office of Federal Patent Licensing (Ph: 703/487–4738). The U.S. patent may be ordered from Commissioner of Patents and Trademarks, Box 9, Washington, D.C. 20231 at a cost of $3.00.

Any inquiries and comments relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, Virginia 22151. Properly filed competing license applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Director, Office of Federal Patent Licensing.

[FR Doc. 95–27938 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–04–M

National Telecommunications and Information Administration

Meeting

AGENCY: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the next meeting of the Spectrum Requirements, Interoperability, Technology, Operational Requirements, and Transition Subcommittees and the Steering Committee of the Public Safety Wireless Advisory Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the next meetings of the five Subcommittees and Steering Committee of the Public Safety Wireless Advisory Committee. The NTIA and the FCC established a Public Safety Wireless Advisory Committee, Subcommittees, and Steering Committee to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. All interested parties are invited to attend and to participate in the next round of meetings of the Subcommittees and the Steering Committee.

DATES: December 13, 14 and 15, 1995.

ADDRESSES: December 13 and 14, 1995 in The Commodity Futures Trading Commission First Floor Hearing Room 1000 at 1155 21st Street (Lafayette Centre), Washington, D.C. 20036. On December 15, 1995 in the U.S. Department of Transportation Nassif Building Room 2230 (See Note below for additional details) at 7th and E. Streets, S.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The five Subcommittees of the Public Safety Wireless Advisory Committee will hold consecutive meetings over a three day period, Wednesday through Friday, December 13, 14 and 15, 1995. The expected arrangement of the meetings, which is subject to change at the time of the meetings, is as follows:

December 13, 1995 the Operational Requirements and Technology Subcommittees will meet consecutively starting at 9 a.m. A separate Public Notice providing additional details about the Technology Subcommittee meeting and associated technology briefings has been released (reference Report No. WT 95–31). On December 14, 1995 the Interoperability and Spectrum Requirements Subcommittees will meet consecutively starting at 9 a.m. On December 15, 1995 the Transition Subcommittee will meet starting at 9 a.m. Note this meeting will be held in room 2230 of the U.S. Department of Transportation Nassif Building at 7th and E Streets, S.W. (See Note below for additional details). The agenda for each meeting is as follows:

1. Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The Steering Committee of the Public Safety Wireless Advisory Committee will meet starting at 1:30 p.m. on December 15, 1995. This meeting will also be held in room 2230 of the U.S. Department of Transportation Nassif Building at 7th and E Streets, S.W. (See Note below for additional details). The agenda for the Steering Committee meeting is as follows:

1. Introduction/welcoming remarks
2. Presentation of definitions of Public Safety and Interoperability from the Interoperability Subcommittee
3. Presentation of draft report from Operational Requirements Subcommittee
4. Subcommittee progress reports
5. Other business
6. Closing remarks

Note: For meetings held at the Nassif Building, participants should go to the southeast building entrance and tell the guard that they are attending a meeting in room 2230. The Metro stop is L'Enfant Plaza, using the exit market ''US Department of Transportation, 7th and D Streets S.W.''.

The tentative schedule and general location of future meetings of the Subcommittees of Public Safety Wireless Advisory Committee is as follows:

January 8, 9 and 10, 1996, at the University of California (Berkeley Campus)
February 28, 29 and March 1, 1996, in Orlando, Florida
April, 1996, in San Diego, CA
May, 1996 at Scott AFB, St Louis, MO
June, 1996 in Washington, D.C.

The tentative schedule and general location of the next full meeting of the Public Safety Wireless Advisory Committee is: June 1996, in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For information regarding the Subcommittees, contact: Interoperability Subcommittee: James E. Downes (202–622–1582); Operational Requirements Subcommittee: Paul H. Wieck (515–281–5261); Spectrum Requirements Subcommittee: Richard N. Allen (703–630–6617); Technology Subcommittee: Alfred Mello (401–738–2220); Transition Subcommittee: Ronnie Rand (904–322–2500 or 800–949–2726 ext. 600). The Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee are William Donald Speights, NTIA (202–482–1652), and John J. Borkowski, FCC (202–418–0680). Information is also available from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswax.ntia.doc.gov).

Dated: November 3, 1995.

William Donald Speights,

PSWAC Co-Designated Federal Official, National Telecommunications and Information Administration.

[FR Doc. 95–27888 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–60–M

Patent and Trademark Office

[Docket #: 951019254–5254–01]

RIN 0651–XX05

Proposed Changes in Procedures Relating to an Application Filing Date

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The Patent and Trademark Office (PTO) requests written public comment on a proposed change in procedures relating to the treatment of *prima facie* incomplete applications. Currently, applications filed without all the pages of the specification or without all of the figures of the drawings are treated as prima facie incomplete and not accorded a filing date. The PTO is considering changing this procedure to accord a filing date to any application that contains something that can be construed as a written description, any necessary drawing, and a claim.

DATES: Written comments will be accepted by the PTO until January 12, 1996.

ADDRESSES: Written comments should be addressed to Box DAC, Assistant Commissioner for Patents, Washington, D.C. 20231. Comments may also be sent by facsimile transmission to (703) 308–6916, with a confirmation copy mailed to the above address, or by electronic mail over the Internet to filedate@uspto.gov.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr by telephone at (703) 305–9285, by facsimile at (703) 308–6916, or Jeffrey V. Nase by telephone at (703) 305–9285, or by mail addressed as indicated above.

SUPPLEMENTARY INFORMATION: The PTO is considering changes in procedures relating to the treatment of *prima facie* incomplete applications. Currently, applications filed without all the pages of the specification (Section 608.01 of the Manual of Patent Examining procedure (MPEP)) (*e.g.*, with page numbering revealing that page(s) are missing), or without all of the figures of the drawings (MPEP 608.02) (*e.g.*, without drawing figures that are mentioned in the specification), are treated as *prima facie* incomplete and not accorded a filing date. The Initial Application Examination Division (formerly the Application Processing Division) in the Office of Initial Patent Examination (formerly the Office of National Application Review) mails a Notice of Incomplete Application indicating that a filing date has not been assigned to the application, and indicating that: (1) The filing date will be the date of receipt of the missing items, and (2) any assertion that the missing item was submitted, or not necessary for a filing date, must be by way of petition (with the $130 fee). MPEP 506.02. To obtain the date of deposit of the application as the filing date, the applicant must: (1) Establish receipt in the PTO of the allegedly missing item (generally by way of postcard receipt in accordance with MPEP 503), in which case the petition fee is refunded, or (2) petition to have the application accepted as deposited, in which case the petition fee is not refunded.

A petition to have the application accepted as deposited requires: (a) An amendment deleting all references to the missing item and correcting the sequential numbering of the pages or drawings in the application, (b) a request to cancel the missing item, if such missing item has been submitted after the date of deposit, and (c) a supplemental oath or declaration by the applicant stating that the invention is adequately disclosed in, and a wish to rely on, the application as thus amended without the missing item and the references thereto in the specification, for purposes of an original disclosure and filing date. The supplemental oath or declaration by the applicant is a statement in writing evidencing that the applicant has been informed of the content of his or her application as filed on the original date of deposit and that the actual content has been reviewed and understood.

As a significant number of applicants are willing to accept the application without the ''missing part,'' the procedure of requiring the applicant to file a petition to obtain the date of deposit as the filing date results in numerous filing date petitions. The preparation by applicants and the consideration by the PTO of some 3000 such petitions a year is time consuming and burdensome. In addition, in most instances there is no controversy as to the content of the *prima facie* incomplete application (*i.e.*, a grantable petition requires only the above-mentioned corrective amendment(s) and supplemental oath or declaration). Finally, the $130 petition fee does not cover the administrative cost of treating such *prima facie* incomplete applications and petitions.

Accordingly, the PTO is considering changing the procedure for the treatment of applications filed without all the pages of the specification or without all of the figures of the drawings. These changes in practice would not require any amendment to the rules of practice.

The Initial Application Examination Division will continue to review application papers for completeness in the manner that such papers are currently reviewed.

Applications Filed Without All Drawings or Pages of Specification

There is no requirement in the statutes or regulations that an application include sequentially numbered pages, or all of the pages, or all of the drawings referred to in the specification to obtain a filing date. That is, while 37 CFR 1.52(b) provides that the pages of the application should be numbered consecutively, the regulations do not provide that compliance with 37 CFR 1.52 is necessary to obtain a filing date. Therefore, applications which contain something that can be construed as a written description, where drawing figure(s) are referred to in the written description, at least one drawing figure, and at least one claim, but are filed with page numbering revealing that page(s) are missing or without all of the drawing figures which are mentioned in the specification will be treated by mailing a notice that indicates that the application papers so deposited have been accorded a filing date, but are lacking some of the pages of specification or drawings described in the specification. The mailing of such a notice will permit applicants to either: (1) Promptly establish prior receipt in the PTO of the item(s), or (2) promptly submit the omitted item(s) and request a later filing date.

The notice will also indicate that:

(a) An applicant asserting that the mentioned item was in fact deposited in the PTO with the application papers must file a petition (and $130 petition fee, which will be refunded if it is determined that the item was in fact received by the PTO) with evidence of such deposit within two months of the date of the notice (37 CFR 1.181(f)),

(b) An applicant desiring to ''complete'' the application and accept the date of completion as the filing date must file any missing items (with a supplemental declaration referring to such items) and a petition under 37 CFR 1.182 (with the $130 petition fee) requesting the later filing date within two months of the date of the notice (37 CFR 1.181(f)), and

(c) An applicant willing to accept the application as deposited in the PTO need not respond to the notice, and the failure to file a petition (and $130 petition fee) under options (a) or (b) above within two months of the date of the notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the PTO.

The application will be retained in the Initial Application Examination Division for a period of two months from the mailing date of such a notice

to permit the applicant to either establish prior receipt in the PTO of the item(s), or submit the omitted item(s) and request a later filing date within this two-month time period. As an applicant may, but is not required to, respond to such a notice, extensions of time under 37 CFR 1.136 will not be applicable to this two-month time period. At the expiration of this two-month non-extendable time period the application will be forwarded to the appropriate examining group for examination of the application. The application will be accorded a filing date as of the date of deposit of the application papers in the PTO. The original application papers (*i.e.*, the original disclosure of the invention) will include only those application papers present in the PTO on the date of deposit.

Due to the effect that a loss of filing date can have on an application, currently the PTO generally treats untimely filing date petitions on their merits since the application, as incomplete, will have undergone no further processing or examination. In the procedure set forth in this notice, however, the PTO will strictly adhere to the two-month period set forth in 37 CFR 1.181(f), and dismiss as untimely any petition not filed within this two-month period. This strict adherence to the two-month period set forth in 37 CFR 1.181(f) is necessary since: (1) Such applications will now be forwarded for examination at the end of this two-month period, (2) according the application a filing date later than the date of deposit may affect the date of expiration of any patent issuing on the application under Public Law 103–465, and (3) the filing of a continuation-in-part application is a sufficiently equivalent mechanism for adding additional subject matter to avoid the loss of patent rights.

Applications Filed Without at Least One Claim

35 U.S.C. 111(a)(2) provides, in part, that an ''application shall include (A) a specification as prescribed by section 112 of this title; (B) a drawing as prescribed by section 113 of this title; and (C) an oath by the applicant as prescribed by section 115 of this title,'' and 35 U.S.C. 111(a)(4) provides that the ''filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.'' 35 U.S.C. 112, second paragraph, provides that ''[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.'' Therefore, 35 U.S.C. 111 and 112, second paragraph, provide that the filing date of an application is that date on which a specification including at least one claim(s) is filed in the PTO. *In re Mattson,* 208 USPQ 168 (Comm'r Pat 1980). Since a claim is a statutory requirement for a filing date, applications filed without a claim will not be accorded a filing date. In situations in which an application is filed without a claim, the Initial Application Examination Division will continue to mail a notice of Incomplete Application, and the treatment of such applications will remain unchanged.

Applications Filed Without Any Drawings

35 U.S.C. 111(a)(2) provides, in part, that an ''application shall include * * * a drawing as prescribed by section 113 of this title'' and 35 U.S.C. 111(a)(4) provides, in part, that the ''filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.'' 35 U.S.C. 113 in turn provides that an ''applicant shall furnish a drawing where necessary for the understanding of the subject matter sought to be patented.'' Drawings are usually not necessary for an understanding of the subject matter in process and composition applications (*i.e.*, applications having claims directed to a process or composition (MPEP 608.02)). As such, applications having at least one process or composition claim and describing drawing figures in the specification, but filed without drawings, will be treated as an application filed without all of the drawings referred to in the specification as discussed above and processed for examination. Applications having at least one process or composition claim which do not describe drawing figures in the specification will simply be processed for examination. In a situation in which the appropriate examining group determines that drawings are necessary under 35 U.S.C. 113, the filing date issue will then be reconsidered on reference from the examining group.

In design applications, the Initial Application Examination Division will continue to mail a notice of Incomplete Application indicating that the application lacks the drawings required under 35 U.S.C. 113, and the applicant may: (a) File a petition (and $130 fee) asserting that the missing item was submitted, or not necessary for a filing date, or (b) ''complete'' the application and accept the date of completion as the filing date.

Dated: November 3, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–27874 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

November 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 14, 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).

The current limit for Categories 351/651 is being increased by application of swing, reducing the limit for Categories 352/652.

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 40162, published on August 7, 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

November 7, 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 June 16, 1995, as amended on August 2, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador and exported during the twelve-month period beginning on March 27, 1995 and extending through December 31, 1995.

Effective on November 14, 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 limit [1]
351/651	535,000 dozen.
352/652	7,865,265 dozen.

[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. 95–27932 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–DR–F

Cancellation of a Limit on Certain Wool Textile Products Produced or Manufactured in Hong Kong

November 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling a limit.

EFFECTIVE DATE: November 15, 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).

The United States Government has decided to rescind the restraint on imports of woven wool shirts and blouses in Category 440 from Hong Kong established on July 25, 1995 pursuant to Article 6.10 of the Uruguay Round Agreement on Textiles and Clothing.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the limit established for Category 440 for the period April 27, 1995 through December 31, 1995.

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 17322, published on April 5, 1995; and 60 FR 37881, published on July 24, 1995.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on July 18, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of wool textile products in Category 440, produced or manufactured in Hong Kong and exported during the period which began on April 27, 1995 and extends through December 31, 1995.

Effective on November 15, 1995, you are directed to cancel the limit established for Category 440 for the period April 27, 1995 through December 31, 1995.

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.95–27933 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–DR–F

Cancellation of a Limit on Certain Wool Textile Products Produced or Manufactured in India

November 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling a limit.

EFFECTIVE DATE: November 15, 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).

The United States Government has decided to rescind the restraint on imports of men's and boys' wool coats in Category 434 from India established on July 14, 1995, pursuant to Article 6.10 of the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the limit established for Category 434 for the period April 18, 1995 through April 17, 1996.

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 35899, published on July 12, 1995.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 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 July 7, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in India and exported during the period which began on April 18, 1995 and extends through April 17, 1996.

Effective on November 15, 1995, you are directed to cancel the limit established for Category 434 for the period April 18, 1995 through April 17, 1996.

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.95–27934 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

November 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 334/634, 335/635, 336/636, 340/640, 342/642, 347/348 and 351/651 are being increased 5 percent for handmade, handloomed apparel products. Also, the limit for Categories 340/640 is being increased for carryforward.

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 62645, published on December 20, 1994). Also see 60 FR 8344, published on February 14, 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

November 7, 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 February 9, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on November 14, 1995, you are directed to amend the directive dated February 9, 1995 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	Adjusted twelve-month limit [1]
Levels in Group I	
334/634	131,994 dozen.
335/635	546,162 dozen.
336/636	775,293 dozen.
340/640	1,927,120 dozen.
342/642	1,175,453 dozen.
347/348	559,159 dozen.
351/651	265,752 dozen.

[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 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. 95–27935 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

November 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 14, 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).

The current limits for Categories 338/339 and 340/640 are being increased for carryover and special carryforward, respectively.

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 17333, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on November 14, 1995, you are directed to amend the directive dated March 30, 1995 to increase 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	Adjusted twelve-month limit [1]
Levels not in a group	
338/339	462,139 dozen.
340/640	641,600 dozen of which not more than 429,597 dozen shall be in Categories 340–Y/640–Y [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–27936 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 13, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 25 and September 1, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 44320 and 45705) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and service.

3. The action will result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List.

Accordingly, the following commodity and service are hereby added to the Procurement List:

Commodity

Garlic Powder
8950–01–254–2691

Service

Grounds Maintenance, Puget Sound Naval Shipyard Bremerton, Washington

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–27958 Filed 11–9–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 13, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Dispenser, Tape
7520–00–240–2417
NPA: Royal Maid Association for the Blind, Inc. Hazlehurst, Mississippi

Carrying Cover, Arch
8340–00–556–9674

NPA: North Bay Rehabilitation Services, Inc., San Rafael, California at its facility in Rohnert Park, California

Shape, Day Maritime
8345–01–101–1101
NPA: North Bay Rehabilitation Services, Inc., San Rafael, California at its facility in Rohnert Park, California

Services

Administrative Services, General Services Administration, Federal Supply Service, 26 Federal Plaza, New York, New York
NPA: Young Adult Institute, New York, New York

Food Service Attendant at the following locations:
Missouri Air National Guard, 10800 Lambert International Boulevard, Bridgeton, Missouri
Jefferson Barracks and Base, Building 280, #1 Grant Road, St. Louis, Missouri
NPA: Challenge Unlimited, Inc., Alton, Illinois

Janitorial/Custodial, Rome Laboratories, Griffis Air Force Base, New York,
NPA: Human Technologies Corporation, Utica, New York

Janitorial/Custodial, The Courthouse and Federal Building, 5th & Hamilton Streets, Allentown, Pennsylvania
NPA: Lehigh Valley Association Rehabilitation Centers, Inc., Bethlehem, Pennsylvania

Laundry Service, Naval Air Station, North Island, Bachelor Enlisted Quarters and Bachelor Officer Quarters, San Diego, California
NPA: Mental Health Systems, Inc., San Diego, California

Laundry Service, Immigration & Naturalization Service, 201 Varick Building, New York, New York
NPA: Goodwill Industries of Greater New York, Astoria, New York

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–27959 Filed 11–9–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 13, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Undershirt, Flyers' Aramid
8415–00–485–6547
8415–00–485–6548
8415–00–485–6680
8415–00–485–6681
8415–01–043–8475
NPA: Peckham Vocational Industries, Inc., Lansing, Michigan

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–27960 Filed 11–9–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Conference Meeting of the National Advisory Panel on the Education of Handicapped Dependents

AGENCY: Department of Defense Dependents Schools.

ACTION: Notice.

SUMMARY: On October 3, 1995, 60 FR 51780, the Department of Defense published a notice concerning a Conference Meeting of the National Advisory Panel on the Education of Handicapped Dependents to be held November 28–30, 1995. This meeting is canceled.

Dated: November 6, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–27930 Filed 11–9–95; 8:45 am]

BILLING CODE 5000–04–M

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Joint Advisory Committee (JAC) on Nuclear Weapons Surety will conduct a closed Executive Session on December 12, 1995, at Lawrence Livermore National Laboratory, Livermore, California.

The Joint Advisory Committee is charged with advising the Secretary of Defense, Secretary of Energy, and the Joint Nuclear Weapons Council on nuclear weapons systems surety matters. At this meeting, the Joint Advisory Committee will discuss classified material on Science Based Stockpile Stewardship, alternatives to nuclear testing and future JAC projects.

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended, Title 5, U.S.C. App. II (1988)), this meeting concerns matters, sensitive to the interests of national security, listed in 5 U.S.C. 552(c)(1) and accordingly this meeting will be closed to the public.

Dated: November 6, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–27931 Filed 11–9–95; 8:45 am]

BILLING CODE 5000–04–M

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 January 12, 1996.

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 Department 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 of the respondents, including through the use of information technology.

Dated: November 6, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Existing.
Title: Federal Family Education Loan, Student Financial Assistance, Federal Aid Programs.
Frequency: One Time.
Affected Public: Individual or households.
Annual Reporting and Recordkeeping Hour Burden
Reporting Burden:
Responses: 1,148,818.
Burden Hours: 183,811.
Abstract: These forms are the means by which a borrower applies for a deferment of repayment of the principal balance on a loan and the lender determines whether a borrower is entitled to a specific type of deferment.

Office of Postsecondary Education

Type of Review: Existing.
Title: Federal Family Education Loan Program Application Documents.
Frequency: One Time.
Affected Public: Individual or households; Business or other for-profit; not for Profit institutions.
Annual Reporting and Recordkeeping Hour Burden
Reporting Burden:
Responses: 100,000.
Burden Hours: 50,000.
Abstract: These forms are the means by which a parent borrower applies for a Federal PLUS Loan and promises to repay the loan.

Office of Postsecondary Education

Type of Review: Existing.
Title: Federal Stafford Loan, (subsidized and unsubsidized) Program Application Documents.
Frequency: One Time.
Affectecd Public: Individual or households; Business or other for-profit.
Annual Reporting and Recordkeeping Hour Burden
Reporting Burden:
Responses: 2,800,000.
Burden Hours: 1,400,000.
Abstract: This application form and promissory note is the means by which a borrower applies for a Federal Stafford Loan and a school, lender, and guaranty agency determines a borrower's eligibility to receive a Stafford loan.

[FR Doc. 95–27954 Filed 11–9–95; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER5–1107–000, et al.]

LTV Steel Mining Company, et al.; Electric Rate and Corporate Regulation Filings

November 3, 1995.

Take notice that the following filings have been made with the Commission:

1. LTV Steel Mining Company

[Docket No. ER95–1107–000]

Take notice that on October 18, 1995, LTV Steel Mining Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Amoco Power Marketing Corporation

[Docket No. ER95–1359–000]

Take notice that on October 27, 1995, Amoco Power Marketing Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. UGI Utilities, Inc.

[Docket No. ER96–60–000]

Take notice that on October 6, 1995, UGI Utilities, Inc. (UGI), tendered for filing FERC Electric Tariff, First Revised Volume No. 1, which makes changes to its currently effective FERC Electric Tariff, Original Volume No. 1. These changes modify the rates, terms and conditions for service rendered under Rate Schedule BLR. The changes are identical in form and substance to tariff changes which became effective for UGI's retail sales service pursuant to orders of the Pennsylvania Public Utility Commission. UGI proposes that the tendered tariff sheets become effective upon filing and requests waiver of the 60-day prior notice filing

requirements of the Commission's regulations. The filing has been served upon all affected customers and the Pennsylvania Public Utility Commission.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER96–117–000]

Take notice that on October 18, 1995, New England Power Company (NEP) tendered for filing a service agreement with KCS Power Marketing, Inc. for sales under NEP's FERC Electric Tariff, Original Volume No. 5. In addition NEP filed on October 24, 1995, an amendment to its October 18, 1995, filing in the above-referenced docket.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Company

[Docket No. ER96–128–000]

Take notice that on October 20, 1995, Southwestern Electric Power Company (SWEPCO), submitted an executed service agreement with Terrebonne Parish Consolidated Government, Terrebonne Parish, Louisiana (Terrebonne) under SWEPCO's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff). The executed Service Agreement supersedes an unexecuted Service Agreement with Terrebonne which became effective April 28, 1995.

SWEPCO requests an effective date of April 28, 1995 for the executed service agreement. Accordingly, SWEPCO seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Terrebonne and the Public Utility Commission of Texas.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. The Washington Water Power Company

[Docket No. ER96–129–000]

Take notice that on October 23, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.15, a Notice of Termination concerning Rate Schedule FERC No. 206. On June 21, 1995, an agreement, between WWP and Public Utility District No. 1 of Chelan County, in which WWP provided power and energy to the Chelan Service Area Load when the Chelan Hydro-Electric Plant Project generation was insufficient terminated by its own terms and conditions.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. The Washington Water Power Company

[Docket No. ER96–130–000]

Take notice that on October 23, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.15, a Notice of Termination concerning Rate Schedule FERC No. 177 and 177.1. On October 31, 1994, the firm capacity sales agreement between WWP and Portland General Electric Company terminated by its own terms and conditions.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER96–131–000]

Take notice that on October 23, 1995, Florida Power Corporation (FPC), tendered for filing a letter of commitment (Letter) for the provision of service between itself and the Orlando Utilities Commission (OUC). The Letter commits FPC to take negotiated service from OUC in accordance with the terms of the Contract for Interchange Service dated January 24, 1979, as supplemented by Service Schedule J dated June 23, 1986. Under the terms of the Letter, OUC will provide 20 MW of capacity and/or energy to FPC.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER96–134–000]

Take notice that on October 23, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with KCS Power Marketing, Inc. (KCS) under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

KCS also filed a Certificate of Concurrence as it relates to exchange transactions under the Tariff.

NUSCO states that a copy of this filing has been mailed to KCS.

NUSCO requests that the Service Agreement become effective December 1, 1995.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER96–136–000]

Take notice that on October 23, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with North American Energy Conservation, Inc. (NAEC). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to NAEC and NAEC will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on October 24, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and NAEC.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER96–140–000]

Take notice that on October 23, 1995, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and National Fuel Resources (National Fuel). This Service Agreement specifies that National Fuel has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and National Fuel to enter into separately scheduled transactions under which NMPC will sell to National Fuel capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of October 17, 1995. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and National Fuel.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER96–141–000]

Take notice that on October 24, 1995, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 246.9.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Edgar D. Jannotta, Sr.

[Docket No. ID–2918–000]

Take notice that on October 23, 1995, Edgar D. Jannotta, Applicant tendered for filing under section 305(b) of the Federal Power Act to hold the following positions:

Director—Commonwealth Edison Company
Senior Partner—William Blair & Company

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Edward A. Brennan

[Docket No. ID–2920–000]

Take notice that on October 25, 1995, Edward A. Brennan (Applicant) tendered for filing under section 305(b) of the Federal Power Act to hold the following positions:

Director—Commonwealth Edison Company
Director—Dean Witter, Discover & Company

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Megan-Racine Associates, Inc.

[Docket No. QF89–58–004]

On October 27, 1995, Megan-Racine Associates, Inc. (applicant), of 80 Lincoln Street, Canton, New York 13617, submitted for filing an application for recertification of a facility as a cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the natural gas-fueled topping-cycle cogeneration facility is located in St. Lawrence County, New York. It consists of a combustion turbine generator, a separately fired heat recovery boiler, and an extraction/condensing steam turbine generator. The facility commenced commercial operation on May of 1991. Thermal output of the facility is sold to Kraft Foods, Inc. for use in the processing of dairy products. Electric power output of the facility is sold to Niagara Mohawk Power Corporation.

In Docket No. QF89–58–000, the applicant was granted certification for a 47.85 MW topping-cycle cogeneration facility [46 FERC ¶ 62,074 (1989)]. On July 7, 1995, in Docket No. QF89–58–003, the applicant filed a notice of self-recertification. The instant recertification is submitted to reflect a change in the operation of the facility.

Comment date: Thirty days after the date of publication of this notice in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27892 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2310–073 California]

Pacific Gas & Electric Co.; Notice of Availability of Environmental Assessment

November 6, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed a non-capacity related amendment of license for the Drum Spaulding Hydroelectric Project, No. 2310–073. The Drum Spaulding Project is located on the Bear, South Yuba, and North Fork American Rivers in Placer and Nevada Counties, California. The plan is for a revised recreation plan for the project. An Environmental Assessment (EA) was prepared for the plan. The EA finds that approving the plan would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Please submit any comments within 20 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 2310–073 to all comments. For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27905 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP95–119–000, CP95–119–001]

Steuben Gas Storage Company; Notice of Availability of the Environmental Assessment for the Proposed Thomas Corners Gas Storage Field Project

November 6, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Steuben Gas Storage Company (Steuben) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed underground gas storage facility and related pipeline facilities in Steuben County, New York, including:

- A storage field in the town of Bath including 13 injection/withdrawal wells (11 new and 2 existing [#1 Sylvan and #1 Mullins]) and 1 observation well; various dehydration facilities including a dehydration unit, a field separator, glycol storage tanks, and an auxiliary

building; and 0.4 mile of 4-inch-diameter and 0.3 mile of 12-inch-diameter well lines within the main well pad area;

- The existing #1 Sylvan well located southeast of the main well pad area and requires 0.2 mile of 4-inch-diameter well lateral pipeline to connect it to the storage field;
- A new 3,284-horsepower (hp) compressor station (Thomas Corners Compressor Station) at the existing Adrian Compressor Station property in the town of Canisteo;
- 6.4 miles of 12-inch-diameter gathering header pipeline between the Thomas Corners Compressor Station and storage field in the towns of Canisteo, Cameron, and Bath; and
- A pipeline drip and storage tank east of the Canisteo River in the town of Canisteo between the Conrail railway and Canisteo River Road.

The purpose of the proposed facilities would be to develop and operate the Thomas Corners gas field as an underground natural gas storage field capable of providing up to 5,300,000 dekatherms (Dth) of working gas storage capacity. The additional gas storage capacity would help satisfy the growing demand for storage service in the Northeast to meet winter use demands and supplement its general system operations in the market area. Presently, only one customer, Virginia Natural Gas, Inc., has signed a Firm Storage Service Precedent Agreement with Steuben for 1,350,000 Dth of capacity in the Thomas Corners Storage Field.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Mr. Howard J. Wheeler, Environmental Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation (PR 11.2), 888 First Street, N.E., Washington, DC 20426, (202) 208–2299.

Any person wishing to comment on the EA may do so. Written comments must be reference Docket Nos. CP95–119–000 and CP95–119–001 and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than December 6, 1995, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. Howard Wheeler, Environmental Project Manager, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Mr. Howard J. Wheeler, Environmental Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27929 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2897–002, et al.]

Hydroelectric Applications [S.D. Warren Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Amendment of License Term.
b. *Project No:* 2897–002.
c. *Date Filed:* October 4, 1995.
d. *Applicant:* S.D. Warren Company.
e. *Name of Project:* Saccarappa Project.
f. *Location:* Presumpscot River, Town of Westbrook, Cumberland County, Maine.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(e).
h. *Applicant Contact:* Nancy J. Skancke, Grammer, Kissel, Robbins & Skancke, 1225 Eye Street, NW., Suite 1225, Washington, DC 20005, (202) 408–5400.
i. *FERC Contact:* Hillary Berlin, (202) 219–0038.
j. *Comment Date:* December 8, 1995.
k. *Description of Amendment Request:* The licensee proposes that the license term be extended to expire five years from the issuance date of the order on this request to facilitate a coordinated review of the relicensing of five projects on the Presumpscot River.
l. The notice also consists of the following standard paragraphs: B, C1, and D2.

2 a. *Type of Application:* Amendment of License Term.
b. *Project No:* 2931–001.
c. *Date Filed:* October 4, 1995.
d. *Applicant:* S.D. Warren Company.
e. *Name of Project:* Gambo Project.
f. *Location:* Presumpscot River, Towns of Gorham and Windham, Cumberland County, Maine.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(e).
h. *Applicant Contact:* Nancy J. Skancke, Grammer, Kissel, Robbins & Skancke, 1225 Eye Street, NW., Suite 1225, Washington, DC 20005, (202) 408–5400.
i. *FERC Contact:* Hillary Berlin, (202) 219–0038.
j. *Comment Date:* December 8, 1995.
k. *Description of Amendment Request:* The licensee proposes that the license term be extended to expire five years from the issuance date of the order on this request to facilitate a coordinated review of the relicensing of five projects on the Presumpscot River.
l. The notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. *Type of Application:* Amendment of License Term.
b. *Project No:* 2932–002.
c. *Date Filed:* October 4, 1995.
d. *Applicant:* S.D. Warren Company.
e. *Name of Project:* Mallison Falls Project.
f. *Location:* Presumpscot River, Towns of Gorham and Windham, Cumberland County, Maine.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(e).
h. *Applicant Contact:* Nancy J. Skancke, Grammer, Kissel, Robbins & Skancke, 1225 Eye Street, NW., Suite 1225, Washington, DC 20005, (202) 408–5400.
i. *FERC Contact:* Hillary Berlin, (202) 219–0038.
j. *Comment Date:* December 8, 1995.
k. *Description of Amendment Request:* The licensee proposes that the license term be extended to expire five years from the issuance date of the order on this request to facilitate a coordinated review of the relicensing of five projects on the Presumpscot River.
l. The notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. *Type of Application:* Amendment of License Term.

b. *Project No:* 2941–001.
c. *Date Filed:* October 4, 1995.
d. *Applicant:* S.D. Warren Company.
e. *Name of Project:* Little Falls Project.
f. *Location:* Presumpscot River, Towns of Gorham and Windham, Cumberland County, Maine.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(e).
h. *Applicant Contact:* Nancy J. Skancke Grammer, Kissel, Robbins & Skancke, 1225 Eye Street, NW., Suite 1225, Washington, DC 20005, (202) 408–5400.
i. *FERC Contact:* Hillary Berlin, (202) 219–0038.
j. *Comment Date:* December 8, 1995.
k. *Description of Amendment Request:* The licensee proposes that the license term be extended to expire five years from the issuance date of the order on this request to facilitate a coordinated review of the relicensing of five projects on the Presumpscot River.
l. The notice also consists of the following standard paragraphs: B, C1, and D2.

5 a. *Type of Application:* Amendment of License Term.
b. *Project No:* 2942–004.
c. *Date Filed:* October 4, 1995.
d. *Applicant:* S.D. Warren Company.
e. *Name of Project:* Dundee Project.
f. *Location:* Presumpscot River, Towns of Gorham and Windham, Cumberland County, Maine.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(e).
h. *Applicant Contact:* Nancy J. Skancke, Grammer, Kissel, Robbins & Skancke, 1225 Eye Street, NW., Suite 1225, Washington, DC 20005, (202) 408–5400.
i. *FERC Contact:* Hillary Berlin, (202) 219–0038.
j. *Comment Date:* December 8, 1995.
k. *Description of Amendment Request:* The licensee proposes that the license term be accelerated to expire five years from the issuance date of the order on this request to facilitate a coordinated review of the relicensing of five projects on the Presumpscot River.
l. The notice also consists of the following standard paragraphs: B, C1, and D2.

6 a. *Type of Application:* Transfer of License.
b. *Project No:* 9907–004.
c. *Date Filed:* October 6, 1995.
d. *Applicant:* A.W. Brown Co., Inc.
e. *Name of Project:* Sunshine Power Project.
f. *Location:* Lake Creek, Lemhi County, Idaho.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Bill Brown, A.W. Brown Co., Inc., Suite F, 3416 Via Lido, Newport Beach, CA 92663, (714) 673–8119.
i. *FERC Contact:* Ahmad Mushtaq, (202) 219–2672.
j. *Comment Date:* December 12, 1995.
k. *Description of Application:* The licensee, jointly and severally with Jerry Lee and Christine McMillan, request Commission approval to transfer the project license to Mr. Lee and Ms. McMillan.
l. This notice also consists of the following standard paragraphs: B, C1, and D2.

7 a. *Type of Applications:* New Major License.
b. *Project Nos.:* 2569–004, and 2538–001.
c. *Dates Filed:* November 29, 1991, and December 21, 1995.
d. *Applicants:* Niagara Mohawk Power Corporation, and Beebee Island Corporation.
e. *Name of Project:* Black River Hydro Project, and Beebee Island Project.
f. *Location:* On the Black River, in Jefferson County, New York.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-–825(r).
h. *Applicant Contact:* Mr. Jerry Sabattis, Hydro Licensing Coordinator, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 474–1511.
i. *FERC Contact:* Tom Camp (202) 219–2832.
j. *Deadline Date:* See paragraph D10.
k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time with one exception. The report on the fish entrainment studies, being conducted as a result of additional information requested by the Commission, has not yet been filed. When the entrainment report is submitted to the Commission, it will be reviewed for adequacy. In the interim, environmental analysis will proceed on all other issues—see attached paragraph D10. No second REA notice will be issued.
l. *Description of Project:* The existing Black River Project consists of five developments, and the existing Beebee Island Project consists of one development. Both projects are on the Black River in Jefferson County, New York.

Black River Project

Herrings Development

The Herrings Development is located in the town of Champion, has a total installed capacity of 5.4 MW, and consists of: (1) a 140-acre reservoir at normal maximum surface elevation of 680.1 feet, and a gross storage capacity of 669.4 acre-ft; (2) a 512-ft by 25-ft high ''L''-shaped concrete gravity dam with crest elevation of 679.1 feet, topped with a 1-foot-high wooden flashboard; (3) intake structure, integral with the powerhouse, consisting of (a) stop-log waste sluice upstream of the existing perpendicular trashracks measuring 101-foot-wide by 31-foot-high with 3.5 inches of clear spacing (b) 11-foot-wide stop-log waste sluice downstream of the trashracks, and (c) nine, 9-foot-wide, 12.5-foot-high motor operated slide gates; (4) 137-foot-wide, 33-foot long brick-masonry powerhouse containing three vertical Allis-Chalmers generating units, each rated at 1,800 kW, with design head of 19.5 ft and hydraulic capacity of 1,203 cfs; (5) short excavated rock tailrace discharging directly into the Black River; (6) transmission lines consisting of (a) 30, 70, and 108-foot-long leads connecting to a 2.4-kV powerhouse bus, and (b) three 97-foot-long 2.4-kV lines connected to a 2.4/23-kV step-up transformer; and (7) appurtenant facilities.

Deferiet Development

The Deferiet Development is located in the town of Wilna, has a total installed capacity of 10.8 MW, and consists of: (1) 70-ac reservoir, at normal maximum surface elevation of 659.0 feet and gross storage capacity of 405 ac-ft; (2) dam consisting of (a) 503-foot-long by 18-foot-high ambursen dam section, with permanent crest elevation of 656 feet, topped with existing 3-foot-high wooden flashboards, and (b) 192-foot-long sluice gate section that houses eleven 14-foot-wide stop-log bays; (3) headworks structure consisting of (a) 180-foot-wide concrete power canal headworks section housing twenty 5-foot-wide by 12.5-foot-high hand operated timber slide gates; (4) 4,200-foot-long canal which connects the power canal headworks and existing powerhouse; (5) intake structure consisting of (a) 108-foot-wide by 27-foot-high perpendicular trashrack with 3.5 inches of clear spacing, (b) three steel slide gates, and (c) 11-foot-wide ice sluice controlled by stop-logs; (6) 145.5-foot-wide by 92.5-foot-long brick/masonry powerhouse equipped with three vertical Francis generating units, each rated at 3,600 kW, with design head of 46 feet, and hydraulic capacity of 1,147 cfs; (7) 1,400-foot-long excavated rock tailrace; (8) transmission lines consisting of (a) 65-, 45-, and 65-foot-long leads connecting to a 2.4 kV powerhouse bus, (b) 67-, 69-, and 73-foot-long 2.4-kV underground lines connecting to 2.4/23-kV step-up transformer; and (9) appurtenant facilities.

Kamargo Development

The Kamargo Development is located in the town of Rutland, has a total installed capacity of 5.4 MW, and consists of: (1) 40-ac reservoir, at normal maximum surface elevation of 563.8 feet and gross storage capacity of 359.5 ac-ft; (2) dam consisting of (a) 647-foot-long by 12-foot-high concrete gravity spillway dam, with permanent crest elevation of 561.8 ft, topped with existing 2-foot-high wooden flashboards, and (b) 150-foot-long overflow section; (3) headworks structure consisting of (a) 131-foot-long power canal headworks structure, with 14 8-foot-wide by 11-foot-high wooden headgates, leading to (b) 3,850-foot-long unlined power canal, and (c) 143-foot-long bulkhead section; (4) 580-foot-long concrete forebay channel consisting of (a) 190-foot-long concrete gravity overflow section, (b) 230-foot-long concrete gravity section topped with 1-foot-high flashboards, and (c) 160-foot-long side channel spillway section equipped with twelve stop-log-bays; (5) intake structure consisting of (a) 66-foot-wide by 28.5-foot-high perpendicular trashrack, with 3.5-inches clear spacing, (b) waste sluice, and (c) nine timber gates with stop-log slots; (6) 97.5-foot-wide by 37-foot-long brick/masonry powerhouse equipped with three vertical Francis generating units, each rated at 1,800 kW, a design head of 25 feet, and a hydraulic capacity of 1,100 cfs; (7) short excavated rock tailrace discharging directly into the Black River; (8) transmission lines consisting of (a) three 25-foot-long leads connecting to a 2.4-kV powerhouse bus, and (b) three 89-foot-long, 2.4-kV underground lines connecting to 2.4/23-kV step-up transformer; and (9) appurtenant facilities.

Black River Development

The Black River Development is located in the town of LeRay, has a total installed capacity of 6.0 MW, and consists of: (1) 25-ac reservoir, at normal maximum surface elevation of 536 feet and gross storage capacity of 128 ac-ft; (2) dam consisting of (a) 327-foot-long by 16-foot-high horseshoe-shaped concrete retaining wall, (b) 36.5-foot-long gated section housing two sluice gates, (c) abandoned substructure powerhouse, and (d) 291-foot-long by 25-foot-high concrete gravity spillway, with a permanent crest of 534 feet, topped with 2-foot high wooden flashboards; (3) headworks structure consisting of (a) 80-foot-long concrete power canal upper bulkhead structure, housing twelve 6-foot-wide by 11-foot-high timber slide gates and one 3.5-foot-wide by 11.0-foot-high gate, and (b) 2,250-foot-long power canal composed of a 1,270-foot-long unlined section containing a 250-foot-long side concrete waste weir, and a 980-foot-long concrete-lined section containing a 134-foot-long side concrete waste weir and low-level sluice gate; (4) intake structure consisting of (a) 80-foot-wide by 29-foot-high perpendicular trashrack, with 3.5-inches clear spacing, and (b) nine timber slide gates; (5) 118-foot-wide by 66-foot-long powerhouse equipped with three vertical Francis generating units, each rated at 2,000 kW with a design head of 33 feet, and a hydraulic capacity of 1,067 cfs; (6) short excavated rock tailrace discharging directly into the Black River; (7) transmission lines consisting of (a) 36-, 65-, and 95-foot-long leads connecting to a 2.4-kV powerhouse bus, and (b) three 88-foot-long, 2.4-kV underground lines connecting to 2.4/23-kV step-up transformer; and (8) appurtenant facilities.

Sewalls Development

The Sewalls Development is located in the city of Watertown and consists of one facility on the south channel and one on the north channel of Sewalls Island. Power generation is obtained only from the powerhouse on the south channel.

The South Channel facility has an installed capacity of 2.0 MW, and consists of the following features: (1) 4-ac reservoir, at normal maximum surface elevation of 463.9 feet and gross storage capacity of 48 ac-ft; (2) 243-ft by 15.5-ft high concrete gravity dam with a permanent crest elevation of 463.9 feet; (3) headworks structure consisting of (a) 65.5-ft power canal headworks structure housing two stop-log bays and two 15-foot-wide by 12-foot-high automated steel slide gates, leading to (b) 400-foot-long by 33 to 35-foot-wide concrete-lined power canal, with a wall adjacent to the Black River with a permanent crest elevation of 463 feet and equipped with 2-foot flashboards for its entire length; (4) intake structure consisting of (a) 69-foot-wide by 21-foot-high perpendicular trashrack with 3.5 inches clear spacing, (b) waste sluice and low-level drain, and (c) four gate openings for steel slide gates; (5) 81-foot-wide by 32-foot-long powerhouse equipped with two vertical Allis-Chalmers propeller-type generating units, each rated at 1,000 kW, a design head of 15.5 feet, and a hydraulic capacity of 900 cfs; (6) short excavated rock tailrace discharging directly into the Black River; (7) transmission lines consisting of (a) 12- and 47-foot leads connecting to a 2.4-kV powerhouse bus, and (b) two 180-foot-long, 2.4-kV underground lines connecting to a 2.4/23-kV step-up transformer; and (8) appurtenant facilities.

The North Channel facility is abandoned and not used for power generation.

Beebee Island Project

Existing project features include: (1) 20-ac reservoir, at normal maximum surface elevation of 431.0 feet and gross storage capacity of 60 ac-ft; (2) 18-foot-high by 266-foot-long, U-shaped concrete gravity main dam with permanent crest elevation of 428.0 feet, topped with 3 -foot-high wooden flashboard; (3) 50-foot-long by 15-foot-high, concrete-capped stone auxiliary non-overflow dam, equipped with a skimmer gate; (4) 47-foot-wide by 82-foot-long powerhouse equipped with two vertical generating units, each rated at 4,000 kW, a design head of 32.0 feet, and a hydraulic capacity of 1,800 cfs; (5) tailrace with a normal surface elevation of 397.4 feet; (6) 300-foot-long, 4.8-kV primary transmission line; and (7) appurtenant facilities.

On October 13, 1995, the applicant filed a settlement offer executed by parties to this proceeding.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraph: A4 and D10.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202 or by calling (315) 474–1511.

8 a. *Type of Application:* Surrender of License (Minor License).

b. *Project No.:* 9186–014.

c. *Date Filed:* October 5, 1995.

d. *Applicant:* Big Bear Area Regional Wastewater Agency.

e. *Name of Project:* Lucerne Valley Hydroelectric Project.

f. *Location:* On its existing treated wastewater effluent outfall pipeline near Lucerne Valley in San Bernardino County, California. The project would occupy lands of the United States within the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791 (a)–825 (r).

h. *Applicant Contacts:* Mr. Steven C. DeBaun, Best, Best & Krieger, 400 Mission Square, 3750 University Avenue, P.O. Box 1028, Riverside, CA 92502, (909) 686–1450.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date:* December 13, 1995.

k. *Description of the Proposed Action:* The existing project, for which the license is being surrendered, consists of: (1) an existing 15,050-foot-long, 18-inch-diameter force main; (2) an existing outfall pipeline—with a 29,500-foot-long, 16-inch diameter section and a 19,500-foot-long, 12-inch-diameter section; (3) a new 650-kW generating unit at the lower end of the existing 16-inch diameter section of outfall pipeline (Kaiser station); (4) a new 19,500-foot-long, 16-inch-diameter pipeline paralleling the existing 12-inch-diameter pipeline, extending from the Kaiser station to Lucerne station; (5) a new 650 kW generating unit at the lower end of the new 16-inch-diameter pipeline at the disposal area of the outfall pipeline—(Lucerne station); two 500-foot long, 4.16-kV transmission line segments; and (6) appurtenant facilities. The license was issued on December 9, 1991. The licensee states that no construction or ground disturbance has been undertaken for the purpose of facilitating the installation of the proposed generating equipment or the related transmission facilities and that the project is no longer economically feasible.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

9 a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 10893–002.

c. *Date Filed:* February 21, 1995, and supplemented on April 27, 1995.

d. *Applicant:* HY Power Energy Company.

e. *Name of Project:* Inglis Lock By-pass.

f. *Location:* On the Inglis Lock By-pass, Withlacoochee River, Levy County, Florida.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)—825(r).

h. *Applicant Contact:* Mr. Robert Karow, 7008 Southwest 30th Way, Gainesville, FL 32601, (904) 336–4727.

i. *FERC Contact:* Charles T. Raabe, (202) 219–2811.

j. *Deadline Date:* December 26, 1995.

k. *Status of Environmental Analysis:* This application is categorically excluded from the preparation of an environmental assessment.

l. *Description of Project:* The proposed project would utilize the existing State of Florida's Inglis Lock By-pass Conduit and would consist of: (1) an open intake channel; (2) a reinforced concrete powerhouse with dimensions of 115 feet by 28 feet and containing one 3.0-megawatt (MW) pit turbine and generator unit, rated at a head of 22.5 feet and a hydraulic capacity of 1,667 cubic feet per second; (3) a short tailrace lined with concrete and rip-rap; and (4) appurtenant equipment and facilities. The project would have an estimated annual output of 15.7 GWh. Power generated would be sold to Florida Power Corporation.

m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D4.

n. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at HY Power Energy Company, 7008 Southwest 30th Way, Gainesville, Florida 32601, (904) 336–4727, and at the A.F. Knotts Public Library, 11 56th Street, Yankeetown, FL.

10a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11557–000.

c. *Date filed:* August 28, 1995.

d. *Applicant:* Harry and Shirley Coleman.

e. *Name of Project:* Coleman Ranch Project.

f. *Location:* Partially on lands administered by the Bureau of Land Management, near the Town of Leadore, in Lemhi County, Idaho. Township 15N, Range 25E Sections 1, 2, 11, and 12, Township 16N, Range 25E, Section 35, Township 15 N, Range 26 E, Section 5, Township 16 N, Range 26E, Section 31 and 32.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a) - 825(r).

h. *Applicant Contact:* Mr. Ted Sorenson, 5203 South 11th East, Idaho Falls, ID 93404, (208) 522–8069.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* January 11, 1996.

k. *Description of Project:* The proposed project would consist of: (1) an existing rock rubble diversion structure; (2) a 22,800-foot-long, 24-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 540 Kw and an estimated average annual generation of 3.2 Gwh; and (4) a 3.25-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $20,000.

l. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (December 26, 1995 for Project No. 10893–002). All reply comments must be filed with the Commission within 105 days from the date of this notice (February 9, 1996 for Project No. 10893–002).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and

conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (December 26, 1995 for Project No. 2569–004). All reply comments must be filed with the Commission within 105 days from the date of this notice (February 6, 1996 for Project No. 2569–004).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: November 6, 1995, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27893 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RM95–3–000 and RM95–4–000]

Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs and Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies; Notice of Informal Technical Conference

November 6, 1995.

Take notice that on Thursday, November 30, 1995, an informal technical conference will be convened pursuant to the orders issued September 29, 1995, in Docket Nos. RM95–3–000 and RM95–4–000.[1] The Commission directed staff to convene an industry-wide conference to resolve any remaining electronic filing issues.

The goals of the conference are to:

- Establish working groups to resolve all remaining issues regarding the Form No. 11, Form No. 2, and rate case filings; and, determine the first date these groups will convene.
- Resolve issues remaining with respect to the use of Rich Text Format (RTF) for text.
- Resolve all remaining electronic filing issues regarding the Index of Customers and the discount rate reports.

Rich Text Format

In the orders, the Commission specifically stated that the following issues should be addressed by conference participants:

- Alternatives to RTF.
- Whether text prepared in the RTF format would be error free when translated.
- Whether translation into and from RTF is available in the most popular word processing programs.
- Whether RTF is compatible with use in databases.
- Where RTF should be used in the Commission's filings and reports.

Index of Customers and Discount Rate Reports

Due to the simplicity of the Index of Customers and the discount rate reports, staff expects to resolve all remaining electronic filing issues associated with these two filings at this conference. To expeditiously resolve all remaining issues, interested conference participants should prepare proposed solutions to the following issues:

- Whether the header record identifying the filing pipeline and the period for which data is being reported should include other information and, if so, what information.
- How files should be named.
- What date format should be adopted to avoid any difficulties in the year 2000.
- How footnotes should be dealt with in the file.

Issues specific to the Index of Customers, include:

- How to treat seasonal contract quantities.
- How to report the expiration date of contracts operating on a month to month, year to year, or similar basis.
- How units of measurement should be included in the report.

In order for the conference to be as productive as possible, staff invites written comments on the above listed issues and topics of discussion. Such comments should be addressed to Richard A. White, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments should be received by November 21, 1995. As part of staff's experimentation with RTF, we encourage commenters to submit their comments on a 3½″ diskette in RTF. Comments in ASCII format are also welcome.

Any parties wishing to make a presentation at the conference should contact Richard White, (202) 208–0491. Presentations should be limited to 10 minutes duration.

The conference will begin at 9:00 a.m. on Thursday, November 30, 1995, in a Hearing Room of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. All interested persons are invited to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27891 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs, Order No. 582, 60 FR 52960 (October 11, 1995), 72 FERC ¶ 61,300 (1995); and, Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies, Order No. 581, 60 FR 53019 (October 11, 1995), 72 FERC ¶ 61,301 (1995).

[Docket No. GT96–25–000]

CNG Transportation Corporation; Notice of Refund Report

November 6, 1995.

Take notice that on October 27, 1995, CNG Transmission Corporation (CNG) tendered for filing a report of the disposition of refunds received from the Gas Research Institute (GRI) for overcollections of the GRI surcharge during 1994. CNG states that the report is being made pursuant to the Commission's February 22, 1995, Order Approving Refund Methodology for 1994 Overcollections in GRI's Docket No. RP95–124–000.

CNG states that the report shows that $412,967.00 refunded by GRI has been refunded pro rata to CNG's eligible firm customers on October 16, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., 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 385.214. All such motions or protests should be filed on or before November 14, 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. 95–27903 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–35–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

November 6, 1995.

Take notice that on November 2, 1995, East Tennessee Natural Gas Company (East Tennessee), tendered for filing the following amendments to its FERC Gas Tariff, Second Revised Volume No. 1:

First Revised Sheet No. 52
Original Sheet No. 52A
First Revised Sheet No. 103
First Revised Sheet No. 104
First Revised Sheet No. 105

East Tennessee is proposing to lower its Unauthorized Overrun charge to $15 per dth, to delete the current Unauthorized Overrun charge language in Section 5.1 of its LMS–MA rate schedule, to be replaced with a ''Maximum Allowed Deliveries'' (MAD) provision, and to add a provision allowing East Tennessee to waive Daily Variance Charges on a nondiscriminatory basis. East Tennessee states that the primary function of the proposed MAD language is to eliminate East Tennessee's need to use Operational Flow Orders to prevent shippers from exceeding their firm entitlements. East Tennessee is lowering its Unauthorized Overrun Charge in response to customer requests and adding the waiver provision to enable it to respond to extenuating circumstances.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Section 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before November 14, 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 this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27897 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES96–4–000]

El Paso Electric Company; Supplemental Notice of Application

November 6, 1995.

This notice supplements the notice issued the Commission on October 19, 1995, in this Docket.

Take notice that on October 11, 1995, El Paso Electric Company (El Paso) filed application under § 204 of the Federal Power Act seeking authorization to issue securities and assume obligations and liabilities under a primary plan and an alternative plan associated with El Paso's reorganization and emergence from bankruptcy. Under the primary plan El Paso would issue several series of first mortgage bonds, preferred stock and common stock. Under the alternate plan, El Paso would issue first mortgage bonds, second mortgage bonds, subordinated debentures, preferred stock, and common stock.

Under either plan, El Paso would also enter into other financing arrangements including (1) a Nuclear fuel Trust arrangement for the nuclear fuel at the Palo Verde Nuclear Generating Station, (2) a revolving credit facility in the amount of $100 million, and (3) modifications to the letters of credit underlying the pollution control bonds issued by the Maricopa County Arizona Pollution Control Corporation and by the City of Farmington, New Mexico.

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, 888 First Street NE., 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 385.214). All such motions or protests should be filed on or before November 15, 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. 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. 95–27904 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–187–013]

Equitrans, Inc.; Notice of Tariff Filing

November 6, 1995.

Take notice that on November 1, 1995, Equitrans, Inc. (Equitrans) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1995:

Fifth Revised Sheet No. 5
Third Revised Sheet No. 7

Equitrans states that it filed a Stipulation and Agreement in the captioned proceedings on July 31, 1995. Equitrans states that the Stipulation and Agreement resolves the remaining reserved issue in Equitrans' general Section 4(e) rate cases, namely, the treatment of stranded production well plugging and abandonment costs and the future treatment of Equitrans' production function. By Order issued on September 28, 1995, the Commission approved the uncontested Stipulation and Agreement filed by Equitrans. Equitrans states that its filing is intended to implement a demand surcharge of $0.0923 per Dth applicable to all firm Part 284 open-access rate schedules for the stranded cost recovery of no more than $2.6 million for abandoned production plant and well plugging costs over a four year period in accordance with the provisions of the Stipulation and Agreement and the Commission's Order.

Any person desiring to protest this application should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., 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 November 14, 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. 95–27894 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–326–004, RP95–242–005]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff and Motion To Make Rates Effective

November 6, 1995.

Take notice that on October 31, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective December 1, 1995.

Natural states that the purpose of this filing is to comply with the Commission's ''Order Following Technical Conference'' issued October 11, 1995, in Docket Nos. RP95–326–000, et al. and RP95–242–000, et al. The Order allowed Natural to implement new services effective December 1, 1995, subject to modifications. Natural states that certain existing services will be cancelled as a result of the approval of the new services.

Natural also states that it is submitting revised rates under motion. Natural states that the rates are lower than the rates set out in its Pro Forma Case filed July 11, 1995. Natural states that it is also filing to reflect reduced fuel and gas lost percentages.

Natural requests whatever waivers may be necessary to permit the tariff sheets as submitted to become effective December 1, 1995.

Natural states that copies of the filing are being mailed to all parties on the restricted service list in the referenced dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 14, 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. 95–27895 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–440–001]

Sabine Pipe Line Company; Notice of Compliance Filing

November 6, 1995.

Take notice on November 1, 1995, Sabine Pipe Line Company (Sabine) tendered for filing Second Revised Sheet No. 226 and Original Sheet No. 226A to its FERC Gas Tariff, Second Revised Volume No. 1 in compliance with the Commission letter order issued in this docket on October 20, 1995. Sabine requests an effective date on October 20, 1995, for the revised tariff sheets.

Sabine states that the purpose of the filing is to clarify Sabine's nomination procedures for transportation that commences on any day other than the first day of the month, in accordance with the Commission's order issued in this docket on October 20, 1995. Sabine clarifies that nomination deadlines will be posted for 30 days prior to the effective date. Sabine states that any proposed change that would result in a nomination deadline earlier than the existing deadline of 9 a.m. Central Time on the business day preceding the commencement of service would still require prior Commission approval.

Sabine states that copies of this filing were served on Sabine's jurisdictional customers, the state regulatory commissions of Texas and Louisiana, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 14, 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. 95–27896 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–30–000]

Trunkline Gas Company; Notice of Compliance Filing

November 6, 1995.

Take notice that on October 31, 1995, Trunkline Gas Company (Trunkline) tendered for filing the material required by Section 24 (Interruptible Revenue Credit Surcharge Adjustment) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that this filing contains the required computations and workpapers in accordance with Section 24 and that since the said computations of the Interruptible Revenue Credit Amount applicable to Rate Schedules FT, EFT, QNT and SST is less than the Base Interruptible Costs, no Interruptible Revenue Credit Surcharge Adjustment is required.

Trunkline requests that the Commission grant such waivers as may be necessary for the acceptance of this filing as being in compliance with Section 24 of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline further states that copies of the filing are being served on all customers subject to Section 24 of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1, and applicable state regulatory agencies.

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, 888 First Street NE., 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 385.214). All such motions or protests should be filed on or before November 14, 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. 95–27898 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–16–001]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1995.

Take notice that on October 31, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are included in Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 1995.

As background to the instant filing, on October 23, 1995, Transco filed in Docket No. GT96–16–000 (October 23 Filing) to convert the incremental Southern Expansion Project (SEP) seasonal firm transportation service provided to the City of Fountain Inn, South Carolina and the City of Kings Mountain, North Carolina (hereinafter referred to as the ''converting SEP shippers'') pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, to firm transportation under Rate Schedule FT pursuant to Transco's blanket transportation certificate and Part 284 of the Commission's regulations. As a part of the conversion process, Transco and the converting SEP shippers expressly agreed that the converted SEP service would be billed on a seasonal basis corresponding to the period during which Transco provides SEP service (i.e. November through March) as opposed to the current annual billing cycle. Such conversions were proposed to be effective December 1, 1995.

Subsequent to the October 23 Filing, Transco has determined that a change from the current annual billing cycle to a seasonal billing cycle requires that the proposed conversions be made effective November 1, 1995, the beginning of the winter season, rather than December 1, 1995. Making the conversions effective November 1, 1995, will allow Transco and the converting SEP shippers to remain economically indifferent to moving from an annual billing cycle to a seasonal billing cycle, consistent with the parties' agreement on the conversion process. To the extent the proposed SEP conversions were to be made effective subsequent to November 1, Transco would incur a revenue shortfall for the time period during which it was to bill converted SEP service based on annual rates. In recognition of this unintended result, Transco and the converting SEP shippers have agreed to effectuate the conversions proposed in Docket No. GT96–16–000 effective November 1, 1995, in lieu of December 1, 1995. Therefore, Transco requests that the Commission accept the tariff sheets included in Appendix A attached to the subject filing, in lieu of those filed in Docket No. GT96–16–000.

Transco states that copies of the filing are being mailed to the converting SEP shippers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 14, 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. 95–27902 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–685–003]

Tuscarora Gas Transmission Company; Notice of Compliance Filling

November 6, 1995.

Take notice that on October 27, 1995, Tuscarora Gas Transmission Company (''Tuscarora'') tendered for filing as part of its FERC Gas Tariff, Original Volume no. 1, the following tariff sheets, to become effective December 1, 1995:

Original Sheet No. 1
Alternate Original Sheet No. 1
Original Sheet Nos. 2–5
Sheet Nos. 6–9
Original Sheet Nos. 10–17
Sheet Nos. 18–19
Original Sheet Nos. 20–25
Sheet Nos. 26–29
Original Sheet Nos. 30–31
Alternate Original Sheet No. 31
Original Sheet Nos. 32–78
Alternate Original Sheet No. 78
Original Sheet Nos. 79–88
Sheet Nos. 89–90
Alternate Original Sheet Nos. 89–90
Sheet Nos. 91–99
Original Sheet Nos. 100–108
Sheet No. 109
Original Sheet Nos. 110–115
Sheet No. 116–119
Original Sheet Nos. 120–126
Sheet Nos. 127–129
Original Sheet No. 130
Alternate Original Sheet No. 130
Original Sheet Nos. 131–138
Sheet Nos. 139–149
Original Sheet No. 150
Alternate Original Sheet No. 150

Tuscarora asserts that the purpose of this filing is to comply with (i) the Commission's April 4, 1995 and May 31, 1995 orders in this certificate proceeding and (ii) changes in the Commission's regulations that occurred after Tuscarora filed its certificate application with the Commission. Also, Tuscarora has provided in this filing additional information and documentation regarding Tuscarora's markets.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 15, 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 pubic inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27901 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–119–000]

Young Gas Storage Company, Ltd.; Notice of Filing

November 6, 1995.

Take notice that on October 31, 1995, Young Gas Storage Company, Ltd. (Young) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Second Revised Sheet No. 5

Young states that the purpose of Young's filing is to reflect an increase in the fuel reimbursement percentage based on actual experience from 1.3% to 2.0% effective December 1, 1995.

Young states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and

385.211). All such petitions or protests should be filed on or before November 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27900 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5330–5]

Acid Rain Program: Notice of Draft Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft written exemptions.

SUMMARY: The Environmental Protection Agency is issuing draft written exemptions from Acid Rain permitting and monitoring requirements to 7 utility units at 2 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are also being issued as a direct final action in the notice of written exemptions published elsewhere in today's Federal Register.

DATES: Comments on the exemptions proposed by this action must be received on or before December 13, 1995.

ADDRESSES: *Comments.* Send comments to: David Kee, Director, Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

Administrative Records. The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: For plants in Minnesota, Franklin Echevarria, (312) 886–9653, and for plants in Wisconsin, Beth Valenziano, (312) 886–2703.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft written exemptions and the exemptions issued as a direct final action in the notice of written exemptions published elsewhere in today's Federal Register will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any exemption, that exemption in the notice of written exemptions will be withdrawn and all public comment received on that exemption based on the relevant exemption in this notice of draft written exemptions. Because the Agency will not institute a second comment period on this notice of draft written exemptions, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the exemptions, see the information provided in the notice of written exemptions elsewhere in today's Federal Register.

Dated: November 3, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–28043 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5330–6]

Acid Rain Program: Draft Permits and Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permits and permit modifications.

SUMMARY: The Environmental Protection Agency (EPA) is issuing for comment 5-year sulfur dioxide (SO_2) and nitrogen oxides (NO_X) compliance plans which either amend previously issued Phase I Acid Rain Permits, or will, if approved, result in the issuance of a Phase I Acid Rain Permit to sources not previously required to have one. These actions are taken in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76).

DATES: Comments on the draft permits and modifications must be received no later than 30 days after the date of this notice or the date of publication of a similar notice in a local newspaper, whichever is later.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following locations: for sources in New York, EPA Region 2, 290 Broadway, New York, NY 10007; for sources in West Virginia, EPA Region 3, 841 Chestnut Building, Philadelphia, PA 19107; for sources in Alabama, Florida, Georgia, and Mississippi, EPA Region 4, 345 Courtland St. NE., Atlanta, GA 30365.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to: for sources in New York, EPA Region 2, Air and Waste Management Division, Attn: Gerald DeGaetano (address above); for sources in West Virginia, EPA Region 3, Air, Radiation and Toxics Division, Attn: Linda Miller (address above); and for sources in Alabama, Florida, Georgia, and Mississippi, EPA Region 4, Air, Pesticides and Toxics Management Division, Attn: Brian Beals (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a compliance plan.

FOR FURTHER INFORMATION: For sources in New York, call Gerry DeGaetano, (212) 637–4020; for sources in West Virginia, call Linda Miller, (215) 597–7547; for sources in Alabama, Florida, Georgia, and Mississippi, call Scott Davis, (404) 347–5014.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish a program to reduce the adverse effects of acidic deposition by promulgating rules and issuing permits to emission sources subject to the program. In today's action, EPA is issuing to the following utility plants draft permits and draft permit modifications that propose to allocate SO_2 emission allowances, approve SO_2 compliance plans, and approve NO_x compliance plans under 40 CFR parts 72 and 76:

Region 2

Dunkirk in New York: Ten conditional substitution plans for units 3 and 4, one

for each year, 1995–1999, that designate Roseton unit 1 as a substitution unit; and one for each year, 1995–1999, that designate Roseton unit 2 as a substitution unit. The designated representative is Clement E. Nadeau.

Roseton in New York: 19,147 conditional substitution allowances to unit 1 for each year, 1995–1999; 16,872 conditional substitution allowances to unit 2 for each year, 1995–1999; ten conditional substitution plans, five for unit 1 (one for each year, 1995–1999) and five for unit 2 (one for each year, 1995–1999) in which units 1 and 2 are designated as substitution units for Dunkirk units 3 and 4; ten conditional reduced utilization plans, five for unit 1 (one for each year, 1995–1999) and five for unit 2 (one for each year, 1995–1999) in which units 1 and 2 will rely on improved unit efficiency, energy conservation and sulfur-free generation to account for any underutilization. The designated representative is Ronald P. Brand.

Region 3

Harrison in West Virginia: Two substitution plans for unit 1 for 1995–1999, one that designates Rivesville unit 7 and one that designates Rivesville unit 8 as a substitution unit; two substitution plans for unit 3 for 1995–1999, one that designates Willow Island unit 1 and one that designates Willow Island unit 2 as a substitution unit. The designated representative is David C. Benson.

Rivesville in West Virginia: 1,009 substitution allowances to unit 7 for each year, 1995–1999; 3,059 substitution allowances to unit 8 for each year, 1995–1999; two substitution plans for 1995–1999, one in which unit 7 is designated as a substitution unit and one in which unit 8 is designated as a substitution unit, both for Harrison unit 1. The designated representative is David C. Benson.

Willow Island in West Virginia: 1,855 substitution allowances for unit 1; 7,765 substitution allowances for unit 2; two substitution plans for 1995–1999, one in which unit 1 is designated as a substitution unit, and one in which unit 2 is designated as a substitution unit, both for Harrison unit 3. The designated representative is David C. Benson.

Region 4

E.C. Gaston in Alabama: Units 1, 2, 3, 4, and 5 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.48 lbs/MMBtu for units 1, 2, 3, and 4, and 0.52 lbs/MMBtu for unit 5, and the actual annual heat input for units 1, 2, 3, and 4 shall not be less than the annual heat input limits of 14,841,000 MMBtu, 13,018,000 MMBtu, 15,826,000 MMBtu, and 14,978,000 MMBtu, respectively, and the actual annual heat input for unit 5 shall not be greater than the annual heat input limit of 50,992,000 MMBtu. The other units designated in this plan are Gadsden units 1 and 2, Gorgas units 6, 7, 8, and 9, and J.H. Miller unit 4. The designated representative is Willard L. Bowers.

Gadsden in Alabama: Units 1 and 2 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.70 lbs/MMBtu and the actual annual heat input for units 1 and 2 shall not be greater than the annual heat input limits of 3,300,000 MMBtu, and 1,189,000 MMBtu, respectively. The other units designated in this plan are E.C. Gaston units 1, 2, 3, 4, and 5, Gorgas units 6, 7, 8, and 9, and J.H. Miller unit 4. The designated representative is Willard L. Bowers.

Gorgas in Alabama: Units 6, 7, 8, and 9 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.70 lbs/MMBtu for units 6, 7, and 8, and 0.46 lbs/MMBtu for unit 9, and the actual annual heat input shall not be greater than the annual heat input limits of 3,904,000 MMBtu, 4,472,000 MMBtu, and 12,984,000 MMBtu for units 6, 7, and 8, respectively, and the actual annual heat input shall not be less than annual heat input limit of 9,401,000 MMBtu for unit 9. The other units designated in this plan are Gadsden units 1 and 2, E.C. Gaston units 1, 2, 3, 4, and 5, and J. H. Miller unit 4. The designated representative is Willard L. Bowers.

J.H. Miller in Alabama: Unit 4 will comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for this unit shall not exceed the alternative contemporaneous annual emission limitation of 0.33 lbs/MMBtu and the actual annual heat input for this unit shall not be less than the annual heat input limit of 50,323,000 MMBtu. The other units designated in this plan are Gadsden units 1 and 2, Gorgas units 6, 7, 8, and 9, and E.C. Gaston units 1, 2, 3, 4, and 5. The designated representative is Willard L. Bowers.

Big Bend in Florida: One NO_X compliance plan for 1996–1999 in which unit BB04 will comply with the standard emission limitation of 0.45 lbs/MMBtu. The designated representative is A. Spencer Autry.

Crist in Florida: Units 4, 5, and 6 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.60 lbs/MMBtu for units 4 and 5 and 0.55 lbs/MMBtu for unit 6, and the actual annual heat input for units 4, 5, and 6 shall not be greater than the annual heat input limits of 4,330,920 MMBtu, 3,518,988 MMBtu, and 13,451,097 MMBtu, respectively. The other units designated in this plan are Jack Watson units 4 and 5, Scholz units 1 and 2, Victor J. Daniel units 1 and 2, and Lansing Smith units 1 and 2. The designated representative is Frederick D. Kuester.

Jack Watson in Florida: Units 4 and 5 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.53 lbs/MMBtu, and the actual annual heat input for units 4 and 5 shall not be greater than the annual heat input limits of 12,086,872 MMBtu and 20,127,887 MMBtu, respectively. The other units designated in this plan are Scholz units 1 and 2, Lansing Smith units 1 and 2, Victor J. Daniel units 1 and 2, and Crist units 4, 5, and 6. The designated representative is Frederick D. Kuester.

Lansing Smith in Florida: Units 1 and 2 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.67 lbs/MMBtu for unit 1 and 0.45 lbs/MMBtu for unit 2, and the actual annual heat input for unit 1 shall not be greater than the annual heat input limit of 11,490,877 MMBtu. The other units designated in this plan are Jack Watson units 4 and 5, Scholz units 1 and 2, Victor J. Daniel units 1 and 2, and Crist units 4, 5, and 6. The designated representative is Frederick D. Kuester.

Scholz in Florida: Units 1 and 2 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.68 lbs/MMBtu, and the

actual annual heat input for units 1 and 2 shall not be greater than the annual heat input limits of 723,608 MMBtu and 731,528 MMBtu, respectively. The other units designated in this plan are Jack Watson units 4 and 5, Lansing Smith units 1 and 2, Victor J. Daniel units 1 and 2, and Crist units 4, 5, and 6. The designated representative is Frederick D. Kuester.

Victor J. Daniel in Florida: Units 1 and 2 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.34 lbs/MMBtu, and the actual annual heat input for units 1 and 2 shall not be less than the annual heat input limits of 21,244,417 MMBtu and 29,987,051 MMBtu, respectively. The other units designated in this plan are Jack Watson units 4 and 5, Lansing Smith units 1 and 2, Scholz units 1 and 2, and Crist units 4, 5, and 6. The designated representative is Frederick D. Kuester.

Arkwright in Georgia: One NO_X compliance plan for 1996–1999 in which units 1 and 2 will comply with the standard emission limitation of 0.45 lbs/MMBtu, and units 3 and 4 will comply with the standard emission limitation of 0.50 lbs/MMBtu. The designated representative is C.M. Hobson.

Harllee Branch in Georgia: One NO_X compliance plan for 1996–1999 in which unit 3 will comply with the standard emission limitation of 0.50 lbs/MMBtu. The designated representative is C.M. Hobson.

McIntosh in Georgia: One NO_X compliance plan for 1996–1999 in which unit 1 will comply with the standard emission limitation of 0.50 lbs/MMBtu. The designated representative is L.O. Keller.

Mitchell in Georgia: One NO_X compliance plan for 1996–1999 in which unit 3 will comply with the standard emission limitation of 0.45 lbs/MMBtu. The designated representative is C.M. Hobson.

Port Wentworth in Georgia: One NO_X compliance plan for 1996–1999 in which units 1, 2, and 3 will each comply with the standard emission limitation of 0.45 lbs/MMBtu. The designated representative is L.O. Keller.

Scherer in Georgia: One NO_X compliance plan for 1996–1999 in which unit 3 will comply with the standard emission limitation of 0.45 lbs/MMBtu. The designated representative is R.H. Haubein.

Dated: November 3, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–28040 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5330–7]

Acid Rain Program: Notice of Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of written exemptions.

SUMMARY: The Environmental Protection Agency is issuing, as a direct final action, written exemptions from the Acid Rain permitting and monitoring requirements to 7 utility units at 2 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

DATES: Each of the exemptions issued in this direct final action will be final on December 26, 1995, unless significant, adverse comments are received by December 13, 1995. If significant, adverse comments are timely received on any exemption in this direct final action, that exemption will be withdrawn through a notice in the Federal Register.

ADDRESSES: *Administrative Records.* The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: For plants in Minnesota, Franklin Echevarria, (312) 886–9653, for plants in Wisconsin, Beth Valenziano, (312) 886–2703.

SUPPLEMENTARY INFORMATION: All public comment received on any exemption in this direct final action on which significant, adverse comments are timely received will be addressed in a subsequent issuance or denial of exemption based on the relevant draft exemption in the notice of draft written exemptions that is published elsewhere in today's Federal Register and that is identical to this direct final action.

Under the Acid Rain Program regulations (40 CFR 72.7), utilities may petition EPA for an exemption from permitting and monitoring requirements for any new utility unit that serves one or more generators with total nameplate capacity of 25 MW or less and burns only fuels with a sulfur content of 0.05 percent or less by weight. On the earlier of the date a unit exempted under 40 CFR 72.7 burns any fuel with a sulfur content in excess of 0.05 percent by weight or 24 months prior to the date the exempted unit first serves one or more generators with total nameplate capacity in excess of 25 MW, the unit shall no longer be exempted under 40 CFR 72.7 and shall be subject to all permitting and monitoring requirements of the Acid Rain Program.

EPA is issuing written exemptions to the following new units, effective from January 1, 1996 through December 31, 2000:

IEA Georgia Pacific units 1, 2, 3, 4, and 5 in Minnesota. The designated representative is William C. Douglas.

Oneida Casino units 1 and 2 in Wisconsin. The designated representative is Gary T. Van Helvoirt.

Dated: November 3, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–28041 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5331–5]

Common Sense Initiative Council, Iron and Steel Sector Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting of the Public Advisory Common Sense Initiative Council, Iron and Steel Sector Subcommittee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is given that, pending resolution of EPA's FY 1996 appropriation, the Iron and Steel Sector Subcommittee of the Common Sense Initiative Council will meet on Thursday, December 7, 1995 in Washington, D.C. The Subcommittee is currently overseeing approved projects and exploring issues related to the iron and steel industry. Limited time will be provided for members of the public to make oral comments at the meeting.

OPEN MEETING NOTICE: Notice is hereby given that the Environmental Protection Agency, pending resolution of its FY 1996 appropriation, is convening an open meeting of the Iron and Steel Sector Subcommittee on Thursday, December 7, 1995. The meeting will begin at 8:00 a.m. est and run until 4:00 p.m. est, and will be held at the Doubletree Hotel Park Terrace, 1515

Rhode Island Avenue NW., Washington, D.C. 20005, telephone number 202–232–7000. Seating will be available on a first come, first served basis. Limited time will be provided for public comment.

The Iron and Steel Subcommittee has created four work groups which are responsible for proposing to the full Subcommittee for its review and approval potential activities or projects that the Iron and Steel Sector Subcommittee will undertake, and for carrying out projects once approved. The Subcommittee has approved seven projects and their work plans. The purpose of the December meeting is to discuss in detail the status of projects sponsored by the Permits and the Brownfields work groups, to hear brief status updates from the Compliance and Innovative Technology work groups, to learn more about integrated industries, and to discuss the role of pollution prevention in the industry.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 2821M of EPA Headquarters, 401 M Street SW., Washington, D.C. 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.gov.

FOR FURTHER INFORMATION CONTACT: For more information about and verification of this meeting, please call either Ms. Mary Byrne at 312–353–2315 in Chicago, Illinois or Ms. Judith Hecht at 202–260–5682 in Washington, D.C.

Dated: November 1, 1995.

Mahesh Podar,

Designated Federal Officer.

[FR Doc. 95–28042 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5331–6]

Common Sense Initiative Council, Printing Sector Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting of the Public Advisory Common Sense Initiative Council, Printing Sector Subcommittee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that, pending resolution of EPA's FY 1996 appropriation, the Printing Subcommittee of the Common Sense Initiative Council (CSIC) will meet November 29, 1995, in Washington, D.C. All meetings are open to the public. Seating at meetings will be on a first-come basis. Limited time will be provided for members of the public wishing to make an oral presentation or comments at the Subcommittee meeting.

PURPOSE: The purpose of the Subcommittee meeting is to discuss the three projects under consideration by the Subcommittee. These projects are the Multi-Media Flexible Permitting Project, the New York Education Project, and the Information/Data Collection and Management Project. The purpose of the workgroup meetings the day before is to further develop workplans for these projects. Agendas will be available November 22, 1995.

DATES: Notice is hereby given that the Environmental Protection Agency, pending resolution of its FY 1996 appropriation, is convening an open meeting of the Printing Sector Subcommittee (PSS) on November 29, 1995, in Washington, D.C. This meeting will take place from 8:30 a.m. est until 11 a.m. est. The Subcommittee will meet at the Washington Hilton, 1919 Connecticut Avenue NW., Washington, D.C. 20009. The telephone number for the hotel is 202–483–3000. The workgroups will meet the day before on November 28, 1995 from approximately 10 a.m. est until about 5:30 p.m. est. Workgroups will also meet on November 29, 1995 from approximately 2:30 p.m. est until about 3 p.m. est.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 2821M of EPA Headquarters, 401 M Street SW., Washington, D.C. 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.gov.

FOR FURTHER INFORMATION: For further information, contact Ginger Gotliffe of EPA's Office of Enforcement and Compliance Assurance at 202–564–7072, or Nancy Cichowicz of EPA's Region III at 215–597–2030.

Dated: November 7, 1995.

Prudence Goforth,

Designated Federal Officer.

[FR Doc. 95–28044 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5330–1]

Resource Conservation and Recovery Act; (RCRA) Docket Information Center: Relocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of move and of closing of RCRA Docket Information Center during the move.

SUMMARY: The Resource Conservation and Recovery Act Docket Information Center (RIC) will move from M2616, 401 M Street SW., Washington, DC to Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC will be closed from November 14, 1995 through November 24, 1995. Closing the RCRA Docket Information Center during the move will facilitate the moving of the RIC's collection and ensure the integrity of the regulatory dockets. The move will allow the RIC to provide improved services to its patrons.

As of October 30, 1995, the public comment periods that will be open during the move are as follows:

F–95–PH4P	Land Disposal Restrictions—Phase IV: Issues Associated With Clean Water Act Treatment Equivalency, and Treatment Standards for Wood Preserving Wastes and Toxicity Characteristic Metal Wastes; Proposed Rule.	11/20/95
F–94–DPLP	Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dye and Pigment Industries; Hazardous Waste Listing Determination Policy; and CERCLA Hazardous Substance Designation and Reportable Quantities; Proposed Rules.	11/30/95
F–95–WT3P	Hazardous Waste Management System; Testing and Monitoring Activities; Proposed Rule	12/01/95
F–95–CPGN	Procedures for Submission of Recycled Content Products Information to EPA; Notice and Request for Information.	02/29/96

The RIC expects the following dockets to open between October 30 and November 27:

F–95–MMP
Military Munitions
F–95–PRLP
Petroleum Listing Proposal
F–95–B5EP
Bethlehem Steel Delisting Proposal
F–95–WHWP
Hazardous Waste Identification Rule (HWIR) Waste Proposal

Special arrangements may be made to see the materials in the above dockets during the time the RIC is closed by calling (202) 260–9327.

The Docket will continue to receive mailed comments at the EPA Headquarters mailing address—RCRA Information Center (5305W), 401 M Street, SW, Washington DC 20460. During the time the RIC is closed, comments may be hand-delivered to M2616, 401 M Street, SW, Washington, DC. Beginning November 27, comments should be hand-delivered to the Virginia address.

FOR FURTHER INFORMATION CONTACT: RCRA Docket Information Center (5305W), 401 M Street, SW, Washington, DC 20460, (202/260–9327). Beginning November 27, the phone number will be 703/603–9230.

Dated: November 1, 1995.

Michael Shapiro,

Director, Office of Solid Waste.

[FR Doc. 95–27947 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5329–8]

User's Guide to Federal Accidental Release Databases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the public availability of an EPA document developed in coordination with the 16 federal agencies on the National Response Team (NRT) titled ''User's Guide to Federal Accidental Release Databases.'' This document was produced to address impediments to accessing the various federal accidental release databases as identified by ''A Review of Federal Authorities for Hazardous Materials Accident Safety,'' which was required under Section 112(r)(10) of the Clean Air Act.

DATES: This report is now available at the address indicated below.

ADDRESSES: Copies of the report may be obtained by phoning the Emergency Planning and Community Right-to-Know Information Hot Line Telephone: (800) 424–9346 or (703) 412–9877 when calling local from Washington, DC area.

FOR FURTHER INFORMATION CONTACT: Mr. David Chung, Chemical Emergency Preparedness and Prevention Office (Code 5101), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Telephone 202–260–8942.

SUPPLEMENTARY INFORMATION: EPA is announcing the public availability of a document titled ''User's Guide to Federal Accidental Release Databases.'' The guide was produced to make the various federal accidental release databases more usable, available, and comparable. It addresses the problems with using the federal accidental release databases as identified by the report titled ''A Review of Federal Authorities for Hazardous Materials Accident Safety,'' which was called for under section 112(r)(10) of the Clean Air Act, 42 U.S.C. 7412. Issuance of the user's guide does not represent final Agency action.

The user's guide provides information on the seven major federal accidental release databases maintained by the National Response Center (NRC), EPA, DOT, OSHA, and the Agency for Toxic Substances and Disease Registry (ATSDR) so as to facilitate data interpretation, analysis, and comparison. The guide describes the information included in each of the databases and outlines some general search strategies to assist the user in formulating a search strategy and choosing the appropriate database. Also included in the user's guide are brief, descriptive profiles of the seven federal accidental release databases and discussions of future linking of databases to enable analysis of the databases in combination.

Jim Makris,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 95–27948 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011375–020.

Title: Trans-Atlantic Conference Agreement.

Parties:

Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Hapag-Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line
Cho Yang Shipping Co. Ltd.
Mediterranean Shipping Company, S.A.
DSR-Senator Lines
Polish Ocean Lines
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A, de C.V.
Neptune Orient Lines Ltd.
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Hanjin Shipping Co., Ltd
Hyundai Merchant Marine Co., Ltd.

Synopsis: the proposed amendment provides for (1) multi-two year service contracts; and (2) an option by shipper service contract parties to fix currency adjustment factors within a ten percentage point band.

Agreement No.: 202–011456–010.

Title: South Europe American Conference.

parties:

Cho Yang Shipping Co., Ltd.
Compagnie Maritime d'Affretement
DSR Senator Lines GmbH
Evergreen Marine Corporation (Taiwan) Ltd.
Hanjin Shipping Col, Ltd.
''Italia'' di Navigazione, S.p.A.
Lykes Bros. Steamship Co., Ltd.
A.P. Moller Maersk Line
Nedlloyd Lijen B.V.
P&O Containers Limited
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment revises Article 14.1(d) to provide that the duration of a service contract shall not exceed two years. It also amends Article 14.3 to provide that an amendment to a service contract is subject to a majority vote of the members entitled to vote.

Agreement No.: 232–011475–001.

Title: Hanjin/Tricon Agreement.
Parties:
Hanjin Shipping Co., Ltd.
Cho Yang Shipping Co. Ltd.
DSR-Senator Lines
Synopsis: The proposed amendment increases the charterer's combined eastbound/westbound slot allocation from 600 slots per week to 800 slots per week effective January 1, 1996.
Agreement No.: 232–011481–002.
Title: Hanjin/AMA Agreement.
Parties:
Hanjin Shopping Co., Ltd.
Cho Yang Shipping Co. Ltd.
DSR-Senator Lines
Synopsis: The proposed amendment expands the geographic scope of the Agreement to include ports in the Middle and Far East (Singapore/Japan range). It also increases the charterer's combined eastbound/westbound slot allocation from 400 slots per week to 600 slots per week effective January 1, 1996.

By Order of the Federal Maritime Commission.

Dated: November 6, 1996.

Joseph C. Poking,

Secretary.

[FR Doc. 95–27877 Filed 11–9–95; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 132–011518.
Title: SPCL/Polynesia Line Cross Space Charter and Sailing Agreement
Parties:
South Pacific Container Line
Polynesia Line Limited
Synopsis: The proposed Agreement permits the parties to charter space to one another and rationalize sailings in the trade between ports in the American Samoa and ports on the Pacific Coast of the United States.

Dated: November 6, 1995.

By Order of the Federal Maritime Commission.

[FR Doc. 95–27878 Filed 11–9–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses are revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 3629
Name: Regina G. Derbin dba Lacs Forwarding
Address: 806 Lemons Drive, Cedar Hill, TX 75104
Date Revoked: September 8, 1995
Reason: Surrendered license voluntarily.

License Number: 2167
Name: An-Mar Project International, Inc.
Address: 425 Victoria Terrace, Ridgefield, NJ 07657
Date Revoked: September 14, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 3427
Name: Rainbow International, Inc.
Address: 3700 Bells Lane, Louisville, KY 40211
Date Revoked: September 16, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 3787
Name: Matrix Express, Inc.
Address: 154–09 146th Ave., Jamaica, NY 11434
Date Revoked: September 21, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 3217
Name: Kremer International Transport, Inc.
Address: 1736 Gilsinn Lane, Fenton, MO 63026
Date Revoked: October 11, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 2456
Name: Export Forwarding Company
Address: 2213 Royal Lane, Dallas, TX 75229
Date Revoked: October 12, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 3609
Name: Asia Trans Lines, Inc.
Address: 163 East Compton Blvd., Gardena, CA 90248
Date Revoked: October 13, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 1499
Name: Anderson Bros. Storage & Moving Co.
Address: 3141 North Sheffield, Chicago, IL 60657
Date Revoked: October 18, 1995
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–27876 Filed 11–9–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

F&M Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications

must be received not later than December 7, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. F&M Bancorporation, Kaukauna, Wisconsin; to merge with Monycor Bancshares, Inc., Superior, Wisconsin, and thereby indirectly acquire Monycor Bank of Superior, Superior, Wisconsin.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. C Bar M, Inc., Carrizo Springs, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Union State Bank, Carrizo Springs, Texas.

Board of Governors of the Federal Reserve System, November 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27921 Filed 11–9–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3785–N–04]

Announcement of Funding Awards for the FY 1995 Service Coordinators for Public Housing Agencies Program

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 to public housing agencies under the Service Coordinators for Public Housing Agencies Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, 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 and 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 Service Coordinators for Public Housing Agencies Program is funded under the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for 1994.

The purpose of the Service Coordinator for Public Housing Agencies Program is to ensure that elderly and non-elderly disabled residents have access to the services they need to enhance the quality of their lives, to live independently, and to avoid premature or unnecessary institutionalization. The grants will be for up to three years in duration, depending upon the activities undertaken.

A National Lottery competition was held and recipients were chosen under selection criteria announced in a Notice of Funding Availability (NOFA) published in the Federal Register on February 27, 1995 (60 FR 10764).

The major functions of the service coordinators are:

—To provide general case management and referral services to all elderly and non-elderly disabled residents needing such assistance;

—To establish linkage with all agencies and service providers in the community;

—To set out a directory of providers for use by both PHA staff and residents;

—To educate residents on service availability, application, procedures, and client rights.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–35, approved December 15, 1989) the Department is publishing the names and addresses of the Public Housing Agencies which received funding under this NOFA, and the amount awarded to each. This information is provided in Appendix A to this document.

Dated: November 2, 1995.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

APPENDIX A—1995 SERVICE COORDINATORS RECIPIENTS

Name and address	Grant amount
Mr. Daniel R. Fauske, Executive Director, Alaska Housing Finance Corporation, P.O. Box 230329, 624 West International Airport Road, Anchorage, AK 99523–0329	$90,000
Mr. Shaler Roberts, III, Executive Director, Florence Housing Authority, 303 North Pine Street, Florence, AL 35630	90,000
Mr. A. A. Roberts, Jr., Executive Director, Housing Authority of the City of Phenix City, P.O. Box 338, 200 16th Street, Phenix City, AL 36868–0338	90,000
Mr. Eric Q. Strong, Executive Director, Jefferson County Housing Authority, 3700 Industrial Parkway, Birmingham, AL 35217	90,000
Mr. William S. Clements, Executive Director, Housing Authority of the City of North Little Rock, P.O. Box 516, 2201 Division, North Little Rock, AR 72115–0516	108,700
Ms. Karen Thoreson, Executive Director, City of Tuscon Community Services Department, P.O. Box 27210, 1501 North Oracle Road, Tucson, AZ 85726–7120	150,000
Mr. Marvin Bowles, Executive Director, Phoenix Housing Department, 251 West Washington Street, Phoenix, AZ 85003	604,000
Mr. James E. Koslow, Executive Director, Housing Authority of the City of San Buenaventura, P.O. Box 1648, 995 Riverside Street, Ventura, CA 93002–1648	90,000
Mr. Paul J. Castro, Executive Director, Housing Authority of the County of Kern, 525 Roberts Lane, Bakersfield, CA 93308–4799	90,000
Mr. Harold Davis, Executive Director, Oakland Housing Authority, 1619 Harrison Street, Oakland, CA 94612	230,587
Mr. John Molloy, Executive Director, Sacramento City Housing & Redevelopment Agency, P.O. Box 1834, 630 I Street, Sacramento, CA 95812–1834	621,272
Ms. Elizabeth Morris, Executive Director, San Diego Housing Commission, 1625 Newton Street, San Diego, CA 92113	90,000
Mr. Sal Carpio, Executive Director, Housing Authority of the City and County of Denver, Box 40305 Mile High, 1100 West Colfax Avenue, Denver, CO 80204	150,000
Mr. Clarence H. Craig, Jr, Executive Director, Housing Authority of the City of Bridgeport, 150 Highland Avenue, Bridgeport, CT 06604–2128	150,000

APPENDIX A—1995 SERVICE COORDINATORS RECIPIENTS—Continued

Name and address	Grant amount
Mr. John D. Wardlaw, Executive Director, Housing Authority of the City of Hartford, 475 Flatbush Avenue, Hartford, CT 06106–3728	150,000
Ms. Dorislee Carpenter, Executive Director, Housing Authority of the City of New Britain, 34 Marimac Road, New Britain, CT 06053–2699	150,000
Mr. Curtis O. Law, Executive Director, Housing Authority of the City of Norwalk, P.O. Box 508, 24½ Monroe Street, Norwalk, CT 06854–0508	90,000
Mr. John B. Roughan, Executive Director, Housing Authority of the Town of East Hartford, 546 Burnside Avenue, East Hartford, CT 06108	90,000
Mr. Michael W. Siwek, Executive Director, West Haven Housing Authority, 15 Glade Street, West Haven, CT 06516–2607	150,000
Mr. Arthur LaChioma, Executive Director, Housing Authority of the City of Fort Myers, 4224 Michigan Avenue, Fort Myers, FL 33916	90,000
Mr. Deborah Vincent, Executive Director, Clearwater Housing Authority, P.O. Box 960, 210 South Ewing Avenue, Clearwater, FL 34617	90,000
Mr. Gregory A. Byrne, Executive Director, Dade County HUD, 1401 NW 7th Street, Miami, FL 33125	674,016
Clarence J. Brown, Executive Director, Housing Authority of the City of Fort Pierce, 707 North 7th Street. Fort Pierce, FL 34950	90,000
Mr. Ronnie A. Ferguson, Executive Director, Jacksonville Housing Authority, 1300 Broad Street, Jacksonville, FL 32202–3901	150,000
Mr. Owen A. Dixon, Executive Director, Riviera Beach Housing Authority, 2014 West 17th Court, Riviera Beach, FL 33404	150,000
Mr. Jacob L. Oglesby, Executive Director, Housing Authority of the City of Augusta, P.O. Box 3246, Augusta, GA 30901	274,754
Mr. William Traylor, Executive Director, Housing Authority of the City of Carrollton, P.O. Box 627, Carrollton, GA 30117–0627	90,000
Mr. William Wilkins, Executive Director, City of Des Moines Housing Services Department, 1101 Crocker Street, Des Moines, IA 50309–1110	90,000
Mr. Daniel V. Stroda, Executive Director, Ottumwa Housing Authority, 102 West Finley Avenue, Ottumwa, IA 52501	90,000
Mr. Roger Marcum, Executive Director, Champaign County Housing Authority, P.O. Box 183, 1201 East Colorado Street, Urbana, IL 61801–0183	80,000
Mr. Kevin Marchman, Executive Director, Chicago Housing Authority, 626 West Jackson Boulevard, Chicago, IL 60661	1,875,000
Mr. Victor L. Walchirk, Executive Director, Cook County Housing Authority, 59 East Van Buren Street, Chicago, IL 60605	675,000
Mr. David P. Carr, Executive Director, Decatur Housing Authority, 1808 East Locust Street, Decatur, IL 62521–1409	90,000
Ms. Gloria McKittrick, Executive Director, Housing Authority City Bloomington, 104 East Wood, Bloomington, IL 61701–6768	90,000
Mr. Stevens Gregory, Executive Director, Housing Authority East St Louis, 700 N 20th Street, East St Louis, IL 62205	675,000
Mr. Henry Morris, Executive Director, Joliet Housing Authority, P.O. Box 2519, Joliet, IL 60434–2519	150,000
Mr. Alon Jeffrey, Executive Director, Lake County Housing Authority, 33928 North Route 45, Grayslake, IL 60030	90,000
Mr. Lawrence E. Williams, Executive Director, Marion County Housing Authority, 719 East Howard Street, Centralia, IL 62801	90,000
Mr. Gary Verni-Lau, Executive Director, Rockford Housing Authority, 330 15th Avenue, Rockford, IL 61108	150,000
Mr. David L. Wagner, Executive Director, Saint Clair County Housing Authority, 100 North 48th Street, Belleville, IL 62223	87,833
Ms. Joanne Quaglia, Executive Director, Williamson County Housing Authority, P.O. Box 045, 300 Hickory Street, Carterville, IL 62918–0045	90,000
Ms. Sarah Moyado, Executive Director, Winnebago County Housing Authority, 2901 Searle Avenue, Rockford, IL 61103	90,000
Mr. Thomas Hannen, Executive Director, Fort Wayne Housing Authority, P.O. Box 13489, 2013 South Anthony Boulevard, Fort Wayne, IN 46803–3489	90,000
Ms. Maria Becerra, Executive Director, Hammond Housing Authority, 7329 Columbia Circle West, Hammond, IN 46324–2819	150,000
Mr. John Nelson, Jr., Executive Director, Indianapolis Public Housing Division, Five Indiana Square, Indianapolis, IN 46204	150,000
Ms. Shirley D. Ying, Executive Director, Kokomo Housing Authority, P.O. Box 1207, 210 East Taylor Street, Kokomo, IN 46903–1207	90,000
Ms. Barbara Huppee, Executive Director, Lawrence Housing Authority, 1600 Haskell Avenue, Lawrence, KS 66044	90,000
Mr. Bobby Crooks, Executive Director, Housing Authority of Bowling Green, P.O. Box 116, Bowling Green, KY 42101	90,000
Ms. Sheri Lee, Executive Director, Housing Authority of Glasgow, P.O. Box 1745, 106 Bunche Avenue, Glasgow, KY 42141	90,000
Mr. Reuben Boswell, Executive Director, Housing Authority of Henderson, 901 Dixon Street, Henderson, KY 42420	90,000
Mr. Austin Simms, Executive Director, Housing Authority of Lexington, 635 Ballard Street, Lexington, KY 40508	90,000
Mr. Donald Costello, Executive Director, Housing Authority of Mayfield, P.O. Box 474, 312 Brookside Drive, Mayfield, KY 42066	90,000
Ms. Peggy Henault, Executive Director, Housing Authority of Paducah, 2330 Ohio Street, Paducah, KY 42002	90,000
Mr. Larry E. Cole, Executive Director, Housing Authority of East Baton Rouge Parish, 4546 North Street, Baton Rouge, LA 70806–3422	109,583
Mr. Joseph D. Feaster, Executive Director, Boston Housing Authority, 52 Chauncy Street, Boston, MA 02111–2302	675,000
Mr. Richard Sergi, Executive Director, Brockton Housing Authority, P.O. Box 240, 45 Goddard Road, Brockton, MA 02403	615,404
Mr. Brian Cloonan, Executive Director, Brookline Housing Authority, 90 Longwood Avenue, Brookline, MA 02146	90,000
Mr. Daniel Wuenschel, Executive Director, Cambridge Housing Authority, 270 Green Street, Cambridge, MA 02139–3360	675,000
Mr. Richard Viveiros, Executive Director, Fall River Housing Authority, P.O. Box 989, 85 Morgan Street, Fall River, MA 02722–0989	105,240
Mr. Domenic J. O'Neill, Executive Director, Lawrence Housing Authority, 353 Elm Street, Lawrence, MA 01842	150,000
Mr. Charles Gaeta, Executive Director, Lynn Housing Authority, 174 South Common Street, Lynn, MA 01905–2513	89,000
Mr. John Daly, Jr., Executive Director, Malden Housing Authority, P.O. Box 365, 630 Salem Street, Malden, MA 02148–0365	150,000
Mr. Joseph Finnerty, Executive Director, New Bedford Housing Authority, P.O. Box A–2081, 134 South Second Street, New Bedford, MA 02741–2081	123,227
Mr. William Casamento, Executive Director, Somerville Housing Authority, 30 Memorial Road, Somerville, MA 02145	90,000
Ms. Michelle Booth, Executive Director, Worcester Housing Authority, 40 Belmont Street, Worcester, MA 01605	622,759
Mr. Larry A. Loyd, Executive Director, Anne Arundel County Housing Authority, P.O. Box 817, Glen Burnie, MD 21060–2817	84,401
Mr. Daniel Henson, III, Executive Director, Housing Authority of Baltimore City, 417 East Fayette Street, Baltimore, MD 21202	675,000
Mr. Fay C. Mummert, Executive Director, Housing Authority of Cumberland, 635 East First Street, Cumberland, MD 21502	85,880
Mr. Roger W. Miller, Executive Director, Housing Authority of the City of Hagerstown, P.O. Box 2859, Hagerstown, MD 21741–2859	150,000

APPENDIX A—1995 SERVICE COORDINATORS RECIPIENTS—Continued

Name and address	Grant amount
Mr. Bernard L. Tetreault, Executive Director, Housing Opportunity Commission, Montgomery County, 10400 Detrick Avenue, Kensington, MD 20895	149,911
Mrs. Dorothy E. Igoe, Executive Director, Brewer Housing Authority, One Colonial Circle, Brewer, ME 04412	90,000
Mr. Peter Howe, Executive Director, Portland Housing Authority, 14 Baxter Boulevard, Portland, ME 04101–4935	150,000
Ms. Danethel Whitfield, Executive Director, Benton Harbor Housing Commission, 925 Buss Street, Benton Harbor, MI 49022	90,000
Mr. Reginald Richardson, Executive Director, Flint Housing Commission, 3820 Richfield Road, Flint, MI 48506–2616	150,000
Mr. Floyd B. Simmons, Executive Director, Inkster Housing Commission, 4500 Inkster Road, Inkster, MI 48141–1871	90,000
Mr. Phillip M. Fracker, Executive Director, Jackson Housing Commission, 301 Steward Avenue, Jackson, MI 49201–1132	90,000
Mr. James M. Inglis, Executive Director, Livonia Housing Commission, 19300 Purlingbrook, Livonia, MI 48152–1902	90,000
Ms. Sharon L. Thomas, Executive Director, Plymouth Housing Commission, 1160 Sheridan Avenue, Plymouth, MI 48170–1561	90,000
Mr. Gerald E. Schock, Executive Director, Port Huron Housing Commission, 905 Seventh Street, Port Huron, MI 48060–5399	90,000
Mr. Ravi Yalamanchi, Executive Director, Saginaw Housing Commission, 2811 Davenport Street, Saginaw, MI 48602–3747	150,000
Ms. Branna K. Lindell, Executive Director, HRA of The City of South Saint Paul, 125 Third Avenue North, South Saint Paul, MN 55075	90,000
Mr. Richard W. Ball, Executive Director, Housing & Redevelopment Authority of Duluth, P.O. Box 16900, 222 East Second Street, Duluth, MN 55816–0900	150,000
Ms. Cora McCorvey, Executive Director, Minneapolis PHA In And For The City of Minneapolis, 1001 Washington Ave, Minneapolis, MN 55401	675,000
Mr. Jon M. Gutzmann, Executive Director, Public Housing Agency of the City of Saint Paul, 480 Cedar Street, Saint Paul, MN 55101–2240	576,053
Mr. William H. Brown, Executive Director, Housing Authority of the City of Columbia, 301 North Providence Road, Columbia, MO 65203–4091	90,000
Mr. Kenneth King, Executive Director, Housing Authority of the City of Poplar Bluff, P.O. Box 1009, 506 Hazel Street, Poplar Bluff, MO 63901–6049	90,000
Mr. Eugene Jones, Executive Director, Kansas City Housing Authority, 299 Paseo, Kansas City, MO 64106–2608	89,976
Ms. Brenda Williams, Executive Director, Saint Louis Housing Authority, 4100 Lindell Boulevard, Saint Louis, MO 63108–2999	112,744
Mr. Ike Francis, Executive Director, Saint Joseph Housing Authority, P.O. Box 1153, 502 South 10th, Saint Joseph, MO 64502	90,000
Mr. Roy E. Necaise, Executive Director, Mississippi Regional Housing Authority No. VIII, P.O. Box 2347, Gulfport, MS 39505–2347	90,000
Mr. Thomas M. Coleman, Executive Director, Tennessee Valley Regional Housing Authority, P.O. Box 1329, Corinth, MS 38834–1329	150,000
Ms. Beverly D. Romeo, Executive Director, The Housing Authority of the City of Biloxi, P.O. Box 447, Biloxi, MS 39533	90,000
Mr. Alvin E. Stevenson, Executive Director, The Housing Authority of the City of Meridian, P.O. Box 870, 2305 D Street, Meridian, MS 39302–0870	150,000
Mr. David Jones, Jr., Executive Director, Housing Authority of the City of Asheville, P.O. Box 1898, 165 South French Broad Avenue, Asheville, NC 28802	150,000
Ms. Elaine T. Ostrowski, Executive Director, Housing Authority of the City of Greensboro, P.O. Box 21287, 450 North Church Street, Greensboro, NC 27420	150,000
Mr. Paul H. Messenger, Executive Director, Housing Authority of the City of Raleigh, P.O. Box 28007, 600 Tucker Street, Raleigh, NC 27611	150,000
Mr. Arthur S. Milligan, Jr., Executive Director, Housing Authority of the City of Winston-Salem, 901 Cleveland Avenue, Winston-Salem, NC 27101	675,000
Ms. Julie Love, Executive Director, Minot Housing Authority, 310 Second Street, SE, Minot, ND 58701	90,000
Mr. Robert L. Armstrong, Executive Director, Omaha Housing Authority, 540 South 27th Street, Omaha, NE 68105–1521	669,288
Mrs. Catherine Naczas, Executive Director, Laconia Housing Authority, 25 Union Avenue, Laconia, NH 03246–3558	90,000
Ms. Grace Hicks-Grogan, Executive Director, Manchester Housing & Redevelopment Authority, 198 Hanover Street, Manchester, NH 03103–6125	150,000
Mr. John J. McAvaddy, Jr., Executive Director, Atlantic City Housing Authority, P.O. Box 1258, 227 North Vermont Avenue, Atlantic City, NJ 08404–7549	147,735
Mr. Benjamin Quattlebaum, II, Executive Director, Camden Housing Authority, 517 Market Street, Camden, NJ 08102–1293	147,735
Mr. Dale P. Gravett, Executive Director, Millville Housing Authority, P.O. Box 803, Millville, NJ 08332–0803	90,000
Ms. Roberta Strater, Executive Director, Morris County Housing Authority, 99 Ketch Road, Morristown, NJ 07960–3115	90,000
Mr. Harold Lucas, Executive Director, Newark Housing Authority, 57 Sussex Avenue, Newark, NJ 07103–3992	675,000
Ms. Diane Pierano-Ingvaldsen, Executive Director, North Bergen Housing Authority, 6121 Grand Avenue, North Bergen, NJ 07047–5436	150,000
Mr. William Reid, Executive Director, Orange Housing Authority, 340 Thomas Boulevard, Orange, NJ 07050–4121	90,000
Mr. Douglas G. Dzema, Executive Director, Perth Amboy Housing Authority, P.O. Box 390, 881 Amboy Avenue, Perth Amboy, NJ 08862–0390	90,000
Mr. William Snyder, Executive Director, Secaucus Housing Authority, 777 Fifth Street, Secaucus, NJ 07094–3362	90,000
Mr. Michael A. Varela, Executive Director, Housing Authority of the City of Santa Fe, P.O. Box 4039, 664 Alta Vista Street, Santa Fe, NM 87502–4039	90,000
Mr. Frederick Brown, Executive Director, Housing Authority of the City of Las Vegas, P.O. Box 1897, Las Vegas, NV 89125	671,698
Mr. W. F. Cottrell, Executive Director, Housing Authority of the County of Clark, 5390 East Flamingo Road, Las Vegas, NV 89122–5308	90,000
Mr. Steven Longo, Executive Director, Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202–1637	150,000
Mr. David K. Tanenhaus, Executive Director, Binghamton Housing Authority, P.O. Box 1906, 45 Exchange Street, Binghamton, NY 13902–1906	90,000
Mr. Michael K. Clarke, Executive Director, Buffalo Municipal Housing Authority, 300 Perry Street, Buffalo, NY 14204–2299	675,000
Mr. James A. Mirando, Executive Director, Elmira Housing Authority, 346 Woodlawn Avenue, Elmira, NY 14901–1397	90,000
Mr. Jeffrey T. McChesly, Executive Director, Jamestown Housing Authority, Hotel Jamestown, 110 West Third Street, Jamestown, NY 14701–5199	90,000

APPENDIX A—1995 SERVICE COORDINATORS RECIPIENTS—Continued

Name and address	Grant amount
Mr. Peter Smith, Executive Director, Municipal Housing Auth. for the City of Yonkers, P.O. Box 35, 1511 Central Park Avenue, Yonkers, NY 10710–0035	675,000
Mrs. Sharon A. Jordan, Executive Director, Municipal Housing Authority of Schenectady, 375 Broadway, Schenectady, NY 12405–2595	150,000
Mr. Paul Graziano, Executive Director, New York City Housing Authority, 250 Broadway, New York, NY 10007–2516	1,875,000
Mr. Micheal J. Raymond, Executive Director, Niagara Falls Housing Authority, 744 10th Street, Niagara Falls, NY 14301–1852	150,000
Ms. S. Patricia Lucia, Executive Director, Plattsburgh Housing Authority, 19 Oak Street, Plattsburgh, NY 12901–2830	90,000
Mr. Thomas F. McHugh, Executive Director, Rochester Housing Authority, 140 West Avenue, Rochester, NY 14611–2744	542,280
Mr. Frederick Murphy, Executive Director, Syracuse Municipal Housing Authority, 516 Burt Street, Syracuse, NY 13202–3999	540,112
Mr. William E. Rutkoske, Executive Director, Town of Islip Housing Authority, 963 Montauk Highway, Oakdale, NY 11769–1494	90,000
Ms. Sandy Forman, Executive Director, Town of Ramapo Housing Authority, Pondview Drive, Suffern, NY 10901–6599	164,880
Mr. Hubert W. McDuffie, Executive Director, Village of Hempstead Housing Authority, 75 Laurel Avenue, Hempstead, NY 11550–5599	90,000
Mr. Anthony O'Leary, Executive Director, Akron Metropolitan Housing Authority, 180 West Cedar Street, Akron, OH 44307–2546	675,000
Mr. James Noyes, Executive Director, Ashtabula Metropolitan Housing Authority, 3526 Lake Avenue, Ashtabula, OH 44004–5780	76,077
Mr. Donald J. Troendle, Executive Director, Cincinnati Metropolitan Housing Authority, 16 West Central Parkway, Cincinnati, OH 45210–1991	507,630
Ms. Claire Freeman, Executive Director, Cuyahoga Metropolitan Housing Authority, 1441 West 25th Street, Cleveland, OH 44113–3101	675,000
Mr. Michael M. Merick, Executive Director, Jefferson Metropolitan Housing Authority, 815 North Sixth Avenue, Steubenville, OH 43952–1847	150,000
Mr. Dennis Morgan, Executive Director, Lucas Metropolitan Housing Authority, P.O. Box 477, 435 Nebraska Avenue, Toledo, OH 43697–0477	675,000
Mr. Rudy J. Vazmina, Executive Director, Youngstown Metropolitan Housing Authority, 131 Boardman Street, Youngstown, OH 44503–1329	148,930
Mr. Philip E. Allen, Executive Director, Zanesville Metrpolitan Housing Authority, 407 Pershing Road, Zanesville, OH 43701	90,000
Mr. John Doty, Executive Director, Housing Authority of the City of Miami, P.O. Box 848, 205 B Street, NE, Miami, OK 74355–0848	89,886
Ms. Linda Dupont-Johnson, Executive Director, Housing Authority of the City of Tulsa, P.O. Box 6369, 415 East Independence, Tulsa, OK 74148–0369	150,000
Mr. Jack G. Womack, Executive Director, Oklahoma City Housing Authority, 1700 NE Fourth Street, Oklahoma City, OK 73117	645,000
Mr. Ric Weaver, Executive Director, HA & Urban Renewal Agency of Polk County, P.O. Box 467, Dallas, OR 97338	90,000
Mr. Denny West, Executive Director, Housing Authority of Portland, 135 SW Ash Street, Portland, OR 97204	439,922
Mr. J. L. Wingard, Executive Director, Altoona Housing Authority, P.O. Box 671, 1100 Eleventh Street, Altoona, PA 16603	90,000
Mr. James F. Tress, Executive Director, Beaver County Housing Authority, 300 State Avenue, Beaver, PA 15009–1798	606,866
Mr. Donald E. Grondahl, Executive Director, Bucks County Housing Authority, P.O. Box 1329, 350 South Main Street, Doylestown, PA 18901–0967	105,000
Mr. Perry O'Malley, Executive Director, Butler County Housing Authority, 111 South Cliff Street, Butler, PA 16003–1917	90,000
Mr. Philip J. Spagnolo, Executive Director, Dauphin County Housing Authority, P.O. Box 7598, 501 Mohn Street, Steelton, PA 17113–2021	150,000
Mr. Thomas Harkless, Executive Director, Lancaster Housing Authority, 333 Church Street, Lancaster, PA 17602–4253	88,693
Mr. Edward P. Christiano, Executive Director, Northumberland County Housing Authority, 50 Mahoning Street, Milton, PA 17847–1021	90,000
Mr. John F. White, Jr., Executive Director, Philadelphia Housing Authority, 2012 Chestnut Street, Philadelphia, PA 19103–4497	626,806
Mr. Stephen K. Hall, Executive Director, Washington County Housing Authority, 100 Crumrine Tower, Franklin Street, Washington, PA 15301–6995	87,844
Ms. Debbie Loucks, Executive Director, York Housing Authority, P.O. Box 1963, 31 South Broad Street, York, PA 17405	150,000
Ms. Elaine Woloohojian, Executive Director, Cranston Housing Authority, 50 Birch Street, Cranston, RI 02920–7565	150,000
Mr. Daniel Marvelle, Executive Director, Newport Housing Authority, One York Avenue, Newport, RI 02840–1212	90,000
Ms. Christine Palma, Executive Director, North Providence Housing Authority, 947 Charles Street, North Providence, RI 02904–5654	90,000
Mr. Roland C. Moussally, Executive Director, Pawtucket Housing Authority, P.O. Box 1303, Pawtucket, RI 02862–1303	150,000
Mr. Stephen O'Rourke, Executive Director, Providence Housing Authority, 100 Broad Street, Providence, RI 02903–4129	668,420
Mr. Stephen Vadnais, Executive Director, Woonsocket Housing Authority, 679 Social Street, Woonsocket, RI 02895–3251	150,000
Ms. Mary Louise Battisti, Executive Director, Housing Authority of Spartanburg, P.O. Box 2828, 325 South Church Street, Spartanburg, SC 29306	150,000
Mr. Donald J. Cameron, PHM, Executive Director, Housing Authority of the City of Charleston, 20 Franklin Street, Charleston, SC 29401–6907	147,457
Mr. Rodney H. Fauser, Executive Director, Housing Authority of the City of Columbia, 1917 Harden Street, Columbia, SC 29204–4307	102,704
Mr. T.A. ''Al'' Harris, Executive Director, Chattanooga Housing Authority, P.O. Box 1486, 505 W.M.L. King Boulevard, Chattanooga, TN 37401–1148	675,000
Mr. Fred O. DeBruhl, Sr., Executive Director, Knoxville's Community Development Corporation, P.O. Box 3550, 901 Broadway NE, Knoxville, TN 37927	675,000
Mr. Jerome Ryans, Executive Director, Memphis Housing Authority, P.O. Box 3664, 700 Adams Avenue, Memphis, TN 38103–0664	675,000
Mr. James L. Thiltgen, Executive Director, Metropolitan Development & Housing Agency, P.O. Box 846, 701 South Sixth Street, Nashville, TN 37202–0846	465,513
Ms. Roxann Chargois, Executive Director, Austin Housing Authority, P.O. Box 6159, 1640 East Second Street, Austin, TX 78762–6159	150,000
Mr. Ernesto Pena, Executive Director, Brownsville Housing Authority, P.O. Box 4420, 24 Elm Street, Brownsville, TX 78520–4420	150,000

APPENDIX A—1995 SERVICE COORDINATORS RECIPIENTS—Continued

Name and address	Grant amount
Mr. Victor De La Cruz, Executive Director, Corpus Christi Housing Authority, 3701 Ayers Street, Corpus Christi, TX 78415–7019 ..	90,000
Mr. Alphonso Jackson, Executive Director, Housing Authority of Dallas, 3939 North Hampton Road, Dallas, TX 75212	150,000
Ms. Barbara Holston, Executive Director, Housing Authority of Fort Worth, P.O. Box 430, 212 Burnett Street, Fort Worth, TX 76101–0430	90,000
Mr. Hal Rose, Executive Director, Housing Authority of Temple, P.O. Box 634, 700 West Calhoun, Temple, TX 76503–0634	90,000
Mr. Dan Strange, Executive Director, Housing Authority of Waco, P.O. Box 978, 1001 Washington, Waco, TX 76703–0978	90,000
Mr. Ernest Wilson, Executive Director, Housing Authority of the City of Beaumont, P.O. Box 1312, 4925 Concord Road, Beaumont, TX 77704–1312	90,000
Mr. Walter Norris, Jr., Executive Director, Housing Authority of the City of Galveston, 920 53rd Street, Galveston, TX 77551–1099	150,000
Ms. Joy W. Fitzgerald, Executive Director, Housing Authority of the City of Houston, P.O. Box 2971, 2640 Fountainview, Houston, TX 77252–2971	150,000
Mr. Abraham Rodriquez, Executive Director, Laredo Housing Authority, 2000 San Francisco Avenue, Laredo, TX 78040	90,000
Mr. Apolonio Flores, Executive Director, San Antonio Housing Authority, P.O. Drawer 1300, 818 South Flores Street, San Antonio, TX 78295–1300	660,246
Mr. Michael McNamara, Executive Director, Alexandria Redevelopment & Housing Authority, 600 North Fairfax Street, Alexandria, VA 22314–2094	90,000
Mr. H. Thomas Griffith, Executive Director, Cumberland Plateau Reg. Housing Authority, P.O. Box 1328, Lebanon, VA 24266–1328	675,000
Mr. James B. Rattray, Executive Director, Hampton Redevelopment & Housing Authority, P.O. Box 280, 22 Lincoln Street, Hampton, VA 23669–0280	90,000
Mr. William L. Hawkins, Jr., Executive Director, Newport News Redev. & Housing Authority, P.O. Box 77, 227 27th Street, Newport News, VA 23607–0077	150,000
Mr. David H. Rice, Executive Director, Norfolk Redevelopment & Housing Authority, P.O. Box 968, 201 Granby Street, Norfolk, VA 23501–0968	525,457
Mr. Richard C. Gentry, Executive Director, Richmond Redevelopment & Housing Authority, P.O. Box 26887, 901 Chamberlayne Parkway, Richmond, VA 23261–6887	471,390
Ms. Lucinda Jones, Executive Director, Barre Housing Authority, 455 North Main Street, Barre, VT 05641–0525	90,000
Mr. Allan L. White, Executive Director, Housing Authority of the City of Everett, P.O. Box 1547, 3107 Colby Avenue, Everett, WA 98206–1547	90,000
Mr. David Gilmore, Executive Director, Housing Authority of the City of Seattle, 120 Sixth Avenue, N, Seattle, WA 98109–5002	675,000
Mr. Wayne W. Morris, Executive Director, Housing Authority of the City of Tacoma, 902 South "L" Street, Tacoma, WA 98405	90,000
Mr. Jim Wiley, Executive Director, King County Housing Authority, 15455 65th Avenue, S, Tukwila, WA 98188–2583	675,000
Mr. Brad J. Masterson, Executive Director, Appleton Housing Authority (Low Rent), 525 North Oneida Street, Appleton, WI 54911–4749	90,000
Mr. Ricardo Diaz, Executive Director, Housing Authority of the City of Milwaukee, P.O. Box 324, 809 North Broadway, Milwaukee, WI 53202–3669	675,000
Mr. George E. Austin, Executive Director, Madison Community Development Authority, P.O. Box 1785, 215 Martin Luther King Jr Boulevard, Madison, WI 53701–1785	90,000
Mr. John M. Franzen, Executive Director, Oshkosh Housing Authority, P.O. Box 397, 600 Merritt Avenue, Oshkosh, WI 54902–0397	86,360
Ms. Zelma Boggess, Executive Director, Housing Authority of the City of Charleston, P.O. Box 86, 911 Michael Avenue, Charleston, WV 25321	150,000
Mr. William Dotson, Executive Director, Housing Authority of the City of Huntington, P.O. Box 2183, 30 Northcott Court, Huntington, WV 25722–2183	150,000

[FR Doc. 95–27865 Filed 11–9–95; 8:45 am]
BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–59440]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Non-competitive sale of public lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 35: S½NW¼NW¼NW¼.
Containing 10.00 acres, more or less.

This parcel of land, situated in Las Vegas is being offered as a direct sale to Nevada Power Company.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to an easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County.

1. Those rights for an electrical substation and electrical line purposes which have been granted to Nevada Power Company by Permit No. N–55657

under the Act of October 21, 1976 (43 U.S.C. 1761).

2. Those rights for distribution line purposes which have been granted to Nevada Power Company by Permit No. N–58122 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for public road purposes which have been granted to Clark County by Permit No. N–58342 under the Act of October 21, 1976 (43 U.S.C. 1761). Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Dated: October 31, 1995.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–27873 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–HC–P

[NM–030–1231–00]

Visitor Restrictions for Designated Recreation Sites, Special Recreation Management Areas, and Other Public Land in the Las Cruces District, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Final supplementary rules; Visitor restrictions.

SUMMARY: The BLM New Mexico State Director is establishing these final supplementary rules, which are necessary for the protection of persons, property, and public land and resources currently under the Bureau's administration within the Las Cruces District, New Mexico and those lands acquired for inclusion within the administrative jurisdiction of the BLM as provided for in 43 CFR 8365.1–6.

EFFECTIVE DATES: December 13, 1995.

ADDRESSES: Inquiries or suggestions may be sent to the District Manager, BLM, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT:

- Mark Hakkila, Outdoor Recreation Planner, BLM Mimbres Resource Area, 1800 Marquess, Las Cruces NM 88005, (505) 525–4341.
- Kevin Carson, Outdoor Recreation Planner, BLM Socorro Resource Area, 198 Neel Ave. NW, Socorro NM 87801, (505) 835–0412.
- Joe Sanchez, Outdoor Recreation Planner, BLM Caballo Resource Area, 1800 Marquess, Las Cruces NM 88005, (505) 525–4391.

SUPPLEMENTARY INFORMATION: The visitor restrictions are necessary for the management of actions, activities, and use on public land including those which are acquired or conveyed to the BLM. Supplementary rule making is provided for under Title 43 CFR Subpart 8365. These regulations establish rules of conduct for the protection of persons, property, and public land resources. As a visitor to public land, the user is required to follow certain rules designed to protect the land and the natural environment, to ensure the health and safety of visitors, and to promote a pleasant and rewarding outdoor experience.

Exceptions to these visitor restrictions may be permitted by the authorized officer subject to limits and restrictions of controlling Federal and State law. Persons granted use exemptions must possess written authorization from the BLM Office having jurisdiction over the area. Users must further comply with the zoning, permitting, rules, or regulatory requirements of other agencies, where applicable. More specifically, the purpose falls into the following categories:

- *Implementation of Management Plans*—Certain prohibited activities have been recommended as rules for designated recreation sites and Special Recreation Management Areas (SRMAs). In order to implement these recommendations, they must be published as specific prohibited acts in the Federal Register. Use of the Supplementary Rules Section of 43 CFR, Subpart 8365, is the most appropriate way of implementation. Rationale for these recommendations is presented in its entirety in the resource management plan or recreation management plan for the specific area.
- *Mitigation of User Conflict*—Certain other rules are recommended because of specific user conflict problems. Prohibiting the reservation of camping space in developed campgrounds will allow such space to be available on a first-come, first-served basis. This will prevent people from monopolizing the use of limited developed camping space. Prohibition of motorized vehicle free-play (operation of any 2-, 3-, or 4-wheel motor vehicle for purposes other than accessing a campsite) is necessary to minimize the noise and nuisance factors that such activities represent in developed recreation sites.
- *Public Health and Safety*—The erection and maintenance of unauthorized toilet facilities or other containers for human waste on the public land could represent a major threat to public safety and health. It should be noted that shooting restrictions recommended do not prohibit legitimate hunting activities except within ½ mile of developed sites. Recreational shooters will be encouraged to use public land where such shooting restrictions do not apply and this use does not significantly conflict with other uses.
- *Complementary Rules*—Some rules, such as parking or camping near water sources, are recommended to complement those of State and local agencies. Because these rules provide for the protection of persons and resources in the interest and spirit of cooperation with the responsible agencies, these rules are deemed necessary.

This notice supersedes previous notices published in the Federal Register, December 15, 1988 (Vol. 53, No. 241); July 24, 1989 (Vol. 54, No. 140); August 17, 1989 (Vol. 54, No. 158); August 31, 1989 (Vol. 54, No. 168); May 10, 1990 (Vol. 55, No. 91); July 9, 1991 (Vol. 56, No. 131); January 22, 1991 (Vol. 56, No. 14); and correction to Supplementary Rules No. 2., February 1, 1991 (Vol. 56, No. 28), establishing Supplementary Rules for Designated Recreation Sites, Special Recreation Management Areas and Other Public Land in New Mexico.

Proposed visitor use restrictions were published in 60 FR 109, pages 30093–30095, June 7, 1995. No comments were received on the proposed rules. Therefore, the rules are being published in final form with no changes.

Under the authority of 43 CFR 8365.1–6, the Bureau of Land Management issues the following

supplementary rules, to be applied on public land in the Las Cruces District, New Mexico:

Final Supplementary Rules

Definitions:

As used in these supplementary rules, the term:

—*A SRMA* means an area where special or more intensive types of resource and user management are needed.

—*A developed recreation site and area* means sites and areas that contain structures or capital improvements primarily used for recreation purposes by the public. Development may vary from limited development for protection of the resources and the safety of users to a distinctly defined site in which developed facilities that meet the Land and Water Conservation Fund Act of 1965 (as amended) criteria for a fee collection site are provided for concentrated public recreation use.

—*Public land* means any land, interest in land, or related waters owned by the United States and administered by the BLM. Related waters are waters which lie directly over or adjacent to public land and which require management to protect Federally administered resources or to provide for enhanced visitor safety and other recreation experiences.

—*Camping* means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or the parking of a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy. Occupying a developed camp site or an approved location within developed recreation areas and sites during the established night period of 10:00 p.m. to 6:00 a.m. will be considered overnight camping for fee collection and enforcement purposes.

—*Campfire* means a controlled fire occurring outdoors for cooking, branding, personal warmth, lighting, ceremonial, or aesthetic purposes.

—*Abandonment* means the voluntary relinquishment of control of property for longer than a period specified with no intent to retain possession.

—*Administrative activities* means those activities conducted under the authority of the BLM for the purpose of safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with regulations or repairing or maintaining facilities.

—*Pet* means a dog, cat, or any domesticated companion animal.

—*Occupancy* means the taking or holding possession of a camp site, other location, or residence on public land.

—*Vehicle* means any motorized or mechanized device, including bicycles, hang gliders, ultra lights, and hot air balloons which is propelled or pulled by any living or other energy source, and capable of travel by any means over ground, water, or air.

—*Authorized Officer* means any employee of the BLM who has been delegated the authority to perform under Title 43.

—*Stove fire* means a fire built inside an enclosed stove or grill, a portable brazier, or a pressurized liquid or gas stove, including space-heating devices.

—*Weapon* means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, spearguns, slingshot, explosive device, or any other implement designed to discharge missiles or projectiles; hand-thrown spear, edged weapons, nun-chucks, clubs, billy-clubs, and any device modified for use or designed for use as a striking instrument; and includes any weapon the possession of which is prohibited under New Mexico law.

—*Historic or prehistoric structure or ruin site* means any location at least 50 years old which meets the standards for inclusion on the National Register of Historic Places as defined in 36 CFR 60.4, without regard to whether the site has been nominated or accepted.

Supplementary Rules—All Public Land

In addition to regulations contained in 43 CFR 8365.1, the following supplementary rules apply to all public land in the Las Cruces District including those lands acquired or conveyed to the BLM and related waters. The following are PROHIBITED unless authorized by written permit or for administrative use:

Sanitation

- To construct or maintain any unauthorized toilet facility.
- The dumping or disposal of sewage or sewage treatment chemicals from self-contained or containerized toilets except at facilities provided for that purpose.
- To shower or bathe at any improved or developed water source, outdoor hydrant pump, faucet or fountain, or rest room water faucet unless such water source is designated for that purpose.

Occupancy and Use

- To camp or occupy any site on public land or any approved location, including those in developed recreation areas and sites or SRMAs, for a period longer than 14 days within any period of 28 consecutive days. Exceptions, which will be posted, include areas closed to camping and areas or sites with other designated camping stay limits. The 28-day period begins when a camper initially occupies a specific location on public land. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation. After the 14 day of occupation, campers must move beyond a 25-mile radius from the previous location. When a camping limit has been reached, use of any public land site within the 25-mile radius shall not occur again until at least 30 days have elapsed from the last day of authorized use.
- To park any motor vehicle for longer than 30 minutes, or camp within 300 yards of any spring, manmade water hole, water well, or watering tank used by wildlife or domestic stock. Hunters with valid hunting licenses may not park within 300 yards of these water sources.
- To dispose of any burning or smoldering material except at sites or facilities provided for that purpose.
- Unauthorized cutting, removing, or transporting woody materials including, but not limited to:

1. Any type or variety of vegetation (excluding dead and downed),

2. Fuelwood or firewood, either green or standing deadwood or,

3. Live plants (except for consumption, medicinal purposes, study or personal collection).

- Removing or transporting any mineral resources including rock, sand, gravel, and other minerals on or from public land without written consent, proof of purchase, or a valid permit. Collection of specimens and samples in reasonable amounts for personal noncommercial use, under 43 CFR 8365.1–5(b) is not affected by this section.
- Failure to prevent a pet from harassing, molesting, injuring, or killing humans, wildlife or livestock.
- Violation of the terms, stipulations, or conditions of any permit or use authorization.
- Failure to show a permit or use authorization to any BLM employee upon request.
- Camp or occupy or build any fire on, or in, any historic or prehistoric structure or ruin site.

• Competitive or commercial operations or events without a Special Recreation Permit.

Vehicles

• Operation of an off-road vehicle without full time use of an approved spark arrester and muffler.
• Failure to display the required State off-road vehicle registration.
• Lubricating or repairing any vehicle, except repairs necessitated by emergency.
• Operate, park, or leave a motorized vehicle in violation of posted restrictions or in such a manner or location as to:

1. Create a safety hazard,
2. Interfere with other authorized users or uses,
3. Obstruct or impede normal or emergency traffic movement,
4. Interfere with or impede administrative activities,
5. Interfere with the parking of other vehicles, or
6. Endanger property or any person.

Public Health and Safety

• Possession or use of fireworks.
• Leaving a campfire unattended, or failing to completely extinguish a fire after use.
• The sale or gift of an alcoholic beverage to a person under 21 years of age.
• The possession of an alcoholic beverage by a person under 21 years of age.
• Ignition or burning of any material containing or producing toxic or hazardous material.
• Carrying of weapons in violation of State or Federal law.
• Abandonment of animals.

State and Local Laws

• Failure to comply with all applicable State of New Mexico regulations for boating safety, equipment, and registration.

Supplementary Rules—Developed Recreation Sites/Areas and Special Recreation Management Areas

In addition to the regulations contained in 43 CFR 8365.1, 8365.2 and those listed above, the following rules will be applied in accordance with 43 CFR 8365.2. The following activities are PROHIBITED unless authorized by written permit or for administrative use:

• Failure to pay use fees at Aguirre Spring Campground, Dripping Springs Natural Area, Datil Well Campground, or Three Rivers Recreation Area.
• Failure to immediately remove and dispose of in a sanitary manner, all pet fecal material, trash, garbage or waste created.
• Failing to physically restrain a pet at all times within developed campsites and picnic areas. Pets are prohibited where posted on all designated nature or interpretive trails and from entering caves. Animals trained to assist handicapped persons are exempt from this rule.
• Reserving space, except within established guidelines for group facility reservations at Aguirre Spring Campground or Dripping Springs Natural Area. Camping and picnicking space is available on a first-come, first-served basis.
• Failure to maintain quiet between the hours of 10 p.m. to 6 a.m. or other hours posted. During this period, no person shall create noise which disturbs other visitors.
• Vehicles off existing or designated roads and trails unless facilities have been specifically provided for such use. Motorized vehicles will be operated for access to and from developed facilities only.
• To park or occupy a parking space posted or marked for handicapped use without displaying an official identification tag or plate.
• Posting or distribution of any signs, posters, printed material, or commercial advertisements.
• The discharge of firearms or other weapons, hunting and trapping within ½ mile of developed recreation sites and areas.
• Using, displaying, or carrying loaded weapons within developed campsites or picnic areas.
• Disposing of any waste or grey water except where facilities are provided.
• Bringing equine stock, llama, cattle, or other livestock within campgrounds or picnic areas unless facilities have been specifically provided for such use.
• Unauthorized gathering or collecting woody plants or any other natural resource, minerals, cultural, or historical artifacts that require permits.
• Not adhering to fire danger ratings issued by Government.
• Climbing, walking on, ascending, descending or traversing on the earthwork of Fort Craig National Historic Site, or historic structures within the Dripping Springs Natural Area, the Lake Valley Historic Site, or Fort Cummings.
• Wood fires are prohibited within the Dripping Springs Natural Area unless the firewood is provided by the BLM.
• Aguirre Spring Campground use is limited to overnight campers after 10:00 p.m. The entrance gate will be closed at 8:00 p.m. during summer hours (approximately April 1 to September 30) and at 6:00 p.m. during winter hours (approximately October 1 to March 31).
• The Dripping Springs Natural Area will be managed as a day-use area (no overnight camping). The entrance gate located in T. 23 S., R. 3 E., Section 3 on the Dripping Springs road (controlling access to La Cueva Picnic Area, A.B. Cox Visitor Center, and Dripping Springs Natural Area) will be locked at sunset.
• Pets are prohibited on the Dripping Springs Trail uphill (southeast) of the Crawford Trail junction (located in T. 23 S., R. 3 E., Section 12, NW¼SE¼NE¼). All hikers beyond this point are required to stay on trails or in established use areas in order to reduce damage to the Dripping Springs Ruins and to protect endangered plants in the area.
• Swimming, wading, and bathing are prohibited at the pond at the Dripping Springs Natural Area.
• Discharge of firearms, walking off established trails, or unauthorized overnight camping are prohibited within the fenced enclosure at Fort Cummings, Lake Valley, or the Fort Craig National Historic Site.
• Overnight camping, discharge of firearms, and wood fires are prohibited within The Box Special Management Area.
• Lake Valley Historic Site use is limited to posted hours.
• Pets are prohibited on the Petroglyph Trail and the Pit House Village Trail within the Three Rivers Recreation Area.

Penalties

These supplementary rules apply to all persons using public land. Violations of these rules may be punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

List of Developed Recreation Sites/ Areas and Special Recreation Management Areas

1. Aguirre Spring Campground (Mimbres Resource Area)

T. 22 S., R. 4 E., NMPM,
Sec. 29.

2. Dripping Springs Natural Area (Mimbres Resource Area)

T. 23 S., R. 3 E., NMPM,
Secs. 1, 2.
T. 23 S., R. 4 E., NMPM,
Sec 7.

3. Three Rivers Recreation Area (Caballo Resource Area)

T. 11 S., R. 9½ E., NMPM,
Secs. 17, 20, 21, 28.

4. Datil Well Campground (Socorro Resource Area)

T. 2 S., R. 10 W., NMPM,

Secs. 10, 11.

5. Fort Craig National Historic Site (Socorro Resource Area)

T. 8 S., R. 2 W., NMPM,
Secs. 10, 11.

6. Paleozoic Trackways (Mimbres Resource Area)

T. 22 S., R. 1 E., NMPM,
Sec. 19.

7. Organ Mountains Recreation Lands SRMA (Mimbres Resource Area)

T. 22–26 S., R. 3–4 E., NMPM,

8. Gila Lower Box SRMA (Mimbres Resource Area)

T. 19 S., R. 19 W., NMPM,
Secs. 7–10, 15–19, 30.
T. 19 S., R. 20 W., NMPM,
Secs. 13–17, 20–29.

9. Fort Cummings SRMA (Mimbres Resource Area)

T. 21 S., R. 8 W., NMPM,
Secs. 22, 23.

10. The Box Special Management Area (Socorro Resource Area)

T. 3 S., R. 1 W., NMPM,
Sec. 31.

11. Lake Valley Historic Site (Caballo Resource Area)

T. 18 S., R. 7 W., NMPM,
Sec. 28.

Dated: October 16, 1995.

William C. Calkins,

State Director, New Mexico.

[FR Doc. 95–27956 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–FB–P

National Park Service

Notice of Intent To Issue a Prospectus for the Operation of Hotel and Related Facilities in Kings Canyon National Park

SUMMARY: The National Park Service is seeking to award a concession contract for the future operation and improvement of existing visitor facilities within Kings Canyon National Park, which is part of Sequoia and Kings Canyon National Parks. The contract will be awarded on a fully competitive basis without application of any preference to the incumbent.

SUPPLEMENTARY INFORMATION: The concession facilities, which include overnight accommodations, food service, retail and other related operations, are located at the Grant Grove and Cedar Grove areas of the park. Grant Grove is a meadow setting adjacent to groves of giant sequoias. Cedar Grove is deep within the spectacular Kings Canyon on the South Fork of the Kings River.

To receive this prospectus send your name and address to: National Park Service, Concession Program Management Division, Attention: Kings Canyon Prospectus, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372, or call: (415) 744–3981—Teresa Jackson

Applications will be accepted for one hundred and twenty (120) days under the terms described in the Prospectus. The one hundred and twenty (120) day application period will begin on October 30, 1995.

Dated: October 17, 1995.

Stanley T. Albright,

Field Director, Pacific West Field Area.

[FR Doc. 95–27909 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–70–P

Notice of Intent To Issue a Prospectus for the Operation of Hotel and Related Facilities In Sequoia National Park

SUMMARY: The National Park Service is seeking to award a concession contract for the operation and construction of new visitor facilities and continued operation of certain existing facilities within Sequoia National Park, which is part of Sequoia and Kings Canyon National Parks. The contract will be awarded on a fully competitive basis without application of any preference to the incumbent.

SUPPLEMENTARY INFORMATION: The development to be constructed includes as many as 414 guest units, along with food service and other related commercial and support facilities. Extensive site preparation, roads, parking and other infrastructure work have already been completed by the government. The site is in the Sierra Nevada with a panaramic view of the central High Sierra.

To receive this prospectus send your name and address to: National Park Service, Concession Program Management Division, Attention: Kings Canyon Prospectus, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372, or call: (415) 744–3981—Teresa Jackson.

Applications will be accepted for one hundred and twenty (120) days under the terms described in the Prospectus. The one hundred and twenty (120) day application period will begin on October 30, 1995.

Dated: October 17, 1995.

Stanley T. Albright,

Field Director, Pacific West Field Area.

[FR Doc. 95–27910 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–70–P

Dayton Aviation Heritage Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Dayton Aviation Heritage Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Monday, November 27, 1995; 5:15 p.m. to 6:30 p.m.

ADDRESSES: Innerwest Priority Board conference room, 1024 West Third Street, Dayton, Ohio 45407.

AGENDA TOPICS INCLUDE: Committee membership, committee assignments, committee structure; update on the park and general management plan. This business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the Superintendent, Dayton Aviation, one week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: William Gibson, Superintendent, Dayton Aviation, National Park Service, P.O. Box 9280, Wright Brothers Station, Dayton, Ohio 45409, or telephone 513–225–7705.

SUPPLEMENTARY INFORMATION: The Dayton Aviation Heritage Commission was established by Public Law 102–419, October 16, 1992.

William W. Schenk,

Field Director, Midwest Region.

[FR Doc. 95–27908 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–70–P

Indian Memorial Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scheduled meeting of the Indian Memorial Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: November 17–18, 1995, from 10:00 a.m.–5:00 p.m. on 11/17, and 8 a.m.–5 p.m. on 11/18.

ADDRESSES: Holiday Inn—Rushmore Plaza, 505 North 5th Street, Rapid City, South Dakota. (605) 348–4000.

THE AGENDA OF THIS MEETING WILL BE: Introduction/opening remarks, administrivia, minutes from last meeting, discuss follow-up actions from last meeting, review of design competition language/draft text of competition document, set design competition timetable, discuss fund-raising strategy and promotional materials.he meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with: Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, Montana 59022, telephone (406) 638–2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and ''* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable.''

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Sutteer, Chief, Office of American Indian Trust Responsibilities, Intermountain Field Area Office, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2511.

Dated: October 18, 1995.

Gerard Baker,

Designated Federal Officer Little Bighorn Battlefield National Monument, National Park Service.

[FR Doc. 95–27967 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–70–P

Notice of Realty Action

AGENCY: National Park Service, Interior.

ACTION: Notice of realty action.

SUMMARY: Proposed exchange of Federal land for private land, both of which are located within the District of Columbia and within the boundary of the Chesapeake and Ohio Canal National Historical Park.

SUPPLEMENTARY INFORMATION: Public comments will be accepted for a period of 45 days from the date of this notice. An environmental assessment for this project was completed in August 1995, resulting in a Finding of No Significant Impact on September 6, 1995.

The land to be exchanged by the United States of America is generally described as follows: A rectangularly-shaped parcel of land containing approximately 1.09 acres lying and situated adjacent to the Potomac River in the City of Washington, the District of Columbia. The property is located approximately 910 feet west from the southwesterly corner of the intersection of 35th and K (Water) Streets, NW. The fee simple interest in the property is to be exchanged together with a 15-foot-wide right-of-way for ingress and egress across other lands of the United States.

The land to be acquired in fee simple by the United States of America is generally described as follows: An irregularly-shaped parcel of land, including a 15-foot-wide right-of-way for ingress and egress, containing approximately 1.09 acres of land and approximately 1.9 acres of right-of-way, lying and situated adjacent to the Potomac River in the City of Washington, the District of Columbia. The property is located approximately 5,300 feet west from the southwesterly corner of the intersection of 35th and K (Water) Streets NW., and contains approximately 1,076 feet of Potomac River shoreline. The land, located within the boundary of the Chesapeake and Ohio Canal National Historical Park, is now owned by the President and Directors of Georgetown College, a corporation which is better known as Georgetown University.

The selected Federal land, with attached use covenants, has been determined to be suitable for disposal by means of exchange. This exchange is authorized by 16 U.S.C. 4601–22(b) (188), and 16 U.S.C. 410y–1(b) (1988). No cultural resources resulting from human development and use have been identified on this tract. The vegetation found on this site is of the type found in previously-cleared urban areas. The land may be inhabited by limited populations of small mammals and birds. The property is located within a floodplain, and wetland characteristics are visible. The U.S. Army Corps of Engineers has been consulted and has determined that subterranean improvements, if not corrected, have artificially altered the historic hydrology of the site.

The exchange Federal tract will become the site of a non-motorized boating facility which is functionally dependent on a waterfront floodplain site. The alternative to exchange of the Federal tract would be the development by Georgetown University of a boathouse upon the tract of land which is proposed to be acquired in this realty action.

The development by Georgetown University of a boathouse upon the Federal property that it would receive conforms with the findings of National Park Service studies and regional planning. The land to be acquired by the United States of America is an undisturbed parcel within the park boundary which features mature trees, a wetland which is contributory to the water quality of the Potomac River and the Chesapeake Bay, native vegetation, wildlife, and wildlife habitat. Acquisition of this land will ensure that this tract: (1) Remains as an amenity to the public enjoyment of the Potomac River shoreline; (2) with its attached access rights will not conflict with the public use and enjoyment of a coincident recreational trail; and (3) will preserve the historic character of the Chesapeake and Ohio Canal National Historic Park as it leads to or departs its historic commercial destination of Georgetown. Acquiring this in holding is in furtherance of the Act creating this park.

The value of the properties are of approximate equal value. Each site was surveyed for the presence of hazardous materials and none were found. The mineral rights of both tracts are to be exchanged.

Detailed information concerning the exchange including precise legal descriptions, the environmental assessment, the Finding of No Significant Impact, maps, and other referenced reports in this exchange are available from the Associate Superintendent, Stewardship and Partnerships, National Capital System Support Office, National Park Service, 1100 Ohio Drive SW., Room 201, Washington, D.C. 20242.

Comments will be accepted from interested parties for a period of 45 calendar days from the date of this notice, and may be submitted to the above address. Comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate this exchange, this realty action

will become the final determination of the Department of the Interior.

For further information contact Mr. John Parsons, Associate Superintendent, Stewardship and Partnerships, National Capital System Support Office, 1100 Ohio Drive SW., Room 201, Washington, D.C. 20242.

Dated: October 20, 1995.

Terry R. Carlstrom,

Acting Field Director, National Capital Area.

[FR Doc. 95–27907 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

The following Notice was filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. The rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP–102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Knouse Foods, Inc.

(2) 800 Peach Glen-Idaville Rd., Peach Glen, PA 17375–0001.

(3) Peach Glen, PA 17375–0001.

(4) Arlene Jennings, 800 Peach Glen Idaville Rd., Peach Glen, PA 17375–0001.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27945 Filed 11–9–95; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–369 (Sub-No. 4X)]

Buffalo & Pittsburgh Railroad, Inc.—Abandonment Exemption—In Clearfield County, PA

Buffalo & Pittsburgh Railroad, Inc. (B&P), has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon 2 miles of its Wharton subdivision between MP 5+/− (valuation station 2440 + 00) and MP 7+/− (valuation station 2560 + 50), in Sandy Township, Clearfield County, PA.

B&P has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 13, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by November 24, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 4, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Eric M. Hocky, 213 W. Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

B&P has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 17, 1995. Interested persons may obtain a copy of the EA by writing to SEA (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 2, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27946 Filed 11–9–95; 8:45 am]

BILLING CODE 7035–O1–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. v. Vision Service Plan; Proposed Revised Final Judgment and Revised Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Revised Final Judgment, a Superseding Stipulation, and a Revised Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Vision Service Plan,* Case No. 1:94CV02693.

The Complaint in the case alleges that Vision Service Plan (VSP) entered into so-called ''most favored nation'' agreements with its panel doctors in unreasonable restraint of trade, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, by effectively restricting the willingness of panel doctors to discount fees for vision care services and substantially reducing discounted fees for vision care services.

The proposed Revised Final Judgment eliminates VSP's most favored nation clause and enjoins VSP from engaging in other actions that would limit future discounting by its participating doctors. The proposed Revised Final Judgment modifies a few provisions of the original proposed Final Judgment in view of VSP's experience while operating under the terms of the original proposed Final Judgment, pursuant to a Stipulation with the Government, pending approval of a Final Judgment by the Court. The specific revisions, and the reason for making them, are summarized and explained in the Revised Competitive Impact Statement.

Public comment on the proposed Revised Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Gail Kursh, Chief; Professions & Intellectual Property Section/Health Care Task Force; United States Department of Justice; Antitrust Division; 600 E Street, NW., Room 9300; Washington, DC 20530 (telephone: (202) 307–5799).

Rebecca P. Dick,

Deputy Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia:

United States of America, Plaintiff, vs. Vision Service Plan, Defendant.

[Case No. 1:94CV02693 TPJ]

Superseding Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. This Superseding Stipulation supersedes the Stipulation of the parties filed with the Court on December 15, 1994.

2. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

3. The parties consent that a Revised Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

4. Defendant agrees to be bound by the provisions of the proposed Revised Final Judgment pending its approval by the Court. If plaintiff withdraws its consent, or if the proposed Revised Final Judgment is not entered pursuant to the terms of the Superseding Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

For Plaintiff:

Anne K. Bingaman,

Assistant Attorney General.

Joel I. Klein,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director, Office of Operations.

Gail Kursh,

D.C. Bar #293118, Chief.

David C. Jordan,

D.C. Bar #914093, Ass't. Chief Professions & Intellectual Property Section, Antitrust Division, U.S. Department of Justice.

Steven Kramer

Richard S. Martin,

Attorneys, Antitrust Division, U.S. Dept. of Justice, 600 E Street, NW., Room 9420, BICN Bldg., Washington, DC 20530 (202) 307–0997.

For Defendant:

John J. Miles,

D.C. Bar #364054, Ober, Kaler, Grimes & Shriver, Fifth Floor, 1401 H Street, NW., Washington, DC 20005–2202 (202) 326–5008.

Barclay L. Westerfeld,

General Counsel, Vision Service Plan, 3333 Quality Drive, Rancho Cordova, CA 95670, (916) 851–5000.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, vs. Vision Service Plan, Defendant.

[Case No. 1:94CV02693 TPJ]

Revised Final Judgment

Plaintiff, United States of America, filed its Complaint on December 15, 1994. Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party about any issue of fact or law or that any violation of law has occurred. Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED, as follows:

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the Defendant under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

Definitions

As used herein, the term:

(A) ''Defendant'' or ''VSP'' means Vision Service Plan;

(B) ''Panel Doctor's Agreement'' means the VSP Panel Member Agreement by which Defendant contracts with optometrists or ophthalmologists, including all amendments and additions, in effect at any time since January 1, 1992, and during the term of this Final Judgment;

(C) ''Most Favored Nation Clause'' means:

(1) the clause characterized as a Fee Non-Discrimination Clause in paragraph 6 of the VSP Panel Doctor's Agreement, pursuant to which each VSP member doctor agrees:

(a) not to charge fees to VSP that are any higher than those charged to the doctor's non-VSP patients, nor those that the doctor accepts from any other non-governmental group, group plan, or panel;

(b) If a published VSP fee schedule would cause payment in excess of the doctor's usual and customary fee, to notify VSP and accept such lower fee as is consistent with the doctor's usual and customary fees; and

(c) if VSP determines that the doctor is charging fees to VSP that are higher than those charged non-VSP patients, VSP shall reduce the doctor's fees accordingly; or

(2) any other existing or future clause in the VSP Panel Doctor's Agreement, VSP policy, or VSP practice having the same purpose or effect, in whole or in part.

(D) ''Non-VSP patients'' means patients who are not members of a plan insured or administered by VSP.

(E) ''Non-VSP plan'' means any plan (other than VSP) responsible for all or part of any expense for vision care services, provided to plan members, pursuant to contractual terms with providers of vision services limiting the fees that providers collect for serving the plan's members.

(F) ''Usual and customary fees'' means the fees for services and materials that are charged, before any discounting, by VSP panel doctors to their private

patients (patients not covered by Medicare or Medicaid programs).

(G) ''VSP panel doctor'' means any optometrist or ophthalmologist who has entered into, or who has applied to enter into, a VSP Panel Doctor's Agreement.

III

Applicability

This Final Judgment applies to:

(A) the Defendant and to its successors and assigns, and to all other persons (including VSP panel doctors) in active concert or participation with any of them, who have received actual notice of the Final Judgment by personal service or otherwise; and

(B) the Most Favored Nation Clause, as defined in Section II(C) of this Final Judgment, but to no other clause of the VSP Panel Doctor's Agreement, VSP policy, or VSP practice.

IV

Prohibited Conduct

Except as permitted in Section V, Defendant is enjoined and restrained from:

(A) maintaining, adopting, or enforcing a Most Favored Nation Clause in any VSP Panel Doctor's Agreement, corporate bylaws, policies, rules, regulations, or by any other means or methods;

(B) maintaining, adopting, or enforcing any policy or practice linking payments made by VSP to any VSP panel doctor to fees charged by the doctor to any non-VSP patient or any non-VSP plan;

(C) differentiating VSP's payments to, or other treatment of, any VSP panel doctor because the doctor charges any fee lower than that charged by the doctor to VSP, to any non-VSP patient or to any non-VSP plan;

(D) taking any action to discourage any VSP panel doctor from participating in any non-VSP plan or from offering or charging any fee lower than that paid to the doctor by VSP to any non-VSP patient or any non-VSP plan;

(E) monitoring or auditing the fees any VSP panel doctor charges any non-VSP patient or any non-VSP plan; and

(F) communicating in any fashion with any VSP panel doctor regarding the doctor's participation in any non-VSP plan or regarding the doctor's fees charged to any non-VSP patient or to any non-VSP plan.

V

Permitted Activities

Despite any prohibition contained in Section IV of this Final Judgment,

(A) for the purpose of calculating payments to be made to its panel doctors, Defendant may request annually that a VSP panel doctor report the doctor's usual and customary fee, for each applicable service, provided by the doctor during a preceding period of up to 12 months ending no later than 2 months before the information must be reported, provided that such information is requested uniformly from all panel doctors within a meaningful geographic area comprising zip codes;

(B) Defendant may calculate the fees that it pays to a VSP panel doctor for services rendered to VSP patients based on the panel doctor's usual and customary fees, provided that Defendant employs a uniform method of calculation at least within each meaningful geographic area, comprising zip codes, in which it does business;

(C) only for the purposes of verifying whether the information reported by a VSP panel doctor, pursuant to Section V(A), is accurate or of investigating a VSP panel doctor's suspected excessive billing to VSP, upon reasonable belief that the reported fees may be inaccurate or excessive, and subject to the reasonable convenience of the VSP panel doctor, Defendant may audit the VSP panel doctor's charges to patients;

(D) consistently with Sections IV (C) and (D), Defendant may devise and utilize a fee system for doctors who apply for VSP panel membership after the date of this Final Judgment that is different from the system used to compensate current panel doctors, and that system may be based on the average fees VSP pays in a meaningful geographic area comprising zip codes;

(E) consistently with Sections IV (C) and (D), Defendant may elect to maintain current fees for panel doctors at their existing levels and may base any future fee increases on the Consumer Price Index, VSP's own financial growth, or any other meaningful economic indicator;

(F) consistently with Sections IV (C) and (D), Defendant may impose penalties on panel doctors who have misrepresented their usual and customary fees; and

(G) when acting as an agent of the Medicare program or any state Medicaid program, Defendant may administer the payment methodologies employed by such programs, provided that any fee information, that VSP is required to collect from its panel doctors in administering any such payment methodology, is not considered by VSP in determining the fees that it pays its panel doctors for services rendered to patients not covered by these programs.

VI

Nullification

The Most Favored Nation Clause shall be null and void and Defendant shall impose no further obligation arising from it on any VSP panel doctor. Within 60 days of entry of this Final Judgment, Defendant shall disseminate to each present VSP panel doctor an addendum to the Panel Doctor's Agreement, nullifying the Most Favored Nation Clause, and Defendant shall eliminate the Most Favored Nation Clause from all Panel Doctor's Agreements entered into after entry of this Final Judgment.

VII

Compliance Measures

The Defendant shall:

(A) distribute, within 60 days of the entry of this Final Judgment, a copy of this Final Judgment to: (1) all VSP officers and directors; (2) VSP employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with VSP panel doctors; and (3) all present VSP panel doctors and all former VSP panel doctors whom VSP should reasonably know have resigned because of the Most Favored Nation Clause;

(B) distribute in a timely manner a copy of this Final Judgment to any officer, director, or employee who succeeds to a position described in Section VII(A) (1) or (2);

(C) obtain from each present or future officer, director, or employee designated in Section VII(A) (1) or (2), within 60 days of entry of this Final Judgment or of the person's succession to a designated position, a written certification that he or she: (1) Has read, understands, and agrees to abide by the terms of this Final Judgment; and (2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court;

(D) maintain a record of persons to whom the Final Judgment has been distributed and from whom, pursuant to Section VII(C), the certification has been obtained;

(E) The Defendant shall notify all former VSP panel doctors whom it should reasonably know have resigned because of the Most Favored Nation Clause, that they are reinstated, on terms and conditions that VSP may establish consistently with this Final Judgment, unless they do not desire reinstatement; and

(F) report to the Plaintiff any violation of the Final Judgment.

VIII

Certification

(A) Within 75 days of the entry of this Final Judgment, the Defendant shall certify to the Plaintiff whether it has: (1) disseminated contractual addenda pursuant to Section VI, (2) distributed the Final Judgment in accordance with Section VII(A), and (3) obtained certifications in accordance with Section VII(C).

(B) For five years after the entry of this Final Judgment, on or before its anniversary date, the Defendant shall file with the Plaintiff an annual Declaration as to the fact and manner of its compliance with the provisions of Sections IV, V, VI, and VII.

IX

Plaintiff's Access

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Plaintiff, upon written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to the Defendant made to its principal office, shall be permitted, subject to any legally recognized privilege:

(1) access during the Defendant's office hours to inspect and copy all documents in the possession or under the control of the Defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of the Defendant and without restraint or interference from it, to interview officers, employees or agents of the Defendant, who may have Defendant's counsel and/or their own counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to the Defendant's principal office, the Defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section IX shall be divulged by the Plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the Defendant to Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, ''subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then 10 days notice shall be given by Plaintiff to the Defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the Defendant is not a party.

Further Elements of the Final Judgment

(A) This Final Judgment shall expire five years from the date of its entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment, but not other person, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

In the United States District Court for the District of Columbia

United States of America, Plaintiff, vs. Vision Service Plan, Defendant.

[Case No. 1:94CV02693 TPJ]

Revised Competitive Impact Statement

I

Background

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States submits this Revised Competitive Impact Statement relating to the proposed Revised Final Judgment submitted for entry in this civil antitrust proceeding. These documents are styled as ''Revised'' because they reflect changes made to a few of the provisions of the proposed Final Judgment, filed on December 15, 1994, as the basis for settling this antitrust lawsuit, and in related portions of the Competitive Impact Statement, filed on January 13, 1995, and published at 60 Fed. Reg. 5110–17 (1995).

This civil antitrust action commenced on December 15, 1994, when the United States filed a Compliant alleging that Vision Service Plan (VSP), in all or parts of the 46 states and the District of Columbia in which VSP operates vision care plans, entered into agreements with its panel doctors that unreasonably restrain competition by restraining discounting of fees for vision care services in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint seeks injunctive relief to enjoin continuance of the violation.

The previously filed Competitive Impact Statement is incorporated by reference herein, except as modified by this Revised Competitive Impact Statement. The Government has agreed to the revisions of the proposed Final Judgment that are contained in the proposed Revised Final Judgment and outlined below to remedy certain problems VSP has experienced while operating under the terms of the proposed Final Judgment since it was filed, pursuant to a Stipulation with the Government, pending the Court's approval of the Final Judgment.

II

Explanation of the Proposed Final Judgment

A. Definitions

A definition of ''VSP panel doctor'' has been added as Section II(G) of the proposed Revised Final Judgment to clarify that to the extent provisions of the Final Judgment prohibit VSP from taking, or permit VSP to take, specified actions regarding the doctors on its panel, those provisions apply in the same manner also to doctors who have applied for panel membership. In addition, the definitions of ''modal fee'' and ''median fee,'' which had been Sections II (F) and (G) of the original proposed Final Judgment, have been deleted because, as explained below, VSP will no longer collect or use information concerning the modal or median fees of its panel doctors in calculating payments to be made to them. A definition of ''usual and customary fees'' has been added as a new Section II(F) because, as explained below, VSP will be permitted to collect and use information concerning the usual and customary fees that its panel doctors charge in calculating VSP's payments to them.

B. Permitted Activities and Obligations

The proposed Revised Final Judgment modifies Section V of the original proposed Final Judgment. Generally, Section V permits VSP to undertake prescribed activities in determining payments to its panel doctors that could otherwise violate applicable injunctive provisions of Section IV. The proposed

Revised Final Judgment adds a new Section V(G) and revises Sections V (A), (B), (C), and (F).

The addition of Section V(G) is the primary basis for submitting the Revised Final Judgment. Section V(G) permits VSP to implement the reimbursement methodologies of any Medicare program or any state Medicaid program that it may administer. VSP acts as the agent for those programs in several states, but, in negotiating the proposed Final Judgment, VSP simply overlooked the Final Judgment's possible restriction upon its ability to carry out its obligations to those governmental programs. Section V(G) of the proposed Revised Final Judgment, therefore, makes clear that nothing in the Judgment should be construed to prevent VSP from gathering fee information required by Medicare or Medicaid, while precluding VSP from using that fee information in setting the fees that VSP pays its panel doctors for providing services to VSP patients not covered by Medicare or Medicaid programs.

Sections V (A), (B), (C), and (F) of the proposed Revised Final Judgment have been changed to reflect that VSP will no longer maintain the option, contained in the original proposed Final Judgment, to calculate the payments made to its panel doctors based on a doctor's modal or median fee and to collect and, if warranted, verify the accuracy of, the fee data from its panel doctors needed to make such calculations. Pursuant to revised Sections V (A), (B), (C) and (F), VSP will now merely retain the option of calculating the fees that it pays panel doctors based on their usual and customary fees, and it will no longer be permitted to request panel doctors annually to report ''sufficient information'' or, if warranted, verify the accuracy of the reported information, to enable VSP ''to calculate'' a doctor's modal or median fee. Rather, VSP will simply be permitted to ask each panel doctor to report annually only the doctor's usual and customary fees before any discounts are applied, and it will be allowed, if warranted, to verify only that fee information. These changes will substantially reduce both the level of detail of fee information that VSP will be permitted to obtain routinely from its panel doctors and the resultant reporting requirements it may impose on VSP panel doctors.

VSP requested these changes because of difficulties encountered during the past several months in trying to calculate the modal and median fees of its panel doctors pursuant to the terms of the original proposed Final Judgment. Based on that experience, VSP has concluded that it does not routinely need to obtain more detailed fee information from its panel doctors than an annual report of each doctor's usual and customary fees, as now provided by Sections V (A) and (B) of the proposed Revised Final Judgment. The Government is amendable to making these requested changes because they narrow the scope of activities permitted by VSP under the Final Judgment and raise no competitive concerns.

III

Procedures Available for Modification of the Proposed Revised Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Revised Final Judgment should be modified may submit written comments to Gail Kursh, Chief; Professions & Intellectual Property Section/Health Care Task Force; Department of Justice; Antitrust Division; 600 E Street, N.W.; Room 9300; Washington, D.C. 20530, within the 60-day period provided by the Act. Comments received, along with comments already received on the previously published Competitive Impact Statement, and the Government's responses to them, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 2 of the Stipulation, to withdraw its consent to the proposed Revised Final Judgment at any time before its entry if the Department should determine that some modification of the Judgment is necessary to the public interest. The proposed Revised Final Judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

IV

Determinative Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Revised Final Judgment. Consequently, none are filed herewith.

Dated: _____

Respectfully submitted,

_____

Steven Kramer

_____

Richard S. Martin,

Attorneys, Antitrust Division, U.S. Dept. of Justice, 600 E Street, N.W., Room 9420, Washington, D.C. 20530, (202) 307–0997.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, vs. Vision Service Plan, Defendant.

[Case No. 1:94CV02693 TPJ]

Certificate of Service

I certify that I caused copies of the Revised Final Judgment, Revised Competitive Impact Statement and Superseding Stipulation to be served on October ____, 1995, by Federal Express to: Barclay L. Westerfeld, General Counsel, Vision Service Plan, 3333 Quality Drive, Rancho Cordova, California 95670, and by courier to: John J. Miles, Ober, Kaler, Grimes & Shriver, 1401 H Street, NW., Fifth Floor, Washington, DC 20005–2110.

Dated: _____.

_____

Steven Kramer,

Attorney, Antitrust Division, Department of Justice, 600 E Street, NW., Room 9420, Washington, DC 20530, (202) 307–1029.

[FR Doc. 95–27939 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Intelligent Large Area Processing

Notice is hereby given that, on May 23, 1995, pursuant to Section 6(a) of the national Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Intelligent Large Area Processing (''CILAP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a Joint Research and Development Program. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the Joint Program are: The Dow Chemical Company, Midland, MI; Radiant Technology Corporation, Anaheim, CA; FAS Technologies, Inc., Dallas, TX; ACSIST Associates, Inc., Minneapolis, MN; and MicroModule Systems, Inc., Cupertino, CA.

The objectives of the program are to engage in advanced research and development with the intent of developing demonstrable technology for the manufacture of multichip module packaging via intelligent large area processing and transferring this technology to multichip module foundries, thereby allowing them to achieve lower manufacturing costs.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–27940 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Message Oriented Middleware Association

Notice is hereby given that, on May 15, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Message Oriented Middleware Association (''MOMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the Joint Venture are: Apertus/ Systems Strategies, Melville, NY; Applied Communications, Inc., Omaha, NE; AT&T GS, San Diego, CA; Covia Technologies, Rosemont, IL; Digital Equipment Corporation, Rocky Hill, CT; Early, Cloud & Company, Middletown, RI; IBM UK Laboratories, Ltd., Hampshire, UK; LEGENT Corporation, Herndon, VA; Momentum Software, Needham, MA; Motorola, Inc., Glen Rock, NJ; Novell, Inc., Summit, NJ; PeerLogic, Inc., San Francisco, CA; SOFTWARE AG, Uhlandstrasse, Darmstadt, GERMANY; SunSoft, Inc., Mountain View, CA; Compuware, Los Gatos, CA; National Securities Clearing Corporation, New York, NY; and Liberty Mutual Insurance, Portsmouth, NH.

The objectives of the venture are to promote message passing and queuing technology that provides interoperability for peer-to-peer and client/server computing applications.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–27941 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on August 7, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Network Management Forum (''the Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: Atlantech Technologies, Ltd., Glasgow, SCOTLAND; and Nexus Telecom AG, Hombrechtikon, SWITZERLAND are Corporate Members. CITR PTY Limited, St. Lucia, Queensland, AUSTRALIA; and Nuvo Network Management, Ottawa, Ontario, CANADA are Associate Members. ClearSystems, Inc., Irving, TX; FINATEL, Santa Rita do Sapucai, BRAZIL; International Centers for Telecommunication Technology, Inc., Terre Haute, IN; OpenCon Systems, Inc., Piscataway, NJ; Q3 Consulting Ltd., Valbonne Village, FRANCE; University College London, London, UNITED KINGDOM; and the University of Missouri at Kansas City, Kansas City, MO are Affiliate Members.

No other changes have been made since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on June 6, 1996. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on June 28, 1995 (60 FR 33433).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–27942 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—NIST ATP Joint Venture

Notice is hereby given that, on June 13, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the NIST ATP Joint Venture has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of Cooperative Agreement No. 70NANB5H1024. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Kestrel Development Corporation, Palo Alto, CA; University of Southern California, Los Angeles, CA; SRI International, Menlo Park, CA; and Stanford University, Stanford, CA.

The purpose of the NIST ATP Joint Venture is to perform preproduct stage research and development on a complete suite of software tools based on semantic descriptions of software capabilities and automated ''theorem-provers'' to enable fundamentally new capabilities in automated software composition.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–27943 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Diesel Particulate NO_X Aftertreatment Using Plasma or Corona Discharges Cooperative Research Project

Notice is hereby given that, on July 24, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), Southwest Research Institute, (''SwRI''), on behalf of the Participants in the Diesel particulate/ NO_x Aftertreatment Using Plasma or Corona Discharges Cooperative Research Project has filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to the Project, and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identifies of

the current parties participating in the Cooperative Research Project are Caterpillar, Inc., Peoria, IL: Equipements et Composants pour L'Industrie Automobile, Valentigny, FRANCE; and Renault VI DITCM/DERM, Saint-Priest, FRANCE, together with its subsidiary, Mack Trucks, Inc., Hagerstown, MD.

The nature and objective of this cooperative research project is to investigate the feasibility of using plasma or corona discharge technologies as diesel exhaust aftertreatment devices through the screening of the present plasma or corona discharge technologies utilizing a diesel engine comparing the effects of the different technologies on the various type and concentrations of exhaust components such as particulates, NO_X, THC and CO, of the velocity, production of unregulated emissions in the plasma and other safety related aspects associated with implementation of the technologies; theoretical modelling of the electrical and chemical processes and a scaled-up development of the most promising technologies on a heavy-duty diesel engine followed by a full-scale demonstration on a heavy-duty vehicle.

Participation in this Cooperative Research Project will remain open, and SwRI intends to file additional written notifications disclosing all changes in its membership or planned activities.

Information regarding participation in the Cooperative Research Project may be obtained from John W. McLeod, Southwest Research Institute, 6220 Culebra Road, Post Office Drawer 28510, San Antonio, TX 78228–0510.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–27944 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

Gerneral wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

New York
NY950013 (Feb. 10, 1995)
Rhode Island
RI950001 (Feb. 10, 1995)
RI950002 (Feb. 10, 1995)
RI950003 (Feb. 10, 1995)

Volume II

District of Columbia
DC950001 (Feb. 10, 1995)
DC950002 (Feb. 10, 1995)
DC950003 (Oct. 6, 1995)
Maryland
MD950002 (Feb. 10, 1995)
MD950008 (Feb. 10, 1995)
MD950010 (Feb. 10, 1995)
MD950015 (Feb. 10, 1995)
MD950031 (Feb. 10, 1995)
MD950034 (Feb. 10, 1995)
MD950035 (Feb. 10, 1995)
MD950036 (Feb. 10, 1995)
MD950045 (Feb. 10, 1995)
MD950046 (Feb. 10, 1995)
MD950048 (Feb. 10, 1995)
MD950053 (Feb. 10, 1995)
MD950055 (Feb. 10, 1995)
Pennsylvania
PA950005 (Feb. 10, 1995)
PA950006 (Feb. 10, 1995)
PA950031 (Feb. 10, 1995)
Virginia
VA950012 (Feb. 10, 1995)
VA950015 (Feb. 10, 1995)
VA950018 (Feb. 10, 1995)
VA950023 (Feb. 10, 1995)
VA950025 (Feb. 10, 1995)
VA950034 (Feb. 10, 1995)
VA950036 (Feb. 10, 1995)
VA950039 (Feb. 10, 1995)
VA950048 (Feb. 10, 1995)
VA950052 (Feb. 10, 1995)
VA950058 (Feb. 10, 1995)
VA950063 (Feb. 10, 1995)
VA950064 (Feb. 10, 1995)
VA950068 (Feb. 10, 1995)
VA950069 (Feb. 10, 1995)
VA950080 (Feb. 10, 1995)
VA950081 (Feb. 10, 1995)
VA950085 (Feb. 10, 1995)
VA950088 (Feb. 10, 1995)
VA950102 (Feb. 10, 1995)

VA950104 (Feb. 10, 1995)
VA950105 (Feb. 10, 1995)
VA950108 (Feb. 10, 1995)
VA950114 (Feb. 10, 1995)
VA950115 (Feb. 10, 1995)

Volume III

Kentucky
KY950001 (Feb. 10, 1995)
KY950002 (Feb. 10, 1995)
KY950003 (Feb. 10, 1995)
KY950004 (Feb. 10, 1995)
KY950006 (Feb. 10, 1995)
KY950007 (Feb. 10, 1995)
KY950025 (Feb. 10, 1995)
KY950026 (Feb. 10, 1995)
KY950027 (Feb. 10, 1995)
KY950028 (Feb. 10, 1995)
KY950029 (Feb. 10, 1995)
KY950035 (Feb. 10, 1995)

Volume IV

Illinois
IL950016 (Feb. 10, 1995)
Ohio
OH950001 (Feb. 10, 1995)
OH950002 (Feb. 10, 1995)
OH950003 (Feb. 10, 1995)
OH950012 (Feb. 10, 1995)
OH950027 (Feb. 10, 1995)
OH950029 (Feb. 10, 1995)
OH950034 (Feb. 10, 1995)

Volume V

Louisiana
LA950005 (Feb. 10, 1995)
LA950015 (Feb. 10, 1995)

Volume VI

California
CA950001 (Feb. 10, 1995)
CA950004 (Feb. 10, 1995)
CA950016 (Feb. 10, 1995)
CA950029 (Feb. 10, 1995)
CA950030 (Feb. 10, 1995)
North Dakota
ND950002 (Feb. 10, 1995)
South Dakota
SD950002 (Feb. 10, 1995)
SD950024 (Feb. 10, 1995)
SD950041 (Feb. 10, 1995)

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 3d day of November 1995.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 95–27734 Filed 11–9–95; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consolidation Coal Company

[Docket No. M–95–152–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.380(d)(4)(escapeways; bituminous and lignite mines) to its Powhatan No. 4 Mine (I.D. No. 33–01157) located in Monroe County, Ohio. The petitioner requests that its petition for modification, docket number M–93–60–C be amended to allow a minimum clearance of 4 feet for its alternate escapeway instead of the 2 feet minimum clearance specified in its previous petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Twentymile Coal Company

[Docket No. M–95–153–C]

Twentymile Coal Company, One Oxford Center, 301 Grant Street—20th Floor, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner requests that its previous petition for modification, docket number M–92–55–C be amended to allow the use of high-voltage cables that are made by any manufacturer instead of cables made by one manufacturer and that meets the specification listed in this petition. The petitioner proposes to use these cables for 2400 and 4160-volts high-voltage longwall systems. The types of cables would be the Tiger Brand SHD–CGC, Pirelli SHD-Center-GC, and Cablec SHD + GC, or any cable manufactured to ICEA specification S–75–381 for type SHD–3 conductor cable that is 5000 volt, MSHA-accepted flame-resistant cable with a ground-check wire that is 16 AWG minimum. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Knott County Mining Company

[Docket No. M–95–154–C]

Knott County Mining Company, P.O. Box 2805, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; electric face equipment) to its Hollybush Mine No. 1 (I.D. No. 15–15289), and its Brimstone Mine No. 1 (I.D. No. 15–16893) both located in Knott County, Kentucky. The petitioner proposes to operate electric face equipment without cabs and canopies in mining heights below 48 inches. The petitioner states that application of the standard would result in a diminution of safety to equipment operator. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Clintco Enterprises, Inc.

[Docket No. M–95–155–C]

Clintco Enterprises, Inc., P.O. Box 2831, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.388(a)(3) (boreholes in advance of mining) to its No. 1 Mine (I.D. No. 15–17700) located in Floyd County, Kentucky. The petitioner requests a modification of the standard to allow them to not drill boreholes to locate old workings. The petitioner asserts that application of the standard could be dangerous because drilling would create a conduit for gas or water to accumulate on the active section and cause the equipment to slip, slide, or become marred in wet bottom; and that these wet conditions would increase the probability of electrical-related injuries and accidents. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Amax Coal Company and Clipmate Corporation

[Docket No. M–95–156–C]

Amax Coal Company and Clipmate Corporation, 16 S. Pennsylvania, Oklahoma City, Oklahoma 73106 have filed a petition to modify the application of 30 CFR 75.1303(y) (1) and (2) to its Chinook Mine (I.D. No. 12–00322) located in Clay County, Indiana. The petitioner proposes to use a protected Rozdet open circuit detonator system at its Chinook Mine instead of shunted electrical detonators; to package and store the detonator at the mine in accordance with the U.S. Department of transportation Report, Reference Number EX–9309092; and to provide instructions in each Rozdet package on the proper use of the Rozdet. The petitioner asserts that application of the standard would result in a diminution of safety to the miners under certain conditions. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Sunshine Precious Metals, Inc.

[Docket No. M–95–11–M]

Sunshine Precious Metals, Inc., P.O. Box 1080, Kellogg, Idaho 83837–1080 has filed a petition to modify the application of 30 CFR 57.11055 (inclined escapeways) to its Sunshine Mine (I.D. No. 10–00089) located in Shoshone County, Idaho. The petitioner requests a modification of the requirement for an emergency hoisting facility. The Petitioner states that a portion of the West Chance orebody between the 2700 and 3100 foot levels of the mine is being developed for mining; that no mining has taken place in recent years; and that the 2700 foot level is only accessible from the Jewell Shaft. The petitioner proposes to establish a second escapeway to the 3100 foot level which would provide access to the adjoining Silver Summit Mine; to have a borehole at a 5-foot diameter raise lined with steel in order to establish a 4-foot diameter opening for ventilation from the 2700 foot to the 3100 foot level; and to have a suitable ladderway for safe travel in an emergency. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 13, 1995. Copies of these petitions are available for inspection at that address.

Dated: November 1, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–27872 Filed 11–9–95; 8:45 am]

BILLING CODE 4510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Consumers Power Company, Big Rock Point Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.2(b)(i), concerning testing of the escape air lock, to the Consumers Power Company (CPCo or the licensee), for operation of the Big Rock Point Plant (BRP), located in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow an exemption from the requirement of 10 CFR Part 50, Appendix J, Paragraph III.D.2(b)(i), to test air locks at an internal pressure not less than P_a. This requires the emergency (or escape) air lock at Big Rock Point to be tested at 23 psig, the calculated peak pressure (P_a) for Big Rock Point. The proposed action is in accordance with the licensee's application for exemption dated October 4, 1994, as supplemented by letter dated September 27, 1995.

The Need for the Proposed Action

The regulation, as set forth in 10 CFR Part 50, Appendix J, paragraph III.D.2(b)(i), requires that Big Rock Point's containment emergency air lock be tested at an internal pressure not less than P_a, which is 23 psig for Big Rock Point. Currently, the containment escape air lock at Big Rock Point is tested at a pressure of 2 psig. Therefore, the explicit requirement of paragraph III.D.2(b)(i) of Appendix J is not met. The requested exemption is required because of the emergency air lock manufacturer's restrictions on internal pressurization and the Big Rock Point design which necessitates frequent personnel entries. The licensee stated that the escape air lock internal pressurization is limited by the manufacturer to 2 psig without a strongback and 5 psig with a strongback in place, thereby making pressurization to peak pressure impossible for local leak rate tests. In addition, the licensee stated that the required use of a strongback for the 5-psig test and its positioning on the inside of the lock which tends to assist the door in sealing is less conservative than the 2-psig test for the inner door. Therefore, the 5-psig test has no significant increase in value. The licensee believes that the escape air lock's performance is demonstrated with the local leak rate test at 2 psig.

Environment Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed exemption will not affect facility radiation levels or facility radiological effluents. The licensee has provided an acceptable basis for concluding that the proposed exemption to test the escape air lock at a pressure of 2 psig would maintain the containment leak rates within acceptable limits.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or

greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement Related to the Operation of Big Rock Point Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on October 3, 1995, the staff consulted with the Michigan State official, Mr. Dennis Hahn of the Nuclear Facilities and Environmental Monitoring Section, Office of the Department of Public Health, regarding the environmental impact of the proposed action. The State official has no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 4, 1994, as supplemented by letter dated September 27, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington DC, and at the local public document room located at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland, this 6th day of November 1995.

For the Nuclear Regulatory Commission.

John B. Hickman,

Acting Director, Project Directorate III–I, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–27917 Filed 11–9–95; 8:45 am]

BILLING CODE 7590–01–P

Availability of NRC Iterative Performance Assessment Phase 2: Development of Capabilities for Review of a Performance Assessment for a High-Level Waste Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of NUREG–1464, ''NRC Iterative Performance Assessment (IPA) Phase 2: Development of Capabilities for Review of a Performance Assessment for a High-Level Waste Repository.''

ADDRESSES: Copies of NUREG–1464 can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of NUREG–1464 is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Michael P. Lee, Performance Assessment and Hydrology Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, 11545 Rockville Pike, MD 20852–2738. Telephone: (301) 415–6677.

SUPPLEMENTARY INFORMATION: This report describes the results of the second phase of the development of the NRC staff's capability to review a performance assessment for a geologic repository. This capability, developed with the assistance of its contractor (the Center for Nuclear Waste Regulatory Analyses—the CNWRA), helps the NRC staff assess whether the U.S. Department of Energy's (DOE's) site characterization activities are adequate, during the pre-licensing phase, and, later, will help the staff review a license application for the potential geologic repository for spent nuclear fuel and other high-level radioactive waste (HLW) at Yucca Mountain, NV.

As its name indicates, IPA involves repeated iterations directed at improving both the NRC staff's capability for reviewing DOE's demonstration of repository performance and the staff's understanding of combined systems and events and processes that are key to repository performance. In addition, IPA is intended to support timely feedback to DOE on their licensing strategy, site characterization, and design programs. Performance assessment of a geologic repository, like other systematic safety-assessment methodologies, benefits substantially by being conducted in an iterative manner, primarily because the lessons learned regarding modeling improvements, data needs, and methodology can be addressed in subsequent iterations.

The IPA Phase 2 demonstration made use of the scenario selection procedure developed by Sandia National Laboratories and modified by the NRC staff to provide a set of scenarios, with corresponding probabilities, for use in the consequence analysis of a potential HLW disposal site in unsaturated tuff. Models of release of radionuclides from the waste form and transport in ground water, air and by direct pathways provided preliminary estimates of releases to the accessible environment for a 10,000 year period. The input values of parameters necessary for the consequence models were sampled numerous times using Latin Hypercube Sampling from probability distributions. The results from the consequence models were then used to generate Complementary Cumulative Distribution Functions (CCDFs) for either normalized radionuclide release to the accessible environment or effective dose equivalents to a target population. CCDFs were calculated for probabilistically significant combinations (scenarios) of four disruptive events; exploratory drilling, pluvial climate, seismicity, and magmatism. Sensitivity and uncertainty analyses of the calculated releases and effective dose equivalents were also used to determine the importance of the parameters.

Because of the preliminary nature of the analysis and data base, the results and conclusions presented in NUREG–1464 should be carefully interpreted. They should not be misconstrued to represent the actual performance of the proposed Yucca Mountain repository nor serve as an endorsement of the methods used.

Dated at Rockville, Maryland, this 30th day of October 1995.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Performance Assessment and Hydrology Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–27918 Filed 11–9–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36424A; File No. SR–PSE–95–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Amendment of the Schedule of Rates for Exchange Services

November 6, 1995.

Correction

In notice document 95–27129 beginning on page 55628 in the issue of Wednesday, November 1, 1995, make the following correction.

On page 55628, in the third column, under the Purpose heading, the second sentence should read as follows:

The Exchange is proposing to establish a rate $0.25 per contract side where the premium is $1 or more per contract for contracts in a block trade over the first 400.

In the initial notice of this proposed rule change, the Commission erroneously stated that the PSE's reduced fee schedule would apply to the first 400 of such contracts, as opposed to the Exchange's intent that this reduced fee be applicable to contracts over the first 400. In all other respects, the PSE's initial proposal is unchanged.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27971 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36452; File No. SR–PSE–95–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Stock Exchange Incorporated, Relating to the Listing and Trading of Flexible Exchange Options on Specified Equity Securities

November 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 1995, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 25, 1995, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to provide for the listing and trading of Flexible Exchange Options (''Flex Options'') on specified equity securities (''FLEX Equity Options''). The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand the PSE's FLEX Options rules[4] to permit the introduction of trading in FLEX Options on specified equity securities that satisfy the Exchange's listing standards for equity options. Currently, FLEX Options are listed and traded on the PSE in respect of several broad market indexes of equity securities (''FLEX Index Options'').[5]

For the most part, the PSE represents that the current rules governing FLEX Index Options will apply unchanged to FLEX Equity Options. Certain changes to the PSE's existing FLEX Options rules, however, are proposed to deal with the special characteristics of FLEX Equity Options. Specifically, the PSE proposes to add several new definitions to rule 8.100 to accommodate the introduction of trading in FLEX Equity Options,[6] and to revise certain other PSE rules describing FLEX Options and governing their trading, as described below.

The PSE proposes to revise Rule 8.102 concerning the terms of FLEX Options to make specific reference to the terms of FLEX Equity Options. Specifically, FLEX Equity Options will have (1) a maximum term of three years, (2) a minimum size of 250 contracts for an opening transaction in a new series, and (3) a minimum size of 100 contracts for an opening or closing transaction in a series in which there is already open interest (or any lesser amount in a closing transaction that represents the remaining underlying size). The minimum value size for FLEX Quotes[7] by a single Market-Maker in response to a Request for Quotes[8] in FLEX Equity Options is the lesser of 100 contracts or the remaining underlying size in a closing transaction.

The PSE also proposes to allow exercise prices and premiums for FLEX Equity Options to be stated in dollar amounts or percentages, with premiums rounded to the nearest minimum tick and exercise prices rounded to the nearest one-eighth. The exercise of FLEX Equity Options will be by physical delivery, and the exercise-by-exception procedures of The Options Clearing Corporation (''OCC'') will apply.[9]

The PSE represents that the trading procedures applicable to FLEX Equity Options will be mostly the same as

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[1] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange first proposes to add the definition of ''FLEX Post Official'' to PSE Rule 8.100(b)(7). Second, the Exchange proposes to add as new PSE Rule 8.114, the provision on financial requirements for FLEX Appointed Market Makers, which had been inadvertently deleted from the proposed rule change as originally filed. Third, the Exchange proposes to re-number PSE Rule 8.114, as PSE Rule 8.115. *See* Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to John Ayanian, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated October 26, 1995.

[4] *See* PSE Rules 8.100 through 8.114.

[5] Specifically, the Commission has approved the listing by the PSE of FLEX Options on the Wilshire Small Cap and PSE Technology Indexes. *See* Securities Exchange Act Release No. 34364 (July 13, 1994), 59 FR 36813 (July 19, 1994) (approval of FLEX Options on the Wilshire Small Cap and PSE Technology Indexes).

[6] In addition to the term FLEX Equity Options, the proposal also defines the terms ''FLEX Index Options,'' ''Non-FLEX Options,'' ''Non-FLEX Equity Option,'' and, ''Applicable Floor Procedure Committee.

[7] *See* PSE Rule 8.100(b)(7).

[8] *See* PSE Rule 8.100(b)(12).

[9] OCC Rule 805 provides for automatic exercise of in-the-money options at expiration without the submission of an exercise notice to the OCC if the price of the security underlying the option is at or above a certain price (for calls) or at or below a certain price (for puts); and the non-exercise of an option at expiration if the price of the security underlying the option does not satisfy such price levels. *See* OCC rule 805.

those that apply to FLEX Index Options, except that unless the Exchange decides otherwise, there will not be FLEX Appointed Market-Makers [10] who are obligated to respond to Requests for Quotes in respect of FLEX Equity Options as there are in respect of FLEX Index Options. Instead, the PSE proposes to have five or more ''FLEX Qualified Market-Makers'' appointed to each class of FLEX Equity Option who must satisfy essentially the same standards of qualification as FLEX Appointed Market-Makers (including the requirement for a specific clearing member letter of guarantee for FLEX Options), [11] and who may, but without obligation to do so, enter quotes in response to a Request for Quotes in a class of FLEX Equity Options in which the Market-Maker is qualified. In addition, FLEX Qualified Market-Makers will be obligated to make responsive quotes when called upon to do so by a FLEX Post Official [12] in the interests of a fair and orderly market. Quotes of FLEX Qualified Market-Makers must satisfy the minimum size parameters discussed above for FLEX Equity Options and must be entered within the time periods provided in the PSE's FLEX Options Rules.[13]

The PSE represents that the rules governing priority of bids and offers for FLEX Equity Options are also much the same as those that apply to FLEX Index Options, except that in the case of FLEX Equity Options, no guaranteed minimum right of participation is provided to an Exchange member that initiates a Request for Quotes and indicates an intention to cross or act as principle on the trade; [14] as to such a member the Exchange's regular rules of price and time priority shall apply.[15]

The PSE represents that position limits and exercise limits for FLEX Equity Options are proposed to be larger than the limits applicable to Non-FLEX Equity Options, in the same manner and for the same reasons that the position and exercise limits for FLEX Index Options are larger than those applicable to Non-FLEX Index Options. Position and exercise limits for FLEX Equity Options are proposed to be five times the limits for Non-FLEX Equity Options on the same underlying security. Also, as is currently the case for FLEX Index Options, it is proposed that there will be no aggregation of positions or exercises in FLEX Equity Options with positions or exercises in Non-FLEX Equity Options for purposes of position or exercise limits. The PSE believes that the larger position and exercise limits for FLEX Options and the nonaggregation of positions and exercises in FLEX Options and Non-FLEX Options reflect the institutional nature of the market for FLEX Options and the fact that the PSE must compete with over-the-counter markets throughout the world, many of which do not impose any position or exercise limits whatsoever.

Also, the Exchange proposes to provide that the expiration date of a FLEX Equity Option may not fall on a day that is within two business days of the expiration date of a Non-FLEX Equity Option. This is intended to eliminate the possibility that the exercise of FLEX Equity Options at expiration will cause any untoward pressure on the market for underlying securities at the same time as Non-FLEX Options expire. The Exchange proposes that this change will also apply to FLEX Index Options.[16]

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to SR–PSE–95–24 and should be submitted by December 4, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 95–27880 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[10] *See* Rule 8.109.

[11] *See, e.g.,* PSE Rules 8.109, 8.113, 8.114, and 8.115.

[12] *See* PSE Rule 8.100(b)(7).

[13] *See* PSE Rule 8.103.

[14] *See* PSE Rule 8.103(c).

[15] *See* PSE Rule 6.75.

[16] Current PSE Rule 7.52(b)(4) provides that the expiration date of a FLEX Index Option may not fall within three business days of the expiration date of a Non-FLEX Index Option.

[17] 17 CFR 200.30–3(a)(12).

[Release No. 34–36457; File No. SR–Phlx–95–60]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Regarding Alternate Specialists

November 3, 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 September 15, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange

Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 1, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Phlx Rule 202A, Responsibilities of Alternate Specialists, to reduce the number of equity issues in which an individual can serve as Alternate Specialist from the current maximum, which is all of the Exchange's approximately 2,300 securities, to a new level of 60 securities.

Moreover, under the proposed rule change, the Exchange would permit the ''50% on-floor requirement'' to be met by trade volume, rather than share volume. The proposed rule change would also allow Alternate Specialists to count trades effected on another national securities exchange through the Intermarket Trading System (''ITS'') towards their 50% on-floor requirement provided that the Alternate Specialist's on-floor trades outnumber his/her ITS trades by a minimum ratio of three-to-one. An Alternate Specialist's ITS trades in excess of that ratio could not be used to satisfy the 50% requirement. Moreover, unexecuted orders of 500 shares or more placed with the Specialist on the Exchange at a price on or in-between the consolidated market and maintained on the book for an extended period of time would be eligible for the 50% on-floor requirement.[2]

The Exchange also proposes that, once a member has been assigned as an Alternate Specialist, the member must maintain such assignment for at least 30 business days, after which the member may terminate the assignment by providing written notification to the Exchange on a form prescribed by the Exchange.[3] Terminations will become effective as of the opening of trading on the equity floor on the business day following the submission.

Moreover, to avoid repetition and improve the clarity of Rule 202A, the Phlx proposes to amend several provisions that focus on the coordination of Alternate Specialist activities with the respective Specialist, the Alternative Specialist's participation on openings, and the handling of orders. Specifically, the Exchange proposes to consolidate into Rule 202A(a) the provisions relating to an Alternate Specialist's affirmative and negative market making obligations, which were previously covered by paragraphs (b)–(e) of Rule 202A. Under the proposed rule change, Rule 202A(a) defines an Alternate Specialist as an individual member of the Exchange registered as an equity Specialist on the floor who, in addition to those securities for which he serves as Specialist, has agreed to provide liquidity on demand as an Alternate Specialist in the execution of customer orders in certain other securities on the Exchange. The responsibilities of the Alternate Specialist are defined as follows: to provide a bid and/or offer in the security upon the request of a Floor Broker or Specialist holding a customer order and to only participate in the execution of such orders in a manner reasonably calculated to contribute to the maintenance of a fair and orderly market.

Finally, the Exchange proposes to incorporate certain requirements previously contained in the Supplementary Materials into new Rule 202A(c), which will list the criteria for qualifying and maintaining the status of an Alternate Specialist. The Exchange also proposes to delete the remaining requirements in the Supplementary Materials because the Exchange finds them unnecessary in light of other existing Exchange rules.

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

Currently, Rule 202A, which was adopted in 1987, outlines the responsibilities of Alternate Specialists on the Exchange. The Rule presently permits equity Specialists to trade in an Alternate Specialist capacity in all securities traded on the equity floor. As a result, the current rule does not encourage Alternate Specialists to focus liquidity in small groups of stocks where more concentration of activity could result in a higher degree of liquidity. Therefore, the proposal limits the maximum number of Alternate Specialist issues to 60 per member. The primary purpose of the propose rule change is to bolster liquidity provided by the Phlx's Alternate Specialist program by concentrating Alternate Specialist activities in a more focused manner.

The current rule also provides that Alternate Specialists must comply with two quarterly trading requirements. First, 50% of an Alternate Specialist's quarterly share volume (excluding share volume in securities in which he is registered as Specialist) must be in issues to which he is assigned. In situations where a Floor Official requests an Alternate Specialist to participate in trading an issue in which he is not assigned, to share volume so accumulated will be included as part of the volume required to satisfy the 50% requirement. Second, 50% of the quarterly share volume that creates or increases a position (''opening'') in an alternative specialist account must result from transactions consummated on the Exchange.

This proposal deletes the first requirement that 50% of the Alternate Specialist's share volume must be in assigned issues because the Exchange has limited the maximum number of Alternate Specialist securities to 60. The other 50% requirement (*i.e.*, that 50% of the Alternate Specialist's ''opening'' volume must be effected on the Phlx) is retained.[4] The Exchange, however, proposes to replace the ''50% of quarterly opening share volume'' requirement with ''50% of quarterly trade volume.'' The Exchange states that it has determined that the requirement should no longer be limited to

[1] *See* letter from Gerald D. O'Connell, First Vice President, Phlx, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated October 30, 1995. In Amendment No. 1, the Exchange clarifies that the ''50% of quarterly opening share volume'' requirement has been replaced with ''50% of quarterly trade volume.''

[2] According to the Exchange, an ''extended period of time'' will be determined by the Exchange on a case by case basis. Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, Phlx, and Jennifer S. Choi, SEC, on October 11, 1995.

[3] The Exchange notes that the general provision pertaining to assignment of Alternate Specialists is Phlx Rule 201A.

[4] *See* Phlx Rule 202A(c)(iv).

''opening'' positions because measuring all trade volume each quarter to ensure that 50% is executed on the Exchange should fulfill the Phlx's intent to monitor for true alternate specialist activity and obligations. The Exchange also notes that opening transactions are difficult to monitor because floor tickets are not marked with an opening or closing distinction on the equity floor.

Moreover, the 50% on-floor requirement is proposed to be amended both to employ trade volume rather than share volume in the calculation as well as to include: (1) ITS trades and (2) unexecuted orders placed on the Phlx at prices on or between the consolidated market. In this regard, the Phlx notes that, consistent with their regulatory responsibility to provide fair and orderly markets, Alternate Specialists must provide liquidity on the Exchange in assigned alternate issues. The ability to inventory or offset securities positions is a critical aspect of the National Market System, which links equity markets, including the Phlx and seven other equity markets, with the goal of best-execution pricing. Thus the Exchange believes that it is appropriate to allow one-quarter of the 50% on-floor requirement to be met by ITS trades effected away from the Exchange, because ITS enhances liquidity and provides the linkage vital to a true National Market System. Only those ITS trades that do not exceed a ratio of three Phlx trades to one ITS trade may be counted. For example, if an Alternate Specialist needs to employ ITS trades to meet his on-floor requirement, and has executed a total of 2,000 trades in that quarter, the requirement could be met by effecting 250 off-floor ITS trades and 750 on-floor trades.

Second, the Exchange notes that Alternate Specialists serve an important role in providing liquidity and stabilizing the marketplace in their Alternate Specialist securities. In offsetting positions or responding to market needs, Alternate Specialists routinely place orders on the Exchange that add liquidity to the Exchange's market, regardless of whether the orders are subsequently availed upon by a customer's agent, to facilitate customer interest. In order to give proper credit to such stabilizing and liquidity-providing orders placed on the Exchange floor by Alternate Specialists that are not executed, the Exchange also proposes to count toward the 50% requirement orders placed on the Exchange on or in-between the consolidated market, notwithstanding that the orders are not executed. The Alternate Specialist must evidence for any such claim that the respective bid or offer was maintained for an extended period of time.

As part of the proposed simplification of the Rule, the Phlx proposes to delete certain existing provisions, namely former Supplementary Material .06, .07 and .09. First, the Exchange proposes to delete Commentary .06, which states that Alternate Specialists as a group are entitled to participate in opening a security on the Exchange with equal standing with respect to any net imbalance (after Specialist participation) of purchase and sale orders on the Exchange. This provision is being deleted because the Exchange believes that the priority of orders is already adequately addressed in Rules 119 and 120,[5] which fairly allot participation levels to all members, including Alternate Specialists.[6]

Second, the Phlx also proposes to delete Commentary .07, which provides that following the opening, when the bids or offers of one or more Alternate Specialists are equal in price to those of the Specialist, the Alternate Specialist as a group are entitled to participate in the transactions effected thereon to the extent of one-third of the total shares involved (excluding those needed to satisfy public orders). This provision also is being deleted because existing parity and priority provisions of Rules 119 and 120 satisfactorily allocate shares in today's market environment.[7]

Third, the Exchange also proposes to delete Commentary .09, which states that, when requested by a Floor Broker, an Alternate Specialist must accept and guarantee execution of all 100 share agency orders to which his assignment extends that are not accepted by the Specialist. This provision is being deleted because the affirmative obligation of this provision only pertains to 100 share orders and will be largely superseded by new Rule 202A(c)(iv), where the Alternate Specialist's affirmative obligation to maintain an adequate presence in his assigned issues is more pronounced.[8]

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest. The Exchange believes that the proposed changes to Rule 202A strengthen its requirements by limiting the number of Alternate Specialist issues, which, in turn, should prevent fraudulent and manipulative acts and practices, and foster consistency with the principles underlying the National Market System and Section 11A, as well as favorable specialist margin treatment.[9] Nevertheless, the Exchange also believes that the proposed changes with respect to the 50% requirements should protect investors and the public interest as well as promote just and equitable principles of trade by facilitating the inventory needs of Alternate Specialists.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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

[5] *See* Phlx Rule 119 (Precedence of Highest Bid) and Phlx Rule 120 (Precedence of Offers at Same Price).

[6] Therefore, in accordance with Phlx's rules of priority and precedence, the level of Alternate Specialists participation would depend on price and size. Telephone conversation between Gerald O'Connell, Vice President, Phlx, and Jennifer S. Choi, SEC, on October 25, 1995.

[7] Under the Phlx's rules of priority and precedence, the number of shares that an Alternate Specialist and a regular specialist would be entitled to would depend on price, time, and size. Telephone conversation between Gerald O'Connell Vice President, Phlx, and Jennifer S. Choi, SEC, on October 25, 1995.

[8] The Commission notes that new provision 202A(c)(iv) requires that the Alternate Specialist ''maintain an adequate presence in the Exchange's market with respect to assigned alternate issues and related trade activities for the alternate account,'' and sets forth the 50% on floor requirement. This provision, however, does not require the alternate specialist to guarantee execution of any specific number of shares.

[9] Phlx specialists and alternate specialist qualify for favorable margin treatment under Rule 12 of Regulation T.

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 Exchange. All submissions should refer to File No. SR–Phlx–95–60 and should be submitted by December 4, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 95–27879 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36456; File No. SR–Phlx–95–67]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Increasing the Maximum Size of Placer Dome Options Orders Eligible for Automatic Execution

November 3, 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 September 22, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] 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

Generally, public customer market and marketable limit orders for up to 25 option contracts are eligible for execution through the automatic execution (''AUTO–X'') feature of the Phlx's Automated Options Market (''AUTOM'') system.[2] The Phlx proposes to implement a six-month pilot program that increases the maximum AUTO–X order size eligibility for public customer market and marketable limit orders for Placer Dome, Inc. (''PDG'') options from 25 contracts to 50 contracts.

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

The purpose of the proposal is to implement a six-month pilot program that increases the maximum AUTO–X order size eligibility for PDG options from 25 to 50 contracts.[3] The Phlx has traded PDG options since 1987. According to the Exchange, PDG, which is traded on the New York Stocks Exchange, has moved in price from 18⅜ in January 1995 to 27⅝ in September 1995. This, in turn, has caused increased volatility in the overlying options. In addition, the Phlx notes that PDG options have consistently been one of the most active equity options traded on the Phlx. According to the Phlx, the daily trading volume in PDG options has averaged 1,641 contracts per day throughout 1995, and open interest was 69,425 contracts on September 8, 1995.

Because of this recent activity, the Phlx proposes to implement a six-month pilot program allowing up to 50 PDG contracts to be executed automatically by AUTO–X. Generally, a maximum of 25 equity option contracts are eligible for AUTO–X, although USTOP 100 Index options are subject to a 50 contract AUTO–X maximum.[4] In addition, the Phlx recently filed a proposal with the Commission to increase the maximum AUTO–X order size to 50 contracts for all equity and index options.[5] Accordingly, the purpose of the proposal at hand is to afford expedited treatment to PDG options to provide a sample, which can be reviewed while consideration is given to File No. SR–Phlx–95–39.

The Phlx notes that the proposed 50 contracts for PDG options represents the maximum size of a permissible AUTO–X order in PDG options, which is determined by the specialist in PDG options. Under the 10-up rule,[6] the maximum size of the Exchange's AUTO–X guarantee is 10 contracts.

AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,[7] is the Phlx's electronic order

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[1] On October 30, 1995, the Phlx amended its proposal to request that the proposal be implemented on a six-month pilot basis. *See* Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated October 30, 1995 (''Amendment No. 1'').

[2] For USTOP 100 Index (''TPX'') options, public customer market and marketable limit orders for up to 50 contracts are eligible for AUTO–X. *See* Securities Exchange Act Release No. 35781 (May 30, 1995), 60 FR 30131 (June 7, 1995) (File No. SR–Phlx–95–29).

[3] *See* Amendment No. 1, *supra* note 1.

[4] *See* Securities Exchange Act Release No. 35871, *supra* note 1.

[5] *See* File No. SR–Phlx–95–39.

[6] *See* Phlx Rule 1033(a), ''Size of Bid/Offer and 10-up Guarantee.''

[7] *See* Securities and Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR–Phlx–94–41). *See also* Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR–Phlx–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR–Phlx–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR–Phlx–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR–Phlx–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR–Phlx–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR–Phlx–90–34),

Continued

routing, delivery, execution and reporting system for equity and index options. AUTOM is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor.

Certain orders are eligible for AUTOM's automatic execution feature, AUTO–X.[8] AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO–X are handled manually by the specialist.

The Commission approved the use of AUTO–X as part of the AUTOM pilot program in 1990.[9] In 1991, the Commission approved a Phlx proposal to extend AUTO–X to all equity options.[10] As noted earlier, orders for up to 500 contracts are eligible for AUTOM and orders for up to 25 contracts, in general, are eligible for AUTO–X.

The Phlx believes that the proposed expanded AUTO–X parameter for PDG options should improve the AUTOM system by offering the benefits of AUTO–X, including prompt and efficient automatic executions at the displayed price, to additional customer orders. The Exchange states that the proposed AUTO–X increase for PDG options from a maximum of 25 to 50 contracts is in line with prior changes. For examples, the Phlx notes that the Commission previously has approved an AUTO–X increase from 10 to 20 contracts.[11] In addition, the Commission has previously approved the expansion of AUTO–X with respect to a specific equity option.[12]

The Exchange represents that the specialist unit currently assigned in PDG, which requested this change, presently is in compliance with Exchange financial requirements and possesses adequate capital to fulfill its proposed AUTO–X responsibilities respecting 50 contracts in PDG. In addition, the Exchange notes that although AUTO–X orders are by definition executed automatically, there are opportunities for price improvement in accordance with a post-execution price change. For example, in the event of an error in the displayed price, the AUTO–X price can be adjusted.

The Exchange notes that the proposed expansion of the maximum AUTO–X order size in PDG options should not impose significant burdens on the operation and capacity of the AUTOM system. Instead, the Phlx believes that the proposal may enhance AUTOM's effectiveness by increasing the number of orders eligible for automatic execution, thereby reducing manual processing.

The Phlx believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest, by extending the benefits of AUTO–X to a larger number of customer orders.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the 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 Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 4, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR–Phlx–91–31, permitting AUTO–X orders up to 20 contracts in Duracell options only); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR–Phlx–91–33, increasing size of AUTO–X orders from 10 contracts to 20 contracts); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR–Phlx–92–38, permitting AUTO–X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR–Phlx–93–57, extending pilot through December 31, 1994).

[8] Orders for up to 500 contracts are eligible for AUTOM and public customer orders for up to 25 contracts, in general, are eligible for AUTO–X. *See* Securities Exchange Act Release Nos. 35782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (order approving File No. SR–Phlx–95–30); and 32000 (March 15, 1993), 58 FR 15168 (March 19, 1994) (order approving File No. SR–Phlx–92–38). As noted above, public customer orders for up to 50 contracts in TPX options are eligible for AUTO–X. *See* Securities Exchange Act Release No. 35781, *supra* note 1.

[9] *See* Securities Exchange Act Release No. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990) (order approving File No. SR–Phlx–89–03).

[10] *See* Securities Exchange Act Release No. 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991) (order approving File No. SR–Phlx–90–34).

[11] *See* Securities Exchange Act Release No. 29837, *supra* note 5.

[12] *See* Securities Exchange Act Release No. 29662, *supra* note 5 (permitting AUTO–X orders up to 20 contracts in Duracell options only).

[13] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 35–26403]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 3, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the

Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 27, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declaration(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the applicant(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Co., et al. (70–8693)

American Electric Power Company, Inc. (''AEP''), 1 Riverside Plaza, Columbus, Ohio, 43215, a registered holding company, and eight electric utility subsidiary companies, Appalachian Power Company (''Appalachian''), 40 Franklin Road, S.W., Roanoke, Virginia, 24011, Columbus Southern Power Company (''Columbus''), 214 North Front Street, Columbus, Ohio, 43215, Indiana Michigan Power Company (''Indiana''), One Summit Square, P.O. Box 60, Forth Wayne, Indiana, 46801, Kentucky Power Company (''Kentucky''), 1701 Central Avenue, Ashland, Kentucky, 41101, Ohio Power Company (''Ohio''), 301 Cleveland Avenue, S.W., Canton, Ohio, 44701, AEP Generating Company (''Generating''), 1 Riverside Plaza, Columbus, Ohio, 43215, Kingsport Power Company (''Kingsport''), 40 Franklin Road, S.W., Roanoke, Virginia, 24011, and Wheeling Power Company (''Wheeling'') 51 Sixteenth St., Wheeling, West Virginia, 26003, have filed an application under section 6(b) of the Act and rule 54 thereunder.

AEP, Appalachian, Columbus, Indiana, Kentucky and Ohio request authorization to incur short-term indebtedness, through December 31, 2001, through the issuance and sale of short-term notes to banks and commercial paper to dealers in commercial paper and, in addition, Generating, Kingsport, and Wheeling request authorization to incur short-term indebtedness, through December 31, 2001, through the issuance and sale of short-term notes to banks, in aggregate amounts not to exceed those herein specified:

Company	Amount
AEP	$150,000,000
Appalachian	250,000,000
Columbus	175,000,000
Indiana	175,000,000
Kentucky	150,000,000
Generating	100,000,000
Kingsport	30,000,000
Ohio	250,000,000
Wheeling	30,000,000
Total	1,310,000,000

AEP, Appalachian, Columbus, Indiana, Kentucky, Generating, Kingsport, Ohio and Wheeling (''Applicants'') request authorization for an increase in the exemption provided from the provisions of Section 6(a) by the first sentence of Section 6(b) of the Act to the extent necessary to cover the issuance and sale of notes and commercial paper. AEP's request is in addition to the authority granted to AEP in Holding Co. Act Release No. 36200 (Dec. 22, 1994). Applicants will use the short-term debt to pay general obligations and for other corporate purposes.

Applicants propose to issue and sell notes to several domestic and foreign banks through various credit arrangements, to include revolving credit agreements or shared lines of credit. Notes under the credit arrangements will mature within 270 days. Credit arrangements generally require commitment fees borne by each Applicant in proportion to its respective projected maximum need for credit.

The total annual cost of borrowings under all such bank lines is estimated to be not in excess of the effective rate for borrowings that bear interest at the prime commercial rate with compensating balances of up to 10% of the line of credit.

The maximum effective annual interest cost under any of these arrangements, assuming full use of the line of credit, is estimated to not exceed 125% of the prime commercial rate in effect from time to time, or not more than 10.94% on the basis of a prime commercial rate of 8.75%.

Commercial paper will be sold directly by AEP, Appalachian, Columbus, Indiana, Kentucky, or Ohio to dealers in commercial paper. Commercial paper will be in the form of promissory notes in denominations of not less than $50,000 and will mature within 270 days. Such notes will not be prepayable and will be sold at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. The commercial paper dealers will re-sell the commercial paper to investors, generally at a discount rate of up to ⅛ of 1% per annum less than the discount rate at which it was sold.

Applicants also request authorization to issue unsecured promissory notes or other evidence of their reimbursement obligations in respect of letters of credit issued on their behalf by certain banks. Letters of credit, together with other short-term indebtedness authorized, would be in an aggregate amount not to exceed the above-itemized aggregate amounts authorized for each Applicant.

Drawings under the letters of credit would bear interest at not more than 125% of the prime commercial rate in effect from time to time. An annual fee may be required for the issuance of such letters of credit. Such fee will not exceed 1% of the face amount of such letter of credit. Any such promissory note or other evidence of reimbursement obligations would mature within 270 days.

Arkansas Power & Light Company (70–8723)

Arkansas Power & Light Company (''AP&L''), 425 West Capitol Avenue, 40th Floor, Little Rock, Arkansas 72201, an electric public utility subsidiary company of Entergy Corporation, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 thereunder.

AP&L proposes, from time-to-time through December 31, 2000, to: (1) Issue and sell through one or more special purpose subsidiaries, one or more series of preferred securities of such subsidiary having a stated per share liquidation preference (''Entity Interests''), in an aggregate principal amount not to exceed $200 million; (2) issue one or more series of AP&L's junior subordinated debentures to the special purpose subsidiary(ies), each series in an amount not to exceed the amount of the respective series of Entity Interests, plus an equity contribution; and (3) provide certain guarantees.

AP&L proposes to organize either a special purpose limited partnership or a statutory business trust (''Issuing Entity'') for the sole purpose of issuing the Entity Interests. In the case of a limited partnership, AP&L would either: (1) Act as the general partner of the Issuing Entity; or (2) organize a special purpose, wholly owned corporation for the sole purpose of acting as the general partner of the Issuing Entity. In the case of a business trust, the business and affairs of the trust would be conducted

by one or more trustees. AP&L will directly or indirectly make an equity contribution to the Issuing Entity at the time the Entity Interests are issued and thereby directly or indirectly acquire all of the general partnership interest (in the case of a limited partnership) or all of the voting interests (in the case of a business trust) in the Issuing Entity.

AP&L will issue, from time-to-time in one or more series, Subordinated Debentures (''Entity Subordinated Debentures'') to the Issuing Entity. The Issuing Entity will use the proceeds from the sale of its Entity Interests, plus the equity contributions made to it by AP&L to purchase the Entity Subordinated Debentures.

Each series of Entity Subordinated Debentures will mature at such time, not more than fifty years from their date of issuance, as AP&L may determine at the time of issuance. Prior to maturity, AP&L will pay interest only on the Entity Subordinated Debentures at either a fixed or adjustable rate. The distribution rates, payment dates, redemption, maturity, and other terms applicable to each series of Entity Interests will be substantially identical to the related interest rates, payment dates, redemption, maturity, and other terms applicable to the Entity Subordinated Debentures, and will be determined by AP&L at the time of issuance. The interest paid by AP&L on the Entity Subordinated Debentures will constitute the only source of income for the Issuing Entity and will be used by the issuing Entity to pay monthly or quarterly distributions on the Entity Interests.

AP&L may also enter into a guaranty (''Guaranty'') to guarantee unconditionally: (1) Payment of distributions on the Entity Interests, if and to the extent the Issuing Entity has legally available funds; (2) payments to the holders of Entity Interests of certain amounts due upon liquidation of the Issuing Entity or redemption of the Entity Interests; and (3) certain additional ''gross up'' amounts that may be payable regarding the Entity Interests. AP&L's Entity Subordinated Debentures and any Guaranty will be subordinated to senior indebtedness. Payment of interest on Entity Subordinated Debentures may be deferred for specified periods, without creating a default, so long as no dividends are being paid on, or certain actions are being taken with respect to the retirement of, the common or preferred stock of AP&L, respectively, during the deferral period.

Distributions on the Entity Interests will be paid monthly, quarterly or as determined at the time of sale of each series, will be cumulative, and will be mandatory to the extent that the Issuing Entity has legally available funds sufficient for such purposes. The Issuing Entity will have the right to defer distributions on the Entity Interests for a specified period, but only if and to the extent that AP&L defers the interest payments on the Entity Subordinated Debentures. It is anticipated that interest payments by AP&L on the Entity Subordinated Debentures will be deductible for federal and state income tax purposes and that the Issuing Entity will be treated as either a partnership or a trust, as the case may be, for federal income tax purposes. Consequently, the holders of Entity Interests will be deemed to have received interest income rather than dividends, and will not be entitled to any ''dividends received deduction'' under the Internal Revenue Code.

One or more series of Entity Interests and Entity Subordinated Debentures may include provisions for the mandatory and/or optional retirement of some or all of such series prior to maturity. The Entity Interests will be subject to redemption, in whole or in part, on and after a specified date (''Earliest Redemption Date'') at the option of the Issuing Entity, with the consent of AP&L, at a price equal to their stated liquidation preference, plus any accrued and unpaid distributions. The Earliest Redemption Date will be not later than five years after the date of issuance.

AP&L may also reserve the right, under certain circumstances, to exchange the Entity Subordinated Debentures for the Entity Interests or otherwise to distribute the Entity Subordinated Debentures to the holders of Entity Interests. If, as the result of: (1) The Entity Subordinated Debentures not being treated as indebtedness for federal income tax purposes; or (2) the Issuing Entity not being treated as either a partnership or a trust, for federal income tax purposes, the Issuing Entity is required to withhold or deduct from payments on the Entity Interests amounts that otherwise would not be required to be withheld or deducted, the Issuing Entity may also have the obligation, if the Entity Interests are not redeemed or exchanged, to increase or ''gross up'' such payments so that the holders of Entity Interests will receive the same payment after such withholding or deduction were required.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Issuing Entity, holders of Entity Interests will be entitled to receive, out of the assets of the Issuing Entity available for distribution to the limited partners or the preferred security holders, before any distribution of assets to the general partner or AP&L, an amount equal to the stated liquidation preference of the Entity Interests, plus any accrued and unpaid distributions.

No series of Entity Interests or corresponding series of Entity Subordinated Debentures will be sold if the fixed distribution or interest rate or initial adjustable distribution or interest rate would exceed the lower of 15% per annum or market rates generally obtainable at the time of pricing for sales of limited partnership or business trust interests having a reasonably equivalent maturity, issued by subsidiaries of companies of reasonably comparable credit quality and having reasonably similar terms, conditions and features. The initial distribution rate for Entity Interests of such series having an adjustable distribution will be determined in negotiations between AP&L and the purchasers of such series and be based on then current market rates for comparable subsidiary securities. Thereafter, the distribution rate on the Entity Interests would be adjusted according to a pre-established formula or method of determination or would be that rate which, at the time of remarketing, would be sufficient to remarket the Entity Interests at their principal amount.

The price, exclusive of accrued distributions, to be paid to the Issuing Entity for each such series of Entity Interests to be sold at competitive bidding will be within a range from 95% to 105% of the liquidation amount of such series of Entity Interests.

The Southern Company (70–8725)

The Southern Company (''Southern''), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed an application-declaration under sections 6(a), 7, 12(b), 32 and 33 of the Act and rules 45, 53, 54 and 100(a) thereunder.

Southern is currently authorized under the terms of three separate orders to finance the operations of its subsidiaries: (1) by issuing and selling approximately 50 million additional authorized shares of its common stock, par value $5 per share, from time to time through December 31, 1999, (2) by issuing guaranties of the securities of one or more exempt wholesale generators (''EWGs'') or foreign utility companies (''FUCOs''), as defined in sections 32 and 33 of the Act, in an aggregate amount not to exceed $1.2 billion at any one time outstanding, from time to time through December 31,

1999, and (3) by issuing notes evidencing short-term and term loan borrowings and/or commercial paper, in an aggregate principal amount not to exceed $1 billion at any one time outstanding, from time to time through March 31, 2000 (Holding Co. Act Release Nos. 26349 (Aug. 3, 1995), 26347 (Aug. 2, 1995), and 26346 (Aug. 1, 1995) (the ''Orders'')).

Under the terms of the Orders, Southern may use the proceeds of common stock sales and borrowings to finance the acquisition of the securities of one or more EWGs or FUCOs, and may issue guaranties in respect of the securities of such entities, provided that the sum of the net proceeds of common stock sales and borrowings used by Southern for these purposes and the guaranties at any time outstanding shall not, when added to Southern's ''aggregate investment'' (as defined in rule 53(a) under the Act) in all EWGs and FUCOs, exceed 50% of Southern's ''consolidated retained earnings'' (as defined in rule 53(a)).[1]

Southern requests the Commission to modify this limitation, and exempt Southern from the requirements of rule 53(a)(1), to permit Southern to use the net proceeds of common stock sales and borrowings authorized by the Orders to acquire the securities of EWGs and FUCOs, and to issue guaranties pursuant to the Orders,[2] in an aggregate amount that, when added to Southern's direct and indirect ''aggregate investment'', as defined, in all EWGs and FUCOs, would not at any time exceed 100% of Southern's ''consolidated retained earnings'', as defined. The current amount of Southern's ''aggregate investment'', as defined, in EWGs and FUCOs (approximately $1.244 billion) represents approximately 38.72% of its ''consolidated retained earnings'', as defined, at June 30, 1995 (approximately $3.213 billion). Increasing this limitation as Southern proposes would allow financing of additional investments in EWGs and FUCOs of approximately $1.97 billion.

Southern states that it is committed to making substantial additional investments in EWGs and FUCOs, primarily because (1) since 1988 and for at least the next ten years, there has been and is projected to be little or no need for Southern to make any significant equity investment in any of its utility subsidiaries; and (2) Southern has invested in utility systems in countries where competition is more fully developed so that it will be better able to compete in the future in the southeastern United States. Southern also describes comprehensive procedures that it has established to identify and address risks involved in EWG and FUCO investments.

Southern states that the use of financing proceeds and guaranties to make investments in EWGs and FUCOs to the proposed increased level will not have a substantial adverse impact on the financial integrity of the Southern system or an adverse impact on any utility subsidiary of Southern or its customers or on the ability of the affected state commissions to protect such customers. Southern further represents that it will not seek recovery through higher rates to its utility subsidiaries' customers in order to compensate Southern for any possible losses that it may sustain on investments in EWGs and FUCOs or for any inadequate returns on such investments.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[1] This investment limitation is consistent with the investment limitation contained in Rule 53(a)(1).

[2] In a separate proceeding in File No. 70–8733, Southern is proposing to restate its authority to guaranty the securities of EWGs, FUCOs and certain other nonutility subsidiaries. If an order in that matter is issued prior to the issuance of the order requested in this filing, such order will be subject to the percentage limitation sought to be increased herein. The issuance of an order in this filing would amend Southern's guaranty authority as in effect at the date of issuance of such order.

[Investment Company Act Rel. No. 21472; 812–9558]

Ridgewood Electric Power Trust III et al.; Notice of Application

November 3, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Ridgewood Electric Power Trust III (''Power III''), Ridgewood Electric Power Trust IV (''Power IV'') (Collectively, the ''Funds''), and Ridgewood Power Corporation.

RELEVANT ACT SECTIONS: Order requested under rule 17d–1 in accordance with sections 17(d) and 57(a)(4).

SUMMARY OF APPLICATION: Applicants request an order permitting Power III and Power IV, which are affiliated with each other, to co-invest in the same portfolio securities.

FILING DATE: The application was filed on April 6, 1995 and amended on November 2, 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 November 28, 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 reasons for the request, and the issues contested. Persons who with to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 947 Linwood Avenue, Ridgewood, New Jersey 07450.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942–0582, 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.

Applicants' Representations

1. The Funds are Delaware business trusts that have each elected to be regulated as a business development company (a ''BDC'') under the Act. They are designed to provide investors with the ability to participate primarily in investments in unregulated entities that own electric power plants or other facilities used in the generation, transmission, or distribution of electrical energy and related products and services (the ''Portfolio Companies'').

2. The investment objectives of each BDC are to (i) generate current cash flow for distribution to investors from the operation of the Portfolio Companies, and (ii) provide the opportunity for capital appreciation through the subsequent sale of the BDC's investments. Applicants request an order permitting the Funds to invest jointly in Portfolio Companies.

3. Power III raised approximately $40 million in an offering that was exempt from registration under the Securities Act of 1933 (the ''1933 Act'') pursuant to Regulation D thereunder. In order to

qualify as a BDC, Power III registered the offering on Form 10 under the Securities Exchange Act of 1934 (the ''1934 Act''). Power III's 1934 Act registration became effective on April 16, 1994. The offering terminated on June 30, 1995.

4. Power IV expects to raise funds from only accredited investors pursuant to an offering which is exempt from registration under the 1933 Act pursuant to Regulation D thereunder. In order to qualify as a BDC, on January 23, 1995 Power IV filed a registration statement for its proposed offering on Form 10 under the 1934 Act. The Form 10 registration became effective and the Power IV offering commenced on March 31, 1995. It is expected that the proceeds of Power IV's offering of securities will result in assets for Power IV in the range of 30 to 40 million dollars.

5. Power III and Power IV each have a management structure consisting of a three member Board of Trustees. Ridgewood Power Corporation (''PRC''), a Delaware corporation, services as one member of the Board of Trustees and as Managing Shareholder of Power III and Power IV. RPC also has an equity interest in each of the Funds. The Funds each have two individual trustees (the ''Independent Trustees''), who are not ''affiliated persons'' of RPC or otherwise ''interested persons'' of Power III and Power IV. Neither of the Independent Trustees of Power III serves as an Independent Trustee of Power IV.

6. Pursuant to each Fund's Declaration of Trust, the Board of Trustees provides overall guidance and supervision with respect to the operations of the Fund, and performs all duties that the Act imposes on the boards of directors of business development companies. The Managing Shareholder is charged with certain responsibilities pursuant to each Fund's Declaration, including authority to determine and manage the Fund's independent power investments, subject to the supervision of the Board of Trustees.

7. Before a co-investment transaction will be effected, the Managing Shareholder will make a written investment presentation respecting the proposed co-investment transaction to the Board of Trustees of each Fund based on such considerations and circumstances as the Managing Shareholder may deem appropriate, including the consistency of the proposed co-investment transaction with the investment objectives and policies of each Fund. Each Fund will make its own decision and have the right to decide not to share a particular investment with another.

8. There will be no consideration paid to the Managing Shareholder (or its controlling persons) directly or indirectly, including without limitation any type of brokerage commission, in connection with a co-investment transaction. The Managing Shareholder will continue to receive, however, its normal compensation arrangements with respect to a Fund and will participate indirectly in a transaction through its existing equity interest in a Fund.

9. Prior to engaging in a co-investing transaction, a required majority (as that term is defined in section 57(o) of the Act) (''Required Majority'') of the trustees of each Fund shall each conclude, as to their respective Fund, that as presented to them by the Managing Shareholder, the terms of the proposed co-investment transaction are reasonable and fair and do not involve overreaching of their Fund or its Shareholders on the part of any person concerned.

10. Neither the Managing Shareholder nor its controlling persons will participate directly or indirectly in a co-investment transaction effected by a Fund pursuant to the order. For this purpose, the term ''participate'' shall not include either the Managing Shareholders' existing equity interest in a Fund or their normal compensation arrangements with the Fund.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 thereunder provide, among other things, that it shall be unlawful for an affiliated person of an investment company, acting as principal, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which any such investment company is a participant unless an application regarding such joint enterprise or arrangement has been filed with an exemptive order issued by the SEC. Section 57(a)(4) of the Act applies the same prohibitions to the persons specified in section 57(b), including any person under common control with a BDC. Because the Funds are under common control, they are prohibited under section 57(a)(4), absent an exemptive order, from engaging in co-investment transactions. Section 57(i) makes rule 17d–1 applicable to transactions prohibited by section 57(a)(4). In reviewing applications filed under rule 17d–1, the SEC considers whether the participation of such investment company (or BDC) or controlled company in such joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extend to which such participation is on a basis different from or less advantageous than that of other participants.

2. Applicants propose, subject to SEC approval, to allow Power III and Power IV to invest jointly in Portfolio Companies in transactions that are otherwise prohibited by section 57(a)(4) or rule 17d–1 under the Act (''co-investment transactions'').[1] The Funds have the same investment objectives, and applicants believe that the ability to participate in co-investment transactions, in the manner described below, would be advantageous for each of the Funds. Applicants believe there are a significant number of potential investments that may be possible investments for both of the Funds. Moreover, a Fund's ability to participate in co-investment transactions would enlarge the scope of each Fund's investment opportunities. Finally, the aggregate capital resulting from the pooling of the Funds' available resources should cause co-investment transactions to be affected at better prices and on more favorable terms if only one Fund had been able to participate in any given transaction.

3. Additionally, under the terms of the proposed procedures to be followed in effecting co-investment transactions, the terms of the co-investment transactions will not be less advantageous to one Fund than they are to the other Fund. To the contrary the terms and conditions of each co-investment transaction will be identical for both Funds since each Fund will be offered the opportunity to participate in the co-investment transactions on a *pro rata* basis. The decision to participate would, moreover, be based on the written investment presentation of the Managing Shareholder. If the Independent Trustees determined not to participate in a proposed co-investment transaction, they could decline to do so on behalf of their Fund. By the same token, the Independent Trustees could determine to participate more or less fully in a proposed co-investment transaction than their Fund's *pro rata* share would have authorized, and the Independent Trustees have the same flexibility as the final sale, exchange, or

[1] The Funds intend to seek shareholder approval of proposals to withdraw their elections to be regulated as BDC's. If shareholder approval is obtained, the Funds intend to conduct business thereafter as operating companies. Accordingly, applicants request that the SEC's order apply to those joint transactions with respect to which a binding contract has been entered into by March 31, 1996.

other disposition of a co-investment transaction.

4. For these reasons, applicants believe that the requested exemption for such co-investment transactions meets the standards for granting exemptive relief under sections 17(d) and 57(a)(4) and rule 17d–1.

Applicant's Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. (a) To the extent that a Fund is considering new investments, the Managing Shareholder will review investment opportunities on its behalf, including investments being considered on behalf of the other Fund. The Managing Shareholder will determine whether a particular investment is eligible for investment by either Fund.

(b) If the Managing Shareholder deems an investment eligible for investment by either Fund, the Managing Shareholder will determine what it considers to be an appropriate amount that the Fund should invest in the particular investment. Where the aggregate amount recommended for the Funds is greater than the amount available for investment, the amount available for purchase by a Fund shall be determined on a *pro rata* basis by dividing the net assets of the Fund by the sum of the net assets of both Funds.

(c) Following the making of the determinations referred to in (a) and (b), the Managing Shareholder will distribute written information concerning the proposed co-investment transaction to the Independent Trustees of each Fund.

(d) The Independent Trustees of each Fund will review the information regarding the Managing Shareholder's preliminary determination. A Fund will only engage in a co-investment transaction if a Required Majority of the trustees of the Fund conclude, prior to the acquisition of the investment, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of the Fund and do not involve overreaching of the Fund or such shareholders on the part of any person concerned;

(ii) The transaction is consistent with the interests of the share holders of the Fund and is consistent with the Fund's investment objectives and policies as recited in its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to shareholders; and

(iii) The investment by the other Fund would not disadvantage the Fund and that participation by the Fund would not be on a basis different from or less advantageous than that of the other Fund.

(e) Each Fund has the right to decline to participate in a particular co-investment transaction or may purchase less than its full allocation.

2. Neither Fund will make an investment for its portfolio if a Fund or the Managing Shareholder or a person controlling, controlled by, or under common control with the Managing Shareholder is an existing investor in such issuer.

3. All co-investment transactions will consist of the same class of securities, including the same registration rights (if any) and other rights related thereto, at the same unit consideration, and on the same terms and conditions, and the settlement dates will be the same.

4. If a Fund elects to sell, exchange, or otherwise dispose of an interest in a particular security that is also held by the other Fund, the Managing Shareholder will notify the other Fund of the proposed disposition at the earliest practical time and such Fund will be given the opportunity to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions. The Managing Shareholder will formulate a recommendation as to participation by such Fund in such a disposition, and provide a written recommendation to the Independent Trustees of such Fund. A Fund will participate in any such disposition if a Required Majority of its trustees determines that it is in the best interest of the investing Fund. Each Fund will bear its own expenses associated with any such disposition of a portfolio security.

5. If a Fund desires to make a ''follow-on'' investment (i.e., an additional investment in the same entity) in a particular issuer whose securities are held by the other Fund or to exercise rights to purchase securities of such an issuer, the Managing Shareholder will notify the other Fund of the proposed transaction at the earliest practical time. The Managing Shareholder will formulate a recommendation as to the proposed participation by each Fund in a follow-on investment, and provide the recommendation to the Fund's Independent Trustees along with notice of the total amount of the follow-on investment. Each Fund's Independent Trustees will make their own determination with respect to follow-on investments. To the extent that the amount of a follow-on investment available to a Fund is not based on the amount of its initial investment, the relative amount of investment by each Fund will be based on a ratio derived by comparing the remaining funds available for investment by each Fund with the total amount of the follow-on investment. A Fund will participate in such investment to the extent that a Required Majority of its trustees determine that it is in the Fund's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

6. The Independent Trustees of the Funds will be provided quarterly for review all information concerning transactions made by the Funds so that they may determine whether all co-investment transactions made during the preceding quarter, including co-investment opportunities that were declined, complied with these conditions.

7. Each Fund will maintain the records required by section 57(f)(3) of the Act as if each of the co-investment transactions permitted under these conditions were approved by the Fund's Independent Trustees under section 57(f).

8. The Funds will not have common Independent Trustees.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27884 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–21471; 812–9690]

SEI Financial Management Corporation, et al.; Notice of Application

November 3, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: SEI Financial Management Corporation and SEI Financial Services Company (collectively, ''SEI'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act exempting SEI from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder permitting certain transactions.

SUMMARY OF APPLICATION: SEI seeks an order amending a prior order that facilitates the conversion of bank-sponsored collective funds into mutual funds by permitting registered open-end management investment companies administered or distributed by SEI, and

any registered open-end management investment company as may in the future be distributed or administered by SEI or any entity controlling, controlled by, or under common control with SEI (together with any portfolio thereof, the ''Funds'') to accept in-kind transfers of marketable securities from bank-sponsored collective investment funds in exchange for shares of Funds advised by the bank. As amended, the order also would permit the Funds to accept in-kind transfers of marketable securities from bank-sponsored accounts consisting solely of the assets of a single retirement plan for employees of the bank or bank affiliates, in exchange for Fund shares.

FILING DATES: The application was filed on July 25, 1995, and amended on November 2, 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 SEI with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1995, and should be accompanied by proof of service on SEI, 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 reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. SEI, c/o SEI Financial Services Company, 680 East Swedesford Road, Wayne, Pennsylvania 19087, Attention: Kathryn L. Stanton, Esq.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 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. SEI, on behalf of the Funds, seeks an order amending a prior order of exemption (the ''Prior Order'').[1] The Prior Order was issued under sections 6(c) and 17(b) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder, granting an exemption from the provisions of section 17(a) of the Act and allowing the Funds to participate in the conversion of assets from bank-sponsored collective investment funds (''CIFs'') into shares of the Funds.

2. Some or all of the assets in a converting CIF may belong to employee retirement plans established for employees of the bank that sponsors the converting CIF (the ''Bank'') or employees of entities that are affiliated persons of the Bank (the ''Affiliated Plans''). From time to time, however, a Bank also may maintain assets of an Affiliated Plan in an account consisting solely of the assets of that Plan (an ''Affiliated Plan Account''), rather than in a CIF. Because the Prior Order does not contemplate expressly Affiliated Plan Account conversions, SEI seeks to amend the Prior Order to allow the conversion of Affiliated Plan Account assets, as well as CIF assets, into shares of a Fund. Any order granted on the current application will supersede the Prior Order.

3. SEI provides or procures administrative and other services necessary for the operation of the Funds and their portfolios. The precise services provided by SEI to a Fund may vary depending on the contract with the particular Fund. SEI will, however, always provide certain core services specified in the application (including the provision of individuals reasonably acceptable to the Fund's board of directors for nomination, appointment, or election as officer of the Fund) that will enable SEI to help assure and monitor compliance with the terms of any order that may be granted on the application. By virtue of its role as administrator, SEI plays an integral and active role in the conversion of CIFs, and will play such a role in the conversion of Affiliated Plan Accounts, into Funds.

4. The Funds are or will be registered as open-end management investment companies under the Act. Such Funds' shares are or will be offered and sold pursuant to an effective registration statement under the Securities Act of 1933 (the ''Securities Act''). The overall management of each Fund, including the negotiation of investment advisory and other service contracts, rests with the members of the Board of Directors or Trustees (the ''Board of Directors'') of the Fund, at least 40% of whom are not ''interested persons'' (as defined by the Act) of the Fund.

5. The CIFs and Affiliated Plan Accounts are sponsored by Banks as investment vehicles for employee retirement plans. The CIFs and Affiliated Plan Accounts are excluded from the definition of investment company under section 3(c)(11) of the Act, which excepts certain individual and collective investment vehicles that consist solely of the assets of employee retirement plans qualified under Section 401 of the Internal Revenue Code or similar governmental plans described in section 3(a)(2)(C) of the Securities Act (each, a ''Plan''). In addition to sponsoring a CIF and/or maintaining an Affiliated Plan Account, a Bank or an affiliate of the Bank also may serve as the investment adviser to a Fund, within the meaning of section 2(a)(20) of the Act. In some instances, the Bank may provide additional services such as custody and transfer agency to a Fund and be compensated by the Fund for those services.

6. Banks frequently determine that Plan holders would be better served if sponsored CIFs and/or Affiliated Plan Accounts were converted into Funds with substantially similar investment objectives so that the Plan holders may be afforded the enhanced disclosure and other protections of the Securities Act and the Act. Banks that seek conversion of CIF and/or Affiliated Plan Accounts assets will cause the CIFs and Affiliated Plan Accounts to transfer their assets to corresponding portfolios of Funds with substantially similar investment objectives in exchange for Fund shares (the ''Proposed Transfers'').

7. Each Affiliated Plan participating in a Proposed Transfer will have an employee benefit review committee or equivalent body that serves as a fiduciary for the Plan (the ''Committee''). Each unaffiliated Plan participating in a Proposed Transfer will have an independent or ''second'' fiduciary, in addition to and independent of the Bank or its affiliates, that supervises the investment of that Plan's assets. This second fiduciary generally will be the unaffiliated Plan's named fiduciary, trustee, or sponsoring employer and will be subject to fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 (''ERISA''). Under section 404(a) of ERISA, such fiduciaries must ensure that the investment of the Plans' assets is prudent and operates exclusively for the benefit of participating employees of the particular corporation and its subsidiaries and of the participating employees' beneficiaries.

8. Before transferring a CIF's or Affiliated Plan Account's assets to a Fund, a Bank will be required to obtain the approval of the Committee, the

[1] Investment Company Act Release Nos. 21128 (June 9, 1995) (notice) and 21194 (July 7, 1995) (order).

Plan's second fiduciary, or both, as the case may be. The Bank will provide the Committee and the second fiduciaries with a current prospectus for the relevant portfolio(s) of the Fund and a written statement giving full disclosure of the fee structure and the terms of the Proposed Transfer. Such disclosure will explain why the Bank believes that the investment of Plan assets in the Fund is appropriate.

9. On the basis of such information, the Committee, the second fiduciary, or both, as the case may be, will decide whether to authorize the Bank to invest the relevant Plan's assets in the Fund and to receive fees from the Fund (subject to the Bank's agreement to waive, credit, or rebate relevant fees). A Bank will not collect fees at both the Plan level and the Fund level for managing the same assets. Depending on the Plan, the Bank either will charge a fee only to the Fund or will rebate or credit its management fees at the Plan level.

10. Subject to obtaining the fiduciary approvals discussed above and the requested exemptive order, SEI will assist a Bank, in SEI's capacity as administrator, to effect the acquisition of Fund shares by a Plan currently invested in a CIF or Affiliated Plan Account. On the date of each transfer, the converting CIF or Affiliated Plan Account will deliver to the corresponding Fund securities equal in value to the interest of each participating Plan, in exchange for Fund shares, using market values as of the time that the Fund calculates its net asset value at the close of business on that day. The Fund share received by a CIF then will be distributed, *pro rata*, to all Plans whose interests were converted as of that date. No such additional distribution will be required in the case of an Affiliated Plan Account, as it will hold Fund shares already. All securities transferred to a Fund will be securities for which market quotations are readily available, as that term is used in rule 17a–7(a) under the Act, and will be consistent with the investment objectives and fundamental policies of the corresponding Fund.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in pertinent part, defines an ''affiliated person'' to include: (a) any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by or under common control with such other person; and (c) if such other person is an investment company, any investment adviser thereof.

2. Section 17(d) of the Act prohibits any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of such rules and regulations as the SEC may prescribe. Rule 17d–1 under the Act provides that no joint transaction covered by the rule may be consummated unless the SEC issues an order upon application.

3. Because a Bank that sponsors a CIF and/or Affiliated Plan Account Plan Account may have legal title to the assets of the CIF or Affiliated Plan Account and therefore may be viewed as acting as a principal in the Proposed Transfers, and because a CIF or Affiliated Plan Account and a Fund may be viewed as being under the common control of that Bank within the meaning of section 2(a)(3)(C), the Proposed Transfers may be prohibited by section 17(a). For the same reasons, the Proposed Transfers might be deemed to be a prohibited enterprise or other joint arrangement within the meaning of rule 17d–1.

4. Rather than requiring an exemption for all CIF conversions, the SEC's Division of Investment Management has issued a series of no-action letters permitting conversions if the changes comply with subparagraphs (b)–(f) of rule 17a–7 under the Act.[2] *See e.g.*, Federated Investors (pub. avail. Apr. 21, 1994). The letters require, however, that no first or second-tier affiliated person of the registered open-end fund have a beneficial interest in the exchange (except for the bank acting in its fiduciary capacity). Because some or all of the assets in a converting CIF may belong to Affiliated Plans, and the converting Affiliated Plan Accounts will consist entirely of such assets, SEI is unable to rely on the no-action letters.

5. Section 17(b) of the Act provides that any person may file an application for an order exempting a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed 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, and that the proposed transaction is consistent with the policy of each registered investment company concerned and the general policies and purposes of the Act.

6. Under section 6(c) of the Act, the SEC may exempt any person or transaction from any provision of the Act, or any rule thereunder, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

7. In passing upon applications under rule 17d–1, the SEC considers whether participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act, and is not on a basis less advantageous than that of other participants.

8. SEI requests an order under sections 6(c) and 17(b) granting an exemption from section 17(a), and pursuant to section 17(d) and rule 17f–1, to amend the Prior Order to allow the Proposed Transfers of Affiliated Plan Account as well as CIF assets. SEI submits that the terms of the Proposed Transfers, as set forth above, satisfy the standards for an exemption set forth in sections 6(c) and 17(b) and rule 17d–1.

9. The terms of the Proposed Transfers will be reasonable and fair to the Plans and to the shareholders of the Funds. The fact that the Proposed Transfers are designed as in-kind transfers does not affect their fairness. If the Proposed Transfers instead were effected in cash, the Plans would have to sell their securities, thereby incurring brokerage commissions or the adverse effects of mark-downs. Similarly, following the Plans' investment in the Fund, the Fund would purchase similar securities in the market, causing a second round of brokerage commissions and the adverse effects of mark-ups. In addition, since some time could elapse between the two transactions, the Fund would not necessarily be able to purchase the same quantity of securities at the same price. In contrast, the Proposed Transfers would not expose the Plans' assets to transaction costs or timing risk. Moreover, the Proposed

[2] Rule 17a–7 conditionally exempts from the prohibitions of section 17(a) certain purchases and sales of securities between registered investment companies and certain affiliated persons, where the affiliation arises solely by reason of having a common investment adviser, directors and/or officers. Since the Banks may be deemed to have a direct or indirect beneficial interest in the performance of the CIFs and/or Affiliated Plan Accounts and the Funds, the limited affiliation required to make rule 17a–7 available does not exist.

Transfers will result in no gain or loss being recognized by the individual participants of the Plans.

10. The terms of the Proposed Transfers also will not involve overreaching. Although each Bank may have an indirect beneficial interest in the performance of the Funds, the Proposed Transfers will be subject to ERISA, must be approved by a Committee or second fiduciary and, as required by Condition 1 below, will be conducted in accordance with the valuation standards set forth in rule 17a–7. In addition, as required by Condition 2 below, the conversions will be made subject to the requirement of rule 17a–8 under the Act that the Fund Directors and Plan fiduciaries find that the Proposed Transfers are in the best interests of the Fund and the Plans.[3] SEI's administrative role and its significant compliance responsibilities places it in an ideal position to monitor each conversion and implement procedures designed to ensure that the terms and conditions of any application are strictly adhered to. Thus, the Proposed Transfers may be expected to occur in a manner that is in the best interests of both the Plans and the Funds.

11. The investment objectives and policies of the Funds and the CIFs and/or Affiliated Plan Accounts will be substantially similar. Therefore, it will be consistent with the policies of the Funds to acquire securities that the Bank has previously purchased for the CIFs and/or Affiliated Plan Accounts on the basis of substantially similar objectives and policies.

12. The request exemptive relief also would be consistent with the purposes intended by the policy and provisions of the Act, since the Proposed Transfers do not give rise to the abuses that sections 17 (a) and (d) and rule 17d–1 were designed to prevent. A primary purpose underlying sections 17 (a) and (d) and rule 17d–1 is to prevent a person with a pecuniary interest in a transaction from using his or her position with a registered investment company to benefit himself or herself to the detriment of the company's shareholders. After the Proposed Transfers, each Plan will be a shareholder in a Fund with substantially similar investment objectives. In this sense, the Proposed Transfers can be viewed as a change in the form in which assets are held, rather than as a disposition giving rise to section 17 concerns. In addition, the participation in the Proposed Transfers by each Fund will not be on a basis less advantageous than that of other participants for purposes of rule 17d–1.

13. The effectuation of the Proposed Transfers in the manner described also is fully consistent with the policies underlying the adoption of rules 17a–7 and 17a–8 under the Act. Even though Fund shares would be exchanged for securities, rather than ''solely'' for cash as required by subparagraph (a) of rule 17a–7, the terms of rule 17a–7 otherwise will be fully met, as required by Condition 1 below. In addition, as set forth in Conditions 2 and 3, below, the Plan fiduciaries and Directors of the Fund will be required to make the fairness and dilution findings required by rule 17a–8.

Applicants' Conditions

SEI agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The Proposed Transfers will comply with the terms of rule 17a–7(b)–(f).

2. The Proposed Transfers will not occur unless and until: (a) the Board of Directors of the Fund (including a majority of its directors who are not interested persons of the Fund) and the Committee or the Plans' second fiduciaries, as the case may be, find that the Proposed Transfers are in the best interests of the Fund and the Plans, respectively; and (b) the Board of Directors of the Fund (including a majority of its directors who are not interested persons of the Fund) finds that the interests of the existing shareholders of the Fund will not be diluted as a result of the Proposed Transfers. These determinations and the basis upon which they are made will be recorded fully in the records of the Fund and the Plans, respectively.

3. In order to comply with the policies underlying rule 17a–8, any conversion will be approved by a Fund's Board of Directors, and any non-affiliated Plan's second fiduciaries who would be required to find that the interests of beneficial owners would not be diluted.

[3] Rule 17a–8 conditionally exempts from the prohibitions of section 17(a) the merger or consolidation of affiliated registered investment companies where the affiliation arises solely by reason of having a common investment adviser, common directors and/or common officers. Because the CIFs and Affiliated Plan Accounts are not registered investment companies, and the affiliation of the CIFs and/or Affiliated Plan Accounts and the Funds would not exist ''solely by reason of'' the commonality of their management, SEI cannot rely on rule 17a–8 for the Proposed Transfers.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27886 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21473; 812–9670]

Smith Barney Adjustable Rate Government Income Fund, et al.; Notice of Application

November 3, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Smith Barney Adjustable Rate Government Income Fund, Smith Barney Aggressive Growth Fund Inc., Smith Barney Appreciation Fund Inc., Smith Barney Arizona Municipals Fund Inc., Smith Barney California Municipals Fund Inc., Smith Barney Equity Funds, Smith Barney Florida Municipals Fund Inc., Smith Barney Fundamental Value Fund Inc., Smith Barney Funds, Inc., Smith Barney Income Funds, Smith Barney Investment Trust (formerly, Smith Barney Income Trust), Smith Barney Investment Funds Inc., Smith Barney Institutional Cash Management Fund Inc., Smith Barney Managed Governments Fund Inc., Smith Barney Managed Municipals Fund Inc., Smith Barney Massachusetts Municipals Fund, Smith Barney Money Funds, Inc., Smith Barney Municipal Money Market Fund, Inc., Smith Barney Muni Funds Inc., Smith Barney New Jersey Municipals Fund Inc., Smith Barney New York Municipals Fund Inc., Smith Barney Oregon Municipals Fund, Smith Barney Precious Metals and Minerals Fund Inc., Smith Barney Principal Return Fund, Smith Barney Series Fund, Smith Barney Telecommunications Trust, Smith Barney/Travelers Series Fund, Inc., Smith Barney Variable Account Funds, Smith Barney World Funds, Inc. The Consulting Group Capital Markets Funds, Greenwich Street California Municipal Fund Inc., Greenwich Street Municipals Fund Inc., High Income Opportunity Fund Inc., Managed High Income Fund Inc., Managed Municipals Portfolio Inc., Managed Municipals Portfolio II Inc., Municipal High Income Fund Inc., Smith Barney Intermediate Municipal Fund, Inc., Smith Barney Municipal Fund, Inc., The Italy Fund Inc., The Inefficient Market Fund, Inc. and Zenix Income Fund Inc.

(collectively, the ''Investment Companies'') and Smith Barney Holdings Inc. (''Holdings'').

RELEVANT ACT SECTIONS: Exemption requested pursuant to 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) of the Act and rule 2a-7 thereunder; pursuant to sections 6(c) and 17(b) from section 17(a)(1); and pursuant to section 17(d) and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: The Applicants seek an order to allow the Investment Companies, and all subsequently registered investment companies for which any entity controlling, controlled by or under common control with Holdings serves as investment adviser or principal underwriter (such subsequently registered investment companies, together with the Investment Companies, the ''Funds'') to enter into deferred fee arrangements with their trustees or directors who are not ''interested persons,'' as that term is defined in the Act (the ''Directors''), and effect certain transactions incidental thereto with participating Directors.

FILING DATES: The application was filed on July 18, 1995, and amended and restated applications were filed on August 25 and November 1, 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 November 28, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 388 Greenwich Street, 22nd Floor, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 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. Each Investment Company is organized as either a Maryland corporation or a Massachusetts business trust and is registered under the Act as either an open-end or a closed-end management investment company. Smith Barney Inc. (the ''Distributor''), the principal underwriter of the open-end Investment Companies, is an affiliated person of Holdings. Holdings is a wholly-owned subsidiary of Travelers Group Inc., a diversified financial services holding company.

2. All of the Investment Companies, except for one portfolio of Smith Barney Series Fund, are advised by investment advisers that are affiliated persons of Holdings (such advisers are collectively referred to herein as the ''Managers''). An entity controlling, controlled by or under common control with Holdings will serve as investment adviser or principal underwriter (as such terms are defined in the Act) for each of the Funds.

3. The board of directors of each Investment Company includes a majority of Directors who are not ''interested persons,'' as that term is defined in section 2(a)(19) of the Act, of any of the Managers, the Distributor or any of the Investment Companies. Each Director who is not an interested person receives an annual retainer fee and an additional fee for each Directors' meeting attended. All such fees are collectively referred to herein as the ''Director's Fees.''

4. Certain Directors who are not interested persons have entered into a ''Deferred Compensation Agreement'' (each an ''Agreement''), an unfunded, nonqualified deferred compensation arrangement with certain Investment Companies for all or part of 1995. Under an Agreement, a Director may elect to defer receipt of his Director's Fees earned from the effective date of the Agreement through December 31, 1995 until a later date specified by the Director. Each Investment Company with respect to which one or more Agreements have been entered into by Directors has established an account on behalf of each electing Director (each a ''Deferred Fee Account''). On the dates that each such Investment Company would otherwise pay these deferred fees, the Investment Company credits such amounts into the Deferred Fee Account. Interest on each Deferred Fee Account is credited at 90 day intervals, calculated based on the balance of the Deferred Fee Account as of the first day of each rolling 90 day period and the prevailing 90 day U.S. Treasury Bill rate in effect at such time.

5. Under each Agreement, deferral of the Director's Fees essentially maintains the parties in the same position as if the fees were paid on a current basis. For income tax purposes, however, a Director's inclusion of the Director's Fees in his or her gross income and interest credited with respect to such Fees, and the individual Investment Company's deduction of its share of the Director's Fees, are both deferred until actual receipt by the Director or his or her beneficiary. Deferral of Director's Fees also has a negligible effect on each Investment Company's assets, liabilities and net income per share. Because the Investment Companies believe such Agreements are substantially similar to deferred compensation arrangements that have been the subject of previous no-action letters, they have not obtained any exemptive relief in connection with the Agreements. *See, e.g.*, The North Carolina Cash Management Trust (pub. avail. Jan. 23, 1992).

6. Each Investment Company now proposes to adopt, and if the requested exemptive relief is granted each other Fund will adopt, a formal plan (each a ''Proposed Plan'') to allow eligible Directors to defer receipt of all or a portion of future Director's Fees. Each Proposed Plan will be identical (except for the identity of the adopting Fund). As is the case with the existing Agreements, the Director's Fees deferred by an electing Director under the Proposed Plans will be credited to the Director's Deferred Fee Account as of the date the Fund otherwise would have paid them.

7. Under the Proposed Plans, however, the value of the Deferred Fee Account as of any date will be periodically adjusted by treating the Deferred Fee Account as though an equivalent dollar amount had been invested and reinvested in certain designated securities (the ''Underlying Securities''). In addition, if the requested exemptive relief is granted, Directors who have entered into Agreements may designate amounts credited to their Deferred Fee Account under their Agreements as being deemed invested in Underlying Securities. The Underlying Securities for a Deferred Fee Account will be shares of any of the Funds as designated by the participating Director. Unless a Fund actually purchases the Underlying Securities to cover its obligation under a Proposed Plan, each Deferred Fee Account shall be credited or charged monthly with book adjustments to reflect any increase or decrease in the value of the Underlying Securities.

8. The Proposed Plans provide that a participating Fund's obligation to make payments from a Deferred Fee Account will be a general obligation of the Fund and payments made pursuant to the Proposed Plan will be made from such Fund's general assets and property. The relationship of a Director to the Fund will be only that of a general unsecured creditor. Each Proposed Plan also provides that the adopting Fund will be under no obligation to the Director to purchase, hold or dispose of any investments. Nonetheless, if the Fund chooses to purchase investments, including Underlying Securities, to cover its obligations under such Proposed Plan, such investments will continue to be a part of the general assets and property of the Fund. Decisions on whether to purchase and maintain Underlying Securities to cover a Fund's obligation will be made by the Fund's senior management personnel. With respect to any money market Fund that values its assets by the amortized cost method or the penny-rounding method, such money market Fund has undertaken to purchase and maintain Underlying Securities in an amount equal to the deemed investments of the Deferred Fee Accounts of its Directors.

9. Deferral of Director's Fees in accordance with each Proposed Plan will have no material effect on the net assets and net income per share of any Fund. This is because the amount of the Fund's liability for deferred fees may be exactly offset by the value of shares of the Underlying Securities owned by the Fund (or in cases where the Director has designated the Fund itself as the Underlying Security, by the general investment assets of the Fund). In the case where the Fund purchases the Underlying Securities to cover its obligations, changes in the amount of the liability will be exactly matched by changes in the value of the Underlying Securities. At times determined by a Fund's management, the Fund (other than a money market Fund) may elect to cover its obligations under a Proposed Plan with the Fund's general investment assets, rather than with the purchase of Underlying Securities. Under those circumstances, there will not be an exact match between the Fund's liability for deferred fees and the value of the Deferred Fee Accounts. Any such mismatch will be *de minimis* in relation to the net assets of the Fund. In such event, the Fund's Board of Directors would monitor the amount of uncovered liability and consider whether to continue to permit shares of such other Fund to be designated as Underlying Securities.

10. Under each Proposed Plan, a Director may specify that the deferred Director's Fees be distributed in whole or in part commencing on or as soon as practicable after a date specified by the Director, which date may not be sooner than the earlier of (a) a date at least one year following the election of deferral, or (b) the date of the Director's anticipated retirement as a Director of the Fund. Notwithstanding any elections by a Director, his or her Deferred Fee Account shall be distributed (a) in the event of the Director's death or disability, (b) upon his or her ceasing to be a Director of the Fund or (c) upon the dissolution, liquidation or winding up of the Fund (unless the obligations of the Fund shall have been assumed by another Fund) or the merger of the Fund into another trust or corporation or its consolidation with one or more other trusts or corporations (unless the obligations of the Fund are assumed by such surviving entity and such surviving entity is another Fund). In addition, upon application and appropriate determination that the Director has suffered a ''Financial Hardship,'' as defined in each Proposed Plan, the Plan Administrator (the Fund's Board of Directors or such person(s) as the Board may designate) shall distribute to the Director an amount equal to the lesser of the amount needed by the Director to meet the hardship, or the balance of the Director's Deferred Fee Account. The Director's right to receive payments will be nontransferable, except in the event of his or her death, in which case amounts payable under the Proposed Plan will be payable to his or her designated beneficiary.

11. Each Proposed Plan provides that it will not obligate the adopting Fund to retain the services of a Director, nor will it obligate such Fund to pay any (or any particular level of) Director's Fees to any Director. Rather, it will merely permit a Director to elect to defer receipt of all or part of the Director's Fees which he or she would otherwise receive for future services from the Fund. Moreover, the proposed arrangement will not affect the voting rights of the shareholders of any of the Funds. If a Fund purchases Underlying Securities issued by another Fund, the purchasing Fund will vote such shares in proportion to the votes of all other shareholders of such other Fund.

Applicants' Legal Analysis

1. The Applicants request an order under section 6(c) of the Act exempting the Funds from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g) and 23(a) of the Act, and rule 2a–7 thereunder, to the extent necessary to permit the Funds to enter into deferred fee arrangements with their Directors pursuant to the Proposed Plans. In addition, the Applicants request an exemption under sections 6(c) and 17(b) of the Act from section 17(a)(1) to the extent necessary to permit the Funds to sell securities issued by them to participating Funds, and under section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds and participating Directors to effect certain joint transactions incident to the proposed deferred fee arrangements.

2. Section 6(c) provides, in part, that the SEC may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) provides that any person may file an application for an order exempting a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed 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, and that the proposed transaction is consistent with the policy of each registered investment company concerned and the general policies and purposes of the Act. Rule 17d–1(a) provides that the SEC may, by order upon application, grant exemptions from the prohibitions of section 17(d) regarding certain joint arrangements involving a registered investment company. Rule 17d–1(b) further provides that, in passing upon such an application, the SEC will consider whether the participation of the registered investment company in such arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Sections 18(a) and 18(c) restrict the ability of a registered closed-end investment company to issue senior securities. 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 believe that the Proposed Plans would possess none of

the characteristics of the instruments that led to the adoption of restrictions pertaining to ''Senior securities.'' In this regard, the Funds would not be ''borrowing'' from their Directors in the manner that concerned Congress. Liabilities for deferred fees will be *de minimis* in relation to Fund net assets. In addition, given the common existence of deferred compensation agreements, the Proposed Plans would not confuse investors.

4. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. Sections 22(g) and 23(a) prohibit registered open-end and closed-end investment companies, respectively, from issuing securities for services. The Applicants submit that the restriction on transferability of a Director's benefits under the Proposed Plans will have no adverse effects on the Director, the adopting Fund or Fund shareholders. With respect to Sections 22(g) and 23(a), Applicants submit that each Fund's obligation to make payments under its Proposed Plan would not be issued for services, but in return for the Fund not being required to pay fees on a current basis.

5. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such registered investment company. Applicants submit that the sale of securities issued by the Funds pursuant to the Proposed Plans to other Funds do not implicate the concerns that led to the enactment of section 17(a), but would merely facilitate that matching of a Fund's liability for deferred Director's Fees with the Underlying Securities that would determine the amount of such Fund's liability. Accordingly, Applicants believe that, in addition to satisfying section 6(c), they also meet the standards of section 17(b) for exempting a series of transactions from section 17(a).

6. Section 139(a)(3) prohibits registered investment companies from, among other things, deviating without a shareholder vote from any investment policy that is changeable only if authorized by shareholder vote or deviating from any policy recited in its registration statement pursuant to section 8(b)(3). Certain of the Investment Companies have a fundamental investment restriction prohibiting them from investing in securities of other investment companies, except in connection with a merger, consolidation or acquisition of assets (collectively, the ''Restricted Investment Companies''). Applicants submit that it is appropriate to exempt the Restricted Investment Companies from the provisions of Section 13(a)(3), so as to enable the Restricted investment Companies to invest in Underlying Securities without a shareholder vote. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of each Restricted Investment Company. Furthermore, the relief requested from section 13(a)(3) would extend only to future Funds for which an affiliated person of Holdings becomes investment adviser or principal underwriter subsequent to the future Fund's initial public offering and that have fundamental investment policies prohibiting the purchase of investment company shares without shareholder approval.

7. 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. The Applicants submit that exempting each Fund that is a money market Fund from rule 2a–7 to the limited extent required to permit it to invest in Underlying Securities (and to exclude Underlying Securities in calculating such Fund's dollar-weighted average maturity) is appropriate. Such an exemption would permit the Funds in question to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fee arrangements will not affect net asset value.

8. 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 without prior SEC approval. To the extent that the Proposed Plans may be deemed to involve joint transactions between the Funds and their Directors, Applicants submit that the participation in the Proposed Plans by any Fund will not be on a basis that is less advantageous than that of any other participant. Deferral of a Director's Fees in accordance with the Proposed Plans would essentially maintain the parties, viewed both separately and in their relationship to one another, in the same position (apart from tax effects) as if the Fees were paid on a current basis.

9. Applicants believe that, for the reasons set forth above, the Proposed Plans are in the best interests of each Fund and its shareholders and are consistent with the purposes fairly intended by the policy and provisions of the Act. In addition, the Applicants submit that exemption of the proposed deferred fee arrangement and transactions related thereto from the foregoing provisions of the Act is necessary and appropriate in the public interest and consistent with the protection of investors.

Conditions

Each Applicant agrees that the order of the SEC granting the requested relief shall be subject to the following conditions:

1. With respect to the requested relief from rule 2a–7, any money market Fund that values its assets by the amortized cost method or the penny-rounding method will buy and hold Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between such Fund's liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by another Fund, the purchasing Fund will vote such shares in proportion to the votes of all other shareholders of such other Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27883 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21474; 812–9812]

Standish, Ayer & Wood Investment Trust; Notice of Application

November 6, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Standish, Ayer & Wood Investment Trust (the ''Trust'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act to exempt applicant from the provisions of section 17(a).

SUMMARY OF APPLICATION: Applicant seeks an order to permit the in-kind redemption of Trust shares held by an ''affiliated person'' of the Trust.

FILING DATE: The application was filed on October 11, 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 December 1, 1995, and should be accompanied by proof of service on 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 5th Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111 .

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, 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.

Applicant's Representations

1. The Trust is an open-end management investment company established as a Massachusetts business trust. The Trust consists of twelve portfolios, including the Standish Equity Fund (the ''Fund''). Standish, Ayer & Wood, Inc. (the ''Adviser'') serves as the Fund's investment adviser.

2. State Mutual Separate Account F (the ''Separate Account'') is a shareholder of the Fund and is an insurance company segregated asset account established by State Mutual Life Assurance Company of America (''State Mutual''). It is operated as a comingled funding and investment vehicle for several qualified pension plans. As of September 21, 1995, the Separate Account owned beneficially and of record approximately 39.3% of the outstanding shares of the Fund.

3. State Mutual, acting pursuant to its fiduciary obligation under the Employee Retirement Income Security Act of 1974, as amended, has concluded that the assets of the Separate Account invested in the Fund should be managed directly by the Adviser in the form of a separate investment advisory account. Consequently, State Mutual, on behalf of the Separate Account, has notified the Trust that it expects to redeem its shares of the Fund and place the proceeds in a separate investment advisory account to be managed by the Adviser.

4. The Fund's prospectus and statement of additional information provide that redemption requests generally will be paid in cash. If, however, the Fund's board of trustees (the ''Board'') determines that it would be in the best interest of the shareholders of the Fund, redemption amounts will be paid in-kind with respect to redemption requests in a single transaction or series of transactions during any 90 day period in excess of $250,000. In such event, cash will be paid for that portion of the Fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements) and other assets which are not susceptible for distribution (including receivables and prepaid expenses), net of all liabilities. The Board has determined that it would be in the best interest of shareholders to redeem the shares of the Separate Account in-kind to the extent permitted by the Trust's election under rule 18f–1.[1]

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act prohibits affiliated persons of the Fund from knowingly purchasing any securities from the Fund. Section 2(a)(3)(A) of the Act defines an ''affiliated person'' of another person as any person owning five percent or more of the outstanding voting securities of such other person. The Separate Account is an affiliated person of the Fund because it owns beneficially and of record in excess of 5% of the Fund's shares.

2. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

3. Applicant submits that the terms of the proposed in-kind redemption meets the standards set forth in section 17(b). Applicant believes that the redemption will be on terms that are reasonable and fair to the Fund and its shareholders and will not involve overreaching on the part of any person because the Fund will use an objective, verifiable standard for the selection and valuation of any securities to be distributed in connection with the proposed redemption in-kind. Similarly, the proposed transactions are consistent with the investment policy of the Fund, which expressly allows redemptions in-kind. Finally, applicant believes that the proposed transaction is consistent with policies and purposes of the Act to protect shareholders of investment companies from self-dealing on the part of investment company affiliates to the detriment of other shareholders because the Separate Account would not receive any advantage not available to any other shareholder if the proposed in-kind redemption is permitted.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The portfolio securities of the Fund distributed to the Separate Account pursuant to a redemption in-kind (the ''In-Kind Securities'') will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed on a *pro rata* basis after excluding (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933 and (b) certain portfolio assets (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. In addition, the Fund will distribute cash in lieu of any securities held in the Fund's portfolio not amounting to round lots, fractional shares, and accruals on such securities.

3. The In-Kind Securities distributed to the Separate Account will be valued in the same manner as they would be valued for purposes of computing the Fund's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is the last reported trade price on the exchange on which the securities are principally traded, or, if there is no such reported price, is the last quoted bid price.

4. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption by the separate account occurred, the first two years in an easily accessible place, a written record of such

[1] The Trust has elected to be governed by the provisions of rule 18f–1 under the Act and is, therefore, committed to pay in cash all requests for redemption by any shareholder of record, limited in amount with respect to each shareholder during any 90 day period to the lesser of $250,000 or 1% of the Fund's net asset valve at the beginning of such period.

redemption setting forth a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27968 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21476; File No. 811–7053]

Torchmark Government Securities Fund, Inc.; Application for Deregistration

November 6, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Torchmark Government Securities Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on August 25, 1995, and amended on October 25, 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 December 4, 1995, and should be accompanied by proof of service on 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 6300 Lamar Avenue, P.O. Box 29217, Shawnee Mission, Kansas 66201–9217.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

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.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a corporation under Maryland law. On October 20, 1992, applicant registered under section 8(a) of the Act by filing a notification of registration on Form N–8A, and filed a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933 to register an indefinite number of shares. The registration statement was declared effective on February 26, 1993, and the initial public offering of applicant's shares commenced on that date.

2. At a meeting held on February 8, 1995, applicant's board of directors determined that it was desirable to dissolve applicant and approved a plan to liquidate. In determining to liquidate applicant, the board considered the fact that applicant's investment adviser, based upon analysis of market conditions, applicant's performance, and opportunities for growth, determined that it was unlikely that applicant's assets would increase to a level that would enable applicant to achieve a desirable expense level.

3. On or about March 1, 1995, proxy materials were distributed to applicant's shareholders containing the proposed plan of liquidation (the ''Plan''). Applicant's shareholders approved the Plan at a special meeting of shareholders held on April 3, 1995.

4. Pursuant to the Plan, applicant sold substantially all of its portfolio securities and other property by June 27, 1995, on which date applicant had outstanding 150,772.54 shares of common stock. As of June 28, 1995, applicant had an aggregate value of $1,460,985.89, and a net asset value per share of $9.69. On June 28, 1995, pursuant to the Plan and in accordance with Maryland law, applicant made a liquidating distribution to its shareholders *pro rata* at net asset value. In addition, Waddell & Reed, Inc., the parent of applicant's investment adviser, made individual payments to applicant's shareholders not affiliated with Waddell & Reed, Inc., that, when added to the amounts received by such shareholders, approximated their investment in applicant.

5. The expenses incurred in connection with the liquidation are expected to total $3,788 and have been or will be paid by Waddell & Reed, Inc. They consist primarily of legal expenses, expenses of printing and mailing communications to shareholders, and miscellaneous accounting and administrative expenses.

6. At the time of the application, applicant had no securityholders, assets, or liabilities, except for certain legal and audit fees that will be paid by Waddell & Reed, Inc. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

7. Applicant filed Articles of Dissolution with the Maryland Department of Assessments and Taxation on April 24, 1995. Applicant also took other actions required by Maryland law in connection with the dissolution.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27970 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21475; File No. 811–7045]

Torchmark Insured Tax-Free Fund, Inc.; Application for Deregistration

November 6, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Torchmark Insured Tax-Free Fund, Inc..

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on August 25, 1995, and amended on October 25, 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 December 4, 1995, and should be accompanied by proof of service on 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 6300 Lamar Avenue, P.O. Box 29217, Shawnee Mission, Kansas 66201–9217.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management.

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.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a corporation under Maryland law. On September 29, 1992, applicant registered under section 8(a) of the Act by filing a notification of registration on Form N–8A, and filed a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933 to register an indefinite number of shares. The registration statement was declared effective on February 26, 1993,and the initial public offering of applicant's shares commenced on that date.

2. At a meeting held on February 8, 1995, applicant's board of directors determined that it was desirable to dissolve applicant and approved a plan to liquidate. In determining to liquidate applicant, the board considered the fact that applicant's investment adviser, based upon analysis of market conditions, applicant's performance, and opportunities for growth, determined that it was unlikely that applicant's assets would increase to a level that would enable applicant to achieve a desirable expense level.

3. On or about March 1, 1995, proxy materials were distributed to applicant's shareholders containing the proposed plan of liquidation (the ''Plan''). Applicant's shareholders approved the Plan at a special meeting of shareholders held on April 3, 1995.

4. Pursuant to the Plan, applicant sold substantially all of its portfolio securities and other property by June 27, 1995. As of that date, applicant had outstanding 244,444.751 shares of common stock, with an aggregate value of $2,426,548, and a net asset value per share of $9.93. On June 28, 1995, pursuant to the Plan and in accordance with Maryland law, applicant made a liquidating distribution to its shareholders *pro rata* at net asset value. In addition, Waddell & Reed, Inc., the parent of applicant's investment adviser, made individual payments to applicant's shareholders not affiliated with Waddell & Reed, Inc. that, when added to the amounts received by such shareholders, approximated their investment in applicant.

5. The expenses incurred in connection with the liquidation are expected to total $3,631 and have been or will be paid by Waddell & Reed, Inc. They consist primarily of legal expenses, expenses of printing and mailing communications to shareholders, and miscellaneous accounting and administrative expenses.

6. At the time of the application, applicant had no securityholders, assets, or liabilities, except for certain legal and audit fees that will be paid by Waddell & Reed, Inc. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

7. Applicant filed Articles of Dissolution with the Maryland Department of Assessments and Taxation on April 24, 1995. Applicant also took other actions required by Maryland law in connection with the dissolution.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27969 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21470; 812–9532]

The Vanguard Group, Inc., et al.; Notice of Application

November 3, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Vanguard Group, Inc. (''TVGI''); and Vanguard Balanced Index Fund, Inc., Vanguard Index Trust, Vanguard International Equity Index Fund, Inc., Vanguard Bond Index Fund, Inc., Vanguard Institutional Index Fund, Vanguard Institutional Portfolios, Inc., Vanguard California Tax-Free Fund, Vanguard New York Insured Tax-Free Fund, Vanguard Pennsylvania Tax-Free Fund, Vanguard Fixed Income Securities Fund, Inc., Vanguard Preferred Stock Fund, Vanguard Asset Allocation Fund, Inc., Vanguard/Trustees' Equity Fund, Vanguard/Windsor Funds, Inc., Vanguard Tax-Managed Fund, Inc., Vanguard Florida Insured Tax-Free Fund, Inc., Vanguard/Primecap Fund, Inc., Vanguard/Morgan Growth Fund, Inc., Vanguard Variable Insurance Fund, Vanguard Money Market Reserves, Inc., Vanguard Municipal Bond Fund, Inc., Vanguard New Jersey Tax-Free Fund, Vanguard Ohio Tax-Free Fund, Vanguard/Wellesley Income Fund, Inc., Vanguard Convertible Securities Fund, Inc., Vanguard/Wellington Fund, Inc., Vanguard Equity Income Fund, Inc., Vanguard Quantitative Portfolios, Inc., Vanguard World Fund, Inc., Vanguard Explorer Fund, Inc., Vanguard Specialized Portfolios, Inc., Vanguard Admiral Funds, Inc., Gemini II, Inc. and any future registered open-end management investment company, or portfolio thereof, in which a Fund of Index Funds (as defined below) invests that (a) is part of a group of investment companies which holds itself out to investors as related companies for purposes of investment and investor services, and (b) obtains corporate management, administrative, and distribution services from TVGI.

RELEVANT ACT SECTIONS: Order of exemption requested pursuant to section 6(c) of the Act from section 12(d)(1) of the Act, pursuant to sections 6(c) and 17(b) of the Act from section 17(a) of the Act, and pursuant to rule 17d–1 under the Act permitting certain joint transactions in accordance with section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: The requested order would permit applicants to create a ''fund of index funds'' that would invest according to specified ratios or weightings in shares of two or more Vanguard index funds without regard to the percentage limitations of section 12(d)(1) (''Fund of Index Funds''). The requested order also would permit the boards of trustees/directors of the funds constituting the Vanguard Group of Investment Companies to modify the funds' service agreement to provide that a Fund of Index Funds may become a member of The Vanguard Group of Investment Companies without bearing duplicative capital contribution or expense allocation costs.

FILING DATE: The application was filed on March 16, 1995, and amended on November 1, 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 November 28, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o The Vanguard Group, Inc., P.O. Box 2600, Valley Forge, Pennsylvania 19482.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, 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 Vanguard Funds are 32 registered management investment companies that currently offer shares in 86 portfolios (the ''Portfolios''). The Vanguard Funds organized and operate TVGI, pursuant to the terms of a Second Amended and Restated Funds' Service Agreement dated May 15, 1993 (the ''Funds' Service Agreement'') in order to provide the Funds with services on an ''internalized,'' at-cost, no-load basis.[1] Each Fund is organized as a business trust under Pennsylvania law, or as a Maryland corporation. Each Fund is registered as an open-end management investment company, except for Gemini II, Inc., which is registered as a closed-end company. Each Fund has a board of directors/trustees (the ''Board of Directors'') that consists of the same ten persons, eight of whom are not ''interested persons'' of the Fund under section 2(a)(19) of the Act. Nine of the directors compose the board of directors of TVGI. The Funds that are party to the Funds' Service Agreement constitute The Vanguard Group of Investment Companies (''The Vanguard Group''). Vanguard Institutional Index Fund is a registered management investment company that receives services from the Vanguard Group, Inc., but is not a member of The Vanguard Group.

2. Within the Vanguard Funds are the following index funds: Vanguard Balanced Index Fund, Inc., Vanguard Index Trust, Vanguard International Equity Index Fund, Inc., Vanguard Bond Index Fund, Inc. (collectively, with the Vanguard Institutional Index Fund, the ''Index Funds''). The Index Funds currently offer shares in 15 separate portfolios (''Index Portfolios''). Except for Vanguard Balanced Index Fund, each Index Portfolio seeks to provide investment results that correspond to the results of a particular securities index (or benchmark) by investing its assets in the same proportion as the securities represented in the index (or a representative sampling thereof). Vanguard Balanced Index Fund seeks to provide investment results that correspond to the results of a 60%/40% weighting of two indices, the Wilshire 5000 Index and the Lehman Brothers Aggregate Bond Index.

3. As a matter of fundamental policy, the Index Portfolios invest all of their investable assets in securities selected to replicate the composition of a specified securities index or benchmark. In addition, the Index Portfolios invest solely in liquid, readily marketable securities. Several Index Portfolios impose purchase charges that are designed to allocate transaction costs associated with new purchases to investors making the purchases. The Emerging Markets Portfolio is the only Index Portfolio that charges a redemption fee.

4. Vanguard seeks to create a Fund of Index Funds. The initial portfolio of the Fund of Index Funds would be an ''International Index Portfolio,'' which would replicate the Morgan Stanley Capital International Europe, Australia and Far East Index (''EAFE''). Vanguard intends to create this International Index Portfolio by combining two existing Index Portfolios, the European Portfolio and the Pacific Portfolio, rather than creating a separate investment company or portfolio to invest in securities directly. By combining existing Index Portfolios, Vanguard seeks to avoid higher start-up and ongoing costs, and tracking errors.

5. Applicants request that the relief sought herein apply to any future Fund of Index Funds, whether organized as an open-end investment company or as a portfolio thereof, which operates in all material respects in accordance with the representations contained in the application, complies with the conditions to the requested order, and is a Vanguard Fund or is operated by TVGI.

6. TVGI, a registered investment adviser under the Investment Advisers Act of 1940, is a wholly and jointly owned and capitalized subsidiary of the Vanguard Funds. TVGI provides to the Vanguard Funds on an at-cost basis almost all of their necessary corporate management, administrative, and shareholder accounting services, distribution services, and, for certain Portfolios, advisory services. TVGI also provides specified services to two funds, Vanguard STAR Fund and Vanguard Institutional Index Fund, that do not contribute to the capital of TVGI.

7. Under current provisions of the Funds' Service Agreement, a Fund of Index Funds, if structured as a separate investment company, could not become a member of The Vanguard Group without making a capital investment in TVGI, and being allocated a portion of TVGI's corporate management and distribution expenses, even though Fund of Index Funds shareholders would bear a portion of these expenses through the fees they pay with respect to the Index Portfolios. The Boards of Directors of the Funds propose to amend the Funds' Service Agreement to permit a Fund of Index Funds, whether structured as a separate investment company or as a portfolio of a Vanguard Fund, to become a member of The Vanguard Group.

8. The amendment to the Funds' Service Agreement would provide, in substance, that: (a) The obligation of a Fund of Index Funds to make capital contributions to TVGI would be reduced or eliminated to the extent that its assets consist of shares of an Index Portfolio that is already contributing to the capital of TVGI; (b) a Fund of Index Funds would not be allocated any portion of the corporate management and administrative expenses, or the distribution expenses, that are allocated under the Funds' Service Agreement; and (c) a Fund of Index Funds would be obligated to pay for services rendered by outside parties and certain other direct Fund of Index Funds expenses customarily borne by each Fund pursuant to the Funds' Service

[1] The Funds operate TVGI pursuant to a number of exemptive orders. The Vanguard Group, Inc., Investment Company Act Release Nos. 19011 (Oct. 9, 1992) (notice) and 19184 (Dec. 29, 1992) (order); Wellington Fund, Inc., Investment Company Act Release Nos. 15788 (June 9, 1987) (notice) and 15846 (July 2, 1987) (order); Wellington Fund, Inc., Investment Company Act Release Nos. 13566 (Oct. 5, 1983) (notice) and 13613 (Nov. 3, 1983) (order); The Vanguard Group, Inc., Investment Company Act Release Nos. 11718 (Apr. 6, 1981) (notice) and 11761 (May 4, 1981) (order); The Vanguard Group, Inc., Investment Company Act Release Nos. 9850 (July 15, 1977) (notice), and 9927 (Sept. 13, 1977) (temporary order) and 11645 (Feb. 25, 1981) (order); Wellington Fund, Inc., Investment Company Act Release Nos. 8644 (Jan. 17, 1975) and 8676 (Feb. 18, 1975) (order).

Agreement, subject to the partial or complete elimination of these charges by the savings which would accrue to the benefit of the Index Portfolios.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) provides that the SEC may exempt persons or transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) exempting them from section 12(d)(1) to permit any Fund of Index Funds to invest in the Index Portfolios in excess of the percentage limitations of section 12(d)(1).

3. Section 12(d)(1) was intended to mitigate or eliminate actual or potential abuses that might arise when one investment company acquires shares of another investment company. These abuses include the acquiring fund imposing undue influence over the management of the acquired funds through the threat of large-scale redemptions, the acquisition by the acquiring company of voting control of the acquired company, the layering of sales charges, advisory fees, and administrative costs, and the creation of a complex pyramidal structure that may be confusing to investors.

4. Applicants believe that none of these potential abuses would be present in the structure of a Fund of Index Funds. A Fund of Index Funds would not exercise any influence over the management of the acquired Index Portfolios by the threat of redemptions. A Fund of Index Funds would invest its assets solely to establish and maintain specified ratios or weightings of Index Portfolios. Unless a Fund of Index Funds would cease using one Index Portfolio and begin using another, the Fund of Index Funds would have no investment management authority to select which Index Portfolios to purchase or redeem, and would not hold itself out as doing so. Redemptions from the acquired Index Portfolios would result solely in the ordinary course of business as a result of a Fund of Index Fund's receipt of net redemption requests from its shareholders. The acquired Index Portfolios, as a matter of policy and practice, are at all times fully invested in liquid, publicly traded securities. Thus, they would have no reason to hold a cash position to protect their other shareholders against potential redemptions by a Fund of Index Funds.

5. The structure of a Fund of Index Funds would contain no improper layering of sales charges or advisory fees. Neither a Fund of Index Funds nor the Index Portfolios currently intend to impose any sales charges or fees pursuant to rule 12b–1. Applicants currently do not intend to charge an advisory fee at the Fund of Index Funds level with respect to assets invested in the Index Portfolios. Similarly, virtually all administrative fees would be imposed at the Index Portfolio level, and shareholders of a Fund of Index Funds would bear a portion of these fees only in proportion to their holdings of the Index Portfolios.

6. A Fund of Index Funds would not have a complex structure that would make it difficult for a shareholder to determine the true value of his or her interest in the Fund of Index Funds. The Fund of Index Funds would seek to replicate specified indices by investing in shares of Index Portfolios that hold securities replicating the indices, rather than by direct investments in these securities.

7. In addition to not containing the actual and potential abuses which led to the enactment of section 12(d)(1), applicants believe that the structure of a Fund of Index Funds would provide a number of benefits to a Fund of Index Funds and its shareholders, including: (a) The opportunity to obtain through a single investment account a diversified investment program suitable for retirement or long-term savings; (b) a simpler method for an investor to allocate his or her assets on a continuous basis without, at a minimum, the inconvenience of initiating the steps periodically to ''rebalance'' his or her portfolio; (c) a modest reduction in the investor's account maintenance costs, because an investor would not need to maintain two or more accounts to attain a desired allocation; and (d) the lower expense ratios and increased diversification which result from a new Fund of Index Fund's ability to take advantage of the existing asset base created by the acquired Index Portfolios.

8. The acquired Index Portfolios benefit from the existence of a Fund of Index Funds in three major respects: (a) The likely addition of assets from a Fund of Index Funds would reduce the expense ratios of the Index Portfolios; (b) to the extent many shareholders of a Fund of Index Funds would otherwise open accounts with each of the Index Portfolios, the number of accounts maintained by the Index Portfolios in the aggregate, and the resulting transfer agency fees, would be reduced; and (c) the costs of printing and mailing prospectuses, sales material, and periodic reports would be reduced because The Vanguard Group can combine information concerning two or more funds in a single document. All of the Vanguard Funds are also likely to benefit from the existence of a Fund of Index Funds since increased distribution and the resulting addition of assets to The Vanguard Group produces cost savings and other benefits for all Funds even if they are not the acquired Funds.

B. Section 17(a)

1. Section 17(a) makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. A Fund of Index Funds and the acquired Index Portfolios may be considered affiliated persons because they share common officers and/or directors/trustees. An acquired Index Portfolio's issuance of its shares to a Fund of Index Funds may be considered a sale prohibited by section 17(a).

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Index Portfolios to sell their shares to a Fund of Index Funds.

[2] Section 17(b) applies to specific proposed transactions and not to an ongoing series of future transactions. *See* Keystone Custodian Funds, 21 S.E.C. 295, 298–299 (1945). Section 6(c) can be used

3. Applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b). All purchases and redemptions of shares of an Index Portfolio would be effected at current net asset value. A Fund of Index Fund's purchase and sale of shares of the Index Portfolios is consistent with the Fund of Index Funds' policy, as set forth in its registration statement. Applicants also believe that the proposed transactions are consistent with the general purposes of the Act.

C. Section 17(d) and Rule 17d–1

1. Section 17(d) prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of SEC rules and regulations. Rule 17d–1 provides that an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the SEC has issued an order approving the arrangement. The Vanguard Funds and TVGI are engaged in a joint enterprise within the meaning of section 17(d).

2. Applicants request an order under section 17(d) and rule 17d–1 to permit the Boards of Directors of the Vanguard Funds to modify the Funds' Service Agreement. Applicants believe that, for the reasons discussed above, the proposed amendments to the Funds' Service Agreement are consistent with the standards of rule 17d–1. Requiring a Fund of Index Funds to make an asset-related capital contribution to TVGI, when the assets of the Fund of Index Funds will already be bearing a capital assessment indirectly at the Index Portfolio level, would unfairly impose duplicative expenses upon the shareholders of the Fund of Index Funds, and confer an unjustified benefit on the acquired Index Portfolios, as well as the other Vanguard Funds, which will be deriving other benefits from the Fund of Index Funds' participation in TVGI.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The Fund of Index Funds and each underlying Index Portfolio will be part of a group of investment companies which holds itself out to investors as related companies for purposes of investment and investor services, and which obtains corporate management, administrative, and distribution services from TVGI.

2. No underlying Index Portfolio shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. A majority of the directors of the Fund of Index Funds will not be ''interested persons,'' as defined in section 2(a)(19) of the Act.

4. Before approving any advisory contract under section 15 of the Act, the board of directors of the Fund of Index Funds, including a majority of the directors who are not ''interested persons,'' as defined in section 2(a)(19), shall find that advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any underlying Index Portfolio's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund of Index Funds.

5. Any sales charges or service fees charged with respect to securities of the Fund of Index Funds, when aggregated with any sales charges or service fees paid by the Fund of Index Funds with respect to shares of the underlying Index Portfolios, shall not exceed the limits set forth in Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

6. The applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets for each Fund of Index Funds portfolio and each of its underlying Index Portfolios; monthly purchases and redemptions (other than by exchange) for each Fund of Index Funds portfolio and each of its underlying Index Portfolios; monthly exchanges into and out of each Fund of Index Funds Portfolio and each of its underlying Index Portfolios; month-end allocations of each Fund of Index Funds portfolio's assets among its underlying Index Portfolios; annual expense ratios for each Fund of Index Funds portfolio and each of its underlying Index Portfolios; and a description of any vote taken by the shareholders of any underlying Index Portfolio, including a statement of the percentage of votes cast for and against the proposal by the Fund of Index Funds and by the other shareholders of the underlying Index Portfolios. Such information will be provided as soon as reasonably practicable following each fiscal year-end of the Fund of Index Funds (unless the Chief Financial Analyst shall notify applicants in writing that such information need no longer be submitted).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27885 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

to grant relief from section 17(a) for an ongoing series of future transactions.

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2286]

Policy on Munitions Export Licenses to Ecuador and Peru

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Pursuant to Sections 38 and 42 of the Arms Export Control Act, notice is hereby given that it is no longer the policy of the United States to deny all requests for licenses and other approvals to export or otherwise transfer lethal items to Ecuador or Peru. All requests will henceforth be reviewed on a case-by-case basis.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Brian D. Bachman, Office of Arms Transfer and Export Control, Bureau of Political-Military Arms Transfer and Export Control, Bureau of Political-Military Affairs, Department of State (202–647–4231).

SUPPLEMENTARY INFORMATION: Effective immediately, it is no longer the policy of the U.S. Government to deny all requests for licenses and approvals to authorize the export or other transfer of lethal items to Ecuador and Peru. All requests will henceforth be reviewed on a case-by-case basis.

Exports will be evaluated in light of the recent conflict between these countries and the desirability of promoting multilateral restraint in arms transfers to Peru and Ecuador.

The licenses and approvals subject to this policy include those which permit commercial defense and service exports of any kind (e.g. exemptions and licenses and other approvals for licenses for manufacturing, license agreements, technical assistance agreements, and

technical data exports) involving Ecuador and Peru under the authority of the Arms Export Control Act.

This action has been taken pursuant to Sections 38 and 42 of the Arms Export and Control Act (22 U.S.C. 2778, 2791) and Section 126.7 of the International Traffic in Arms Regulations in furtherance of the foreign policy of the United States.

Dated: November 6, 1995.

Thomas E. McNamara,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 95–27957 Filed 11–9–95; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–076]

National Preparedness for Response Exercise Program (PREP)

AGENCY: Coast Guard, DOT.

ACTION: Notice of PREP area exercise schedule for 1996, 1997 and 1998, and summary of the PREP Annual Workshop.

SUMMARY: The Coast Guard, the Environmental Protection Agency (EPA), the Research and Special Programs Administration (RSPA) and the minerals management Service (MMS), in concert with the states, the oil industry and concerned citizens, developed the Preparedness for Response Exercise Program (PREP). This notice announces the schedule of the Area Exercises for 1996, 1997 and 1998. It also provides a summary of the annual public workshop held on June 14, 1995, in Alexandria, VA.

DATES: Industry members interested in leading an Industry-led Area Exercise or participating in a Government-led Area Exercise should submit their requests directly to the USCG or EPA On-Scene Coordinator (OSC) in the appropriate Area as soon as possible, but no later than 3 months before conducting the exercise. Industry representatives should indicate the date and location of the exercise in which they are interested in participating or leading. Once the OSC has chosen an industry plan holder for an Industry-led Area Exercise or as participant for the Government-led Exercise, the OSC will contact the National Scheduling Coordinating Committee (NSSC) at the address listed below.

ADDRESSES: Written comments should be mailed to COMMANDANT (G–MRO–2), Room 2100, U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC, 20593–0001. Attn: Ms. Karen Sahatjian.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Sahatjian, Office of Marine Safety, Security and Environmental Protection, Response Division, (G–MRO–2), (202) 267–2850. PREP Guidelines and Training Elements, previously available through Coast Guard Headquarters, are now available from the Government Printing Office, (202) 512–1800. Stock numbers and cost for each manual are: PREP GUIDELINES—050–012–00365–3 COST: $3.75; TRAINING REFERENCE—050–012–00364–5 COST: $8.50.

SUPPLEMENTARY INFORMATION:

Background Information

The Coast Guard, EPA, RSPA and MMS developed the National Preparedness for Response Exercise Program (PREP) to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). OPA 90 requires periodic unannounced drills. See 33 U.S.C. 1321(j)(7). However, the working group (comprised of Coast Guard, EPA, RSPA, MMS, state representatives, and industry representatives) determined that the PREP Guidelines should also include announced drills. See 33 CFR 154.1055(a)(5) and 155.1060(d), and 40 CFR part 112. This notice addresses announced drills only. The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the plan holder's organization. External exercises extend beyond the plan holder's organization to involve other members of the response community. External exercises are separated into two categories, Area exercises, and Government-initiated unannounced exercises. These exercises are designed to evaluate the entire response mechanism in a given Area to ensure adequate pollution response preparedness. The goal of the PREP is to conduct approximately 20 Area exercises per year, with the intent of exercising most Areas of the country over a three year period. This notice sets forth the Area exercise schedule for calendar years 1996, 1997 and 1998.

The National Scheduling Coordinating Committee (NSCC) conducts an annual public workshop. In the past, this workshop focused on the upcoming schedule; however, this year, the workshop included presentations from a variety of individuals with experiences participating in or conducting Area Exercises. This notice also provides a summary of the workshop.

Summary of PREP Workshop

On June 14, 1995, the Coast Guard, EPA, RSPA Office of Pipeline Safety (OPS), and MMS hosted the second annual PREP Workshop. The following provides a brief summary of the points raised by the Workshop participants. A more complete summary is available on the Coast Guard Navigation Information Service (NIS) Electronic Bulletin Board (BBS) at 703–313–5910.

The workshop was opened by speakers from the four Federal Agencies: Captain Michael Donohoe, USCG; Chris Hoidal, OPS; Ann Whalen, EPA Region 5; and Carl Anderson, MMS. The objectives of the workshop were to ensure that the program is effective for the entire response community; share industry experiences on internal exercises; and identify industry concerns regarding participation in Area exercises in an effort to increase their participation. All four Federal Agency representatives agreed that their Agencies were committed to making the exercise program work for the entire response community.

A panel of industry representatives was convened to give their perspectives of the Area exercise and share their experiences. Tiffany Rau of ARCO Marine, Inc., described ARCO's participation in a Government-led Area Exercise. She said that it was, overall, a positive experience and enabled them to become familiar with area resources and personnel available during an incident. There were negative considerations also. The planning process is very time consuming. Additionally, PREP does not allow for maximum participation of industry management during an exercise. Ms. Rau believed that this is not representative of an actual incident when the government would have minimal participation if the responsible party was responding to the oil spill. Ms. Rau also said that if a company wants to have an exercise with the government, then it is best to volunteer for a PREP Area Exercise.

Dick Wilson and Joel Larkin of Buckeye Pipeline discussed their experience with an Industry-led Area Exercise in the inland zone. Mr. Wilson said that he supports PREP because it reinforces government relations in advance of real incidents. Furthermore, this exercise allowed Buckeye to demonstrate their commitment and competence. Overall, both Mr. Wilson and Mr. Larkin felt that the exercise was meaningful for all participants. The

exercise reflected many attributes of real events including internal confusion.

Earl Espeland of TOSCO discussed his Industry-led Area Exercise in the coastal zone. Mr. Espeland said that TOSCO found that preparing for the exercise was just as beneficial as conducting one. They decided to exercise limited objectives so that they could focus on how the management response team would work together. Unlike many other scenario designs,they viewed the source of the spill as relatively unimportant, since the exercise focused on the response once oil entered the water.

During the afternoon, Mike Kurgan, USCG National Strike Force Coordination Center (NSFCC), and Carrie Bravenec, Robert J. Meyers & Associates, gave presentations on preparing an exercise from the perspective of the public and private sector (respectively).

Throughout the course of the workshop there was a considerable amount of discussion and questions asked of the federal agencies and states represented, as well as other company officials. The summary provides more information, but the following highlights the more salient issues raised.

Scope and Size of Exercise

There is a perception that the exercises are very large and too costly. The industry panelists all said that the cost of conducting their exercise was not excessive. There was some discussion regarding the way costs were figured. A PREP Area Exercise does not have to be a large production and very costly to meet the exercise objectives.

Credit for Spill Management Team (SMT) Tabletop Exercises

This issue has been raised on several different occasions. A workshop participant asked if someone else has a drill that exercises all members of his company's SMT, can he take credit? The answer was no. To further clarify, this does not mean that the plan holder can view an exercise from an audience and then take credit for an annual SMT Tabletop exercise. The purpose of the exercise is not to exercise the team, but to exercise the plan. The focus is how the SMT works within a specific plan, not how well your spill management team works within someone elses plan. To carry out the role of the SMT, the SMT must be familiar with their client's response plan. The reason for this exercise requirement is to ensure familiarity with sources, sizes and locations of potential spill scenarios they will be responsible for managing. In addition, familiarity with the response plan ensures that the SMT knows the plan holders' organization, i.e. domestic, foreign, family-owned, corporate structure, etc. A question was raised in another context regarding participation of the plan holder of a foreign vessel and the SMT during the exercise. This question was raised because of the cost of the plan holder to travel to the United States for the exercise. Understanding the economic burden this may cause a company, the Coast Guard believes that the plan holder gains invaluable experience and knowledge when participating, in person, in the exercise. The Coast Guard suggests combining the exercise with ancillary meetings or conferences to make the exercise more economical. Where this is not possible, the plan holder may participate in the exercise via telephone. In many circumstances, this may be more realistic since it could take the plan holder as long as 30 hours to arrive at the spill site.

Scheduling

One of the participants said that the scheduling was too rigid and inflexible because the dates and location were already chosen before industry has an opportunity to comment on it. The schedule that is published in the spring is proposed. The Coast Guard accepts comments on the proposed schedule, and makes appropriate revisions at the annual workshop. But there was agreement within the Coast Guard that the scheduling seemed too structured. The final schedule in this notice addresses that comment by only listing suggested quarters for calendar year 1996; listing quarters only for the exercises where volunteers have already come forward for calendar years 1997 and 1998; and listing dates or quarters for government-led exercises. It would not be fair to change the date of the exercise after companies have been planning for the exercise. For government-led exercises, NSFCC established a schedule with dates that cannot vary greatly. In all other cases, the industry can work with the appropriate agencies to schedule an exercise. We expect to generate more industry volunteers by increasing the flexibility of the schedule.

Another participant asked whether the scheduling cycle could be changed from three years to five years. The participant thought more companies would volunteer for the exercises if the schedule was extended. It does not appear that more companies would volunteer by extending the schedule. Furthermore, the Coast Guard needs to ensure that the Captains of the Ports (COTPs) are exercised frequently enough so the ACPs can be updated regularly, as needed.

Schedule

The following is the revised PREP schedule for Calendar Years 1996, 1997 and 1998. All of the comments received were considered by the NSCC. Where no industry plan holders have come forward to either participate or lead an exercise, the OSCs may solicit and recommend plan holders. Companies that wish to participate should contact the Coast Guard or EPA OSC, who will then forward the name to the NSCC at the address listed under **ADDRESSES.**

Dated: November 1, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

PREP SCHEDULE.—GOVERNMENT LED AREA EXERCISES

Area	Agency	Date/QTR *	Participant
1996			
Charleston, SC Area (MSO Charleston OSC)	CG	2/15–16	
Puget Sound Area (MSO Puget Sound OSC)	CG	4/18–19	
Buffalo, NY Area (MSO Buffalo OSC)	CG	6/13–14	
EPA Region VIII Area (EPA OCS)	EPA	8/8–9	
Philadelphia Coastal Area (MSO Philadelphia OSC)	CG	9/26–27	
South Florida Area (MSO Miami OSC)	CG	12/12–13	

PREP SCHEDULE.—GOVERNMENT LED AREA EXERCISES—Continued

Area	Agency	Date/QTR *	Participant
1997			
Providence, RI Area (MSO Providence OSC)	CG	1	
Jacksonville Area (MSO Jacksonville OSC)	CG	1	
Southeast Alaska Area (MSO Juneau OSC)	CG	2	
Detroit Area (MSO Detroit OSC)	CG w/RSPA	3	
EPA Oceania Region (EPA OSC)	EPA	3	
New Orleans Area (MSO New Orleans OSC)	CG w/MMS	4	
1998			
Guam Area (MSO Guam OSC)	CG	1	
San Diego Area (MSO San Diego OSC)	CG	2	
Savannah Area (MSO Savannah OSC)	CG	2	
EPA Region VIII Area (EPA OSC)	EPA	3	
Long Island Sound, NY Area (COTP Long Island Sound OSC)	CG	3	
Morgan City Area (MSO Morgan City)	CG	4	

PREP SCHEDULE.—INDUSTRY-LED EXERCISES

Area	Ind**	Date/QTR *	Lead
1996			
Virginia Coastal Area (MSO Hampton Roads OSC)	v	1	
Portland, OR Area (MSO Portland OSC)	f (mtr)	1	
Hawaii/American Samoa Area (MSO Honolulu OSC)	v	1	
EPA Region VI Area (EPA OSC)	p	2	Fina.
Buffalo, NY Area (MSO Buffalo OSC)	v	2	
Central Coast Area (MSO San Francisco OSC)	v	2	
Prince William Sound Area (MSO Valdez OSC)	f (mtr)	3	Chevron.
Western Alaska Area (MSO Anchorage OSC)	p	3	
Boston Area (MSO Boston OSC)	f	3	
EPA Region IX Area (EPA OSC)	f(nonmtr)	3	
Maine & New Hampshire Area (MSO Portland OSC)	v	3	
LA/LB North Area (MSO Los Angeles/Long Beach OSC)	v	4	
EPA Region II Area (EPA Caribbean OSC)	f(nonmtr)	4	
1997			
North Coast Area (MSO San Francisco OSC)	v		
Northeast North Carolina Coastal Area (MSO Hampton Roads OSC)	v		
Commonwealth of N. Marianas Islands Area (MSO Guam OSC)	v	1	Mobile Corp.
Caribbean Area (MSO San Juan OSC)	f(mtr)		
Florida Panhandle Area (MSO Mobile OSC)	v	2	Kirby Corp.
Western Lake Erie Area (MSO Toledo OSC)	f(mtr)		
EPA Alaska Region (EPA OSC)	p		
EPA Region X Area (EPA OSC)	f(nonmtr)		
Houston/Galveston Area (MSO Houston OSC)	v	3	Aramco Services Co.
New York, NY Area (COTP New York OSC)	v	3	OMI Corp.
EPA Region IV Area (EPA OSC)	p		
Detroit Area (MSO Detroit OSC)	v		
1998			
Southern Coastal NC Area (MSO Wilmington)	v		
San Francisco Bay & Delta Region Area (MSO San Francisco OSC)	f(mtr)		
Chicago Area (MSO Chicago OSC)	f(mtr)		
Cleveland, OH Area (MSO Cleveland OSC)	v		
EPA Region V Area (EPA OSC)	p		
EPA Region III Area (EPA OSC)	f		
Saulte Ste. Marie, MI Area (COPT Saulte Ste. Marie OSC)	f(mtr)		
South Texas Coastal Zone Area (MSO Corpus Christie OSC)	v		
Maryland Coastal Area (MSO Baltimore OSC)	v		
SW Louisiana/SE Texas Area (MSO Port Arthur OSC)	v		
Tampa, FL Area (MSO Tampa OSC)	v		
EPA Region I Area (EPA OSC)	p		
LA/LB South Area (MSO LA/LB OSC)	v		

PREP SCHEDULE.—INDUSTRY-LED EXERCISES—Continued

Area	Ind**	Date/QTR *	Lead
EPA Region II (EPA OSC)	f(nonmtr)		

*Quarters: 1 (January–March); 2 (April–June); 3 (July–September); 4 (October–December).
Industry: v-vessel, f(mtr)-marine transportation-related facility; f(nonmtr)-nonmarine transportation-related facility; p-pipeline.

[FR Doc. 95–27867 Filed 11–9–95; 8:45 am]
BILLING CODE 4910–14–M

Federal Aviation Administration

RTCA, Inc., Technical Management Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held December 1, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Systems Management Working Group Report to the Technical Management Committee; (4) Consider and Approve: a Proposed Final Draft, Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Airborne Equipment; b. Proposed Final Draft, Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services (AMSS); c. Report from SC165/WG6 Concerning Feasibility of High Frequency Data Link (HFDL) MASPS; (5) Take Action on Open Items from Previous Meeting: Consider White Paper on RNP Issues and Recommendations; (6) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 6, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–27925 Filed 11–9–95; 8:45 am]
BILLING CODE 4810–13–M

RTCA, Inc., Joint RTCA Special Committee 180 and EUROCAE Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 180 and EUROCAE Working Group 46 meeting to be held December 5–7, 1995, starting at 8:30 a.m. on December 5. (On subsequent days, meeting begins at 8 a.m.) The meeting will be held on RTCA, Inc., 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes of Previous Joint Meeting; (4) Leadership Team Meeting Report; (5) Consensus Items; (6) Review Action Items; (7) Review Issue log; (8) Joint Team Status Reports; (9) Joint Team Meeting Assignments and Objectives; (10) Presentation by JT3 on Tools and Qualification; (11) Adjourn to Joint Team Sessions; (12) Joint Team Reports; (13) Other Business; (14) Agenda for Next Meeting; (15) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 6, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–27926 Filed 11–9–95; 8:45 am]
BILLING CODE 4810–13–M

RTCA, Inc., Special Committee 187, Mode Select Beacon and Data Link System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 187 meeting to be held on November 30, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Introductory Remarks; (2) Review and Approval of the Agenda; (3) Terms of Reference; (4) Activities and Accomplishments of Special Committee 142; (5) Current Status of Mode S Standards Development in the ICAO SICAS Panel; (6) Background on the Changes Required to RTCA/DO–181A and DO–218; (7) Review of Change 2 to RTCA/DO–181A and Change 1 to RTCA/DO–218; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 6, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–27927 Filed 11–9–95; 8:45 am]
BILLING CODE 4810–13–M

RTCA, Inc., Special Committee 185; Aeronautical Spectrum Planning Issues

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 185 meeting to be held on November 28–29, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Administrative Remarks; (2) Introductions; (3) Review and Approval of the Agenda; (4) Review and Approval of the Summary of the Previous Meeting; (5) Review of Results of Working Group 1 Editorial Group Meeting; (6) Assignment of Tasks; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 6, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–27928 Filed 11–9–95; 8:45 am]

BILLING CODE 4810–13–M

National Highway Traffic Safety Administration

[Docket No. 95–91; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1992 Mercedes-Benz 300SL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 Mercedes-Benz 300SL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1992 Mercedes-Benz 300SL that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 13, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Liphardt and Associates, Inc. of Ronkonkoma, New York (''Liphardt'') (Registered Importer 90–004) has petitioned NHTSA to decide whether 1992 Mercedes-Benz 300SL (Body Style 129) passenger cars are eligible for importation into the United States. The vehicle which Liphardt believes is substantially similar is the 1992 Mercedes-Benz 300SL that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1992 Mercedes-Benz 300SL to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Liphardt submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 Mercedes-Benz 300SL, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 Mercedes-Benz 300SL is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 111 *Rearview Mirrors,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1992 Mercedes-Benz 300SL complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of U.S.-model speedometer/odometer assembly.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies and sidemarkers; (b) installation of U.S.-model taillamp assemblies; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer relay

and a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer; (b) installation of knee bolsters to augment the vehicle's air bag-based passive restraint system, which otherwise conforms to the standard. The petitioner states that the vehicle is also equipped with Type 2 seat belts.

Standard No. 214 *Side Impact Protection:* installation of reinforcing tubes.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 10590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–27923 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 218
Monday, November 13, 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 ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: November 14, 1995, 9:15—11:15 a.m.

PLACE: New Orleans Marriott Hotel, 555 Canal St., New Orleans, LA 70140, Acadia Ballroom, 3rd Floor.

STATUS: Open.

MATTERS TO BE CONSIDERED: At the Annual Convention and Regulatory Symposium of the National Association of Regulatory Utility Commissioners on the topic of the Commission's Notice of Proposed Rulemaking on Open Access Transmission Services and Recovery of Stranded Costs (Docket Nos. RM95–8–000 and RM94–7–001), there will be a general discussion between the Commission and members of the NARUC Committees on Electricity and Energy Conservation.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

Dated: November 7, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28032 Filed 11–8–95; 2:21 pm]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, November 7, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory and receivership activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: November 7, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Assistant Executive Secretary.

[FR Doc. 95–28110 Filed 11–8–95; 8:45 am]

BILLING CODE 6714–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Thursday, November 16, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Operating Fee Structure and Assessment Scale for 1996.
3. Proposed Rule: Amendments to Part 703, NCUA's Rules and Regulations, Investment and Deposit Activities.
4. Final Rule: Amendments to Section 701.22, NUCA's Rules and Regulations, Loan Participation.
5. Final Rule: Amendments to Part 741, NCUA's Rules and Regulations, Requirements for Insurance.
6. Final Rule: Amendments to Part 748, NUCA's Rules and Regulations, Criminal Referral; and System of Records, System NCUA 15.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Thursday, November 16, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexander, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 125 of the Federal Credit Union Act. Closed pursuant to exemption (8).
3. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
5. Administrative Action under Part 701, NCUA's Rules and Regulations. Closed pursuant to exemption (8).
6. Personnel Action(s). Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

FR Doc. 95–28077 Filed 11–8–95; 2:22 pm]

BILLING CODE 7535–01–M

UNITED STATES ENRICHMENT CORPORATION

Board of Directors

TIME AND DATE: 8:00 a.m., Tuesday, November 14, 1995.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: Portions of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial and financial issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: November 7, 1995.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 95–28024 Filed 11–8–95; 10:23 am]

BILLING CODE 8720–01–M

Federal Register

Monday
November 13, 1995

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 2800 et al.

Rights-of-Way, Rental Schedule for Communication Uses; Final Rule and Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800, 2810, 2880

[WO–350–1430–00–24–1A]

RIN 1004–AC12

Rights-of-Way, Rental Schedule for Communication Uses

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends right-of-way regulations containing procedures for setting rent for communication uses located on lands administered by the Bureau of Land Management. The final rule establishes procedures and a rental schedule for determining rent for nine categories of communication uses. The rental schedule is identical to one recently adopted by the U.S. Forest Service for use on National Forest System lands in the Western States.

These revisions establish a fair and consistent approach for determining rental payments for various communication uses, based on the population of the community nearest the site and reflective of fair market value as required by Title V of the Federal Land Policy and Management Act of 1976. The final rule encourages tenants in a communication facility to consolidate their separate authorizations under one authorization, reducing billing costs and minimizing agency involvement in managing use and occupancy of the facility. The schedules will reduce BLM costs associated with obtaining appraisals, and can be expected to reduce the number of disputes concerning rental values. Rental payments will be applied on a consistent basis and allow users to anticipate changes in rent for planning purposes. At the same time, the administrative process implementing the schedule has been simplified and includes sufficient flexibility and safeguards to minimize disruption in business relationships and service.

DATES: The effective date of the regulations is December 13, 1995.

ADDRESSES: Inquiries or suggestions should be sent to: Director (350), Bureau of Land Management, U.S. Department of the Interior, Room 5555, Main Interior Building, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dave Cavanaugh, (202) 452–7774.

SUPPLEMENTARY INFORMATION:

Statutory Requirements

At 43 U.S.C. 1701(a)(9), FLPMA states that it is the policy of the United States to receive the fair market value of the use of the public lands and their resources unless otherwise provided by statute.

At 43 U.S.C. 1761(a), FLPMA authorizes the Secretary of the Interior to grant, issue, or renew rights-of-way for communication uses, including systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals.

Section 504(g) of FLPMA (43 U.S.C. 1764(g)) requires the holder of a right-of-way to pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing the right-of-way. The Secretary may waive part or all of the payment when it is found to be equitable and in the public interest. Rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way.

The regulations implementing the right-of-way provisions of FLPMA are found in 43 CFR part 2800. Portions of these regulations relating to cost recovery were last amended in 1987. Provisions for rental payments are found in 43 CFR subpart 2803, and state in part that the holder of a right-of-way grant or temporary use permit is required to pay annually, in advance, with certain exceptions, the fair market value rental. The authorized officer determines the rental, applying sound business management principles and, so far as practicable and feasible, using practices used in commerce.

Payment of fair market rent is different from provisions of 43 CFR subpart 2808 on reimbursement of reasonable costs in processing applications. The payment of rent for the right to use land is separate from payment of fees for costs associated with processing an application.

Background

The BLM currently administers approximately 3,200 communication site authorizations and collects annually between $1.5 and $2.0 million dollars in rental payments. Approximately 50 percent of the authorized users pay no rent because they are exempt under existing regulations. Examples of holders who are exempt from rent include local law enforcement and emergency response groups; Federal, State, and county agencies; and public broadcast stations. The remaining communication use right-of-way holders pay an annual rental based upon BLM-approved appraisals.

Generally, BLM bases rents for new uses on a preliminary estimate of fair market value until an appraisal can be completed. As a customary practice, rents for existing users are updated every 5 years to ensure that the amounts reflect changes in market conditions. Many BLM appraisals are out-of-date because statutory language in successive appropriations bills from 1990 to 1994 limited the Secretary's authority to raise rents. The 1995 appropriations bill did not contain any limiting language.

In 1992, Congress directed both the Secretary of Agriculture and the Secretary of the Interior to establish a Radio and Television Use Fee Advisory Committee. The advisory committee report made several recommendations. These included use of rental schedules instead of individual appraisals for setting rental payments; acceptance of market ranking methods that relate to the population served; a phase-in period for rent increases greater than $1,000; a provision for charging 25 percent of the gross sublease income; and annual increases based on the Consumer Price Index, Urban Consumer, U.S. City Average (CPI–U). These recommendations were considered in developing the proposed rule.

The BLM and FS endorsed many of the Committee's recommendations on rental implementation and administration, but rejected its proposed rental schedule on the basis that it did not represent fair market rental.

In July 1993, the FS published a notice in the Federal Register (58 FR 37840, July 13, 1993) proposing a schedule for four categories of commercial uses and invited public comment. The uses included television broadcast, FM radio broadcast, commercial mobile radio, and cellular telephone uses. The FS proposed schedule for television and radio adopted many proposals of the advisory committee. However, the proposed rent was higher than the schedule proposed by the advisory committee. The comment period ended October 12, 1993. In order to coordinate with BLM, the FS decided to delay their final policy.

The FS and BLM jointly reviewed and considered the comments received by the FS on its July 1993 proposed policy. The FS decided to delay publishing their final notice pending BLM's publication of a proposed rule and review of comments.

On July 12, 1994, BLM published a proposed rule in the Federal Register (59 FR 46806). The BLM rule incorporated many of the comments

received by the FS regarding the four categories of commercial communication uses, and the ranges of population served by a facility, that serve as variables on the schedule to determine the rent to be charged. BLM's proposal expanded the number of site categories from 4 to 11, and increased the number of population ranges in the schedule to minimize impacts on holders located on sites serving populations at the lower end of the range. The proposed rule was drafted in cooperation with the FS. It was agreed that the BLM proposal would be the basis for the FS's final notice.

On July 12, 1994, the House of Representatives Committee on Natural Resources, Subcommittee on National Parks, Forests and Public Lands, and the Committee on Government Operations, Subcommittee on Environment, Energy, and Natural Resources, held a joint hearing on rents for communication sites on Federal lands. At the hearing, the General Accounting Office (GAO) released a report (GAO/RCED–94–248) and testified that fees being charged for the communication sites on Federal lands are, in most instances, significantly below fair market value. The Committee strongly encouraged BLM and FS to promulgate rental schedules as soon as possible.

The GAO report stated that FS rental payments are based on an outdated formula established 40 years ago, and that BLM rents are based on out-of-date appraisals. GAO recognized that agency efforts to raise rents had been prohibited by Congress, and warned that if these prohibitions continued, the Federal government would not obtain fair market value for communications sites for many years.

The GAO also found that BLM and FS do not have the basic information needed to manage communication sites effectively and to ensure that the agencies are collecting all of the revenues owed to the government. GAO recommended that the agencies develop and maintain complete and reliable program-wide data on the number and types of uses, and amount of rent that they generate.

The Proposed Rule

The proposed rule amending regulations for determining annual rent was published in the Federal Register (59 FR 35596) on July 12, 1994. The comment period closed on September 12, 1994. On September 12, the BLM extended the comment period to October 12, 1994.

The proposed rule contained amended procedures for setting annual rent for ten categories of communication uses on public lands, plus a category for facility managers. The rule proposed three major categories of use: broadcast, nonbroadcast, and other. Broadcast included television, FM radio, rebroadcast devices, and cable television. Nonbroadcast included commercial mobile radio service, cellular telephone, private mobile communications, common carrier microwave communications, private microwave, other communication uses, and facility management. The category ''other'' referred to small, unobtrusive, low power uses serving small numbers of customers. The rent for a facility with more than one category of use would have been based on its primary use authorized under terms of the right-of-way.

The proposed rule included different methods for setting the base rent for each of the categories. For instance, it proposed that rent for television and FM radio stations be based on the population of the principal community or communities primarily served by the transmitter. For cable television, the base rent was to be determined by the total number of subscribers as reported by the right-of-way holder.

The proposed rule provided that the base rent for nonbroadcast uses—commercial mobile radio service, private mobile communication, cellular telephone, common carrier microwave, private microwave, facility manager and miscellaneous uses—would be determined by different factors. For these uses, rent would be determined by the population of the county in which the transmitter is located or the population of an adjacent or nearby county served by the transmitter, whichever is greater.

In addition to a base rent for the authorized use of a facility, the proposed rule also included an assessment for additional users within the facility. The BLM proposed that right-of-way holders, typically the facility owner, be required to pay a percentage of gross rent received from the subleasing of space in the facility.

Increases in the base rent and the percentage of gross rent were to be phased in over 5 years. Initial increases in the base rent in excess of $1,000 or 20 percent of the current rent, whichever is greater, would have been phased in. The proposed rule included provisions that the percentage of gross rent received from additional tenants in the facility be phased in; 15% during the first five years, and 25% thereafter.

The proposed rule also required annual updates of the rental payments, required periodic review of the rental schedule, and reiterated BLM policy regarding waiver of rental.

As proposed, the rule would have adopted a new procedure that would have reduced agency costs of setting and updating rental payments for new and existing right-of-way holders. The final rule adopts the basic procedure, in which the rental schedule is applied, eliminating most individual appraisals, encouraging consolidated billing under a master right-of-way authorization, and providing a means for annually updating the rent. The BLM estimates appraisals to cost approximately $2,000 each. With more than 1,500 commercial communication site rights-of-way, each cycle of rent establishment could cost more than $3 million. The rule will eliminate much of this cost, although some appraisals will still be performed.

Organization of Rule

This final rule amends 43 CFR 2803.1–2 Rental. This section of the existing regulations includes a schedule for linear rights-of-way, including oil and gas pipelines, related pipeline roads, ditches, canals, electric transmission lines, telephone, electric distribution, non-energy pipelines, and other linear uses. This final rule adds procedures and authorizes a rental schedule for non-linear communication site rights-of-way. The schedule itself appears elsewhere in this issue of the Federal Register.

Many respondents to the proposed rule argued that the proposed rents were too high and would harm small entities, that the provision to charge a percent of the gross rent was unfair, and the different criteria in the schedules—population of the community or communities served or county population—were unworkable and would create inequities. Their overriding concern was that the procedure for setting rental payments was too complicated, that the schedule may not reasonably set rental payments, and that the new rental payments would potentially create problems unless there was some mechanism to alleviate them.

In response to the comments, BLM made a number of changes in the final rule for nonlinear communication site rights-of-way. The schedule in its final form more closely reflects market rent and minimizes impacts on holders of sites serving smaller population areas. Rents will correlate with the population of the local community where the facility is situated or that it serves, or both, rather than distant communities served by the facility. Instead of having several different methods for determining population, the final rule utilizes the Ranally Metro Areas

(RMA's) as identified in the ''Rand McNally Commercial Atlas and Marketing Guide, 1995'' for listed communities having a population of 50,000 or more. Rental payments for uses on sites serving communities not listed and having a population of less than 50,000 will be based on the category of use and the most recent census performed by the U.S. Census Bureau for the community. Therefore, the final schedule that BLM is adopting more directly correlates to the population of the local community where the facility is situated.

To simplify implementation further, the definitions for two categories have been broadened, resulting in the reduction of categories from 11 to 8. The Commercial Mobile Radio Service (CMRS) category has been broadened to include facility managers and ancillary microwave link equipment, and the microwave now includes common carrier microwave category.

To improve consistency in setting rents, the final rule adopts the concept of using the schedule to determine the primary use of the facility and assessing an additional amount for other users. The base rent is determined by the use that generates the highest rent on the schedule (highest valued use) of all uses in the facility, excluding those uses that would qualify for an exemption or waiver. To avoid having to keep track of rents received from tenants in the facility, the final rule assesses an additional amount for each tenant occupying space in the facility. This responds to the contention in many comments that it was not a widespread practice for landowners to charge a percentage of gross rent from tenants. In addition, the final rule defines ''tenant'' to alleviate the potential for charging occupants in the facility who are customers paying for a communication service.

In response to concerns that the rental schedule may be unfair, the final rule provides the authorized officer ample discretion to use other methods to set rental payments. Holders who believe the initial rents set by the schedule are unreasonable may ask the authorized officer to reconsider the initial rental assessment. The holder may request an individual appraisal or may provide recent leases for similar uses in similar locations to help BLM set appropriate rent. If agreement cannot be reached, the holder may appeal the rental determination. For those whose rent will increase more than $1,000 during the first year, the amount over $1,000 will be phased in over the next five years. Also, the authorized officer may consider hardship requests or give partial waivers to holders who provide, without charge or at reduced rates, a valuable benefit to the public or programs of the Secretary.

The final rule also simplifies the process for determining when the holder is eligible for phasing in increases in rent and the amount to be phased in. The final rule phases in increases of more than $1,000, removing the 20 percent or more calculation required in the proposed rule.

Finally, the final rule provides that rental payments will be updated annually based on the Consumer Price Index. This applies to all rents, whether initially determined through the schedules, appraisals, or some other means. Increases in rent based on the Consumer Price Index would be limited to 5 percent. This will reduce the likelihood that rental payments will drop below market levels or result in sharp increases when the schedule is updated.

The rule also adds sections 2800.0–9, 2812.0–9, and 2880.0–9 to the regulations. These sections merely codify the Notes on information collection currently found at the beginning of part 2800.

Section 2803.1–2 has been reorganized in part in the final rule, and paragraphs in the proposed rule have been redesignated in the final rule to reflect this. Mainly, subparagraphs within paragraph (c) of the existing regulation have reen redesignated as paragraphs (e) through (h), and paragraph (e) of the proposed rule, which introduced the rental schedules, has been redesignated (d) in the final rule.

Analysis of Comments

The BLM received a total of 61 comments on the proposed rule. All comments on the rule were shared and jointly analyzed by the BLM and FS.

In general, eight major issues were identified in the comments. (1) Do proposed rents reflect fair market value? (2) Format of schedule. (3) Additional users. (4) Use of appraisals to set fair market rent. (5) Administrative complexity. (6) Phase-in. (7) Updating rental payments. (8) Use categories.

1. Do Proposed Rents Reflect Fair Market Value?

Several respondents stated that the proposed rents were too high. Many of them objected to both the proposed rental payments and the proposal to charge an additional amount based on a percent of the gross receipts received from renting space in the facility. Several suggested that the proposed rental payments were unfair and would affect their economic survival.

A few comments suggested that preparing individual appraisals would more accurately reflect fair market value than use of a schedule, while others expressed concern that individual appraisals would be used instead of the schedule. Others stated that the base rents were acceptable but totally disagreed with adding on a percentage of the gross for rental of space in the facility. A smaller number commented that the proposed rents were far too low and in some cases would not possibly cover the costs of processing the billing. Other comments stated that the right-of-way authorization conveyed fewer rights and therefore should be less valuable than leases conveyed in the private sector.

The BLM intends the approach taken in developing the final schedule to achieve a reasonable estimate of fair market value, and believes that it succeeds in doing so. The BLM took information from a variety of sources into consideration in developing the schedule. These sources include (1) the report of the Radio and Television Broadcast Use Fee Advisory Committee, whose recommendations were discussed above, (2) information obtained by government appraisers, industry representatives, and private lessors, (3) market information provided by users and industry groups in response to the original FS notice and the BLM proposed rule, and (4) agency records showing current billings for new and existing users. The application of this information was described in the preamble to the proposed rule, and is revisited in this preamble in the discussion of public comments.

Appraisals may provide a more accurate indication of the fair market value of a particular use on a specific site. However, the costs of performing individual appraisals—estimated at $2,000 each—would be enormous compared to those of implementing uniformly applicable schedules, reducing the returns to the Treasury for use of public resources. There would be pressure to increase the rents charged to make up for these costs. Also, the lag time involved in performing a large number of appraisals would be so great that some holders would be paying rents disproportionately higher or lower than others for significant periods of time. This might impel holders to complain of unequal treatment under the law.

The rental process outlined in the final rule sets as reasonable a rent as possible for the type of use, its location, and rights granted. The rental market for communication sites varies

considerably. Also, terms of private lease agreements vary widely, and it is difficult to quantify the effect of lease provisions on rental value.

In response to concerns expressed by the comments, BLM has made the following changes in the final rule:

The originally proposed rents in several categories have been reduced to reflect information provided by respondents.

The proposal to base rent for tenants on a percentage of the annual gross receipts received from rental of space in the facility has been eliminated.

Current right-of-way holders will be notified of the new rent and given instructions for appealing the new rent in accordance with existing regulations.

Schedule rents, and rents determined by appraisal or other methods, may be adjusted by the authorized officer if the criteria in section 2803.1–2(b)(2) apply, e.g., the holder is a nonprofit business, provides a public service at reduced or no costs, or would suffer undue hardship from imposition of the schedule rent.

2. Format of Schedule

Several respondents requested that the basis in the proposed rule for setting rent for broadcast and nonbroadcast uses, i.e., U.S. Census Population for the principal community or communities served, or the county population, depending on circumstances and the type of use, be reconsidered. Comments suggested a variety of other methods, including market ranking services for broadcast radio and television, number of subscribers, size of building, the FCC-defined service contour of the individual facility, a percentage of the total value of the facility, number of transmitters, height of the tower, or a percentage of the rental income.

We considered all suggestions. Most of them would require site-specific studies, development of specific criteria and instructions for each type of use, or result in rental determinations that would be too subjective and create potential inconsistencies in application of the schedule. Other suggestions would require a system of information collection that would make the billing process less efficient. The final rule features a common schedule format for all uses based on population, because it represents the best way to obtain a reasonable estimate of fair market value with a tool that is evenhanded and economical to use.

Several of the respondents opposed using the population of the principal communities served for setting the rent for television and radio stations. One comment expressed concern that, based on the total population of the principal communities served in the Boise, Idaho, market, television and radio stations would be paying $16,000 and $11,000 respectively, instead of the $6,000 and $4,000 amounts in the example included in the proposed rule. The major concern was that the original proposal would be difficult to implement and create inequities because of differences in identifying the principal communities served and calculating their populations. The respondents argued that the concept was too vague and that it would be difficult to determine the population served using census information. We agree with the comments and have dropped the idea of calculating rental payments based solely on the U.S. census population of the principal communities served, except for small communities as discussed below.

Television and radio broadcasters preferred that BLM adopt industry-recognized market ranking methods: Nielsen Designated Market Areas for television and Arbitron Company Metro Area rankings for radio.

For several reasons, the final rule does not incorporate the suggestion that the schedule for television and radio uses be based on an industry-recognized market ranking system.

First, radio market rankings are not nationwide, and there are significant gaps in coverage. Therefore, other methods must be developed to establish rent in those areas not covered by the market ranking services.

Second, the television market ranking system does not measure the households or audience reached by the broadcast transmitter. Instead, it includes households reached by a combination of microwave technology and translators that serve other smaller markets. This inadvertently inflates rental payments for those stations that have an extensive network of translators that serve communities outside the area normally reached by the transmitter. Also, translators on public land themselves pay rent based on populations served.

Third, television market rankings do not include satellite or affiliate stations that serve smaller communities within the dominant market area (DMA).

Fourth, having separate market ranking systems for each category of use would complicate implementation of the schedule.

Other respondents questioned using county population for nonbroadcast uses, stating that there was little relationship between county population and rent for nonbroadcast uses. They also believed that in geographically large counties, such as Riverside and San Bernardino, California, using county population would result in overpayment of rent for uses in more remote, sparsely populated areas of the county. One comment suggested that the population considered be more narrowly defined and consideration be given to the population of the nearest community.

Several respondents stated that there was no correlation between the rent paid for microwave and private mobile radio sites and population, and that this would be an inappropriate method for setting rent.

There are various factors that influence rent but that are not necessarily related to population. For example, microwave facilities provide a system for transporting information from one point to another point. They operate on a linear, line-of-sight basis and, in many instances, do not serve nearby population areas, and therefore rent may not have any relationship to population. However, in those instances where the microwave facility is located on a site that serves a nearby population area, land rents are more directly correlated to nearby population. The same reasoning applies to private mobile radio users.

The final rule bases scheduled rent on populations of the community where facilities are situated, rather than of entire counties or other arbitrary political subdivisions containing them. That is, the populations upon which the schedules are based are those that in many cases are being served by the facilities, or are those of the community near or containing the facility (because population is usually causally related to land value) or in some cases where the people working at the facility live, or all of these. Although the concept may not be universally applicable, BLM believes this to be an appropriate basis for developing a schedule, especially compared with other options that would be more difficult to implement.

We disagree with comments that there is no correlation between population and rent charged for a communication site. We recognize there may be no direct relationship between the private communication use and population, since the service is not sold. However, market information gathered by BLM shows that land rents are generally higher for sites near metropolitan areas than for those sites in less populated areas.

Our primary goal has been to develop a schedule that is easy to implement and facilitates the calculation of a reasonable rent. As a result of the comments, the final rule adopts a

formula for calculating the rental based on the population of the community nearest the site, served by the site, affected by the site, or all of these, depending on the nature of the facility. Some facilities affect the environment of or provide employment for a local community while providing communication service to a distant metropolis, while others serve only the locality where they are situated. In calculating rents using the schedules, distant population centers served by the facility will not be considered.

The population base for the site is determined in three ways. The first step is to determine whether the facility is situated in or near a community listed as a Ranally Metro Area (RMA) as identified in the ''Rand McNally Commercial Atlas and Marketing Guide, 1995.'' An RMA represents Rand McNally's definition of metropolitan areas in the United States. There are 452 RMA's. Four hundred and seventeen have a population of 50,000 or more. Thirty-five listed RMA's have a population near 50,000 and are included as RMA's because they include a central city of an official Metropolitan Statistical Area. If the community is listed as an RMA, the population of the community as shown in the Rand McNally publication will be used to set the scheduled rent. RMA's are updated every year, and are more useful than U.S. Census reports on cities in providing accurate counts of the population affected by, serving, served by, or related to a communication facility.

Second, if the site does not serve a listed RMA, the scheduled rent will be based on the most recent Rand McNally Road Atlas population of the largest nearby community.

Third, for sites located in or serving a community of less than 25,000 people, the rent that will be charged is the minimum rent shown on the schedule for the type of facility.

Consideration was given to using statistical definitions of Metropolitan Statistical Areas (MSA), as defined by the Office of Management and Budget (OMB Bulletin No. 93–17), for determining the population of nearby communities. MSA's are defined in terms of entire counties, except in the six New England States where they are defined in terms of cities and towns. In many of the Western States the counties are very large: Maricopa County, Arizona, and Clark County, Nevada, for example. As a result, use of MSA's would result in unfair rents for those holders serving a portion of a larger county. Therefore, BLM decided not to use this method.

In response to the public comments, the final rule includes the following changes:

The final rule bases the rental schedule on a ranking of RMA's as identified in the *Rand McNally Commercial Atlas and Marketing Guide, 1995.*

The rents for uses located on sites serving RMA's will be based on the population of the RMA's served by the site.

Rents for those uses located on sites not serving an RMA will be based on the most recent U.S. census population of the community.

We made minor changes in the description of ''other communication uses'' in response to comments. The description is clarified by including other small, low-power devices used to operate, monitor, or control remote activities such as wireless telephone or mobile radio service to sparsely populated areas, in order more accurately to depict the uses covered by the category.

3. Additional Users

A majority of the comments opposed assessing rent for additional users in the building based on a percentage of the gross rent received. The proposal was criticized as unfair, not supported by market data, exorbitant in view of the proposed base rent, and too difficult and costly to implement. Others pointed out that, with few exceptions, private landowners do not receive an additional amount from the primary lessee for tenants in the building. One respondent suggested that BLM provide data to support its position that payment of a percentage of gross rent is common in the marketplace.

Respondents stated that the term ''gross sublease rent'' was not clear, and worried that the holder would be assessed a charge for all occupants in the facility, customers as well as tenants. There was also concern that it would be difficult for holders to report rent received accurately, making them vulnerable to charges of underpayment of rent. Others argued that, since several BLM State Offices currently charge each tenant separately, this provision would reduce total public revenues.

In view of the comments, the final rule no longer charges 25 percent of the gross rent received from tenants in the facility. We agree the provision would be intrusive for most businesses and would be difficult to implement. Therefore the original proposal has been amended to charge the holder the full schedule rent for the principal use of the facility, even if a tenant's use is the principal use, plus 25 percent of the schedule rent for the other uses, whether of tenants or the holder.

Generally, multiple user facilities located on public lands are more valuable than single user facilities, and an additional amount of rent should be paid. Ignoring tenant use of the facility when setting rent, while allowing the holder nearly exclusive use of the site by no longer requiring agency approval for other tenants in the facility, prevents recovery of fair market value. Also, the BLM and FS in some States authorize tenants in facilities, and charge them rent. Dispensing with that practice entirely, as some respondents suggested by implication (in arguing against the collection of a percentage of actual gross rent), would result in a significant reduction in revenue.

The BLM's statutory responsibility is to obtain fair market value for the use of public lands, and this includes obtaining a rent for secondary uses in the facility. Charging secondary users is in the public interest, and as a business practice is supported by policies of other land managing agencies and companies.

One comment made the observation that setting the base rent on the authorized use without adjusting for other users in the building would encourage lower rent users to obtain an authorization and then rent to higher rent users. For example, a holder having an authorization for internal mobile radio would sublease to a television or radio broadcaster, collecting high rent from the sublessee under the schedule in the proposed rule and paying low rent to the Government under the same schedule. The comment suggested that the rent should be based on all of the actual users in the facility, rather than just the holder's use.

As a result of the comment, BLM realized that the existing provision in section 2801.1–1, which was not addressed in the proposed rule, limits uses of rights-of-way to those ''specified in'' the authorization and prevents BLM from basing rent on the principal use of the facility in cases where tenants of the holder actually operate the primary or higher valued uses. In practice, most BLM authorizations are for a ''communication use'' and do not specify a particular type of communication use. Therefore, in a technical amendment in the final rule, we have removed the reference in section 2801.1–1(b) to purposes ''specified in'' the authorization.

The rent for a holder of a facility with tenants will be the highest rent the rental schedule assigns to any one of the uses in the facility. An additional amount for the other tenants covered by

the authorization will be 25 percent of the scheduled rent for each of those categories of use. The total rent paid by the holder will be the schedule rent for the highest valued use plus 25 percent of the schedule rent for each of the other tenant uses in the facility, including the holder's use if it is not the highest valued. In some cases, the rent paid by the holder under the final rule will be higher than the rent that would have been required under the proposed rule, depending on the amount of rent actually paid by tenants to the holder. However, the total rent will still be less than it would be if the full rent for all uses were assessed individually.

In response to the comments, the final rule makes the following changes from the proposed rule:

Prior written approval from the authorized officer for other tenants in the communications facility is no longer required.

The BLM will adjust the rent assessed the holder to reflect the principal occupancy and use in the facility instead of basing it only on the holder's use authorized by the existing right-of-way.

The certified statement of rents collected from sublessees, provided for in section 2803.1–2(e)(6) of the proposed rule, has been revised (section 2803.1–2(d)(6) in the final rule) to require only a listing of tenants, by category of use, in the facility on September 30 of the current year. Provision for reporting the amount of rent collected has been removed. The BLM reserves the right to conduct spot audits.

The base rent for an authorized multiple use facility will be charged for the use generating the highest schedule rent.

The terms ''tenant'' and ''customer'' have been defined to help make clear which occupants in the facility would be subject to an additional amount of rent under terms of the holder's authorization.

Existing tenants maintaining a separate authorization will be subject to paying their full schedule rent. Applicants for rights-of-way on land already subject to rights-of-way may obtain separate authorizations from BLM. However, they will be subject to paying their full scheduled rent, plus appropriate administrative costs. Users are encouraged to combine same-site rights-of-way under a single right-of-way authorization, and the final rule provides a rent reduction incentive for such combinations.

4. Use of Appraisals To Set Fair Market Rent

Several respondents opposed permitting the authorized officer to set rent payments based on individual appraisals instead of using the schedule. They feared that the agency would seek to rely on appraisals instead of uniformly implementing the schedule. One respondent asked BLM to provide guidance on when individual appraisals would be needed. Two respondents stated that the proposed rule would allow the authorized officer to have unfettered discretion to set rental payments different from the schedule, and another stated that the proposed rule could result in significant abuse. Another comment suggested that BLM establish criteria or standards to be applied when the rental schedule does not yield fair market rent.

In response to the comments, section 2803.1–2(e)(4) of the proposed rule (section 2803.1–2(d)(7) in the final rule) has been clarified and criteria established in the final rule for allowing the authorized officer to use appraisals or otherwise deviate from the schedule. Under this section, the authorized officer may use appraisals or other means if the holder is eligible for a waiver or reduction in rent, if payment of the rent will cause undue hardship, if the right-of-way is a cost-share road or reciprocal right-of-way, if the original right-of-way authorization has been or will be issued under a competitive bidding process, or if the State Director concurs in a determination made by the authorized officer that the expected rent exceeds the schedule rent by 5 times, or the communication site serves a population of 1 million or more and the expected rent based on comparable leases for the communication use is more than $10,000 above the schedule rent. To accommodate this change, paragraph 2803.1–2(c)(1)(v) of the existing regulation is amended in the final rule to allow BLM to use methods other than the schedule in establishing rents for communication uses.

5. Administrative Complexity

Several respondents stated that the proposed rule would not improve processing or reduce costs. One argued that the new procedure would increase administrative processing and associated costs. The major problems identified included how to categorize uses properly, the difficulty of requesting and obtaining information from holders on a timely basis to calculate a rental, whether to rely on the accuracy of information provided by the holder regarding population served, number of subscribers, or listings of tenants; and how to calculate the rent accurately during the phase-in period. Some comments stated that audits and inspections might be necessary to ensure enforcement, and feared that the agencies would not have the resources to manage the changes effectively.

Several comments complained that it takes too long to process an application for use of public lands. One comment suggested that we need to stop emphasizing the issue of fair market rent and get on to more important matters, such as excessive delays and unnecessary requirements for processing authorizations for use of Federal lands. Others said that Government should not regulate or require rent for secondary users, because of the length of time it takes to authorize additional users in an existing building. However, one of the main purposes of this rule is to streamline the process. This is accomplished, for example, by removing appraisals from the process in most instances, and removing the requirement for prior written approval of tenants. No changes are made in the final rule in response to these comments.

The BLM is committed to improving administration of communication site uses and to full implementation of new, streamlined rental procedures. Once they are implemented, rental payments will be calculated consistently and updated annually to reflect fair market value, and both administrative costs to the Government and non-rental costs to users should decline, while service to the public improves. At the same time, BLM will have more complete information on who is authorized to be on public lands and what uses they may make of the lands, and will be able to assess rental payments more accurately.

In response to the public comments, the final rule has been revised in an effort to streamline implementation of the schedule. These changes include:

The number of use categories is reduced from 11 to 9.

Use categories are defined more broadly to include other related uses associated with the maintenance and monitoring of the use. For example, internal mobile radio is often associated with other uses and, therefore, is included in the definition of each category of use.

Commercial mobile radio service is redefined to include internal and private communication used by commercial concerns but not sold for a profit. When commercial mobile radio service is the highest valued in the facility, the holder will not be assessed a percentage of the scheduled rent for

internal and private communication uses.

The rule is amended to provide that occupants owning and operating communication equipment in a commercial mobile radio service facility for internal use only, and not re-selling their service for a profit, are considered customers, not tenants. The base rent assessed (that is, the rent paid by the holder for the holder's use and all tenant uses) does not include any added rent for customers.

Facility owners and tenants may decide whether to consolidate their authorizations.

Except as otherwise provided in Section 504(g) of FLPMA, the requirement that the holder obtain written consent from the authorized officer before allowing other parties to use the facility is removed.

The final rule allows phase-in of new rental payments if the holder shows that the increase will exceed the previous year's rental by $1,000 or more.

The information collection burdens placed on users in the original BLM proposal are drastically reduced. For example, the final rule eliminates the requirements that cable television users provide the number of basic subscribers, that broadcasters provide a 1 millivolt contour map or a list of communities served, and that holders account to BLM for all rent actually received from sublessees.

Differences in the methods used to determine rent for each category of use are minimized.

New applicants are encouraged to co-locate in existing facilities in order to reduce surface disturbances for new roads and buildings and avoid the proliferation of buildings and towers.

6. Phase-in

The proposed rule included provisions for reducing potential impacts of large increases in rent. As proposed, increases in the base rent of more than $1,000, or 20 percent of the current rent, whichever is greater, were to be phased in over a 5-year period. Additional rent from tenants based on a percent of the gross rent was proposed to be set at 15 percent during the first 5 years and 25 percent thereafter.

Many of the respondents stated that the proposed procedure phasing in increases in the base rent was reasonable. One person argued that the 5-year phase-in was too generous, and another wondered why the agency should provide a financial break for users who have not paid fair market value for many years.

In response to general suggestions that the rental determination process be simplified, we have changed the proposed phase-in procedure.

The final rule eliminates the dual standard test to determine eligibility for phase-in of increases in rent. Instead, the final rule requires that any increase of more than $1,000 or more will be phased in over a five-year period. The original proposal would have required the agency to make two separate calculations: determine if the new rent exceeds the current rent by (1) $1,000 or (2) 20 percent of the current rent. We have simplified the process by only requiring a determination of whether the new rent exceeds the old by more than $1,000.

The phase-in adjustment works in this manner: if the current base rent is $700 and the new rent based on the schedule will be $2,700, the first year's rent will be $1,700, and the rent for years 2 through 5 will be increased $250 per year, plus the inflation adjustment increase or decrease. Assuming a 2 percent annual increase in the CPI-U during the 5-year phase-in period, the base rents will be calculated as follows:

Year 1 $700+$1,000=$1,700
Year 2 ($1,700+$250)×1.02=$1,989
Year 3 ($1,989+$250)×1.02=$2,283.78
Year 4
($2,283.78+$250)×1.02=$2,584.46
Year 5
($2,584.46+$250)×1.02=$2,891.15
Year 6 ($2,891.15×1.02)=$2,948.97

7. Updating Rental Payments

Under the current regulations, rental payments are based on appraisals, and the appraisals are supposed to be updated every 5 years. Because of delays in performing appraisals, increases in rent have often been substantial, resulting in complaints and more appeals. All too often, rental assessments had not been updated for 10 to 15 years. Legislated limitations on agency authority to increase rents have made the problem worse.

The proposed rule included provisions to update payments annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U), U.S. City Average, published in July of each year, in order to avoid larger increases in rent and the possible economic disruptions that would be caused by longer update intervals.

Two respondents expressed concern over when the agency would re-evaluate the schedule. The proposed rule provided that the schedule would be re-evaluated and if necessary updated periodically. One respondent asked what was meant by ''periodically.'' The other comment suggested that the rental schedule should be re-evaluated every 5 years. The comment noted that the rent for communication uses has surged over the last several years, and that unless there was a mechanism to update market information, rents under the schedule would fall below fair market value.

In response to the comments, we have included in section 2803.1–2(d)(2) of the final rule a provision that the rental schedule will be reviewed for possible update no later than 10 years after it becomes effective, and at least every 10 years thereafter, to ensure that the schedule reflects a reasonable estimate of fair market value. Also, individual rights-of-way may be reviewed after the first 10 years, and no more often than once every 5 years thereafter, on holder request, to determine whether rents are appropriate.

Many of the respondents generally supported use of the Consumer Price Index-Urban (CPI–U) to index the rental payments. One respondent stated that the CPI–U may not relate to local market conditions. Others suggested the CPI–U be limited so that increases would not be too dramatic. One suggested that increases be limited to no more than 5 percent, and others suggested they be limited to 1 percentage point below the annual level of inflation.

In response to these comments, the final rule limits subsequent increases based on changes in the consumer price index to 5 percent. We believe this limitation, along with the notification and appeal process and hardship provisions contained in section 2803.1–2(b)(2)(iv), should reduce the potential for overcharging. One of the inherent problems with schedules is that, over the long term, they may not adequately reflect fair market rent. Market rents in specific areas may be more or less than rents set by a schedule. Periodic reviews of the schedule itself will help ensure that the rents do not become too low.

One respondent suggested that the example included in the proposed rule was incorrect. The proposed rule provided that the first year's base rent would be adjusted to reflect any increase in the consumer price index. We agree with the comment. Any increase in the Consumer Price Index (CPI–U) not exceeding 5 percent for the year will be applied for the first time during the second year.

Along with updating rents based on the CPI–U, the RMA rankings will be updated annually to reflect changes in estimated population. Of course, this may also result in rent adjustments.

8. Comments Pertaining to Use Categories

Television and FM Radio Broadcast

In response to comments made by the Arizona Broadcasters Association (ABA), BLM met with the Administrative Assistant, City of Phoenix, Parks and Recreation, on October 12, 1994. The purpose of the meeting was to gather information regarding rental payments paid on South Mountain, a major communications site within the City of Phoenix, and administrative procedures used by the city. The ABA suggested that the proposed rents for Phoenix and Tucson were too high and that consideration should be given to recently negotiated rents charged by the Phoenix City Parks Department on South Mountain.

The information obtained was useful in preparing the final rule. The City of Phoenix grants a license to each user, including tenants within the facilities. The facility owner and tenants pay individual rental payments. The BLM final rule establishes a different process. The facility owner is allowed to manage the facility without any interference from the agency. BLM will no longer require prior written approval to allow other parties to use the facility and tenants will be encouraged to relinquish their separate authorization, thereby reducing agency billing costs and user administrative costs. Although the schedule rent for the primary use of the facility is slightly higher, the additional rent assessed for tenants will be less. Overall, total revenues generated by the City of Phoenix for multiple user facilities will be greater than those obtained on a similar BLM facility because of greater management involvement by the city.

The BLM also considered examples of rent levels in other typical locations to arrive at the final schedule rents.

Land rents for television facilities in similar markets vary considerably. There is also a difference between rents paid for communication sites based on Ranally Metro Area (RMA) populations and rents based on Nielsen market rankings. In response to the comments, the final rule lowers the rent for television and FM radio stations serving areas with an RMA population of 500,000 to 999,999 from $16,000 for television and $12,000 for FM radio to $14,000 and $10,000 respectively.

The proposed rule included FM (frequency modulation) radio only. Several respondents wondered if AM (amplitude modulation) stations were also included. The rule has been amended to include BLM authorizations for the location of AM stations on public lands.

One respondent asked how an AM station would be handled if it is in an FM broadcast facility. AM and FM radio stations located in the same facility will be considered two radio stations in determining rent, with one considered the primary holder and the other as a tenant, even if co-owned.

In response to the public comments, the following changes have been included in the final regulation:

- AM broadcast radio stations have been included in the schedule. Rents will be based on 70 percent of the FM scheduled rental payment in recognition of the lower profit generally derived from AM broadcasting. Co-located AM and FM stations will pay the full FM radio rent, plus 25 percent of the AM rent.
- The scheduled rent for television and radio stations serving RMA's with a population of 1,000,000 to 2,499,999 is reduced in the notice published today elsewhere in this issue of the Federal Register. Typical cities within this population range are Phoenix, AZ, San Diego, CA, and Portland, OR.

Broadcast Translator and Low Power Television (LPTV)

Broadcast translators are low-power devices that transmit television and radio signals originated elsewhere to remote areas, and LPTV serves the same function, but may originate programming on a limited basis.

Several respondents suggested that the BLM final rule should adopt the fee schedule for broadcast translator stations previously approved by the FS. The FS regional offices had adopted a schedule supported by the National Translator Association.

The BLM proposed rule was different from the FS rule in two respects. First, it included LPTV, an FCC-licensed facility that has limited authority to originate programming, as well as broadcast translators. Second, it set a schedule to be applied to all markets, regardless of population, whereas the FS schedule was limited to communities having a population of less than 60,000. The scheduled rents for population ranges less than 50,000 were essentially the same as those adopted by the FS.

Two FM translator operators argued that the proposed rental payment schedule would have an enormous impact on holders and result in an elimination or reduction of service. FCC regulations effective June 1, 1994, prohibit television stations from supporting the operation or maintenance of a translator either directly or indirectly. The new FCC rules allow the owners to solicit contributions from listeners for the operation and maintenance of the FM translator. The comments stated that the recent changes in FCC regulations, along with the proposed increase in rents imposed by the BLM, will eliminate or reduce service in some areas.

In response to the comments, we have substantially revised the schedule for broadcast translator and LPTV in the final rule. Because of insufficient market information and the concerns expressed in the comments, the schedule will be applied only to the 4 lowest population groups. Rental for holders located on sites serving a community of 200,000 population or more will be based on other methods, including separate appraisals.

Another respondent suggested that a distinction in the rent be made for the difference between a translator and LPTV. LPTV stations are essentially translators that are permitted by the FCC to originate programming. They cannot interfere with full-power stations and are limited to 10 watts VHF and 1,000 watts UHF. Both LPTV and translators serve remote areas, and there is little information to suggest that there should be a difference in land rent between the two uses. Therefore, BLM has kept LPTV stations and translators in the same category on the schedule.

One respondent suggested that the term ''Rebroadcast Device'' be clarified, because microwave relays and repeaters are also rebroadcast devices. Because of the potential confusion, we have changed the name of the category to ''Broadcast Translators and Low Power Television'' in the final rule.

Cable Television

Cable television uses on public lands include facilities for receiving and transmitting television programming over a wired or wireless network.

Respondents raised concerns about basing the schedule on the total number of basic subscribers. One suggested that there should be a provision for increasing the rent as the population served increases. Another suggested that requiring the holder to report the number of basic subscribers would exclude those that subscribe to other program packages that include basic programming. Another suggested that the standard for determining rent should be based on the actual number of households subscribing to the cable television service at a given time.

The proposed schedule would have imposed annual reporting requirements on cable television authorization holders. The comments indicated potential confusion over the reporting of

the number of basic subscribers. Also, it is administratively more complicated for BLM to set different information requirements for each category of use when preparing a billing. As a result the format of the cable television schedule was amended in the final rule to reflect the population of areas served by the cable television station. Cable television holders serving a metropolitan area should pay rents similar to those paid by other broadcast users in the same market, based on the cost to the public and the impact on the land of similar uses, rather than market shares enjoyed by the holder.

One respondent disagreed with the proposed $2,400 rent for a cable user having 2,500 or more subscribers. The respondent stated that in larger markets the proposed rent was too low. He concluded the rents should be similar to rents paid by broadcasters on sites serving larger metropolitan areas.

A review of market information revealed that most of the data available to BLM came from leases in smaller, rural areas. Since in the final rule the schedule format has been changed to population instead of number of basic subscribers as in the proposed rule, and because we have limited comparable lease data for cable use in larger markets, the cable schedule is limited to those locations serving less than 200,000 population. In larger population markets, rent will be established through appraisals or other methods.

Commercial Mobile Radio Service (CMRS)

CMRS businesses provide mobile radio service to individual customers by operating interconnected network of transmitters linking contiguous coverage areas, and ranging in power from 10 to 1000 watts.

As to CMRS, the BLM proposal included: (1) Rents based on the population of the largest county predominantly served by the transmitter, (2) a separate category for facility managers (building owners), and (3) adjusting rents in most levels to reflect additional analysis.

Right-of-way holders providing commercial mobile radio service were strongly opposed to the schedule. Their comments stated that the schedule was unfair and the rents too high, and that many small businesses would be driven out of the market. They objected to using county population as a basis for setting rent, and were opposed to paying 25 percent of the gross rents received from tenants in the building. Several likened the revenue sharing proposal to a tax. Others were dismayed at the prospect of the Government being a partner in their businesses. Their primary argument was that revenue sharing with the landowner is not a widespread practice. One comment stated that since CMRS and facility manager uses were so similar they should be combined into one category.

In response to the proposed rule, industry groups submitted extensive market data to support lower schedule rents. Their comments provided lease data, appraisals, and references to lease information, and concluded that there was very little difference in the land rent paid by common carrier and industrial microwave users. Further, they asserted that the difference between microwave (all types) and mobile radio-commercial communications was less than 4 percent.

Several respondents objected to the proposed rents in Maricopa County, Arizona as being too high. One comment provided information from a real estate listing for a 10,000 square foot undeveloped site on Shaw Butte, 10 miles north of downtown Phoenix. The site was offered at $350 per month rent or $4,200 per year. On Usery Mountain east of Phoenix undeveloped parcels are available for $1,200 per month. The comment argued that the listed rent on Usery Mountain was too high. The comment suggested that the fair market rent for sites serving the Phoenix metropolitan area should be $9,000 per year or 25 percent of gross rent as it was defined in the proposed rule, whichever is greater.

Another comment suggested BLM take into consideration rents paid by local users on South Mountain, a mountain managed by the City of Phoenix. The comment reported that CMRS providers pay $5,400 per year on South Mountain, in contrast to the $12,000 proposed in the schedule.

The rent paid to the City of Phoenix on South Mountain was set by agreement dated February 7, 1992. It is our understanding that the City of Phoenix Parks and Recreation Board set a rent of $750 per month, or $9,000 per year, for building owners and $450 per month, or $5,400 per year, for commercial tenants.

The BLM final schedule sets the rent for CMRS users serving the Phoenix RMA at $8,000 per year. The rent for CMRS tenants included under the building owner's authorization is based on 25 percent of the scheduled rent, or $2,000 per year.

A number of other respondents also provided market data. One suggested that comparable leases for a CMRS user in Bonneville County, Idaho, were $1,000, not $1,500 as proposed. This information supports the scheduled rent of $1,200 for a site serving Idaho Falls.

A user in South Dakota objected to the minimum rents of $600 per year proposed in rural areas and suggested that a minimum rent of $300 per year would be more equitable. The respondent indicated that on 16 sites in South Dakota rents vary from $50 $300 per year. Market research by BLM showed that rents at these levels would be too low, and the comment is not adopted in the final schedules. However, rents can be adjusted on a case-by-case basis under the final rule, and thus hardships proven to be caused by the schedule rent can be mitigated.

Comments stated that the commercial mobile radio service (CMRS) category should have included microwave communication equipment. The comment stated that CMRS facilities are dependent on microwave communication equipment similar to cellular telephone facilities. We agree and have added microwave communications link equipment to the CMRS definition.

The definition of CMRS contained in the proposed rule included two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, and public switched network (telephone/data) interconnect service. It did not include cellular telephone or personal communication service (PCS). The final rule maintains the distinction between the two wireless forms of communication because market information indicates that cellular telephone companies pay more for sites than CMRS users.

Based on the comments, the following changes were included in the final rule, and in the notice accompanying the final rule containing the rental schedule:

The proposed rental payments have been adjusted to coincide more closely with rental payments for cellular telephone in larger markets. In less populated areas, rents for CMRS use are generally less than rents for cellular telephone, and this relationship has been maintained in the final rule.

The definition of CMRS has been broadened to include facility managers and ancillary microwave link equipment.

The definition was also broadened to include microwave link equipment.

Rents in 6 of the 9 population categories were reduced.

Facility Manager

The proposed rule included a separate category for facility managers. Because many facility managers do not sell,

operate, or maintain communication systems or equipment, BLM considered them separate and distinct from CMRS providers.

The comments received in response to the proposed rule contended that the proposed rental schedule was discriminatory and inequitable. The respondents stated that since the facility manager derives income only from the rental of space in the building, the proposed schedule would unfairly reduce their gross income by charging a percentage of all revenues over and above the base rent. By contrast, rents assessed holders that provide CMRS are not adjusted to reflect their revenues from services such as dispatch, cellular subscriptions, or broadcast advertising.

There were questions concerning the similarity between CMRS and that provided by the facility manager, and possible confusion in applying the schedule. Others expressed concern that we may have inadvertently created a loophole by setting the rent for the facility manager lower than that for CMRS. One comment suggested that the category be eliminated and incorporated into the CMRS. Another expressed support for the category of use, but argued that it was unfair for the Government to take 25 percent of their revenue since their only source of revenue was from the rental of space in the facility.

BLM agrees there are many similarities between the CMRS category and facility manager. To eliminate potential inequities and confusion in applying the schedule, the facility manager category has been removed and included under the CMRS category for purposes of setting the base rent on the empty facility.

Cellular Telephone

Cellular telephone is a means of providing mobile telephone service to subscribers. Current cellular telephone systems are based on analog signal transmission. The next generation of cellular telephones will be based on digital transmission and is sometimes referred to as personal communication service (PCS).

Two comments suggested that the cellular telephone category should include systems providing similar wireless telecommunications services to the public, such as specialized mobile radio. They pointed out that Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 directed that similar wireless telecommunications services should be regulated consistently.

The FCC has made recent regulatory changes to establish a level playing field for competitive mobile communications market. The Budget Act outlined three criteria for determining commercial mobile radio service: the service must be provided for profit, it must be interconnected to the public switched network, and it must be available to a substantial portion of the public. Under FCC regulations, mobile services not included under the CMRS definition are classified as private mobile radio services (PMRS).

The suggestion in the comments was not adopted in the final rule. Other wireless communication users were not included under cellular telephone. In large metropolitan markets cellular telephone companies and commercial mobile radio providers often pay similar rents for privately owned space. In small to medium size markets, mobile radio service providers pay less than cellular telephone companies. Therefore, for purposes of assessing rent, separate schedules are included in the notice accompanying the final rule.

Two comments objected to including PCS, a new digital wireless telephone technology, in the schedule with cellular telephone. One comment suggested that this category be dropped until the technology is more fully developed. The other comment explained that the PCS licensees network will be far more concentrated and require more sites than a cellular network. The comment warned that it would be a serious mistake to require PCS licensees to pay the same rental as a cellular carrier.

PCS is similar to cellular telephone services. The major differences are that it is low power and provides coverage to a smaller area. The service is not yet available. In December 1994, the FCC began auctioning licenses, and it is likely that PCS service will be available in some markets as early as mid-1996.

Therefore, we have removed PCS from the cellular telephone definition. Once we know what the site requirements will be for PCS facilities, we will consider amending the regulation to include them. However, we have broadened the definition of cellular telephone to include other technologies in the event PCS facilities prove to be similar. It is our intent to apply the schedule to similar, emerging technologies when practical. Meanwhile, appraisals or other methods will be used to set rents for PCS and other advanced technologies.

Another respondent suggested establishing a separate rent category for microcell facilities. The comment letter explained that these facilities efficiently serve small, distinct communities. In contrast to conventional cellular facilities that operate at 10 watts and use larger antenna, the microcell antenna is much smaller, usually mounted on a pole, and the equipment operates at 5 watts or less. It also suggested that the rent for these facilities be $2,500 per year. We have not adopted the suggestion because it cannot be incorporated in the final rule without further opportunity for public comment.

In response to the comments, we have made the following changes:

We removed personal communication service use from the definition of cellular telephone.

Rental payments in the top population levels were adjusted to coincide with rents paid by CMRS users.

Adjustments were made in the proposed rent to reflect more recent market information.

Private Mobile Radio

The definition of ''Private Mobile Communications'' was inadvertently omitted from the proposed rule, but this use was discussed in the preamble and included in the proposed rent schedule. In the final rule, this category of use has been renamed Private Mobile Radio (PMR), a discussion of it has been inserted as section 2803.1–2(e)(1)(vi), and the remaining paragraphs have been redesignated. Holders in this category are subject to a rent if they own and operate the facility for their own use. If they are located in an authorized facility, they are considered customers and no additional amount will be assessed for their use.

One comment pointed out that the proposed rule did not make it clear which use is primary for holders using both microwave and private mobile communications. Many microwave sites are also used for private mobile communications. To eliminate possible confusion, the comment suggested that when microwave and mobile facilities are at the same site, the primary use should be defined as private mobile if the microwave ends at the site and is primarily for the control of the mobile facility.

We agree. If the microwave and mobile radio are ancillary to each other, the holder should not be subject to paying separate rents. To correct the potential problem, we have broadened the definition of PMR to include other equipment for the control of the facility, such as private local radio dispatch, private paging services, and ancillary microwave communications equipment for facility control.

Microwave

One comment observed that there is little difference in the schedule rent for private or common carrier microwave facilities and suggested that the two categories be combined. We agree with the comment and have consolidated the two categories in an effort to simplify implementation.

Other Communication Uses

The rental schedule for ''other communication uses'' was intended to include small, unobtrusive, low-power uses that monitor or provide communication service to a small number of customers. The definition of ''other communication uses'' has been clarified to include low-power monitoring or controlling devices. The definition explicitly excludes communication devices and related facilities appurtenant to either a BLM oil and gas lease or pipeline right-of-way authorized under the Mineral Leasing Act.

Holders in this category are subject to a rent if they own and operate the facility for their own use. If they are located in a facility authorized to another holder, they are considered customers and no additional amount will be assessed for their use.

The definition of other communication uses has been rewritten to include FCC-licensed private communication uses such as amateur radio, personal/private receive-only antennas, natural resource and environmental monitoring equipment, and other low power monitoring or controlling devices, excluding communication devices and related facilities appurtenant to either a BLM oil and gas lease or pipeline right-of-way authorized pursuant to the Mineral Leasing Act of 1920. Passive reflector has been removed from the schedule—the use is not common on the public lands, and appropriate rent will be determined based on appraisals or other methods.

The rental schedule has been changed to correct a misprint for amateur radio and remove the local exchange carrier use from this category. The amateur radio use rental should be $75 instead of $.75.

The local exchange carrier category of use has been removed from other uses in the final rule, because of a misunderstanding regarding the appropriate name for this service. The term ''local exchange carrier'' is generally understood to mean the local telephone company. It was our intent that we include basic exchange telephone radio service (BETRS), a microwave radio service that provides telephone service to remote areas. We were unable to get sufficient information to establish a schedule rent for this use, and appropriate rent will be determined based on appraisals or other methods.

Impact of Schedule on Existing Rental Payments

Several selected authorizations were reviewed in Idaho, New Mexico, Arizona, and California to assess the potential impact of the final rule on existing rental payments.

Impacts on current rents varied because current rents vary considerably. In some areas communication rental payments have been low historically or have not been updated for many years. In other areas, rental payments that have been updated recently by site-specific appraisals are higher than those in the final rule. Complicating this analysis are assumptions about the number of tenants who will relinquish their authorization and no longer pay full rent, and questions about how to determine the number of tenants in existing buildings. As a consequence, it is difficult to draw any reliable conclusions as to what the impact may be on total revenues.

There are situations where rental payments based on a schedule may be substantially lower than the current rent. When this occurs the authorized officer may use provisions of section 2803.1–2(c)(1)(iv).

Rental Determination

Rental payments for communication sites will be calculated as follows:

1. The authorized officer requests that the holder provide a certified statement by October 15 of each year containing a list of tenants, by category of use, in the facility on September 30 of that year.

2. Using information submitted by the holder, the schedule will be used to determine the highest schedule use.

If the highest schedule rent is a ''tenant'' rent, the ''tenant'' rent becomes the base rent and the building owner's schedule rent is used as a tenant rent for calculating the total rent for the facility.

Tenants located in a CMRS facility who provide internal and private communication services are considered customers, not tenants, and therefore no additional amount is assessed for their use. This is only applicable to CMRS providers holding a right-of-way authorization.

3. The base rent will be calculated from the schedule based on the category of use and the population of the community served by the site, or determined by appraisal or other methods, such as negotiating rents for new sites, extrapolating from current rent paid, or using comparable lease information provided by the holder, in appropriate circumstances.

4. To the base rent, add 25 percent of the schedule rent applicable to each tenant located in the facility on September 30 of that year, to get the total rent.

5. Compare the total rent to existing rent and determine whether the holder is eligible for phase-in. If eligible, calculate the first year's rent.

6. Compare total estimated rent against expected or current rent to determine whether the rent should be exempted from the schedule.

7. If the rent as calculated from the schedule is not applicable, it will be set following an appraisal or using other methods as determined by the authorized officer.

The following examples show how schedule rents are calculated:

Example 1: A communications facility serving an RMA population of 200,000, with CMRS provider (building owner), one TV broadcaster, two FM broadcasters, one cellular telephone, and two private mobile radio users.

Base rent = $6,000 (TV broadcast is the highest value use in the facility) + $750 (25% CMRS provider (building owner)), + $2,000 (25% of two FM broadcasters) + $1,000 (25% cellular telephone + $0.00 (no charge for PMRS)) = Total first year rent for the facility: $9,750.

Example 2: A microwave facility located in a remote, sparsely populated community with no tenants in the facility would pay a first year rent of $1,500.

Example 3: A television station located on a site serving a RMA listed community with a population of 60,000 with two tenants; a FM radio station, and a paging company. Current rent is $1,000.

Base rent = $3,000 (television station is highest schedule rent) + $500 (25% of schedule rent for FM station) + $300 (25% of $1,200 since paging is covered under CMRS) = $3,800. $3,800 (schedule rent) − $1,000 (current rent) = $2,800. First year's rent is $1,560 ($1,000 + one fifth of $2,800).

Implementation Plan

The BLM plans the following to implement the final rule:

1. The BLM and FS will adopt a format for communication use authorizations to be used by both agencies. The new authorization will allow the holder to have tenants in the facility, eliminating the requirement for prior written consent of the agency.

2. A notice will be sent to all authorized communication site users. This notice will advise them of regulatory changes affecting assessment of communication site rental payments,

and the option to convert to a new authorization. Holders will have 60 days to respond to the authorized officer indicating their intention.

3. Tenants in a facility who have a separate BLM authorization will be given an option to retain their separate authorization, or relinquish their authorization and be included in the facility owner's authorization. Tenants electing to maintain their existing authorization will be billed the full rental in accordance with the schedule.

4. Holders will be notified by December 1 each year what their rent would be for the next calendar year.

Procedural Matters

The principal author of this final rule is David Cavanaugh of the Special Area/Land Tenure Team, assisted by the Regulatory Management Team, BLM. Other persons who have made significant contributions include Ellen Heath and Mark Scheibel of the FS, Ron Appel, Dan Nowell, Larry Shiflet, and Bil Weigand of BLM.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, being a regulation of an administrative, financial, legal, technical, or procedural nature, and that the rule will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule has been reviewed under Executive Order 12866. The BLM expects the rule will result in savings estimated at $3,000,000 per rent cycle. These savings will result primarily from a significant reduction in the number of communication site appraisal reports that will have to be prepared and reviewed. Under current policy rents for communication sites are established based upon appraisals, which are to be updated every five years. Through the establishment of rental schedules applicable to categories of communications users, the final rule will eliminate the need for individual appraisal reports for most communication site rights-of-way. The BLM estimates appraisals of this type to cost approximately $2,000 each. With more than 1,500 communication site rights-of-way, the savings for each cycle of rent is estimated to be more than $3,000,000.

The BLM expects the rule to bring annual rental payment charged holders to fair market value as required by statute. The current rental payments for most current holders have not been reviewed or updated in the last five years, with many not adjusted for 10–15 years. The payments that would be placed in effect by this final rule would bring existing rental charges for communication holders on public lands more into line with those who lease land from private landowners. Revenues are expected to initially increase modestly to $2,000,000 annually and keep pace with inflation. Increases may be greater depending on the number of tenants in the building that would be assessed a rent under the schedule. At this time we are unable to project the impact of charging holders for tenants since we currently have no data on tenants in authorized facilities.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The final rule, with its fee schedule, affects only that segment of the communications industry operating on the public lands. There are 57 FM radio broadcast sites, 26 television broadcasting facilities, and approximately 3,200 other permits in effect on these lands. Available records do not indicate how many of these permits are held by small entities. The phase-in of annual fees proposed in this rule will allow any small entities that may be affected to adjust to the new fees over a period of time and thereby minimize the risk of adverse impact due to the magnitude of some fee increases under the rule.

Because the rule will result in no taking of private property and no impairment of property rights, the Department certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights, as required by Executive Order 12630.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0102 and 1004–0107, with the exception of the annual collection of information concerning tenants and tenants' category of use from right-of-way holders.

In compliance with 5 CFR 1320.8(d), BLM is required to provide 60-day notice in the Federal Register concerning a proposed collection of information to solicit comments on (a) 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; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize 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. Accordingly, none of the information proposed to be collected as described below will be required until comments have been received and analyzed and approval has been obtained from OMB under 44 U.S.C. 3501 *et seq.* and a clearance number assigned.

In this rule, BLM is establishing procedures for setting rent for communication uses located on lands administered by BLM as required by FLPMA. Generally, multiple-user facilities located on public lands involve tenants, and under this rule, the holder will be assessed an additional amount for certain categories of tenants. Ignoring tenant use of the facility when setting rent, while allowing the holder nearly exclusive use of the site, prevents recovery of fair market value. Thus, BLM's statutory responsibility to obtain fair market value for the use of public lands includes obtaining a rent for tenant uses in the facility.

In response to comments on the proposed rule, BLM changed the original proposal (at § 2803.1–2(d)(6) in the final rule) from charging 25 percent of the gross rent received from tenants

in the facility because it would be too intrusive and difficult to implement. The final rule has been amended to charge the holder of the right-of-way the full schedule rent for the highest valued use in the facility, plus 25 percent of the schedule rent for the other uses. To implement this provision, BLM must obtain from the holder a listing of tenants by category of use on an annual basis. The information collected will allow BLM to calculate the rent for the communications facility. The information is mandatory to obtain a benefit, use of public lands for communications facilities.

The public reporting burden for this collection of information is estimated to average one hour per response. The respondents are holders of right-of-way grants or temporary use permits. The estimated number of respondents is 1,500. The estimated number of responses per respondent is one per year. The estimated total annual burden on respondents is 1,500 hours.

Elsewhere in this issue of the Federal Register, BLM is publishing a separate notice soliciting comments on this proposed information collection.

List of Subjects

43 CFR Part 2800

Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2810

Public lands—rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2880

Public lands—rights-of-way, Reporting and recordkeeping requirements.

Dated: October 2, 1995.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

Under the authority of Sections 303, 310, and 501–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733, 1740, and 1760–1771), and for the reasons stated in the preamble, 43 CFR Parts 2800, 2810, and 2880 are amended as follows:

PART 2800—[AMENDED]

1. The Note at the beginning of Group 2800 is removed.

2. The authority citation for part 2800 continues to read as follows:

Authority: 43 U.S.C. 1733, 1740, and 1760–1771.

Subpart 2800—Rights-of-Way; General

3. Section 2800.0–5 is amended by revising paragraph (j) and adding paragraphs (aa) through (cc) to read as follows:

§ 2800.0–5 Definitions.

* * * * *

(j) *Facility* means an improvement constructed or to be constructed or used within a right-of-way pursuant to a right-of-way grant. For purposes of communication site rights-of-way, facility means the building, tower, and/or other related incidental improvements authorized under terms of the right-of-way grant.

* * * * *

(aa) *Base rent* means the amount required to be paid by the holder of a right-of-way on public lands for the communication use with the highest assigned schedule rent in the facility, in accordance with terms of the right-of-way grant.

(bb) Tenant means an occupant who rents space in a facility and operates communication equipment in the facility to resell the communication service to others for a profit. For purposes of calculating rent, the term ''tenant'' does not include private mobile radio or those uses included in the category of Other Communication Uses.

(cc) Customer means a person who is paying the facility owner or tenant for communication services, and is not reselling communication services to others. Persons or entities benefiting from private or internal communication uses located in a CMRS facility are considered customers for purposes of calculating rent.

4. Section 2800.0–9 is added to read as follows:

§ 2800.0–9 Information collection.

(a) The information collection requirements contained in part 2800 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0102 and 1004–0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

(b) Public reporting burden for this information is estimated to average 41.8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0102 or 1004–0107, Washington, DC 20503.

Subpart 2801—Terms and Conditions of Rights-of-Way Grants and Temporary Use Permits

5. Section 2801.1–1 is amended by revising the first sentence of paragraph (b) and adding a sentence to the end of paragraph (f) to read as follows:

§ 2801.1–1 Nature of right-of-way interest.

* * * * *

(b) A right-of-way grant or temporary use permit may be used only for the purposes authorized. * * *

* * * * *

(f) * * * However, the holder of a right-of-way grant for communication purposes may authorize other parties to use a facility, without prior written consent of the authorized officer, if so provided by terms and conditions of the grant.

* * * * *

Subpart 2803—[Amended]

6. Section 2803.1–2 is amended by revising paragraph (b)(1)(i), paragraph (c)(1)(iv), the introductory text of paragraph (v), and paragraph (c)(2), by redesignating paragraphs (c)(3)(i), (c)(3)(ii), (c)(4), (c)(5), and (d) as paragraphs (e)(1), (e)(2), (f), (g), and (h) respectively, and by adding paragraph (d) and revising newly designated paragraph (e), to read as follows:

§ 2803.1–2 Rental.

* * * * *

(b)(1) * * *

(i) The holder is a Federal, State, or local government, or agency or instrumentality thereof, except parties who are using the space for commercial purposes, and municipal utilities and cooperatives whose principal source of revenue is customer charges:

* * * * *

(c)(1) * * *

(iv) Rental for the ensuing calendar year for any single right-of-way grant or temporary use permit is the rental per acre from the current schedule multiplied by the number of acres embraced in the grant or permit, unless such rental is reduced or waived as

provided in paragraph (b)(2) of this section.

(v) The authorized officer will use the linear rental schedule unless the authorized officer determines:

* * * * *

(2)(i) Existing linear right-of-way grants and temporary use permits may be made subject to the schedule provided by this paragraph upon reasonable notice to the holder.

(ii) Where the new annual rental for linear rights-of-way exceeds $100 and is more than a 100 percent increase over the current rental, the amount of increase in excess of the 100 percent increase shall be phased in by equal increments, plus the annual adjustment, over a 3 year period.

* * * * *

(d) The annual rental payment for communication uses listed in paragraph (d)(1) of this section is based on rental payment schedules. The rental schedules apply to right-of-way holders and tenants authorized to operate and maintain communication facilities on public lands. They do not apply to holders who are public telecommunications service operators providing public television or radio broadcast services granted a waiver under § 2803.1–2(b)(2)(i). Nor do they apply to communication site uses, facilities, or devices located exclusively within the exterior boundaries of an oil and gas lease and directly associated with the operations of the oil and gas lease (subpart 2880).

(1) The schedules are applicable to communication uses that provide the following services:

(i) Television broadcast includes right-of-way holders that operate FCC-licensed facilities used to broadcast UHF and VHF audio and video signals for general public reception, and communication equipment directly related to the operation, maintenance, and monitoring of the use. This category does not include holders licensed by the FCC to operate Low Power Television (LPTV) or rebroadcast devices such as translators, or transmitting devices such as microwave relays serving broadcast translators.

(ii) AM and FM radio broadcast includes rights-of-way that contain FCC-licensed facilities primarily used to broadcast amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception, and communication equipment directly related to the operation, maintenance, and monitoring of the use. This category is not applicable to holders licensed by the FCC as a low-power FM radio. This category also does not include rebroadcast devices such as translators, boosters, or microwave relays serving broadcast translators.

(iii) The broadcast translator and low power television category includes FCC-licensed translators and low power television, low power FM radio, and communication equipment directly related to the operation, maintenance, or monitoring of the use. Microwave facilities used in conjunction with LPTV and broadcast translators are included in this category.

(iv) Cable television includes FCC-licensed facilities that transmit video programming to multiple subscribers in a community over a wired or wireless network, and communication equipment directly related to the operation, maintenance, or monitoring of the use. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, personal or internal antenna systems such as private systems serving hotels or residences.

(v) Commercial mobile radio service/facility manager includes FCC-licensed commercial mobile radio facilities or their holders providing mobile communication service to individual customers, and communication equipment directly related to the operation, maintenance, or monitoring of the use. Such services generally include two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment. Some holders in this category may not hold FCC licenses or operate communication equipment, but may lease building, tower, and related facility space to a variety of tenants as a part of their business enterprise, and may act as facility managers.

(vi) Private Mobile Radio includes FCC-licensed private mobile radio systems primarily used by a single entity for mobile internal communications, and communication equipment directly related to the operation, maintenance, or monitoring of the use. This use is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. Services generally include private local radio dispatch, private paging services, and ancillary microwave communications equipment for the control of the mobile facilities.

(vii) Cellular telephone includes FCC-licensed systems and related technologies used for mobile communications using a combination of radio and telephone switching technology, and providing public switched network services to fixed and mobile users within a defined geographic area. The system consists of cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, and often microwave communications link equipment, and communication equipment directly related to the maintenance and monitoring of the use.

(viii) Microwave includes FCC-licensed facilities used for long-line intrastate and interstate public telephone, television, information, and data transmissions, or used by pipeline and power companies, railroads, and land resource management companies in support of the holder's primary business. Also included is communication equipment directly related to the operation, maintenance, or monitoring of the use.

(ix) Other communication uses include holders of FCC-licensed private communication uses such as amateur radio, personal/private receive-only antennas, passive reflectors, natural resource and environmental monitoring equipment, and other small, low-power devices used to monitor or control remote activities.

(2)(i) The rental schedules will be adjusted annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U, U.S. City Average, published in July of each year), and Ranally Metro Area population rankings. Annual adjustments based on the CPI–U will be limited to no more than 5 percent. The rental schedule will be reviewed for possible update no later than 10 years after December 13, 1995, and at least every 10 years thereafter, to ensure that the schedule reflects fair market value.

(ii) Rights-of-way may be reviewed on a case-by-case basis 10 years after issuance or beginning [10 years and 30 days after the date of publication], whichever is later, and no more often than every 5 years thereafter, on holder request, to determine whether rents are appropriate.

(3) Rent is based on the actual users in the facility. For a facility with a single user, the base rent is the schedule rent for the use. Base rent for authorizations that include more than one user will be based on the use in the facility with the highest rent as shown on the schedule. An additional amount will be assessed based on 25 percent of the schedule rent for all other users. (A facility manager is not considered a separate use for purposes of calculating

the additional amount for tenants in the facility.)

(4) Increases in base rental payments over 1996 levels in excess of $1,000 will be phased in over a 5-year period. In 1997, the rental payment will be the 1996 rental, plus $1,000. The amount exceeding $1,000 will be divided into 4 equal installments, and beginning in 1998 the installment, plus the annual adjustment in the total rent, will be added to the previous year's rent.

(5) Annual rental payments will be calculated and provided to the holder by December 31 for each ensuing calendar year based on the schedules published from time to time as necessary in the Federal Register.

(6) Also, the right-of-way holder must submit a certified statement by October 15 of each year listing tenants in the facility and the category of use for each tenant as of September 30 of that year, and pay 25 percent of the schedule rent for the category of use. Tenants occupying space in the facility under terms of the holder's right-of-way authorization will not be required to have a separate BLM authorization.

(7) Other methods may be used to set rental payments for communication uses when the authorized officer determines one of the following:

(i) The holder is eligible for a waiver or reduction in rent in accordance with § 2803.1–2(b)(2);

(ii) Payment of the rent will cause undue hardship under § 2803.1–2(b)(2)(iv);

(iii) The original right-of-way authorization has been or will be issued pursuant to a competitive bidding process;

(iv) The State Director concurs in a determination made by the authorized officer that the expected rent exceeds the schedule rent by 5 times, or the communication site serves a population of 1 million or more and the expected rent for the communication use is more than $10,000 above the schedule rent; or

(v) The communication facilities are ancillary to and authorized under a right-of-way grant for a linear facility. In such cases, rent for the associated communication facilities is to be determined in accordance with the linear fee schedule.

(e)(1) The rental for right-of-way grants and temporary use permits not covered by the right-of-way schedule in § 2803.1–2(d)(5) will be determined by the authorized officer and paid annually in advance. Rental for communication site rights-of-way not covered by the schedule, except those issued pursuant to Section 28 of the Mineral Leasing Act (30 U.S.C. 185), will be based on comparative market surveys, appraisals, or other reasonable methods. All such rental determinations shall be documented, supported, and approved by the authorized officer. Where the authorized officer determines that a competitive interest exists for site type right-of-way grants such as for wind farms, communication sites, etc., rental may be determined through competitive bidding procedures set out in § 2803.1–3.

(2) To expedite the processing of any grant or permit covered by paragraph (e)(1) of this section, the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of a rental value determination, the advance deposit will be adjusted according to the final fair market rental value determination.

* * * * *

PART 2810—TRAMLOADS AND LOGGING ROADS

Subpart 2812—Over O. and C. and Coos Bay Revested Lands

7. Section 2812.0–9 is added to read as follows:

§ 2812.0–9 Information collection.

The information collection requirements contained in part 2810 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0102 and 1004–0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

PART 2880—[AMENDED]

Subpart 2880—Oil and Natural Gas Pipelines and Related Facilities: General

8. Section 2880.0–9 is added to read as follows:

§ 2880.0–9 Information collection.

The information collection requirements contained in part 2880 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0102 and 1004–0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

[FR Doc. 95–27619 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–00–24–1A]

RIN 1004–AC12

Notice of Proposed Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, BLM is announcing its intention to request approval for the collection of information annually from communications right-of-way holders concerning their tenants and the category of use for each tenant.

DATES: Comments on the proposed information collection must be received by January 12, 1996 to be assured of consideration.

ADDRESSES: All comments regarding this proposed information collection should be sent to Director (420), Bureau of Land Management, Room 401, 1620 L Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, (202) 452–5030.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), the Bureau of Land Management (BLM) is required to provide 60-day notice in the Federal Register concerning a proposed collection of information to solicit comments on (a) 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; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize 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. Accordingly, none of the information proposed to be collected as described below will be required until comments have been received and analyzed and approval has been obtained from OMB under 44 U.S.C. 3501 *et seq.* and a clearance number assigned.

In the final rule published elsewhere in this issue of the Federal Register, BLM is establishing procedures for setting rent for communication uses located on lands administered by BLM as required by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(g)). Generally, multiple-user facilities located on public lands involve tenants, and under this rule the holder will be assessed an additional amount for certain categories of tenants. Ignoring tenant use of the facility when setting rent, while allowing the holder nearly exclusive use of the site, prevents recovery of fair market value. Thus, BLM's statutory responsibility to obtain fair market value for the use of public lands includes obtaining a rent for tenant uses in the facility.

In response to comments on the proposed rule, BLM changed the original proposal (at § 2803.1–2(d)(6) in the final rule) from charging 25 percent of the gross rent received from tenants in the facility because it would be too intrusive and difficult to implement. The final rule has been amended to charge the holder of the right-of-way the full schedule rent for the highest valued use in the facility, plus 25 percent of the schedule rent for the other uses. To implement this provision, BLM must obtain from the holder a listing of tenants by category of use on an annual basis. The information collected will allow BLM to calculate the rent for the communications facility. The information is mandatory to obtain a benefit, use of public lands for communications facilities.

The public reporting burden for this collection of information is estimated to average one hour per response. The respondents are holders of right-of-way grants or temporary use permits. The estimated number of respondents is 1,500. The estimated number of responses per respondent is one per year. The estimated total annual burden on respondents is 1,500 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: November 6, 1995.

Annetta Cheek,

Regulatory Management.

[FR Doc. 95–27785 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–84–P

[WO–350–1430–00–24–1A]

Rights-of-Way, Rental Schedule for Communication Uses for 1996

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of establishment of rental fee schedule for communication site rights-of-way on public lands for 1996.

SUMMARY: The Director, Bureau of Land Management (BLM), hereby publishes the schedule for the rental fees for communication site rights-of-way on public lands administered by BLM.

EFFECTIVE DATE: January 1, 1996, through December 31, 1996.

ADDRESSES: Any inquiries should be sent to Director (420), Bureau of Land Management, Main Interior Building, Room 5650, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David Cavanaugh (202) 452–7793.

SUPPLEMENTARY INFORMATION: Rental fees for the use of public lands for right-of-way purposes are established and collected under the authority of Section 504(g) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(g)), and in accordance with the procedures provided in the regulations at 43 CFR subpart 2803. Elsewhere in this issue of the Federal Register ([*insert FR citation of schedule notice*]), BLM is publishing a final rule that establishes procedures for determining rent for nine categories of communication uses for which fair market value is required for the use of the public lands. This final rule authorizes a rental schedule for non-linear communication site rights-of-way. Annual rental payments will be calculated and provided to the holder by December 31 for each ensuing calendar year based on the following schedule:

RENTAL SCHEDULE

Population	Television	AM/FM radio*	Cable television	Broadcast translator/ LPTV/ LPFM	CMRS/facility manager	Cellular telephone	Private mobile radio service	Microwave	Other	Sample RMA's
5,000,000 plus.	$45,000	$34,000	Insufficient market data.	Insufficient market data.	$12,000	$12,000	$10,000	$10,000	$75	Los Angeles, CA.
2,500,000 to 4,999,999.	30,000	21,000	.....	.....	10,000	10,000	6,000	8,000	75	Seattle, WA.
1,000,000 to 2,499,999.	18,000	14,000	Rent to be determined.	Rent to be determined.	8,000	8,000	6,000	7,000	75	Phoenix, AZ, San Diego, CA Portland, OR, Riverside, CA.
500,000 to 999,999.	14,000	10,000	.....	.....	5,000	6,000	4,000	5,500	75	Las Vegas, NV, Salt Lake City, UT, Tucson, AZ, Albuquerque, NM.
300,000 to 499,999.	12,000	8,000	.....	.....	4,000	5,000	2,500	2,500	75	Bakersfield, CA, Spokane, WA.
100,000 to 299,999.	6,000	4,000	$2,400 ...	$2,400 ...	3,000	4,000	2,000	2,000	75	Boise, ID, Reno, NV, Anchorage, AK, Palm Springs, CA, Yakima, WA, Yuma, AZ, Billings, MT.
50,000 to 99,999.	3,000	2,000	1,200	1,200	1,200	3,000	1,000	1,500	75	Las Cruces, NM, Grand Junction, CO, Idaho Falls, ID, Missoula, MT, Santa Fe, NM, Pocatello, ID, Farmington, NM, Roswell, NM.
25,000 to 49,999.	1,500	1,200,	1,000	500	1,000	2,500	600	1,500	75	Butte, MT.
Less than 25,000.	1,200	900	600	100	600	2,500	350	1,500	75	

*Rent for AM radio is 70% of the FM scheduled rent.

The rental schedule will be updated from time to time as necessary under these regulations.

Dated: October 2, 1995.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

[FR Doc. 95–27620 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–84–M

Federal Register

Monday
November 13, 1995

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 103 et al.
Beverages: Bottled Water; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 103, 129, 165, and 184

[Docket No. 88P–0030]

RIN 0910–AA11

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing a standard of identity for bottled water. At the same time, the agency is recodifying the standard of quality for bottled water. FDA is revising the definition for bottled water in the quality standard to include mineral water and ingredient uses of this product. In addition, FDA is defining ''artesian water,'' ''ground water,'' ''mineral water,'' ''purified water,'' ''sparkling bottled water,'' ''spring water,'' ''sterile water,'' and ''well water.'' FDA is exempting mineral water from certain physical and chemical allowable levels. FDA is taking these actions, in part, in response to a petition submitted by the International Bottled Water Association (IBWA). FDA finds that the regulations will promote honesty and fair dealing in the interest of consumers as well as the interests of the regulated industry.

EFFECTIVE DATE: May 13, 1996. The Director of the Office of the Federal Register approves the incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications at 21 CFR 129.35(a)(3)(ii), 129.80(g), and 184.1563(c), effective May 13, 1996.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4681.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of January 5, 1993 (58 FR 393), FDA published a proposal to establish a standard of identity in § 165.110(a) for bottled water (hereinafter referred to as the January 1993 proposal). At the same time, the agency proposed to recodify in § 165.110 (b), (c), and (d), the standard of quality for bottled water currently found in § 103.35. FDA proposed to revise the definition for bottled water in the quality standard to include mineral water and ingredient uses of this product. In addition, FDA proposed to define ''artesian water,'' ''distilled water,'' ''mineral water,'' ''purified water,'' ''spring water,'' and ''well water.'' FDA proposed to exempt mineral water from certain physical and chemical allowable levels if the mineral water contained total dissolved solids (TDS) in excess of 500 parts per million (ppm). Interested persons were given until March 8, 1993, to submit comments.

In the Federal Register of March 9, 1993 (58 FR 13041), FDA extended the comment period to April 7, 1993. In addition, the agency reopened the comment period for comments concerning two spring water surveys that FDA received in response to the proposal (58 FR 34010, June 23, 1993). Interested persons were given until July 23, 1993, to submit comments concerning the two spring water surveys.

FDA received approximately 430 responses, each of which contained one or more comments, from trade and retail associations, government organizations, manufacturers, consumers, health care professionals, retailers, consumer groups, State groups, private organizations, the U.S. Congress, professional societies, and universities. The comments generally supported the proposal. Several comments addressed issues outside the scope of the proposal (e.g., microbiological quality standards, definitions for multicomponent bottled water beverages) that will not be discussed here. A number of comments suggested modifications and revisions in various provisions of the proposal. A summary of the suggested changes and the agency's responses follow.

Elsewhere in this issue of the Federal Register, FDA is proposing to update the methods referenced in § 165.110(b)(3) and to exempt mineral water from the allowable level for aluminum in the quality standard. FDA is responding to the comments on the January 1993 proposal that addressed those issues in that proposal.

II. The Standard of Identity

A. Coverage

The agency proposed in the January 1993 proposal, to move the definition for bottled water from the quality standard to the standard of identity and to revise the definition to include mineral water and ingredient uses of bottled water. Specifically, FDA proposed that bottled water be defined as water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients, except that it may contain safe and suitable antimicrobial agents. The agency also proposed that bottled water may be used as an ingredient in beverages (e.g., diluted juices, flavored bottled water) but stated that the term did not cover those food ingredients that are declared in ingredient labeling as ''water,'' ''carbonated water,'' ''disinfected water,'' ''filtered water,'' ''seltzer water,'' ''soda water,'' and ''tonic water.'' Finally, FDA proposed that the processing and bottling of bottled water must comply with applicable regulations in part 129 (21 CFR part 129).

1. One comment asked why bottled water is singled out for a source identification requirement (e.g., water from a municipal source), and why soft drinks, beers, reconstituted juices, salad dressings, and other products that contain water as an ingredient are not also subject to this requirement.

The agency considered the scope of the bottled water standard, particularly its application to water used as an ingredient in multicomponent foods such as flavored waters and diluted juices, in the proposal to this final rule (58 FR 393 at 395). FDA stated that highlighting the water component of these products is effectively a claim that the water ingredient in the beverage has particular value, and that consumers are likely to purchase these products in large measure because of the claim concerning the water ingredient. For example, in a significant number of situations, the labeling of products stated or implied that the water originated from a source such as a spring or a well. In contrast, in products such as soft drinks or reconstituted juices in which water is simply used as an ingredient, no claim is made about the water. The intent of the proposal was not to require source labeling of all water ingredients from a municipal source, but to require it in the former type of situation, where the finished product is bottled water or the labeling makes an explicit or implied claim concerning the water ingredient.

Under section 403(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(a)), a product is misbranded if its labeling is false or misleading in any particular. To determine whether the absence of information on food labels constitutes misbranding the agency must take into account the extent to which the labeling fails to reveal facts material in light of representations made or suggested with respect to consequences that may result from the use of the article under customary or usual conditions of use (section 201(n) of the act (21 U.S.C. 321(n))). The agency does not deem

source labeling of ingredient water from a municipal source as a material fact unless labeling representations are made or suggested that the water possesses particular properties.

Thus, the agency finds no reason to include water that is not a highlighted ingredient in the bottled water standards, and the comment has not provided a basis to do so. Therefore, § 165.110 applies only to bottled water and ingredient uses of water where the water ingredient is highlighted in the labeling.

2. Two comments expressed concern about sparkling water being regulated under the bottled water standards. They stated that sparkling water has long been understood by consumers and recognized by FDA as a common or usual name for unsweetened and unflavored water containing compressed carbon dioxide. The comments contended that consumers clearly understand ''sparkling water'' to be in the same category as ''carbonated water,'' ''seltzer water,'' ''soda water,'' and ''tonic water,'' substances that historically have been regulated by FDA as ''soft drinks.'' They stated that as such, ''sparkling water'' is more appropriately classified as a ''soft drink'' that is not subject to the proposed bottled water standard.

Some comments stated that it was unclear whether ''sparkling water'' was included under the exemption for ''carbonated water'' and asked for clarification. One comment stated that if the standard does not encompass the term, FDA should include ''sparkling water'' in the definition of bottled water.

FDA stated in the preamble to the proposed rule that when a beverage is labeled as containing ''water,'' ''carbonated water,'' ''disinfected water,'' ''filtered water,'' ''seltzer water,'' ''soda water,'' and ''tonic water,'' there is no claim that the water ingredient has particular value, and that, thus, these ingredients were not included in the definition of bottled water (58 FR 393 at 395). This proposed exclusion did not extend to the term ''sparkling water'' or to any other term not specifically excluded by the standard. In the proposal, the agency used the example of the term ''sparkling'' as indicating that the water ingredient possessed a specific characteristic or had received a specific treatment (*id.*). FDA tentatively concluded at that time that use of such highlighted terms concerning the water component was effectively a claim that the water ingredient in the beverage had particular value, and that consumers were likely to purchase these beverages in large measure because of the claim.

The agency notes, however, that sparkling water was included in the former soda water standard. In the Federal Register of February 16, 1967 (32 FR 2940), the agency amended the soda water standard to add the term ''sparkling water'' to the standard as an example of a type of soda water generally designated by a particular common name. FDA proposed this change to permit the designation of nonsweetened and nonflavored soda water by names other than those prescribed in the standard (31 FR 11109, August 20, 1966). However, FDA repealed the standard of identity for soda water in the Federal Register of January 6, 1989 (54 FR 398) because some provisions of the standard were being adequately dealt with by other regulations, while other provisions were no longer necessary.

Given the traditional use of this term, as evidenced by the repealed standard, the agency agrees that the term ''sparkling water'' describes a nonsweetened and nonflavored carbonated water, and that it thus, is a term that is synonymous with the term ''carbonated water.'' The fact is that the agency had separate standards at one time for bottled water and for soda water, and that it included sparkling water in the soda water, and not the bottled water standard. Therefore, the comments have persuaded the agency that some types of sparkling water are in the same category as ''carbonated water,'' ''seltzer water,'' ''soda water,'' and ''tonic water,'' and should be regulated as a soft drink instead of as a bottled water. Accordingly, the bottled water standard in § 165.110 does not include those food ingredients that are declared in ingredient labeling as ''water,'' ''carbonated water,'' ''disinfected water,'' ''filtered water,'' ''seltzer water,'' ''soda water,'' ''sparkling water'' (except as explained in this response) and ''tonic water.''

However, the term ''sparkling water'' may also refer to water that is naturally carbonated (i.e., contains carbon dioxide as it emerges from the source) and that is labeled as ''sparkling water.'' The bottled water standard has traditionally included this type of water because the water has not been carbonated in the same sense that a soda water is carbonated (i.e., with added carbon dioxide). Thus, water that contains carbon dioxide as extracted from the source is not a soda water and must continue to be regulated as a bottled water. Therefore, to differentiate between the two types of sparkling waters, the agency is defining ''sparkling bottled water'' in § 165.110(a)(2)(v) as bottled water that, after treatment and possible replacement of carbon dioxide, contains the same amount of carbon dioxide that it had at emergence from the source. This definition is in accordance with the definition in the European Regional Codex Standard (ERCS) for ''naturally carbonated natural mineral water'' (Ref. 1).

The agency concludes that defining the term ''sparkling bottled water'' is within the scope of this rulemaking because FDA proposed that sparkling water be included under the bottled water standard. As a consequence of proposing that course of action, FDA has been persuaded that some types of sparkling water should be excluded from the standard and that it should differentiate among the types of sparkling water in its bottled water regulations.

3. Two comments objected to the exclusion of carbonated bottled waters from the bottled water standards. They stated that any product that professes to be, or that has as an important ingredient that is one of the defined bottled water types (e.g., spring water, mineral water), whether noncarbonated or carbonated, should be considered to be bottled water. The comments contended that only those carbonated products with respect to which no reference is made to defined bottled water types should be excluded.

The agency agrees with the comment. Products or ingredients described by a term that is defined by the standard of identity (e.g., ''spring water'') or with a term that makes a claim about the water (e.g., ''natural water'') are standardized waters and must comply with § 165.110 whether carbonation has been added or not. Although terms to describe the water ingredient in a product may sometimes be used in combination with a term that is not included under the standards (e.g., ''carbonated spring water'' or ''filtered natural water''), the product or the water ingredient in the product must comply with the bottled water standards because a claim is being made concerning the value of the water. However, use of only a term specifically excluded from the bottled water standards (e.g., ''filtered water'' or ''carbonated water'') means that no claim is being made concerning the value of the water, and, thus, the water is not a standardized food.

4. Several comments stated that it is inconsistent for FDA to exempt carbonated waters from the bottled water standards. They held that carbonated water may be consumed at levels which constitute a major portion of an individual's daily water intake. One comment added that exempting

carbonated water from the bottled water category does not provide for consumer safety or confidence.

The agency does not agree with the comments, although it acknowledges that carbonated waters may constitute a major portion of some consumers' daily water intake. However, FDA points out that standards of identity and quality are not established because a product is consumed in large volumes or for consumer safety or confidence but are established to promote honesty and fair dealing in the interest of consumers.

''Carbonated water'' or ''soda water'' has traditionally not been covered by the provisions of the bottled water quality standard because it has been considered to be a soft drink. Bottled water and soda water, although similar, are two different foods as evidenced by the fact that the agency had quality standards for bottled water at the same time that it had a standard of identity for soda water that included ''carbonated water.''

FDA tentatively concluded in the proposal that it would not include ''carbonated water'' in the standards for bottled water because it has historically not been considered to be bottled water. In addition, the agency tentatively concluded that the standards for bottled water covered water ingredients that were highlighted because of a claim concerning the water ingredient itself.

Labels of foods that claim to contain as an ingredient, or to be, ''carbonated water'' do not claim or imply any particular properties or characteristics for the water ingredient. Any claims on such foods for the ingredient are simply that carbon dioxide has been added. Thus, ''carbonated water'' does not fit within the type of food that the bottled water standard is intended to address because no claim is being made about the water itself. The agency finds no reason to include ''carbonated water'' in the bottled water standard, and the comment has not provided any basis to do so. Therefore, the agency concludes that it has not been inconsistent in the regulation of ''carbonated water'' and ''bottled water.''

5. Two comments stated that the terms ''carbonated water,'' ''disinfected water,'' ''filtered water,'' ''seltzer water,'' ''soda water,'' and ''tonic water'' should be defined to avoid confusion by industry and consumers as to what types of water are covered by the bottled water standards and what types of water are not. One of the comments stated that these terms may have different meanings to the bottled water and beverage industries and consumers.

The agency does not agree with the comments. There is general understanding of the meanings of these terms, even though they are not defined in FDA's regulations. ''Carbonated water,'' ''disinfected water,'' ''filtered water,'' ''seltzer water,'' ''soda water,'' and ''tonic water'' are common or usual names that are in general use by both manufacturers and consumers. In the proposal to this final rule (58 FR 393 at 395), the agency noted that the terms ''carbonated water,'' ''seltzer water,'' ''soda water,'' and ''tonic water'' have historically been considered to be soft drinks, and that ''disinfected water'' and ''filtered water'' described water that has been subjected to a commonly used treatment.

The reason for not addressing these terms under the bottled water standard is that they make no claims about the water used in the ingredients that they denominate. The exclusion is not based on the specific source, composition, or processing of these types of waters. The comments did not provide any information to persuade the agency to conclude otherwise. Therefore, FDA is not defining these common terms at this time. However, persons interested in establishing definitions for ''carbonated water,'' ''disinfected water,'' ''filtered water,'' ''seltzer water,'' ''soda water,'' and ''tonic water'' may petition the agency to do so, providing recommended definitions and justification for the recommendations.

6. Several comments objected to any definition of bottled water that does not allow for the addition of ingredients such as minerals for flavor, flavors that comprise less than 1 percent by weight of the product, and carbon dioxide. They stated that changing the definition of bottled water to exclude established products would: (1) Be costly to the bottled water industry; (2) exempt excluded bottled water products from meeting FDA's proposed health, safety, and quality standards; and (3) confuse rather than unify regulatory authority. One comment declared that it is imperative that the final regulation include all established products of the bottled water industry.

One comment stated that some model codes and State regulations provide for the addition of ingredients to bottled water provided that these additives comprise less than 1 percent by weight of the final product. The comment noted that many consumers may supply a major portion of their daily water intake needs with these 1 percent bottled water products.

Another comment noted that § 129.80(a) states that carbonation, mineral addition, or any other process shall be done in a manner so as to be effective in accomplishing its intended purpose and in accordance with section 409 of the act. It stated that there is no reason to disallow any of these processes or their resultant products as bottled water.

FDA does not agree that it is changing the definition of bottled water. The agency acknowledges that some State regulations define bottled waters with added flavors, minerals, and carbon dioxide as described in the comments (Ref. 2). However, the Federal definition of ''bottled water'' has traditionally been ''water that is sealed in bottles or other containers and that is intended for human consumption'' (§§ 103.35(a)(1) and 129.3(b) (1994)). This definition is the basis of the definition that FDA is adopting in this final rule (§ 165.110(a)(1)). Although § 129.80(a) mentions treatment of product water with carbonation and mineral addition, among other processes, any bottled water product with added ingredients would be just that—bottled water with added ingredients. (However, see the discussion of fluoride in bottled water in comment 8 of this document.)

Firms may manufacture nonstandardized bottled water products with ingredients such as minerals for flavor, flavors that comprise less than 1 percent by weight of the product, and carbon dioxide added to bottled water. The common or usual name of the resultant product must reflect these additions. However, only the bottled water ingredient is subject to the standard in § 165.110. The other ingredients in the product are subject to regulation under the food additive or other food ingredient provisions of the act. Thus, it is not necessary to include added ingredients, such as minerals for flavor, flavors that comprise less than 1 percent by weight of the product, or carbon dioxide, in the standard for bottled water.

Therefore, for the reasons listed above the agency is not persuaded by the comments to include the addition of minerals, flavors, and carbon dioxide in the standard of identity for bottled water in § 165.110(a)(1).

7. One comment stated that all bottled waters imported into the United States should meet all of FDA's requirements for bottled waters including mineral water. It added that U.S. standards should not be lessened to meet European standards unless there are compelling public health reasons for doing so.

FDA agrees that both foreign and domestic bottled waters sold in interstate commerce in the United States must comply with the act and the regulations issued thereunder, including the specific regulations for bottled water

found in part 129 and § 165.110. Although the agency attempts, where possible, to harmonize its regulations with the regulations of other countries, there must be appropriate grounds for FDA to amend any of its bottled water regulations, whether or not such action would harmonize international standards.

B. Fluoridated Water

The agency did not propose a definition for ''fluoridated water,'' although it did request comments on the need to define types of bottled water other than those for which it proposed definitions. Some comments addressed issues on fluoridated water that fall within the scope of this rulemaking. Therefore, the agency is addressing these issues in this final rule.

8. Several comments stated that the addition of fluoride to bottled water should be allowed. One comment noted that many people specifically request and use fluoridated water because of its benefits to dental health. The comment stated that these products have long been established and should not be discontinued. One comment noted an inconsistency between the definition of bottled water and the provisions of proposed § 165.110(b)(4)(ii) that discuss the addition of fluoride.

FDA agrees that there is an inconsistency between the proposed standard of identity and the standard of quality for bottled water with respect to the addition of fluoride. The agency proposed in § 165.110(a)(1) that bottled water contain no added ingredients other than safe and suitable antimicrobial agents. This provision would preclude the addition of fluoride (58 FR 393 at 407). The quality standard, however, provides maximum levels for bottled water to which fluoride is added (§ 165.110(b)(4)(ii)).

The agency recognizes that water with fluoride added may provide a benefit to consumers. The Surgeon General's Report on Nutrition and Health (the Surgeon General's report) recommends that community water systems contain fluoride at optimal levels for prevention of tooth decay, and that, if such water is not available, other appropriate sources of fluoride should be used (Ref. 3). Bottled water may be used by some consumers as an alternative to community drinking water. Therefore, because of the unique circumstances presented by fluoride, the agency is providing for the optional addition of fluoride to bottled water in § 165.110(a)(1) within the limitations established in the quality standard (§ 165.110(b)(4)(ii)).

Because the agency is providing for the optional addition of fluoride to bottled water, the standardized product may be a multiingredient food, and, as such, its label must bear ingredient labeling. According to § 101.4(a)(1) (21 CFR 101.4(a)(1)), all food ingredients are required to be declared on the label. Therefore, bottled water containing added fluoride must list the names of the water ingredient and the fluoride.

Therefore, because FDA is providing for the optional addition of fluoride to bottled water, and thus, bottled water may be a multicomponent food, the agency is adding § 165.110(a)(4) to require that each of the ingredients used in the food be declared on the label as required by the applicable sections of 21 CFR parts 101 and 130.

9. Several comments requested that FDA define ''fluoridated water.'' Some of these comments recommended that ''fluoridated water'' be defined as bottled water containing naturally occurring or added fluoride, and that the label specify whether fluoride is naturally occurring or added. One comment stated that the regulation only discusses maximum limits on fluoride addition without setting a minimum, thus opening a loophole that would allow manufacturers to add insignificant amounts of fluoride to their products and call them ''fluoridated water.'' One comment stated that any water that is called ''fluoridated water'' should contain not less than 0.8 milligram per liter (mg/L) fluoride ion. Another comment stated that any water that is defined as ''fluoridated water'' should contain not less than 1.0 mg/L fluoride. One comment requested that ''fluoridated water'' be defined only as water containing added fluoride.

FDA has provided for the use of the terms ''fluoridated,'' ''fluoride added,'' and ''with added fluoride'' on the label or in labeling of bottled water that contains added fluoride in § 101.13(q)(8). The agency adopted this regulation in the Federal Register of January 6, 1993 (58 FR 2302 at 2314) and stated that the presence of fluoride in bottled water is of interest to consumers, and its declaration should not be prohibited. However, the agency also stated that it did not wish to encourage unnecessary addition of fluoride to bottled water, and that it was concerned that if it permitted the use of terms like ''good source of fluoride'' or ''high in fluoride,'' they might encourage such additions. Therefore, the agency has not defined a nutrient content claim for fluoride. Instead, it has provided that a statement indicating the presence of added fluoride could be used, but that the claim cannot include a description of the level of fluoride present.

As stated in another final rule in the Federal Register of January 6, 1993 (58 FR 2079 at 2149), the agency has considered the identity statement ''fluoridated water'' to be misleading if the product is derived from a source naturally containing fluoride. Because the term ''fluoridated'' represents that fluoride has been added to the water, FDA concluded that the term ''fluoridated water'' should be used to describe only products to which fluoride has been added in the manufacturing process, and that such products would be required to bear nutrition labeling that complies with the simplified format (*id.*). FDA also points out that fluoride may not be present in amounts that exceed the limits in § 165.110(b)(4)(ii).

Although labeling could be used to describe whether fluoride was added or naturally present in bottled water, the term ''fluoridated'' continues to mean that fluoride has been added. FDA is not establishing a minimum level for fluoride addition because the terms ''fluoridated,'' ''fluoride added,'' or ''with added fluoride'' have been defined in § 101.13(q)(8) and amending that provision falls outside the scope of this final rule. However, if the addition of fluoride to water is so minimal that it would be considered dietarily insignificant, a product that bears a claim about such addition would be misbranded under section 403(a) of the act in that its labeling would be misleading because the use of the term ''fluoridated'' or any of its synonyms implies that fluoride has been added in a meaningful amount. Thus, FDA concludes that it has not created a loophole that would allow manufacturers to add insignificant amounts of fluoride to their products and call them ''fluoridated water.''

The Surgeon General's Report states that the optimal fluoride concentration of approximately 1 ppm fluoride has been shown to reduce the prevalence of dental caries by more than 50 percent (Ref. 3). In addition, the Surgeon General's Report states that current recommendations for optimum fluoride concentrations vary from 0.7 to 1.2 ppm (*id.*). Therefore, the comments' suggested values of 0.8 mg/L and 1.0 mg/L fluoride are meaningful amounts of this mineral in bottled water.

10. One comment stated that infant bottled waters may contain fluoride, and that the presence of this mineral may be a problem if parents are not aware that too much fluoride is undesirable, or that an infant should not receive both a physician's prescription of fluoride

drops and drink water containing fluoride. For this reason, the comment stated that the label of a bottled water containing 0.3 ppm or more fluoride should include a statement advising parents not to use the product before consulting with their baby's physician if the baby is receiving a fluoride supplement. The comment added that bottled water for general use is also used for infants, so such a label statement should be required on any bottled water containing 0.3 ppm or more fluoride. It stated that this level of fluoride is taken from the current recommendation of pediatricians and pediatric dentists relating to administration of fluoride supplements. It suggested that the statement could read as follows: ''Note: If you are giving your baby a fluoride supplement, do not use water with fluoride without consulting your doctor.''

The agency agrees that an advisory statement such as that suggested by the comment may be appropriate to prevent unwanted aesthetic effects from excessive doses of fluoride, and it encourages manufacturers to provide such information to consumers, especially on products labeled for infant use. However, FDA does not agree that this statement should be mandatory on all bottled waters containing 0.3 ppm or more fluoride. There are allowable levels for fluoride in the quality standard, and bottled water exceeding these levels must be labeled as substandard. The allowable levels are related to secondary levels established by the Environmental Protection Agency (EPA) for public drinking water in 40 CFR parts 141 and 143 and take into consideration excessive infant fluoride intake. In addition, as discussed in the previous comment, the Surgeon General's Report recommends an optimal level of 1.0 ppm fluoride in drinking water.

Fluoride supplements are generally prescribed for breast-fed infants because those infants frequently consume little or no water. Human milk contains little fluoride, even in areas with fluoridated water supplies. Physicians may also prescribe fluoride supplements for infants not receiving adequate dietary fluoride. Health care professionals must take into consideration the patient's weight and the exposure to fluoride from dietary and other sources to establish the proper dose (Ref. 4).

Therefore, the agency finds no basis to require an advisory statement concerning infant fluoride consumption on bottled waters containing 0.3 ppm or more fluoride.

C. Nomenclature

FDA proposed that the name of the standardized food meeting the definition of bottled water in § 165.110(a)(1) is ''bottled water'' or one of the following defined terms: ''Artesian water,'' ''distilled water,'' ''mineral water,'' ''purified water,'' ''spring water,'' and ''well water.'' The agency requested comments from interested persons on the definitions for these terms and on other terms that need to be defined.

11. A number of comments requested that FDA define the term ''drinking water'' because: (1) It is the most commonly used term to describe bottled water and represents 36 to 40 percent of the gallonage of bottled water sold in food stores; (2) the lack of a Federal definition allows States to adopt special, nonuniform definitions for this segment of the bottled water market; and (3) many bottlers would have to revise their drinking water labels to remove this term to come into compliance with the standard, and doing so would impose severe economic hardships to the industry. One comment noted that producers of 5-gallon returnable bottled water products have a very large investment in bottle inventories that are designed to last for a considerable time, and that a high percentage of these packages is permanently labeled as ''drinking water.'' It stated that it would be costly to dispose of these containers, and that the use of stick-on labels would present problems in its manufacturing operation.

Some comments recommended modifying paragraph § 165.110(a)(2) to define the terms ''bottled water'' and ''drinking water'' synonymously. However, other comments stated that ''drinking water'' is a classification within the bottled water category along with ''spring water,'' ''mineral water,'' and ''purified water.'' These comments suggested the following definition: ''Drinking water means bottled water obtained from an approved source that has at a minimum undergone treatment consisting of filtration (activated carbon or particulate) and ozonation or an equivalent disinfection process. Drinking water that has been treated to meet the definitions of distilled or purified water may contain added minerals for taste, provided an ingredient statement 'minerals added for taste' or optionally 'minerals added for flavor' appears on the label.''

One comment stated that it is important for FDA to define drinking water as only one type of bottled water, and that the terms ''drinking water'' and ''bottled water'' not be interchangeable. It stated that ''bottled water'' includes and describes all types of bottled water products, including bottled ''drinking water,'' but that bottled ''drinking water'' does not include or describe all types of ''bottled water.'' It stated that it is important that FDA define ''drinking water'' to prevent the consumer confusion that would result if this product type, already marketed to and accepted by the public, is not recognized by FDA as a specific type of bottled water. It stated that failure to do so could, at worst, mean that products labeled as ''drinking water'' could no longer be sold in interstate or foreign commerce involving the United States.

Conversely, two comments stated that the term ''drinking water'' should not be permitted on the label because consumers may be misled because they do not understand the meaning of the term.

The agency agrees with the comments that stated that it should define the term ''drinking water.'' Consumers are familiar with the term because, as the comments pointed out, products labeled as ''drinking water'' comprise a significant portion of the bottled water market. In addition, not defining this term would impose an economic hardship on the bottled water industry because products labeled as ''drinking water'' would have to be relabeled as ''bottled water.''

However, FDA disagrees with the comments that said that ''drinking water'' should be defined differently than ''bottled water.'' As required by the standard of quality, ''bottled water'' must meet certain quality requirements, or the water is substandard and must be labeled as such. The definition for ''drinking water'' suggested by the comments provides an apt description of the method of processing bottled water that is used by many manufacturers. Thus, FDA concludes that a separate definition of ''drinking water'' is not warranted.

In addition, EPA has standards for ''drinking water'' from public water systems (40 CFR parts 141 and 143) that are nearly identical to FDA's standards for bottled water. FDA is not aware of any reason why its standard for ''drinking water'' that is sold in a bottle should differ significantly from EPA's standard for ''drinking water.'' Therefore, the agency is including ''drinking water'' as an alternative name for ''bottled water'' in § 165.110(a)(2).

The agency agrees with the comments that pointed out that if minerals are added to bottled water or drinking water, an appropriate statement of identity must appear on the principal display panel of the label of the product

to inform consumers of this fact (e.g., ''drinking water with minerals added for taste''). An ingredient statement must also appear on the label in accordance with § 101.4(a). In addition, if sodium, calcium, or iron are present in the bottled water product in more than an insignificant amount, nutrition labeling is required.

12. One comment suggested that an alternative name for ''spring water'' or ''well water'' could be ''ground water.''

The agency agrees that ''ground water'' is an appropriate name for water from a spring or a well. The term ''ground water'' encompasses not only ''spring water'' and ''well water'' but also ''artesian water'' and ''mineral water'' because by definition all of these waters come from an underground source. A geological definition states that ''ground water'' is water in the saturated zone that is under a pressure equal to or greater than atmospheric pressure (Ref. 5). The saturated zone is the subsurface zone in which all openings are full of water (*id.*).

Because ''ground water'' is an appropriate alternative term to describe some types of bottled water, and because in the January 1993 proposal, the agency requested comments from interested persons on other terms that need to be defined, the agency concludes that it is within the scope of this rulemaking to define the term ''ground water.'' FDA concludes that the geological definition stated above is appropriate. Therefore, the agency is defining ''ground water'' in § 165.110(a)(2)(ii) to mean water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure. (Because the agency is establishing an additional definition in § 165.110(a)(2), it is recodifying the other terms in § 165.110(a)(2) so that they continue to appear in alphabetical order.) The agency is also requiring in § 165.110(a)(2)(ii) that ''ground water'' not be under the direct influence of surface water. EPA defines ground water under the direct influence of surface water as any water beneath the surface of the ground with: (1) Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia;* or (2) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions (40 CFR 141.2). Ground water under the direct influence of surface water is not ''ground water'' because water that does not meet this definition is mingling with water that otherwise would meet the definition. To clarify that ground water must not be under the direct influence of surface water, FDA concludes that this distinction should be included in the definition of ''ground water.''

13. One comment stated that FDA should establish a separate definition for ''sterilized water.'' It stated that water for the initial feeding of babies has been called ''sterilized water'' for decades. The comment held that all water intended for the initial feeding of infants should be commercially sterile, as defined in the low-acid canned food processing regulations (21 CFR part 113). The comment stated that to require a change in the statement of identity from ''sterilized water'' to ''bottled water'' or ''purified'' or ''distilled water'' would create confusion in hospitals and could result in nonsterilized ''bottled water'' or ''purified'' or ''distilled water'' being fed to newborns. The comment suggested that the following definition be added to § 165.110(a)(2)(vi): ''The name of the water intended as the initial feeding of infants may be 'sterilized water' provided it meets the definition of commercial sterility contained in 21 CFR 113.3(e)(1)(i).''

The agency agrees that the terms ''sterile water'' and ''sterilized water'' should be defined as a specific bottled water type. Doing so is the logical outgrowth of FDA's request in the proposal for other terms that need to be defined. Defining these terms will mean that the water must meet a certain minimum standard to be labeled with these terms and will allow firms to prominently label their products in the statements of identity as having been treated to achieve this standard.

The definition of commercial sterility in § 113.3(e)(1)(i) states that ''commercial sterility'' of thermally processed food means the condition achieved by the application of heat that renders the food free of microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution and of viable microorganisms (including spores) of public health significance.

FDA notes that the United States Pharmacopeia (USP) has official monographs for ''sterile water for inhalation,'' ''sterile water for injection,'' and ''sterile water for irrigation.'' The monographs require that each of these types of water meet sterility requirements set forth by the USP (Ref. 6). These requirements involve microbiological tests to determine the presence of viable microorganisms. If no evidence of microbial growth is observed, the article tested meets the requirements of the test for sterility.

The difference between the sterility standard in § 113.3(e)(1)(i) and that used by USP is that water that is commercially sterile may contain bacteria, although in an innocuous amount, whereas water that is sterile according to USP standards does not. The agency acknowledges that water for general drinking purposes need not be sterile or even commercially sterile. However, sterile water may be purchased by immunosuppressed individuals, contact lens wearers, infant caretakers, and laboratories with an expectation that the water is free of any bacteria. In addition, FDA finds that it would be confusing to consumers to have two standards for sterility, one for ''sterile water'' and another for ''sterile water, USP.''

Therefore, the agency concludes that bottled water labeled as ''sterile'' must meet the USP definition. Thus, FDA is defining the terms ''sterile water'' and ''sterilized water'' in § 165.110(a)(2)(vii) to mean water that meets the requirements under ''Sterility Tests'' <71> in the USP, 23d Revision.

14. Several comments requested that the agency clarify whether a bottler may use any name defined in § 165.110(a)(2) as long as the bottled water complies with the definition used. One comment asked whether mineral water that contains between 250 and 500 ppm TDS could be labeled as ''mineral water,'' ''mineral spring water,'' or ''mineral well water.''

The agency advises that if more than one term is applicable, bottlers may combine the terms, as appropriate, in naming the food (e.g., ''mineral spring water, low mineral content''). Thus, bottlers will be able to label their products in an informative manner because all applicable terms can be presented prominently on the labels in the statements of identity. Because this approach will ensure the informativeness of the statement of identity, FDA finds that it will promote honesty and fair dealing in the interest of consumers. Therefore, FDA is revising § 165.110(a)(2) to state that the name of the food is ''bottled water,'' ''drinking water,'' or alternatively one or more of the terms listed in that section as appropriate.

15. Two comments expressed concern that the proposed definitions for ''artesian water,'' ''mineral water,'' ''spring water,'' and ''well water'' provide an opportunity for unintended mineral content manipulation that could lead to potential consumer deception. To alleviate this problem, the comments requested that FDA revise the

definitions for each of these waters to include the following: ''Artesian water (or mineral water, spring water, or well water) shall not be altered by addition or deletion of minerals or by blending it with water from a nonartesian water source.''

FDA disagrees that the suggested revision is warranted or needed. Once a defined bottled water product (e.g., artesian water, mineral water, spring water, or well water) has been blended with water from another source, the product no longer meets the definition of that particular type of bottled water, although it remains bottled water. For example, if artesian water is blended with spring water to reduce the water hardness, the product is ''bottled water'' or ''drinking water,'' although its labeling may state the percentages of the artesian water and spring water it contains. Mineral water may be labeled as ''mineral water'' even if it is a blend of one or more waters, as long as each of the component waters complies with the source, composition, and other requirements of § 165.110(a)(2)(iii).

The agency notes that mineral addition or deletion does not change the source of the water. However, if the water has been altered significantly from the source water, under section 201(n) of the act, that the alteration has been made is a fact material in the light of representations made and must appear on the label of the product. The water is no longer unmodified ground water and differs significantly from the water that was harvested. Therefore, the fact that the water has been altered significantly must be included in the statement of identity so that consumers are aware that the source water has been modified. If minerals have been added, the statement of identity must state that fact. If minerals have been removed from the product, other than those that are removed during normal processing (e.g., filtration to remove precipitates), that fact must be included in the statement of identity of the product (e.g., partially demineralized) (§ 165.110(a)(2)(iii)). Therefore, FDA concludes that the requested revision is not necessary.

1. Artesian Water

The agency proposed to define ''artesian water'' as water from a well tapping a confined aquifer in which the water level stands above the natural water table. The agency also proposed to provide for the collection of artesian water with the assistance of an external force to enhance the natural underground pressure so long as such measures do not alter the physical properties, composition, and quality of the water.

16. One comment stated that FDA should not permit the use of the term ''artesian'' on bottled water labels because it is the most misused term in the bottled water business today.

The agency disagrees that it should prohibit the use of the name ''artesian.'' Because FDA is defining this term in the standard of identity for bottled water, manufacturers will have to label their products in accordance with the standard or face regulatory action. FDA expects that misuse of the term will cease as a result. Therefore, FDA concludes that this comment, rather than establishing why FDA should not define ''artesian water,'' only serves to point up why defining this term will promote honesty and fair dealing in the interest of consumers, and, thus, why it is appropriate for FDA to do so.

17. Several comments stated that the original and vernacular meaning of ''artesian water'' is water that is forced from below the ground to the surface through a well by natural underground pressure and collected at or above the surface. They recommended that this definition be adopted.

One comment pointed out that the geologic definition that FDA referenced in the proposal actually states that ''the water level in artesian wells stands at some height above the top of the aquifer but not necessarily above the land surface'' and does not require that the water stand above the water table. Therefore, the comment added, the water level in an artesian well may be either above or below the water table and still be considered artesian. The comment stated that the distinction in the geologic definition between the water table and the top of the confined aquifer is an important technical one, and that the proposed definition is much more restrictive and not the one that is generally accepted by groundwater scientists.

The agency disagrees with the comments that contended that the water in an artesian well must flow to the surface. As mentioned by the latter comment described above, the geologic definition states that ''the water in artesian wells stands at some height above the top of the aquifer but not necessarily above the land surface'' (Ref. 5). Therefore, the geologic definition does not require that the water flow to the surface, or that, as FDA proposed (58 FR 393 at 398), the water level stand above the natural water table. Because the agency intended that its definition for ''artesian water'' be the geologic definition, it is revising the definition of artesian water in § 165.110(a)(2)(i) to state that bottled water that is drawn from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer may be called ''artesian water'' or alternatively ''artesian well water.''

Concerning artesian water that flows to the surface, FDA notes that a typical geologic definition states that ''if the water level in an artesian well stands above the land surface, the well is a flowing artesian well'' (Ref. 5). The agency would not object to manufacturers labeling their products accordingly, as long as it is done in a truthful and nonmisleading manner. However, the name of the food remains ''artesian water'' or ''artesian well water.''

18. One comment urged that the specific name ''artesian well water'' be permitted on labels instead of ''artesian water'' to provide full disclosure to consumers.

FDA advises that both ''artesian well water'' and ''artesian water'' can be used to identify this product because both terms appropriately describe it, and consumers would recognize either term. ''Artesian water'' does indeed come from a well and only differs from ''well water'' in that the water comes from a confined aquifer where the water is under pressure and stands at some height above the top of the aquifer. Therefore, FDA is modifying § 165.110(a)(2)(i) to state that the name of water from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer may be ''artesian water'' or ''artesian well water.''

19. One comment asked how someone who is reviewing the label statement ''artesian well water'' will be able to verify that the well is actually an artesian well, meeting the definition, after the well has been bored and is in production.

The agency agrees that there must be some means of verifying food labeling claims. In specific instances FDA may require that records or other means of verification be provided to FDA regulatory officials, despite the act's lack of express, general statutory records access authority for foods. The Supreme Court has recognized that FDA has authority that ''is implicit in the regulatory scheme, not spelled out *in haec verba*'' in the statute. *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973). Indeed, ''it is a fundamental principle of administrative law that the powers of an administrative agency are not limited to those expressly granted by the statutes, but include, also, all of the powers that may fairly be implied therefrom. * * * In

the construction of a grant of powers, it is a general principle of law that where the end is required the appropriate means are given and that every grant of power carries with it the use of necessary and lawful means for its effective execution.'' (See *Morrow* v. *Clayton*, 326 F.2d 35, 44 (10th Cir. 1963).)

Under section 701(a) of the act (21 U.S.C. 371(a)), the agency may promulgate regulations for the efficient enforcement of the act. Although it is possible to determine that a source of water is an artesian well after the well is in operation, in some cases it would be onerous for regulatory officials to do so. Therefore, FDA has determined that a verification requirement is necessary for the efficient enforcement of the act. FDA has previously stated that a food manufacturer is responsible for the accuracy of its food labels (58 FR 2079, 2163, and 2165, January 6, 1993). Indeed, placing a claim in food labeling that calls the consumer's attention to a water's source is a representation that the manufacturer has evidence that the product meets the requirements for the claim. See *Thompson Medical Co., Inc.* v. *FTC*, 791 F.d. 189, 193 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987). Making a claim without such a basis would be misleading, in violation of section 403(a) of the act.

The agency anticipates that, in some instances, companies will be amenable to demonstrating to FDA the basis for the claim, regardless of the existence of these regulations. The agency considers, however, that, when a product bears a claim based on information available solely to the manufacturer, it is reasonable for the agency to have access to that information. See *United States* v. *An Article of Device*, 731 F.d. 1253, 1261–62 (7th Cir. 1984) (upholding regulation requiring makers of prescription devices to be able to prove that their devices work safely for their intended purposes and stating that ''[w]here the government's access to the necessary information may be limited * * * it seems not inappropriate to put the burden of persuasion on the party who * * * presumably has better access to the relevant information''); *see also Trans-American Van Service, Inc.* v. *United States*, 421 F. Supp. 308, 331 (N.D. Tex. 1976). Therefore, FDA is modifying § 165.110(a)(2)(i) to require that plants be able to demonstrate to regulatory officials that the water level of the well stands at some height above the top of the aquifer, and, thus, that the well is an artesian well. Compliance with this provision does not entail the creation of any new information or the compilation of any special records. Rather, the requirement would obligate manufacturers simply to have access to information that they should already possess, or to make a measurement of their well, and to provide FDA with this information.

FDA considers this requirement to be the logical outgrowth of its January 1993 proposal. The purpose of this rulemaking is to ensure that terms such as ''artesian water'' are used in a manner that promotes honesty and fair dealing (see section 401 of the act (21 U.S.C. 341)). Such a result requires not only that these terms be appropriately defined, but that they be used in a manner that accurately describes the product. Thus, how FDA would enforce the definitions was a matter that was within the purview of the proposal, and that the agency would provide for such enforcement in the final rule in this proceeding was reasonably foreshadowed by the proposal. The fact that FDA received comments on how it would ensure that the defined terms are appropriately used evidences that this issue is the logical outgrowth of the proposal.

To comply with this requirement, producers may maintain records that demonstrate that the well is indeed an artesian well. The manufacturer may also rely on records from the company that drilled the well. In addition, many States and the United States Geological Survey have records of some wells and of the geology of the surrounding area. To verify that the water is at some height above the top of the aquifer and is, thus, artesian water, the pump may be shut off, and the height or the pressure of the water in the drilled hole measured. This information can then be used, along with information on the depth of the aquifer, to determine whether the water is artesian water. If the source does not meet the definition of artesian water, the product must not be labeled as artesian water, or it is misbranded under sections 403(a), 403(b), and 403(g) of the act.

20. One comment stated that water chemistry changes as wells are pumped, and that the larger the drawdown, the greater the water chemistry may change. It stated that a mineralogical analysis from a water sample taken at 10 gallons per minute (gpm) may be quite different than one taken at 500 gpm for the same well. The comment added that there would be an ongoing burden on FDA to verify that water produced by bottlers drawing on ''artesian'' groundwater resources remains constant in water chemistry.

FDA agrees with the comment. The use of external force may alter the physical properties, composition, and quality of the water, although usually not significantly, depending on the rate of extraction, because of changes in the pressure of the water as it is extracted. This fact is the basis on which the agency proposed to require that the use of external force not alter these characteristics (58 FR 393 at 398). However, because the rate of extraction from the use of external force could vary from day to day or even hour to hour, the characteristics of the water can be also altered.

As discussed in the previous comment, the agency is requiring that the manufacturer demonstrate that the source of the water is indeed an artesian source. However, the agency does not deem it necessary to require that the definition for artesian water extend to the physical properties, composition, and quality of the water. In fact, as long as the source is demonstrated to be an artesian source that meets the definition in § 165.110(a)(2)(i), the actual characteristics of the water are a quality control concern for the manufacturer rather than an attribute that defines artesian water. As stated previously, the agency intends that its definition of artesian water be the geological definition. The geological definition does not take into consideration the composition of the water. Therefore, the agency is removing the requirement in § 165.110(a)(2)(i) that the use of external force in the extraction of artesian water not alter the physical properties, composition, and quality of the water.

2. Mineral Water

The agency proposed that water coming from a source tapped at one or more bore holes or springs, originating from a geologically and physically protected underground water source, may be called ''mineral water.'' FDA further proposed that mineral water be distinguished from other types of water by its constant level of minerals and trace elements at the point it emerges from the source.

The agency tentatively concluded in the proposal that it would be contradictory for bottled water that has essentially no minerals and does not perform (e.g., taste) like mineral water to be labeled as mineral water. Consistent with this tentative conclusion, FDA proposed that ''mineral water'' be defined as water containing not less than 250 ppm TDS. The agency requested comments on the proposed minimum level of 250 ppm TDS in mineral water and stated that if it received substantive data to support another minimum level, it would consider issuing a final rule with a different minimum level.

21. A number of comments objected to FDA establishing a minimum TDS level for mineral water. The comments argued that establishing such a level would be arbitrary and contrary to the most current mineral water definitions, including international definitions which do not include a minimum level, and would prohibit many brands from being labeled as mineral water, thereby adversely affecting consumer sales with no apparent benefit to consumers.

Conversely, other comments suggested raising the minimum TDS level to 500 ppm. These comments argued that establishing the minimum TDS at the higher level would: (1) Make it closer to the definition that has been adopted by most States that have bottled water regulations and to the definition that is currently being considered by the Canadian Government; (2) provide the basis for identification of the term ''mineral water'' with the distinctive taste of a higher mineral content; (3) be less confusing to consumers in that it would not allow the same water to be marketed under several names (e.g., ''mineral water, low mineral content'' or ''spring water''); and (4) simplify application of the quality standards and the label identity statement.

Several comments expressed the view that mineral water is ground water with at least 50 ppm TDS, while several other comments supported the proposed minimum level of 250 ppm TDS in mineral water. One of these comments stated that waters having a TDS of 250 ppm or more generally have a distinctive flavor. Two comments, however, stated that actual taste thresholds for mineral water are often in the range of 100 ppm TDS. One of these comments stated that consumer identification and differentiation among the flavors of various individual source waters, which result from naturally occurring mineral variations in the water, is clearly possible below the proposed threshold of 250 ppm TDS.

The agency acknowledges that many different definitions exist for ''mineral water.'' In the January 1993 proposal, the agency compared several current definitions, including State and European standards, in arriving at its proposed definition (58 FR 393 at 396). International standards vary from requiring at least 500 ppm TDS (Canadian Province of Quebec) to no minimum requirement (ERCS). In a like manner, different States have different requirements. Therefore, no FDA action will harmonize existing State and international regulations.

As stated in the proposal (58 FR 393 at 397), the minimum level of 250 ppm TDS for mineral water is based on the apparent consumer expectation that a product identified as ''mineral water'' will contain at least a minimum level of minerals. The agency tentatively concluded that it would be misleading for bottled water that has essentially no minerals, and that does not perform (e.g., taste) like mineral water, to be labeled as mineral water. The minimum level that FDA proposed, 250 ppm TDS, is in agreement with the Association of Food and Drug Officials (AFDO) definition (Ref. 7) for light mineral water and mineral water.

The main characteristic of mineral water is, as its name implies, the presence of a significant quantity of minerals. Other important characteristics (Ref. 8) are that it be from a geologically and physically protected underground water source, and that it contain a constant level of minerals and trace elements at its point of emergence from the source. Mineral water may come from a spring or a well, including an artesian well, but must contain a significant amount of minerals. The agency considers 250 ppm TDS as a significant amount of minerals because at this level, the minerals, depending on the specific mineral content, begin to impart a particular taste to the water. Although minerals may impart some taste below this level, it is not the significant mineral taste that is characteristic of mineral water.

FDA recognizes that mineral water from a spring that contains between 250 and 500 ppm TDS may be identified as ''spring water,'' ''mineral water, low mineral content,'' or both. However, FDA disagrees that the availability of these terms will cause consumer confusion because such a product meets the definitions of both ''mineral water'' and ''spring water'' in § 165.110(a)(2)(iii) and (a)(2)(vi), and both terms appropriately describe the product. As discussed previously (see comment 14 of this document), use of all applicable terms presented prominently on the label in the statement of identity is appropriate because it will ensure the informativeness of the statement of identity.

FDA realizes that brands previously sold as ''mineral water'' that contain less than 250 ppm TDS will not be provided for under § 165.110 as ''mineral water.'' However, the brands mentioned in the comments are not being sold in the United States as mineral water but as other types of bottled water (e.g., spring water) because of the many State requirements that mineral water contain greater than 500 ppm TDS. Thus, although some of these brands cannot be labeled as ''mineral water,'' other brands that previously could not be labeled as ''mineral water'' and sold in some States now meet the definition of ''mineral water'' in § 165.110(a)(2)(iii) and can be labeled and sold as such.

Moreover, the agency has not been persuaded that this regulation will adversely influence consumer sales or put some bottled mineral water producers at a disadvantage as compared to others. The comments did not provide any information on such adverse consequences, and the agency is not aware of these adverse effects.

Therefore, for the reasons discussed above, FDA concludes that establishing a minimum level of TDS in mineral water is reasonable, and that the proposed level of 250 ppm TDS is the appropriate level.

22. One comment remarked that some bottled waters would not significantly differ from a mineral water slightly above the 250 ppm TDS minimum. Another comment stated that if companies wish to market their products on the basis of the mineral content, they can do so through a TDS disclosure statement on the principal display panel regardless of the amount present. Therefore, there would be no need to establish a minimum TDS level for mineral water.

Several comments declared that each mineral water product is unique because of its particular composition of minerals, and that this unique character imparts distinctive flavor. These comments stated that some water products with a constant mineral content of less than 250 ppm TDS might have a distinctive flavor and should be called ''mineral water—very low mineral content'' or ''mineral light.''

Comments also stated that establishing a level of 250 ppm TDS is contrary to the industry's belief that the overall mineral content is less important than the level of each particular mineral.

The agency agrees that some waters that contain slightly less than the 250 ppm TDS minimum would not significantly differ from a mineral water slightly above the minimum. Any minimum level that the agency establishes will preclude some waters from bearing the term ''mineral water'' even though they do not vary significantly from waters that are above the minimum. FDA also agrees that there is a taste aspect to the presence of minerals, although some minerals may contribute a more distinct flavor to the water than others. For example, in sufficient amounts, sodium chloride gives water a salty taste, and sulfate contributes a bitter taste (Ref. 5). In fact,

a common industry practice is to add minerals to some bottled waters for the flavor that they contribute.

However, a minimum requirement for TDS is necessary to ensure that when consumers purchase a product labeled as ''mineral water,'' the product contains minerals at a level that justifies calling the product by that name. As explained in response to the previous comment, that level is 250 ppm TDS. The minimum TDS requirement for mineral water will not preclude a product that contains less than 250 ppm TDS from being marketed under another name, such as ''ground water,'' ''spring water,'' or ''well water,'' as applicable, or from being called ''bottled water.'' In addition, manufacturers may include a truthful statement of the TDS level on the label of any bottled water product. Thus, even though FDA has carefully considered these comments, it concludes that it is appropriate to establish a minimum TDS requirement for ''mineral water.''

23. One comment stated that the definition for ''mineral water'' should include all water containing over 500 ppm TDS and argued that whether it occurs naturally or is constructed (as are other food products) is irrelevant. The comment added that if mineral solids are added, FDA should require that such additions be noted on the label.

Another comment stated that it is essential that the definition be clear that mineral water may not be altered by the addition or deletion of minerals. The comment stated that mineral water should not be water that is derived from a public water supply and to which minerals are then added.

FDA disagrees with the comment that advocated that water to which minerals have been added should be eligible to be called ''mineral water.'' The agency has reviewed a number of State and foreign standards, and none define ''mineral water'' as containing added minerals (Ref. 8). In fact, many of these standards define water with added minerals as a different type of bottled water, distinct from ''mineral water.'' Therefore, the agency concludes that the definition for ''mineral water'' should not be revised to permit the addition of minerals.

The agency agrees with the comment that stated that the addition of minerals should be clearly prohibited in the definition for mineral water. The definition for mineral water has geological as well as compositional factors. The amounts and types of minerals in mineral water is a result of the path that the water has traveled underground. Therefore, to clarify that the minerals present in mineral water must be from the underground source and not added to the water after extraction, FDA is modifying the definition of mineral water in § 165.110(a)(2)(iii) to specifically preclude the addition of minerals.

However, some mineral waters as extracted from their geological source, may contain high levels of some undesirable minerals (e.g., arsenic, precipitated manganese). In some instances, the water can be treated to selectively remove these undesirable elements. FDA is aware of no reason why it should preclude the removal of these undesirable elements, or why such removal should preclude the manufacturer from labeling the product as ''mineral water'' as long as all other requirements (e.g., source and composition) of the definition are met. Section 165.110(a)(2)(iii) provides accordingly.

24. Several comments requested that FDA more precisely define ''mineral water'' in that the agency should require that the level and relative proportions of minerals and trace elements remain constant. Comments stated that such a requirement would harmonize the definition of mineral water with the European Community and Codex concepts. These comments suggested the following definition: ''Mineral water shall be distinguished from other types of water by its constant level and relative proportions of minerals and trace elements, at the point of emergence from the source, due account being taken of the cycles of natural fluctuations.'' One comment added that this wording recognizes that minor natural fluctuations occur with any source water.

Some comments requested that the agency clarify that, in the term ''constant level of minerals,'' the ''level'' is not the characteristic element. They stated that what is fundamental is the ''constancy'' or ''stability'' of the mineral composition, which acts more as a fingerprint of the water rather than as a measure of the overall total dissolved solids content.

One comment stated that all ground water (well or spring) has a constant level of minerals and trace elements as it emerges from the source. The comment questioned the scientific basis of FDA's approach.

The agency agrees that it needs to clarify its definition of mineral water. In the proposal (58 FR 393 at 396), FDA stated that mineral waters may have very different flavors depending on the mineral content and types of minerals and trace elements present in the water. Consumers may purchase a particular mineral water from a particular source because of the flavor contributed by the mineral content. It is important to consumers that the mineral composition of a particular source remain constant. FDA considers that industry and consumers have come to expect that mineral water has a fairly stable mineral composition. Therefore, FDA proposed that mineral water be distinguished from other types of water by the constant level of minerals and trace elements in the water as it emerges from its source.

FDA further notes that the ERCS defines ''natural mineral water'' as being characterized by its content of certain mineral salts and their relative proportions and by the presence of trace elements or other constituents (Ref. 1). The ERCS also states that mineral water is characterized by the constancy of its composition, the stability of its discharge, and its temperature, due account being taken of the cycles of natural fluctuations.

As stated previously, the composition and concentration of substances dissolved in ground water depend on the chemical composition of precipitation, on the biologic and chemical reactions occurring on the land surface and in the soil zone, and on the mineral composition of the aquifers and confining beds through which the water moves (Ref. 5). Thus, under constant conditions, the mineral content of ground water will be constant. There are certain natural factors that may affect the constancy of a source such as occurrence of earthquakes and long term climatic changes. These natural factors do not preclude the water from qualifying as mineral water as long as the water continues to meet the compositional requirements in § 165.110(a)(2)(iii).

Therefore, to clarify the importance of the relative proportion of minerals and trace elements, and to take into account the cycles of natural fluctuations, FDA concludes that modification of the definition of mineral water, along the lines requested by the comments, is appropriate. The modification reflects the fact that there may be some minor variation in mineral water over time, and that absolute amounts of minerals in the water may change slightly. Thus, the agency is modifying § 165.110(a)(2)(iii) to state that mineral water shall be distinguished from other types of water not only by its constant level of minerals and trace elements at the point of emergence from the source, but also by its relative proportions of these substances, due account being taken of the cycles of natural fluctuations. Natural fluctuations in mineral content may occur, but these fluctuations must not affect the relative

proportions of minerals and trace elements. Samples of mineral water can be compared to ensure that major dissolved mineral contents are the same using several scientific methods, such as the Stiff diagram and the Piper trilinear diagram (Ref. 9).

25. Two comments urged FDA to amend the proposed definition for ''mineral water'' to require that if mineral water is taken from a bore hole tapping a spring, it be from the same underground stratum, and be of the same quality and composition, as the water derived from the natural orifice.

The comments seem to be arguing that any product drawn from a spring must meet the requirements for ''spring water.'' However, this is not the case. A product need only meet the requirements for the term used to name it. Thus, a product labeled as ''mineral water'' need only meet the requirements in § 165.110(a)(2)(iii). It need not meet the definition for ''spring water'' unless its label claims that the water is also spring water. If the product were, however, to claim to be ''mineral spring water,'' it must meet the definition of spring water in § 165.110(a)(2)(v) as well as that for ''mineral water.''

26. One comment noted that the proposed definition of mineral water refers to water ''* * * originating from a geologically and physically protected underground water source.'' The comment stated that this phrase appears to be ambiguous and meaningless because there is no indication in the definition of what would constitute protection. It stated that the terminology seems to offer the consumer some assurance of purity that may not be warranted. The comment asserted that every ground water source inherently possesses some degree of geologic and physical protection by the very fact that it is underground. It stated that there are no operational means to differentiate a protected underground water source from an unprotected one.

The agency agrees that every ground water source inherently possesses some degree of geologic and physical protection by the very fact that it is underground. However, some underground water sources are not protected. This lack of protection is evidenced by the fact that some underground sources are under the direct influence of surface water. As discussed earlier (see comment 12 of this document), EPA defines ground water under the direct influence of surface water as any water beneath the surface of the ground with: (1) Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia*; or (2) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH that closely correlate to climatological or surface water conditions (40 CFR 141.2).

The latter part of EPA's definition pertains to changes in the physical characteristics of the water. Changes in these physical characteristics can have a significant influence on the mineral composition of the water. Because the definition of ''mineral water'' is geological as well as compositional, the agency concludes that it is important that ''mineral water'' be from a physically protected underground water source. Mineral water has been traditionally distinguished from other types of water by its constant level, and relative proportions, of minerals and trace elements at the point of emergence from the source, due account being taken of the cycles of natural fluctuations. This distinction is a reflection of the fact that, traditionally, the mineral composition of products labeled as mineral water does not vary significantly over time. Therefore, it is important that mineral water come from a geologically protected underground source, so that the mineral water retains its distinctive mineral content.

FDA does not agree, however, that there are no operational means to differentiate a protected underground water source from an unprotected one. The presence of insects or other macroorganisms as well as changes in physical characteristics are measurable. Thus, regulatory officials can determine whether mineral water is from a geologically and physically protected underground source.

27. One comment stated that the label statement ''mineral water'' will lead some consumers to believe that the food contains a nutritionally significant amount of minerals. It stated that this perception will occur even if the food is labeled ''low mineral content,'' because ''low'' is a relative term and not a quantitative term. Therefore, the comment asserted that all bottled water labeled as ''mineral water'' should also bear nutrition labeling or a statement such as, ''Not a significant source of _____,'' with the blank being filled in with the names of any essential minerals that are missing or present in insignificant amounts.

One comment asked whether the statement of identity for ''mineral water'' or ''mineralized water'' would constitute a health claim and, thus, trigger full nutrition disclosure, even in abbreviated form. Another comment stated that use of the term ''mineral water'' should not require additional nutrition information.

The agency stated in the preamble to the January 1993 proposal (58 FR 393 at 404), that its tentative view was that nutrition labeling should appear on bottled water labeled as ''mineral water, high mineral content'' because consumers may assume that water with a high mineral content would be of nutritional benefit. In addition, mineral water with a high mineral content could contain enough sodium, calcium, or iron to make nutrition labeling mandatory. Under § 101.9, foods that contain more than an insignificant amount of the nutrients or food components that are required to be listed, or whose label, labeling, or advertising contains a nutrient content claim or any other nutrition information, must bear nutrition labeling.

Nutrients likely to be present in bottled water products in amounts that could trigger nutrition labeling are calcium, sodium, and iron. If any of these minerals are present in a product in more than insignificant amounts, nutrition labeling is required under section 403(q) of the act. More than an insignificant amount of calcium is 20 mg or more per labeled serving, more than an insignificant amount of sodium is 5 mg or more per labeled serving, and more than an insignificant amount of iron is 0.36 mg or more per labeled serving (§ 101.9(c)(8)). The reference amount customarily consumed for bottled water is 240 milliliter (mL) (§ 101.12(b)).

The agency has considered whether the term ''mineral water'' is an implied nutrient content claim, and whether, as a result, nutrition labeling should be mandatory on any product labeled as ''mineral water'' regardless of the level of required nutrients. In the Federal Register of January 6, 1993 (58 FR 2302 at 2369), the agency concluded that when an ingredient constitutes essentially 100 percent of the food, so that the name of the ingredient is the statement of identity, the name of the ingredient does not constitute an implied nutrient content claim, even though in other contexts, reference to the ingredient could constitute such a claim (see § 101.65(b)(4)). For example, when the name of the ingredient constitutes the common or usual name of the product, as described in § 102.5 (21 CFR 102.5), or the identity of the commodity, as described in § 101.3 (e.g., ''canola oil''), it is not a nutrient content claim. In such a context, the name of the ingredient does not imply that a nutrient is present in a certain amount, but rather, it describes the nature of the

product. However, the claim ''made only with canola oil'' does characterize the level of a nutrient in the food. This claim represents an implied claim that the food is low in saturated fat (§ 101.65(c)).

The term ''mineral water,'' when used as the statement of identity of the food, does not trigger nutrition labeling because it does not make a representation, either explicit or implied, about the level of nutrients in the food. ''Mineral water'' is simply the name of the food. Although the term ''mineral water'' indicates that the water contains a significant amount of minerals, it does not imply that these minerals are nutrients. In fact, not all of the total dissolved solids in mineral water are nutrients (e.g., bicarbonates). However, labeling claims that imply the presence or absence of any nutrient in bottled water would trigger nutrition labeling.

The major dissolved inorganic constituents of ground water are sodium, magnesium, calcium, chloride, bicarbonate, and sulfate. The total concentration of these major ions comprises more than 90 percent of the TDS in the water (Ref. 9). The presence of 83 ppm calcium or 21 ppm sodium or more will trigger nutrition labeling. Therefore, because mineral water must contain at least 250 ppm TDS, it is likely that many mineral waters, especially high-mineral-content mineral waters, will contain enough calcium or sodium that the labels of these products must bear nutrition labeling.

The agency does not agree with the comment that asserted that consumers will be led to believe that the food is a significant source of minerals if the food is labeled ''low mineral content.'' Use of the term ''low'' does not suggest that minerals are present in a significant amount. The term ''low,'' as used in the statement of identity of the product, is not used in a dietary context. It is simply a qualitative term used as part of the name of the food to describe the food. Thus, use of the term ''low mineral content'' would not indicate that the mineral water was a significant source of minerals.

Therefore, for the reasons discussed above, FDA concludes that consumers will not be misled that mineral water contains more than a nutritionally insignificant amount of minerals, and nutrition labeling of all mineral water is not required.

28. Several comments stated that the product should be labeled as ''inorganic mineral water'' because all minerals found in water are in an inorganic state. They stated that the inorganic minerals found in water are only substances that have been dissolved by the water itself. The comments stated that fruits or vegetables take in inorganic material through their roots to become organic and readily accepted by the body's cells. They stated that not labeling the product as ''inorganic mineral water'' is misleading to consumers. Additionally the comments noted that many of the so-called ''minerals'' found in mineral water are not minerals at all but are in fact inorganic chemicals. They urged FDA to require the label to read: ''Inorganic mineral & inorganic chemical content _____ ppm TDS.''

FDA disagrees with the comment. Minerals by definition are inorganic elements or chemicals in any food (Ref. 10). Thus, the term ''inorganic'' is not a material fact that must be disclosed in labeling mineral water because the term ''mineral'' means that the water contains inorganic chemicals. While the agency recognizes that some minerals that are also nutrients may be more bioavailable in some foods than in mineral water (e.g., calcium in milk), the comments did not provide any data to substantiate their claim that inorganic nutrients taken into plants systemically are more bioavailable than the same nutrients in water.

In regards to a required label statement concerning TDS, as will be discussed later in this final rule, FDA does not require that the TDS appear on the label of any bottled water product, and the comments have not provided substantive grounds to do so. However, firms may include this information on the label of bottled water in a truthful and nonmisleading manner, including in the manner suggested by the comment if the firm so chooses.

3. Purified Water

The agency proposed that water that is produced by distillation, deionization, reverse osmosis, or other suitable processes, and that meets the definition of ''purified water'' in the most recent edition of the USP, can be labeled as ''purified water.'' FDA also proposed that if the water is produced by distillation and meets the USP standard, alternatively it may be called ''distilled water.''

29. Two comments stated that the term ''purified water'' should not be permitted on labels because consumers do not understand its specific meaning and, thus, may be confused by the use of this term. They requested that only the following specific names be permitted on labels in order to give full disclosure to the consumer: ''Distilled water,'' ''reverse osmosis water,'' and ''deionized water.''

FDA disagrees with these comments. The agency proposed that the name ''purified water'' be defined as water that has been processed to meet the requirements of the USP definition for ''purified water.'' An alternative name for water processed by distillation and that meets the USP standard is ''distilled water.'' ''Purified water'' and ''distilled water'' meeting the USP definition have been marketed under these names for many years, and the comments did not provide any evidence that consumers do not understand the meaning of these terms. Therefore, the agency is aware of no basis on which to conclude that these terms will confuse consumers. The agency views this rulemaking as standardizing the use of these terms, not introducing new terms into the market. Manufacturers may include more specific information concerning the method of preparation of these bottled water products on the label. Therefore, the comments have not persuaded the agency to alter its approach to the use of these terms.

However, the agency agrees that the terms ''reverse osmosis water'' and ''deionized water'' are appropriate alternative names for purified water because these terms describe how water is processed to produce purified or distilled water. Therefore, FDA is modifying § 165.110(a)(2)(iv) to provide for the alternative term ''deionized water'' if the water has been processed by deionization, and ''reverse osmosis water'' if the water has been processed by reverse osmosis.

30. Several comments objected to FDA's proposal that ''purified water'' meet the USP definition because: (1) Water for human consumption does not need to be pharmaceutical grade water; (2) USP methods of analyses for bottled water are different from EPA and FDA methods; and (3) the regulation would automatically adopt future updates of the USP, thus, providing the publisher of the USP with lawmaking power without any formal comment or review mechanism. Comments asked that FDA delete any reference to the USP in § 165.110(a)(2)(iv). Some of the comments recommended that FDA establish specific standards for purified water rather than adopt the USP standard by reference.

One comment stated that a standard for purified drinking water should require the use of ''distillation, deionization, reverse osmosis, or other suitable processes'' and impose a water conductivity testing requirement with a conductivity maximum allowable threshold level of 30 microsiemen per centimeter. It stated that the conductivity test, which would measure

the ionic strength of water based on a customarily used reverse osmosis system, would verify the purification process. Another comment stated that ''purified water'' should only be required to meet the current USP requirements for total solids, pH, and chloride.

FDA is persuaded by the comments that the definition of purified water should not be bound ''to the most recent'' USP standard as it proposed to do. However, the agency does conclude that the definition should use the USP standard because purified water meeting this standard has been sold for years and is an established product. Although water for human consumption does not need to be pharmaceutical grade, water that is labeled as ''purified water'' should meet stricter standards than other types of bottled water because the term ''purified'' asserts that the product has been processed to be of a purer quality than other types of water. Therefore, requiring that ''purified water'' meet a USP definition ensures that the water meets a stricter standard than other types of bottled water.

FDA recognizes that it would be a burden for manufacturers producing purified water and other types of bottled water to have to use different methods of analysis (USP and EPA) to test for the same contaminant. Bottlers may use EPA methods to test their purified water, although the agency notes that it will use USP methods to check for compliance. However, FDA points out that most of the USP methods do not provide a numerical water quality requirement that would parallel EPA methods but instead require testing with a positive or negative result. Thus, the methods may not be easily interchangeable.

FDA concludes that the requirement should remain as proposed because the term ''purified water'' explicitly asserts that the water has been purified, and the USP definition is a commonly used standard for what constitutes purification. This common use is evidenced by the fact that AFDO's definition of ''purified water'' is the USP definition (Ref. 7). However, FDA agrees that interested persons should have an opportunity to comment on any proposed change in the standard of identity for purified water. Therefore, FDA is referencing a specific edition of the USP monograph in the definition of ''purified water'' (§ 165.110(a)(2)(iv)). The agency is defining ''purified water'' as water that has been produced by distillation, deionization, reverse osmosis, or other suitable processes and that meets the definition of purified water in the USP, 23d Revision.

The agency notes that the USP is in the process of updating its monograph for purified water. One such revision may be a water conductivity test requirement as mentioned by one of the comments. As modifications are made to the USP definition, FDA will consider amending its definition for purified water to reflect the modification.

The agency notes that any bottled water that is labeled as ''purified water, USP,'' or that indicates in any manner that the product meets USP specifications, must, in addition to complying with FDA regulations, meet the most recent USP standard, or the product will be misbranded under section 403(a)(1) of the act in that its labeling will be false in this particular.

31. One comment asked that FDA explicitly designate the product as ''purified drinking water'' and, as a food product, differentiate it from ''purified water, USP'' usable for pharmaceutical purposes. The comment stated that a change in nomenclature from ''purified water'' to ''purified drinking water'' would reduce any potential for confusion between purified water that is suitable for use in preparation of compendial dosage forms and purified drinking water for potable purposes. It stated that the qualification would make clear to the public that products labeled as ''purified drinking water'' are not represented as, and do not purport to be, in compliance with the USP monograph for ''purified water.''

The agency disagrees that the term ''purified water'' should be replaced by ''purified drinking water'' in the standard of identity. Many products that are currently being sold as ''purified water'' for drinking purposes meet the USP definition for ''purified water,'' and FDA is not aware of any evidence of public confusion. Thus, FDA concludes that ''purified water'' remains an appropriate name.

However, ''purified drinking water'' and ''distilled drinking water'' are appropriate alternative names for the product because these names will enable consumers to identify the product as water for drinking purposes that has been processed to meet stricter purity standards. Therefore, FDA is modifying § 165.110(a)(2)(iv) to provide for alternative terms that describe the product as a type of drinking water (e.g., ''purified drinking water'').

32. One comment recommended that FDA establish a definition for ''demineralized water'' as follows: ''The name of water demineralized by distillation, reverse osmosis, or other method so that it contains not more than 10 ppm TDS may be 'demineralized water.' ''

The agency agrees that ''demineralized water'' is an appropriate name for water that has been processed to significantly decrease its mineral content. However, FDA concludes that there is no need to establish a separate definition for ''demineralized water'' because the USP definition for ''purified water'' encompasses water that has been demineralized by distillation, reverse osmosis, or other method and that contains not more than 10 ppm TDS. Therefore, the agency is including the term ''demineralized water'' as an alternative name for ''purified water'' in § 165.110(a)(2)(iv).

33. One comment recommended the establishment of a heterotrophic bacteria standard for purified water. It stated that, although the health risks from such bacteria may be small, a higher expectation exists for a product labeled as ''purified'' than for other bottled water products. The comment stated that purified water is purchased by immunosuppressed individuals, contact lens wearers, mothers of small infants, laboratories, and others with an expectation of purity from general bacteria. The comment recommended a limit of no more than 500 bacteria per milliliter for purified water because this standard will limit the suppression of coliform detection and reduce the exposure and dosage level for organisms that might have a health effect on at-risk groups. The comment also recommended that, if FDA does not establish a general bacteria standard for ''purified water,'' the agency substitute the name ''demineralized water'' for ''purified water'' so as not to mislead consumers.

FDA disagrees with the comment. Traditionally, water that is essentially free of chemical impurities is called ''purified water,'' and water that is free of microorganisms is called ''sterile'' or ''sterilized water.'' This distinction is evidenced by the fact that there are USP monographs for ''sterile water'' and for ''purified water'' that distinguish between the two types of water (Ref. 6). Thus, the labeling of a product as ''purified water'' does not imply that it is sterile water.

USP has established a general guideline for purified water for pharmaceutical purposes of 100 colony-forming units per mL. This level evidences that the water has been treated appropriately, even though bacteria are present at low levels. Purified water that has been treated by distillation or reverse osmosis may be sterile if appropriately processed. However, the agency points out that

purified water is typically low in the nutrients required by microorganisms for growth, and, thus, ordinarily has low bacterial counts. Adherence to the regulations in part 129 significantly reduces the risk of contamination. Therefore, ''purified water,'' if appropriately processed as required by part 129, should contain less than the comment's requested 500 bacteria per mL. The agency consequently concludes that the establishment of a bacterial standard for ''purified water'' is not necessary.

The agency is defining ''sterile water'' in this final rule. Use of this term in the statement of identity of qualifying bottled waters will allow consumers desiring to purchase water that is bacteriologically pure to easily identify this type of water and to distinguish it from purified water that is chemically pure.

4. Spring Water

FDA proposed that bottled water derived from an underground formation from which water flows naturally to the surface of the earth, or would flow naturally to the surface of the earth if not for its collection below the earth's surface, may be called ''spring water.'' The agency proposed to provide for the collection of spring water only at the spring or through a bore hole adjacent to the point of emergence. FDA also proposed that spring water collected with the assistance of a bore hole to protect the water shall be from the same underground stratum as the spring and shall retain all the physical properties and be of the same composition and quality as the water that flows naturally to the surface of the earth or that would flow naturally to the surface of the earth if not for its collection below the earth's surface. FDA requested comments from interested persons concerning the definition for ''spring water'' and on the use of a bore hole adjacent to the point of emergence of the spring to facilitate collection of the water.

a. Consumer Surveys

34. Two comments included consumer telephone surveys, each conducted by a different bottled water producer, that addressed issues of consumer understanding and preferences for bottled water labeled as ''spring water.'' A number of subsequent comments pointed to methodological shortcomings in one or the other of the two consumer surveys, including inadequate sample size, nonrepresentative sampling, ambiguous and biased question wording, failure to counterbalance order of questions, improper survey approach, and flawed interpretations of results.

The agency recognizes that such problems exist to some extent in both studies, as they do in virtually all survey studies, but it is not convinced that there is sufficient basis for dismissing the results of these studies. Each study has some merit, and there is a surprising degree of agreement between the two studies in their primary findings. Therefore, FDA finds that both studies provide useful information concerning consumer opinions on spring water, and that it is appropriate to use this information in arriving at a definition for ''spring water.''

35. The principal concern of both surveys, and the primary subject of comments about the respective survey results, was an attempt to describe consumer understanding of the use of the term ''spring water'' with respect to the method of extraction, bore hole or surface collection, used to obtain the water. In study 1 (C302 in this docket), respondents were asked about which extraction method they would expect would be used to collect a product called ''spring water.'' In study 2 (MM5 in this docket), respondents were asked which extraction method is used to collect ''spring water.''

Many comments criticized one or the other of the studies for the way the different methods of extraction (borehole or surface collection) were described to respondents, usually alleging that the wording introduced a bias in respondents' answers. In study 1, for example, surface extraction was described as ''water that flows naturally to the surface,'' and bore hole extraction was described as ''water pumped * * * through a bore hole.'' In study 2, surface extraction was described as ''water taken from springs whose water is captured above ground level,'' and bore hole extraction was described as ''water taken from springs whose water is captured below ground level.''

FDA agrees that biases were introduced by the wording of these questions. However, despite the difficulties in communicating to consumers about methods of extraction for spring water in a telephone survey, the results of both surveys show that there is considerable uncertainty among consumers about which extraction method is or should be used for spring water.

Study 1 asks the question, ''When you see spring water on the label of a bottle, which of the following describes the water you would expect to be in the bottle?'' in a forced-choice form such that ''not sure'' answers are not allowed. Although 54 percent of respondents responded that the water naturally flows to the surface, 46 percent of respondents expressed the possibility that spring water was extracted from a bore hole. In addition, even though the question context strongly encouraged selecting one or the other of the alternatives provided, 34 percent of respondents choose to answer ''either of the above'' when asked which extraction method they would expect for spring water. FDA considers this level of response to the ''either of the above'' alternative to indicate considerable consumer uncertainty. Because of the observed uncertainty, the study documents that there is no consensus among consumers about how spring water is or should be extracted.

In study 2, a ''not sure'' alternative was allowed for each of the two yes/no questions, ''Is bottled spring water taken from springs whose water is captured above the ground level?'' and ''Is bottled spring water taken from springs whose water is captured below the ground level?'' Forty one percent of respondents answered ''not sure'' to both questions, and an additional 13 percent answered ''not sure'' to one of the two questions. These responses mean that, overall, 54 percent of respondents indicated that they were not sure about the extraction methods used for bottled spring water.

Given the high levels of consumer uncertainty about extraction methods used for bottled water that were found in both studies, FDA concludes that the issue of how spring water is or should be extracted is not an issue to which many consumers have given much thought. At the same time, however, FDA considers the finding that consumers have limited opinions about the extraction methods used for bottled spring water to be very relevant to its objective of developing bottled water definitions that promote honesty and fair dealing in the marketplace. The fact that consumers do not appear to be informed or concerned about issues related to the extraction methods used for spring water suggests that FDA has little reason to suggest major changes in the usage of the ''spring water'' designation on bottled water on the grounds of promoting honesty and fair dealing in the marketplace. Currently, as many comments stated, spring water products on the market are produced using both methods of extraction. In addition, most State and international definitions provide for both methods of extraction for spring water (Comment 91 and Refs. 2, 7, 11, 12). Thus, FDA concludes that the use of the term ''spring water'' does not imply a particular extraction method, and that

providing for the use of either surface or bore hole collection of spring water will not mislead consumers.

36. A number of comments cited survey results indicating that consumers perceive that spring water has a higher quality and a better taste than other kinds of bottled water, and that, therefore, consumers are more likely to buy it. They argued that, because spring water has greater consumer appeal, it is incumbent on FDA to ensure that the definition of spring water is not misleading to consumers.

FDA agrees with these comments and with the conclusion, based mainly on Study 1 findings, that consumers consider bottled water labeled as spring water to be of a higher quality than other kinds of bottled water. FDA notes, however, that the favorable state of consumer opinion toward spring water has developed under circumstances in the marketplace in which the term ''spring water'' has been used to describe both water extracted at the surface and water extracted by the bore hole method. Given that it has been extracted in both ways, with apparent consumer satisfaction, how the water is extracted does not appear to be the key factor.

There is a second aspect of the definition of ''spring water''—from where the water comes. By the process of elimination, this factor appears to be key. Thus, it is this aspect of the definition that FDA has made most rigorous.

FDA concludes, therefore, that its requirement in § 165.110(a)(2)(vi) that bottled water labeled as ''spring water'' be from the same underground stratum as the spring and always have the same physical properties, composition, and quality as water that flows naturally to the surface of the earth, without specifying a necessary method of extraction, will provide appropriate protection against use of the term to mislead consumers about quality characteristics of bottled water.

37. A number of comments, based principally on Study 2 findings, argued that safety considerations were the primary consumer concerns about bottled water, that FDA should take these concerns into account when deciding on the appropriate definition of ''spring water,'' and that these concerns provided a sufficient basis for including water obtained by bore hole extraction in the definition of ''spring water.''

FDA agrees that safety considerations are important in the regulation of bottled water. However, the agency does not generally view the standard of identity for a product as the means to ensure its safety. FDA stated in the proposed rule (58 FR 393) that it was developing definitions for types of bottled water to ensure honesty and fair dealing in the interest of consumers, and this remains the agency's basic purpose for defining these terms.

FDA has established quality standards for bottled water to satisfy consumer expectations that bottled water will be of appropriate quality. To be of appropriate quality, the water must be safe. Thus, the quality standard sets maximum levels that are well within safe levels for a number of water contaminants. FDA has also adopted a good manufacturing practice (GMP) regulation for bottled water to ensure that bottled drinking water is processed, bottled, held, and transported under sanitary conditions that will not render the product injurious to health. Thus, regardless of the extraction method used to obtain bottled water, the water will be safe.

For these reasons, FDA does not see consumers' concerns about safety as a particular reason for including water that is obtained by bore hole extraction in the definition of ''spring water.'' FDA is including water obtained in this way in the definition because, as explained above, bore hole collection of spring water is a common industry practice, and consumers are not misled by the use of this collection method. The key to the definition, as FDA stated in response to comment 36 of this document is from where the water comes.

b. Use of a Bore Hole

38. A number of comments objected to a definition of ''spring water'' that would allow the use of a bore hole to collect the water. Comments stated that the definition would allow ''well water'' or ''bore hole water'' to be labeled as ''spring water.'' Comments requested that the reference to bore hole extraction be deleted from the proposed regulation because the water is not ''spring water.''

Some comments stated that ground water derived by the use of bore holes is not compatible with the geological definition of a spring and should not be permitted to be labeled as ''spring water.'' One of the comments added that the proposed definition is inaccurate and does not represent the common usage of this term by professional hydrogeologists, professional ground water hydrologists, or the general public. It stated that springs are naturally occurring discharges or flows of ground water that occur at the land surface.

On the other hand, a number of comments argued that water extracted through the use of a bore hole should be eligible to be called ''spring water.'' Comments stated that a bore hole is a preferred method of spring water collection, and that inclusion of this method of collection in the definition of ''spring water'' would provide flexibility to manufacturers. One comment from a hydrogeologist stated that the use of bore hole collection methods is widely recognized throughout the United States and the rest of the world as a safe, convenient, sanitary, and reliable method for intercepting spring water before it emerges to the earth's surface, where it can be exposed to sources of pollution or alteration.

A number of comments noted that the use of bore holes has long been recognized in this country, Canada, Europe, and elsewhere as a preferred and sometimes necessary method for extracting spring water. Comments stated that bore hole collection of spring water is practiced exclusively in Europe and many other parts of the world for sanitary reasons. Comments added that the proposed definition recognizes that over 50 percent of the water used in domestic spring water production is currently collected through the use of a bore hole, and that the definition provides a consistent standard of identity regardless of the technology used for extraction and collection.

One comment stated that some advance the view that spring water collected at the surface is natural because its collection involves no physical or technological intervention into, or development of, the spring source or of the water, and that subsurface collection of spring water is not natural because it involves extraction and piping through a bore hole, which means that the finished product is produced through physical alteration of, and intervention into, the source. The comment said that this view is misleading because even when spring water is collected at the surface, piping must be used, a bore must be drilled, and technology must be employed in the collection process. The comment said that frequently, physical alteration of the natural orifice also must be undertaken.

The agency has decided to adopt the proposed definition of ''spring water'' as water that is derived from an underground formation from which water flows naturally to the surface of the earth. FDA has also decided to provide that ''spring water'' may be collected below the earth's surface through a bore hole. As previously discussed in response to comment 35 in this final rule, consumers do not necessarily believe that spring water is

collected at the surface of the earth. In addition, over half of the spring water sold in the United States is extracted through a bore hole. Therefore, the agency has concluded that providing for the use of a bore hole in addition to surface collection will permit production flexibility without interfering with established consumer understanding or expectations in any way.

FDA recognizes that some geologists and hydrogeologists disagree with the use of a bore hole in the collection of spring water. However, FDA finds that as long as the physical properties, composition, and quality of the water that is captured by a bore hole are the same as those of the water from the same underground formation that flows to the surface, it is appropriate to label the water as spring water. If the use of a bore hole does not change the characteristics of that water, then the bore hole is only tapping the underground water source that feeds the spring. However, if the water collected through the bore hole has different characteristics from the water emerging from the spring orifice, the water is not spring water. To clarify that the source of the water must be the same underground formation, the agency is adding a provision to § 165.110(a)(2)(vi) that the bore hole collection of spring water must be through a bore hole tapping the underground formation feeding the spring.

A spring is a natural flow of water from the earth (Ref. 13). An aquifer is a porous rock stratum that yields water in a usable quantity to a well or spring (Ref. 5). A stratum is a single layer of rock. Spring water is water that emerges from the spring orifice or water from the stratum that feeds the spring. Scientific field methods can demonstrate that water that emerges from a spring and water from an adjacent bore hole are from the same underground source. Geochemical methods may be used to demonstrate that water extracted from a spring and water extracted from an adjacent bore hole are of the same chemical quality.

FDA agrees that there must be appropriate development of an approved source, whether the water is to be collected at the natural orifice or with the use of a bore hole. Both methods of collection require careful engineering for proper water collection. A source must be appropriately developed, in accordance with the GMP's in part 129, to qualify as an approved source. Under § 129.3(a), an approved source is one that has been inspected by the State and local government agencies having jurisdiction. Under § 129.35(a)(1), the source must be properly located, protected, and operated and be easily accessible and adequate.

In summary, FDA finds that water that is collected by use of a bore hole tapping the underground stratum of a spring is appropriately included in the definition of ''spring water'' in § 165.110(a)(2)(vi), as long as the source of the water is the same no matter which method of collection is used, and the method of collection does not interfere with the quality or composition of the water.

39. Comments contended that this rulemaking is being orchestrated by parties who will profit from being able to legally increase their production of spring water by using pumping mechanisms. One comment stated that the reason that anyone would bore a well next to a spring is because the flow of water from the spring has decreased. Another comment added that the bottled water industry wants a loophole that would allow companies to call their well water by the better perceived term ''spring water.''

One comment stated that to allow ''spring water'' to be collected through a bore hole that is adjacent to the point of emergence is being less than honest with consumers. This comment maintained that allowing this practice only serves the interest of a special segment of the bottled water industry. The comment stated that when bore holes have to be qualified to determine whether they are adjacent to the spring and to determine whether the water is from the same underground stratum, and has all the same physical properties, composition, and quality, as the water emerging at the surface, then fair dealing will be lost in the many ways that these provisions will be interpreted.

Conversely, a comment that supported the use of a bore hole stated that adoption of the standard as proposed would protect consumers against artificial barriers to commerce and restraints on competition that ultimately raise consumer prices and reduce product quality. Another comment stated that the controversy about the use of a bore hole stems partly from a lack of understanding of practices accepted around the world and partly by small companies striving to use regulations for competitive advantages.

One comment asserted that differentiating between the same water, whether it comes from a natural orifice or from a bore hole tapping an aquifer, is an artificial marketing difference.

Some comments stated that if the definition of ''spring water'' were to preclude the use of bore holes, many smaller companies would be constrained from expanding their businesses. These comments added that as long as the water is compositionally identical, the method of extraction is a production matter and should not be a factor in classifying the water.

The agency disagrees with the comment that stated that consumer interests would be compromised by providing for the use of a bore hole in the definition of spring water. As discussed in the response to comment 35 in this document, many consumers have not formed opinions concerning an appropriate method of extraction of spring water, and, based on information from the consumer surveys and other comments received, FDA has concluded that consumers are not misled because of the use of a bore hole.

FDA also disagrees that its position only serves the interest of a special segment of the bottled water industry. Currently, as stated by many comments, over half of the spring water produced in the United States is collected through bore holes. Not providing for the use of a bore hole in the definition of spring water would thus force a significant segment of the industry to relabel their products as other types of bottled water products. Given that most consumers are not concerned about whether a bore hole or a spring collection box is used, and that FDA can control the source of the water and its composition and quality by means of its standard, the agency advises that it is not aware of any factor that compels such a result.

In addition, the agency disagrees that its definition will provide a loophole to allow water that is not spring water to be called ''spring water,'' with certain parties profiting from a broadened definition. FDA's definition is no broader than the definition used by most States, most notably the major bottled water-producing States of New York, California, Texas, and Florida. These States already provide for the use of a bore hole, although the State of North Carolina has a stricter definition for ''spring water.'' Many foreign governments have even broader definitions for ''spring water'' than is provided by FDA's definition. For example, the government of the province of Quebec defines ''spring water'' as ground water containing greater than 10 ppm TDS and less than 500 ppm TDS, regardless of whether the water flowed to the surface of the earth or was collected through a well. Therefore, FDA concludes that its definition will not create a loophole to

market water that is not spring water. FDA's definition is generally consistent with worldwide industry practice and most government regulations. Thus, if anything, FDA's definition will help to eliminate artificial barriers to competition and commerce.

Although how the determination of whether a bore hole actually is tapping a spring is made may vary because of regional geological differences (e.g., limestone formations versus granite formations), the water collected from a bore hole must be the same water that feeds the spring's natural orifice. To be called ''spring water,'' the water must be from a stream that flows naturally to the surface of the earth. No matter what method of extraction is used, the water must have the same physical properties, quality, and composition as the water that actually flows to the surface.

The agency recognizes that there is the possibility of a bore hole extracting water from an aquifer that does not feed the spring. However, the agency is requiring in § 165.110(a)(2)(vi) that the water be from the same underground stratum, retain all the physical properties, and be of the same composition and quality as the water that flows naturally to the surface of the earth. Water from a different underground stratum will have different properties and characteristics. Thus, the water will not meet the definition of spring water unless it has the same properties and characteristics as the water that flows through the spring's natural orifice. Therefore, § 165.110(a)(2)(vi) will protect against the possibility of a bore hole extracting water that does not feed the spring.

40. Comments noted that a domestically produced beer that is identical to a German beer could not be called German beer because it does not come from Germany. They stated that, similarly, spring water must come from a spring, not a bore hole.

Another comment maintained that under the law, ''the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance'' (*F.T.C.* v. *Algoma Lumber Co.*, 291 U.S. 67, 79 (1934)). It concluded that bottlers should not be allowed to tell consumers that a product is spring water when it actually comes from a bore hole.

The agency disagrees with the comments. In the example of the German beer, FDA recognizes that a German source does indeed make the product a German beer, and that if the beer was not produced in Germany the product would not be German beer. However, in the case of spring water, the underground source of the water, that is, the spring, will be the same whether collected at the surface or through use of a bore hole. It is only the method of extraction that is different. Therefore, water that is from an underground formation from which water flows to the surface, and that has the same physical properties, quality, and composition as the water that flows to the surface, is fairly and appropriately considered to be spring water even if it is extracted by use of a bore hole.

41. Several comments stated that natural spring water is free flowing, and that if a bore hole is used by a bottler, it should be so noted on the label to allow consumers to make the ultimate decision on this issue.

Other comments suggested that to differentiate between spring water that is naturally flowing and spring water that is collected from a bore hole, FDA should define ''natural spring water'' as water that is derived from an underground formation from which water flows naturally to the surface of the earth and ''spring water'' as water derived from an underground source from which water flows naturally or through a bore hole adjacent to the point of emergence. One comment added that to not differentiate between ''natural spring'' and ''spring'' waters would be to perpetuate a fraud.

The agency disagrees with the comments. As defined in § 165.110(a)(2)(vi), the underground source of ''spring water'' must be the same whether it is extracted from the natural orifice or from a bore hole. In addition, as shown by the submitted surveys, many consumers did not object to the use of a bore hole to extract spring water. Therefore, it is not necessary to establish mandatory labeling regulations to distinguish between spring water extracted through a bore hole or through the natural orifice. However, FDA would not object to a truthful, nonmisleading statement on the label that stated that the water flowed naturally to the surface, if indeed the water was extracted from the natural orifice without the use of external force, or to a statement that the water was extracted through a bore hole.

42. One comment suggested that bore hole-collected water more clearly fits the definition of ''artesian well water.'' It stated that FDA defined the other types of water with their proper historic geologic definitions, and that spring water should also be defined in this manner.

The agency disagrees that spring water collected from a bore hole more clearly meets the definition of ''artesian water.'' The definition for ''spring water'' mandates that the water come from an underground source where water flows naturally to the earth's surface before the drilling of a bore hole. Artesian water comes from a well tapping a confined aquifer. Artesian water does not flow to the earth's surface unless a well is drilled to tap the source, and the natural hydraulic pressure is great enough to force the water to the earth's surface. Therefore, spring water and artesian water are from distinct sources. However, to clearly distinguish between the definitions of ''artesian water'' and ''spring water,'' FDA is modifying § 165.110(a)(2)(vi) to state that there must be a natural force causing the water to flow to the surface through a natural orifice for the water to be labeled as ''spring water.''

c. Adjacency

43. Some comments asked how one could be assured that water collected through a bore hole would have emerged from the ground through a free-flowing spring at a point adjacent to the bore hole had it not been extracted through the bore hole.

Several comments suggested that FDA incorporate a requirement for hydrogeological data to demonstrate a hydraulic link between a bore hole and a spring to document that the source is a spring. One comment added that the spring water definition will not resolve the matter of whether a bore hole is adjacent to a spring unless scientific support for the term ''adjacent'' is presented.

Some comments suggested specific methods to determine the hydraulic linkage. These included using dye tracer tests, geophysical conductivity tests, water analyses, and graphical methods, such as the Stiff diagram and the Piper trilinear diagram, to demonstrate that the chemical and physical characteristics of the water correspond to those of the spring. Comments stated that pumping should cause a measurable decline in the spring's discharge rate if the well is tapping spring water, although if the withdrawal rate from the bore hole is small relative to the discharge rate of the spring, or if the spring is submerged, this decline may not be measurable.

The comments stated that because of the differences in the mineral composition of geological strata, no one set of analyses will apply to all spring formations to demonstrate compliance with these criteria.

Some comments suggested that the criterion of adjacency used in the hydrogeological context of hydraulic connection is reasonable and logical and objectively addresses this important and

controversial issue. They requested that language be added to the regulation to require that bore hole adjacency to the spring be verified by its measurable hydraulic influence on the spring flow from the natural orifice at the time of collection, as certified by a professional hydrogeologist.

However, some comments asserted that it will be difficult to establish the uniformity or sameness of actual spring water and water collected through an adjacent bore hole.

The agency agrees that hydraulic linkage is important in the definition of ''spring water.'' If the bore hole taps the same underground water source as that which feeds the natural spring, and has the same physical properties, composition, and quality as the water emerging from the natural orifice, it is clear that the location of the bore hole relative to that of the point of emergence is not relevant. However, a bore hole adjacent to a natural emergence can actually tap another water bed far below the aquifer feeding the natural spring source and thus collect water of a totally different composition from that of the water which emerges from the natural spring.

The agency concludes that requiring a hydraulic (i.e., physical) connection between a bore hole and a spring will clarify the definition of spring water and will eliminate the possibility of indiscriminate bore hole use. Therefore, FDA is modifying its definition of ''spring water'' in § 165.110(a)(2)(vi) to require that a measurable hydraulic connection, using a hydrogeologically valid method, between the bore hole and the natural spring be established to show that the water is from the same underground stratum as the spring.

The comments suggested several different methods to determine hydraulic linkage. One or more hydrogeologically valid methods may be used as appropriate to determine hydraulic linkage. However, not all methods may be appropriate for different geologic regions or for the specific bore hole site. Therefore, the agency is not recommending or requiring any specific method or methods.

44. Some comments stated that the location of the bore hole relative to that of the point of emergence is not relevant as long as the bore hole taps the same underground water source as that that feeds, or that would feed, the natural spring if not for the collection below the earth's surface. Other comments objected to the use of the word ''adjacent'' in the definition because they believe that it is ambiguous. Comments suggested that the agency modify the definition for ''spring water'' to delete the use of the term ''adjacent.'' One comment added that such a definition would be easier to enforce and would eliminate the need to arbitrarily decide what ''adjacent'' means in terms of a measurable distance.

Conversely, one comment stated that if bore hole access is permitted in the final definition of ''spring water,'' then it is crucial to retain the requirement that the bore hole be adjacent or near to the point of natural emergence of the spring. The comment stated that this requirement is necessary to assure that the bore hole is tapping only water that would otherwise emerge at that point, and that consumers are not misled that they are purchasing spring water from a specifically identified spring source.

The agency agrees with the comments that suggested that the term ''adjacent'' be deleted from the definition of spring water. As discussed in the previous comment, the agency is requiring that there be a measurable hydraulic connection, using a hydrogeologically valid method, between the bore hole and the natural spring established to show that the water is from the same underground stratum as the spring. To meet the definition of ''spring water,'' the manufacturer must ensure that the water collected through a bore hole is from the same underground stratum as the spring and has the same physical properties, composition, and quality as the water that flows naturally to the surface of the earth from the spring. Water collected at a distance from the natural orifice will not have traveled the same path as the water that flows from the natural orifice of the spring and, therefore, could have a different composition. FDA is accommodating the use of bore hole technology so long as there is assurance that the water from the bore hole has the same composition and characteristics as the water from the natural orifice. If the bore hole is too far from the natural orifice, the latter assurance would not exist.

FDA concludes that the requirement of a measurable hydraulic connection between the bore hole and the spring's natural orifice adequately encompasses the intent of the proposed adjacency requirement. Therefore, the agency is deleting the requirement in § 165.110(a)(2)(vi) that the bore hole be adjacent to the point of emergence of a spring.

45. A number of comments asked FDA to explain or define the terms ''adjacent'' and ''point of emergence.'' Comments requested that FDA designate a specific distance (e.g., 50 feet, 100 feet, 250 feet, 1 mile) for how far bore holes could be located from the source and still meet the criterion of ''adjacent to the point of emergence.'' One comment suggested that a person should be able to see the spring and bore hole at the same time. Some comments held that the rule should specify that the bore hole must be as close as possible to a specifically identified spring discharge, and that the bore hole must be closer to the spring discharge than to any other source of ground or surface water.

One comment stated that the State of California informally defines ''adjacent'' as a distance of approximately 250 feet. It stated that this definition avoids cases of confusion, such as the installation of spring bore holes several miles from the spring location. Other comments stated that some States have used a ballpark figure of 200 feet for adjacent, others more or less than 200 feet.

Another comment stated that the reasoning provided in the preamble of the proposal necessitates a relatively narrow interpretation of ''adjacent'' as a point located a minimal distance from the spring orifice and asked that a statement to this effect be included in the regulation.

In the preamble of the January 1993 proposal (58 FR 393 at 399), FDA stated that allowing for a bore hole adjacent to a spring would provide for the tapping of the source at a point near the mouth of the spring. The agency is not specifying a particular distance between a bore hole and the mouth of the spring because the appropriate distance will vary significantly in different geological areas. FDA is also not adopting a requirement that a person be able to see the spring and bore hole at the same time because, depending on the terrain, a person may be able to see a great distance or only a small distance. Therefore, FDA finds that defining ''adjacent'' in these terms would not be appropriate. As discussed in the previous comment, the agency is defining adjacency in terms of a measurable hydraulic connection.

FDA agrees that the collection apparatus should be as close as possible to the specifically identified spring discharge. The agency also agrees that the bore hole should normally be closer to the spring discharge than to any other source of ground or surface water. However, the agency does not agree that this distance need be specified in the regulation because it is requiring that a measurable hydraulic connection, using a hydrogeologically valid method, between the bore hole and the natural spring be established to show that the water is from the same underground stratum as the spring (§ 165.110(a)(2)(vi)). The agency

concludes that the requirement for a hydraulic connection is appropriate and avoids uncertainty concerning any specific distance implied by the term ''adjacent.''

46. Comments requested that FDA address the issues of ownership and control in the regulations. Comments questioned whether proper inspections could be mandated in a case where a spring is located on one owner's property, and the bore hole is on another's property. One comment stated that the ownership and control of the bore hole should be the same as that of the spring for quality control purposes. One comment stated that, if a company owns, or owns the rights to, a legitimate spring, it should not matter how it collects the water as long as it does so in a sanitary way.

The issues raised by these comments are outside the scope of this rulemaking and really beyond the coverage of the act. Issues of ownership and control turn on property laws, water rights, and access to the spring's natural orifice. However, FDA cautions that a manufacturer must be able to test the water that flows naturally to the surface of the earth to ensure that the water that it is collecting from the bore hole is the same water as that from the spring that flows to the surface, and that there is a hydraulic connection between the bore hole and the natural spring. If the manufacturer cannot establish that the water that it is calling ''spring water'' is the same as that from the identified spring, it runs a significant risk that its product is misbranded, and, thus, that it will be the subject of a regulatory action.

d. External Force

47. Several comments objected to the use of external force in the collection of spring water. One of the comments stated that consumers believe that spring water has no unique taste, color, or other characteristic other than being water that comes to the surface through a natural orifice, and that most believe that the water flowed to the surface by the spring's natural pressure. Comments stated that to furnish other than a natural flow rate by supplemental pressure is misleading, and that such a product should be labeled as ''well water.''

Comments stated that the use of a bore hole is appropriate only if external force is not used. One comment stated that the freely flowing water from a natural spring site represents the overflow of the underlying aquifer, and that, by contrast, pumped water from a vertical well of arbitrary depth may tap many hydrogeologic layers, drawing against the storage of the aquifer. The comment asserted that some trace of the natural flow should be visible at the original spring orifice.

One comment stated that some of the problems associated with pumped wells are: (1) The cone of depression caused by pumping an unconfined aquifer triggers a series of changes in the ground water and aquifer; (2) dewatering the aquifer around a well allows air intrusion into the formation voids, which can oxidize iron and other metals resulting in reduced water storage capacity, thereby increasing the size of the cone of depression; (3) pumping from an aquifer that yields water to a spring can induce recharge from neighboring hydrogeologic units that are not normally hydraulically connected to the spring; and (4) pumping an aquifer causes changes in flow velocity and direction of flow and creates turbulence.

The agency does not agree that the use of external force should be prohibited for the extraction of spring water. Although there must be a natural force that causes at least some of the water to flow to the surface through a natural orifice, this force may not be sufficient to cause the water to flow through some bore holes. The angle and the distance of the bore hole from the mouth of the spring may not provide adequate water pressure for the water to flow through the bore hole.

It is true, as described by the comment, that changes may occur in the underground strata as a result of pumping. The creation of a cone of depression, changes in water flow, and the nature of the recharge can alter the composition of the ground water. However, if the properties of the water change as a result of the use of external force, the water is no longer spring water because the water is no longer the same water that flows through the natural spring orifice. If pumping action alters the properties of the water, pumping will have to cease, and the area allowed to return to its natural equilibrium, so that water collected from the bore hole with the aid of external force will once again have the same properties as the water flowing from the natural spring orifice. If not, while pumping may continue, the water can no longer be labeled as ''spring water.''

Finally, the agency points out, in response to one comment, that if water is pumped from a vertical bore hole of any depth that taps other hydrologic strata, that water is not spring water.

FDA concludes that the use of external force in the collection of spring water is not misleading to consumers because the agency is requiring in § 165.110(a)(2)(vi) that the water be derived from an underground formation from which water flows naturally to the surface of the earth; that the water have the same physical properties, composition, and quality as the water that emerges from the natural orifice; and that there be a hydraulic connection between the bore hole and the spring stratum. Thus, the agency concludes that the definition will ensure that water labeled as ''spring water'' meets consumers' expectations.

48. Three comments stated that FDA should require that the spring continue to flow to the surface naturally. They stated that if the spring ceases to flow for a period of 90 days, then the water from the bore hole should no longer be considered to be spring water, and any labeling of the product as such must cease. One of the comments stated that such a requirement would help to ensure the integrity of the spring source and prevent contamination caused by a reversed flow close to the ground surface.

One comment stated that if the spring ceases to flow to the earth's surface, the pumping mechanism is at fault, and comparative samples would not be available. Another comment asked whether, if the spring ceases to flow as a result of pumping, the water may still be called ''spring water.''

The agency agrees with the concerns of the comments. In some cases pumping may cause the spring to cease flowing through the natural orifice, and, thus, comparative samples of the water would not be available because of the use of external force when the water is collected through a bore hole. It is important to maintain some flow of water through the natural orifice to prevent any reverse flow of surface water, which could then be pumped through the bore hole. As previously stated in the response to comment 12 of this document, ground water under the influence of surface water cannot be called ''spring water.''

FDA recognizes that occasionally a spring may cease flowing temporarily because of fluctuations in ground water levels. Ground water fluctuations may be caused by natural conditions (e.g., drought) or man-induced (e.g., pumping) and are classified as short-lived, diurnal, seasonal, and long-term changes (Ref. 9). If the spring has ceased flowing, and this cessation is not a temporary condition, the water is not spring water. In addition, if the external force is routinely (e.g., more often than during the time of year when the water table is typically low) causing cessation of the spring's flow to the surface, this too is not a temporary condition, and

the water does not qualify to be called ''spring water.''

The State of Florida's definition for ''spring water'' does not include water from a strata feeding a spring that ceases to flow naturally to the surface for a period of 90 days (Comment 184). The agency agrees that there must be an expectation that the spring will continue to naturally flow to the surface for the water to qualify as spring water. Thus, any cessation in the flow of the spring from the natural orifice must be for a limited period of time. Ninety days is an appropriate time limit for seasonal types of changes in ground water. However, the agency will consider each situation on a case-by-case basis and take into consideration all circumstances (e.g., climatic conditions and effect of pumping) causing the flow cessation.

To clarify in § 165.110(a)(2)(vi) that the spring must continue to flow when external force is applied to a bore hole in the collection of spring water, FDA is deleting the statement that it included in the proposed regulation that the water would flow naturally to the surface of the earth if not for its collection below the earth's surface. In addition, the agency is adding a requirement in § 165.110(a)(2)(vi) that if spring water is collected with the use of external force, water must continue to naturally flow to the surface of the earth through the spring's natural orifice.

49. A number of comments expressed concern that the use of external force will allow a spring water bottler to extract more water from the ground than would have naturally flowed to the surface of the earth through the spring's natural orifice. Comments requested that the agency include a provision in the definition of ''spring water'' to require that the quantity of water extracted through external force not exceed the quantity of the water that would flow naturally to the surface of the earth if not for its collection below the earth's surface.

Two comments asked what the purpose of permitting the use of a bore hole was if the quality of the water from the bore hole must equal that of the water that flows naturally to the earth's surface except to enable the pumping of larger volumes of water from a stratum. Another comment held that under the proposed rule, there will be few springs developed with collection boxes because bore holes will be generally more economically advantageous, and greater volumes of water will normally be available through the use of bore holes than through the use of collection boxes.

One comment added that provision for the use of bore holes could encourage bottlers to exceed the safe yield from the spring's aquifer. It stated that excessive withdrawal is usually discussed in terms of ''mining'' of the water (defined as when more water is withdrawn than is replaced by recharge). The comment stated that the real issue as far as surface contamination is concerned is not the ''mining'' of water or the collection device but the quality and purity of the aquifer as determined by the source of recharge.

One comment expressed concern that the proposed rule is silent on any method to identify when, because of overpumping, wells are capturing water that would otherwise not flow to the spring. It stated that overpumped bore holes (i.e., those that pump more water than the spring naturally discharges) could induce flow from surface water or nearby contaminant sources, such as septic tanks. The comment stated that possible solutions to this problem would be to: (1) Restrict the allowable daily pumping volume to that volume equal to the natural average (mean) daily flow from the spring; (2) restrict the use of bore holes to those that do not require the ''assistance of external force'' (i.e., pumping); or (3) require a demonstration that any additional pumping is not altering the flow paths to the spring such that flow is induced from nearby potential sources of contamination to the well.

FDA agrees that there may be adverse effects of overpumping (i.e., mining) a bore hole that is tapping a spring. There may be public health concerns if the recharge to the aquifer is contaminated by surface water. In addition, ground water extracted with external force, and under the direct influence of surface water because of overpumping, is not spring water because the source of the water is not entirely the source that feeds the spring. However, such water may be treated and called ''bottled water'' or another applicable name.

FDA does not object to the use of external force, and does not deem it necessary to restrict the amount of water that may be extracted through the use of external force, as long as the water meets the requirements of § 165.110(a)(2)(vi) (e.g., it is compositionally the same as the water flowing from the natural orifice). Water that has not traveled the same course as the water feeding the spring, and, thus, that does not have the same characteristics as water from the spring, cannot be labeled as ''spring water.''

The agency disagrees that allowing the use of a bore hole and external force will decrease the number of springs developed with collection boxes. Many States already allow the use of both extraction methods, and both methods are already used by manufacturers. Providing for the use of both methods of collection of spring water allows manufacturers the flexibility to use the method best suited for their spring site.

A demonstration that pumping is altering the flow paths to the spring, such that flow is induced from nearby potential sources of contamination to the bore hole, could include bore hole pump tests, monitoring of observation wells, and ground water flow modeling. EPA's Ground Water Protection Division has developed a variety of tools designed to assist State and local governments in the task of identifying the capture zones of pumping as part of the Wellhead Protection Program (WHPA). A capture zone is the area around a bore hole containing ground water that is destined to flow to that bore hole within a specified time. EPA's existing ground water flow model (WHPA 2.1) can identify induced flow from surface water caused by changes in pumping rates. Should a demonstration of the effects of pumping be required, this model could be used as a tool by government agencies to determine the impact of the aquifer's recharge. FDA concludes that a ground water flow model could be used to ascertain whether allowable overpumping is inducing deleterious results. However, regardless of the use of external force to extract spring water, the water must still comply with the definition in § 165.110(a)(2)(vi) to be labeled as ''spring water.''

e. Source Approval and Enforcement Issues

50. Comments asked how it can be proven that the water from the bore hole is from the same stratum as the water that is actually emerging from the spring. They stated that once the bore hole at the spring has been constructed and the establishment is in operation, it would be difficult to verify that the water from the bore hole met the definition of spring water. One comment asked what type of documentation the producer could keep that would satisfy the requirements of the regulation concerning source. It asked whether the records or a certification statement from the drilling company that drilled the holes would be necessary, or whether a site examination and the manufacturer's word on source would be adequate.

One comment expressed concern about potential abuse from the use of a bore hole because the nonexistence of a

spring can be readily attributed to the effect of the bore hole, and no confirmation of the prior existence of a spring at that location is required.

The agency acknowledges the concerns of the comments. Section 129.35(a)(1) states that the product water supply for each plant shall be: (1) From an approved source that is properly located, protected, and operated; (2) easily accessible, adequate, and of a safe, sanitary quality; and (3) in conformance at all times with the applicable laws and regulations of the government agency or agencies having jurisdiction. However, part 129 does not require that the government agency having jurisdiction identify or certify that the source is a spring source.

As discussed in the response to comment 48, FDA has modified § 165.110(a)(2)(vi) to mandate that the spring continue to flow, although it may be at a diminished rate, for the product to qualify as ''spring water.'' In addition, it is important that manufacturers identify the location of the spring to determine that the water is, in fact, flowing and, thus is spring water. A spring is a flow of water from the earth. If there is no identifiable spring, the water can not be labeled as ''spring water.'' Thus, it is critical that manufacturers of ''spring water'' identify the exact location of the natural orifice where the spring flows from the earth. Therefore, the agency is modifying § 165.110(a)(2)(vi) to include a requirement that the location of the spring be identified.

There must be other means of verifying labeling claims once the bore hole at the spring has been constructed, and the establishment is in operation. As discussed above under ''1. Artesian Water,'' the agency may promulgate regulations for the efficient enforcement of the Act under section 701(a) of the Act. Although it is possible to determine that a source of water is a spring after the bore hole is in operation, in some cases it would be onerous for regulatory officials to do so. Therefore, FDA has determined that a requirement to demonstrate the hydraulic connection between the bore hole and the spring's natural orifice is necessary for the efficient enforcement of the Act.

As FDA has stated, a food manufacturer is responsible for the accuracy of its food labels (58 FR 2079, 2163, and 2165 January 6, 1993). Indeed, placing a claim in food labeling that calls the consumers's attention to a water's source is a representation that the manufacturer has evidence that the product meets the requirements for the claim. See *Thompson Medical Co., Inc.* v. *FTC,* 791 F.2d 189, 193 (D.C. Cir. 1986), *cert. denied,* 479 U.S. 1086 (1987). Thus, making a claim without such a basis would be misleading and in violation of section 403(a) of the Act.

The evidence that manufacturers compile in response to the requirement in § 165.110(a)(2)(vi) that they be able to demonstrate to regulatory officials that a measurable hydraulic connection exists between the bore hole and the natural spring orifice (see comment 43 of this document) should also establish that the spring is the source of water for the bore hole. To comply with this requirement, producers may maintain records that demonstrate that a measurable hydraulic connection does indeed exist between the natural orifice and the bore hole. In addition, many States and the United States Geological Survey may have records of the development of some springs and the geology of the surrounding area. Records or a certification statement from a professional hydrogeologist or the drilling company that drilled the holes are appropriate sources of documentation. In addition, manufacturers may use methods such as the dye tracer test to demonstrate the hydraulic connection during an inspection.

If the source does not meet the definition of spring water then the product must not be labeled as ''spring water,'' or it is misbranded under sections 403(a), 403(b), and 403(g) of the Act. Compliance with this provision does not entail the creation of any new information or the compilation of any special records. Rather, the requirement would obligate manufacturers simply to have access to information that they should already possess and be able to provide FDA with this information upon request.

51. Several comments expressed concern about the requirements that spring water be ''from the same underground stratum,'' ''retain all the physical properties,'' and ''be of the same composition and quality.'' They stated that these requirements are too general and are undefined, leaving many questions relative to acceptable differences in such parameters as temperature, pH, turbidity, hardness, iron content, and calcium content. One comment stated that it will be difficult for FDA or any other government agency to monitor the conditions required for ''spring water.''

One comment requested clarification of the requirement in part 129 that product and source waters be approved by State regulatory agencies having approval authority. It asked whether the proposed regulations mandated approval of the bore hole and the spring, whether the spring must be validated as a natural spring, and whether engineering had to be performed to protect the spring site if a bore hole is to be utilized. The comment stated that there is no reference to continuous maintenance of the spring. Comments asked how many, and at what frequency, tests are necessary to show that water from the bore hole is identical to water from the spring.

Comments stated that manufacturers should present geological information about the vicinity of the orifice and bore hole so that the State can devise a representative set of water quality analyses specific to the situation.

FDA notes that the source is approved by the government agency or agencies having jurisdiction (§ 129.3(a)), and that in many cases, it will be a State agency. However, the approval mandated under part 129 is to inspect the source and sample the water to ascertain that the water is of a safe and sanitary quality. Firms are responsible for ensuring that their products comply with the particular source requirements in § 165.110(a)(2)(vi). As discussed previously, the bottled water firm must be able to demonstrate to regulatory officials that a measurable hydraulic connection exists between the bore hole and the natural spring, and that the water complies in all other respects with § 165.110(a)(2)(vi).

Concerning continuous maintenance of the spring, the firm is responsible for ensuring that their products comply with all applicable regulations. The quality of the source water is critical to the quality of the final product. Without proper maintenance of the spring, the quality of the source water will decrease, and the firm is taking a risk that the water will not meet FDA requirements. Thus it is in the interest of the firm to maintain the source in appropriate condition.

In regards to methods of testing for comparative purposes, one or more hydrogeologically valid methods may be used as appropriate to verify that the product is in compliance. However, not all methods may be suitable for different geologic regions or for the specific bore hole site. Therefore, the agency is not recommending or requiring any specific method or methods.

Under § 165.110(a)(2)(vi), manufacturers must be able to demonstrate, upon request, to regulatory officials that there is a measurable hydraulic connection between the natural spring and the bore hole. This verification must be current to be satisfactory. It is the responsibility of the firm to be in compliance at all times.

52. Two comments asked for clarification of whether water emerging at the surface not as a result of flow from an underground formation or aquifer, but as the result of seepage from a higher elevation surface water source reemerging at a lower elevation, is really spring water (e.g., springs fed by higher level lakes; underground creeks popping up to the surface; or other surface water that originates high in a mountain which emerges at a lower elevation).

The agency considers that surface water from a higher elevation reemerging through a natural orifice at a lower elevation is spring water if the water has traveled sufficiently through the ground so as not to be under the direct influence of surface water. According to 40 CFR 141.2, ground water under the direct influence of surface water means any water beneath the surface of the ground with: (1) Significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as *Giardia lamblia*; or (2) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. The existence of any of these factors indicates that the source is under the direct influence of surface water and is, therefore, not a ground water source that meets the definition of ''spring water.''

A spring is water from an underground source that flows naturally to the surface of the earth. Under normal conditions, aquifers feeding springs are in a stable environment. On the other hand, surface water is subject to a changing environment and may assimilate these changes. Thus, if water flowing naturally to the surface of the earth exhibits the characteristics of surface water, it does not comply with the definition of ''spring water'' in § 165.110(a)(2)(vi) and is not spring water.

53. One comment claimed that some members of industry consider any wet location on an otherwise dry mountainside or flat pasture to be a spring. The comment stated that sometimes these wet spots can bead water, producing a small trickle. The comment contended that after development, these wet spots can sometimes produce a considerable flow of water. It also stated that water has been known to come up in natural depressions in hillsides without flowing until the water is pumped. The comment requested clarification on these questions. It asked whether any alteration to the natural terrain that results in water coming spontaneously to the surface of the alteration should be deemed a spring (e.g., a road cut into a mountain and in this cut water trickles (or gushes) out).

FDA is defining ''spring water'' in § 165.110(a)(2)(vi) as water derived from an underground formation from which water flows naturally to the surface of the earth. There must be a natural force causing the water to flow to the surface through a natural orifice. If the water does not flow to the surface of the earth from the underground source without development of the area or the use of external force, then the water does not qualify for use of the name ''spring water.''

54. One comment complained that the January 5, 1993 proposal, if adopted, would be yet another Federal mandate, without Federal funding, to State agencies having the responsibility of ensuring compliance. It stated that justification for additional program expenditures must be based on need and public safety. The comment stated that there has been no evidence presented that adoption of the proposed rules would increase product safety.

One comment stated that the very general nature of FDA's proposal would create problems for regulatory agencies attempting to implement and enforce the rule by generating additional workload, controversy within the bottled water industry, and legal battles over whether a ''bore hole'' is tapping ''spring water'' or ''well water.''

Comments stated that the use of a bore hole in the collection of spring water would make enforcement of the provision not only expensive but most difficult.

The agency disagrees that it is imposing a burden on State regulatory agencies by establishing a standard of identity for spring water. There is no requirement that a State ensure that a firm is complying with FDA regulations. However, a State may elect to enforce § 165.110 under section 310(b) of the Act (21 U.S.C. 337).

In response to comments, the agency has added provisions to its definition of spring water that make it more specific and that should make its requirements more understandable both to the regulated and the regulators. Manufacturers must identify the location of the spring; there must be evidence that the water is flowing naturally to the surface through a natural orifice; firms must demonstrate and be able to verify to regulatory officials that there is a measurable hydraulic connection between the bore hole and the natural spring; and water must continue to flow naturally to the surface of the earth through the springs' natural orifice. FDA concludes that these provisions will aid in enforcement of the definition of ''spring water.''

f. Contamination and Sanitary Bottling

55. A number of comments disagreed with FDA's statement in the preamble to the proposal that use of a bore hole will reduce the possibility of contamination and is an aid in the sanitary bottling of spring water (58 FR 393 at 399). Two comments argued that the available evidence did not support that a bore hole is a more sanitary method to collect spring water than a collection box. Comments stated that a properly engineered and constructed spring collection box system can adequately protect a natural spring from outside microbial contamination.

A comment stated that if the quality of spring water is an issue, then it can and should be addressed by quality standards rather than by altering the common definition of spring water to permit use of a bore hole. It argued that the evidence of record on this rule does not justify any departure from the accepted definitions of ''spring'' and ''spring water.'' Another comment stated that with respect to bore holes serving as an aid in the sanitary bottling of the water, FDA already has provisions for this purpose in part 129. It stated that bore holes as aids in sanitary bottling of water should not be a consideration under the standard of identity.

Another comment stated that the proposed rule provides no specifications for the construction of bore holes, and that, if improperly constructed, sources of contamination could enter the aquifer through the bore hole. It stated that the technology exists to protect a spring water source at its point of discharge, and that treatment systems can be incorporated at the point of discharge to provide protection from a number of types of potential contaminants.

The agency points out that both properly engineered and constructed bore holes and properly engineered and constructed spring collection boxes are appropriate methods to collect spring water. However, in some circumstances, use of a bore hole instead of a collection box will reduce the possibility of contamination and thus aid in the sanitary bottling of the water. For example, springs may surface in areas where it would be difficult to collect the water at the orifice without contaminating the water. In such cases, use of a bore hole can be an effective means to extract the water in a sanitary manner. In all cases the processing and

bottling of drinking water must comply with part 129.

FDA agrees with the comments that stated that sanitation is a function of GMP and not a standard of identity. The agency stated in the preamble of the proposed rule that the use of a bore hole would reduce the possibility of contamination and would be an aid in the sanitary bottling of the water (58 FR 393 at 399), but the intent of this statement was not to say that use of a bore hole is a superior method of collecting the water. Rather, the agency was saying that even though the geological definition of ''spring water'' does not provide for bore holes, it is a good idea to include their use in the definition of ''spring water'' because it would provide an alternative sanitary means of extracting the water. Thus, the statement was intended to be a basis for what the agency was proposing to do, not to be an end in itself. The usefulness of bore holes is one of several factors that have convinced the agency that it is appropriate to include water collected by means of their use in the definition of ''spring water.''

External force is often used with bore holes to extract the water. To clarify the agency's intent that use of bore holes, including those using external force, or properly engineered and constructed spring collection box systems must adequately protect the water, FDA is modifying § 165.110(a)(2)(vi) to remove any inference that manufacturers may use external force to protect the water. Under part 129, any method of collection of spring water must protect the water (§ 129.35(a)(1)).

The agency is not providing detailed specifications for the construction of bore holes or for the construction of spring collection boxes. Appropriate construction specifications may vary according to the site. However, construction of either type of collection mechanism must be in accordance with current good engineering practice. In addition, under § 129.3(a), the source water must be of a safe and sanitary quality. Proper construction will greatly assist in complying with this requirement.

56. Comments asserted that a main concern is that drilling a bore hole next to a free flowing spring orifice may create a hydraulic connection or direct communication between any nearby surface water (river, creek, lake, pond, or swamp) and the spring source and, thus serve only to increase the risk of contamination. Comments were concerned about altering the patterns of recharge by the use of external force and lowering the quality of the water as a result. One comment stated that the use of bore hole collection systems runs contrary to the standards set by EPA regulations (40 CFR part 141) because, almost by definition, the bore hole will be shallow, and it can be sited near surface waters created by the discharging spring.

Conversely, one comment stated that, in a properly equipped bore hole, reverse ground water flow from the surface should not occur. It stated that pumping may change the flow of ground water in a horizontal direction within the aquifer, specifically within the cone of depression created by pumping, and that if a bore hole is properly equipped and managed, vertical movement of surface water downward into the screen will not occur. It added that properly equipped bore holes are accepted by both Federal and State agencies as safe supplies of both domestic and municipal drinking water.

FDA agrees that the potential exists for improper recharge of an aquifer feeding a spring. Water recharge is an issue that must be considered during source approval because there is the potential that the recharge may come from surface sources that may contaminate the underground source. For source approval, the government agency having jurisdiction must determine whether the water will be of a safe and sanitary quality. The States, however, have experience with issues of this type.

The establishment of a definition for ''spring water'' does not have any effect on the State's burden in reviewing a site for approval, whether a bore hole or a collection box is to be used. The State's decision on whether to approve a source has nothing to do with how water collected from that source and bottled is to be labeled. That decision is made by the bottler, subject to the definitions in § 165.110(a)(2)(vi) and the scrutiny of FDA.

57. One comment stated that the language of the proposed rule creates the impression that spring water may be collected from the surface, which is unlikely, and that bottlers may bottle untreated surface water. The comment stated that surface water intended for drinking must undergo treatment that may result in alteration of the original chemical properties of the water, which would destroy the product's identity as ''spring water'' in the public's perception. It recommended that the following language be added to the definition of spring water: ''After treatment, spring water shall maintain the same physical properties and chemical composition as the water that does or would flow naturally to the surface of the earth.''

FDA disagrees with the comment. Spring water may be collected from the surface by means of a collection box. A properly engineered collection box captures the water as it surfaces, before it can be contaminated by surface elements and become surface water. However, spring water collected under the most sanitary conditions may still require some treatment.

The definition of ''spring water'' is based on the underground source of the water. Thus, water meeting the definition of ''spring water'' in § 165.110(a)(2)(vi) would remain spring water after treatment, even if the physical properties and chemical composition of the water are altered from such treatment. For example, ozonation is commonly used to treat bottled water and may cause some dissolved minerals, such as manganese, to precipitate. Other treatments, such as filtering, may also cause changes in the water. As long as the water meets the definition of ''spring water,'' however, even though it has been treated, it may be called ''spring water.''

In the case of spring water extracted from a bore hole, the water must be compared with the water extracted from the natural spring. When that comparison occurs, either before or after any treatment, may have a significant impact on whether the water collected from the bore hole maintains the same physical properties and chemical composition as the water from the natural orifice. To clarify the intent of the regulation, FDA is modifying § 165.110(a)(2)(vi) to state that, before treatment, the water collected from the bore hole must have the same physical properties and chemical composition and quality as water from the natural spring.

However under section 201(n) of the Act, if the water has been treated in such a way that it differs significantly from the source water, regardless of whether that source water is from a natural spring or a bore hole, the fact that that alteration has been made is a fact material in light of representations made and must appear on the label of the product. The water is no longer unmodified spring water and differs significantly from the water that was harvested. Therefore, the fact that the water has been altered significantly must be disclosed in the statement of identity, so that consumers are aware that the source water has been modified. If minerals have been added, the statement of identity must state that fact. If minerals have been removed from the product, other than those that are removed during normal processing (e.g., filtration to remove precipitates),

that fact must be included in the statement of identity of the product as well (e.g., demineralized) (§ 165.110(a)(2)(iv)).

5. Well Water

FDA proposed that the name of bottled water from a hole bored, drilled, or otherwise constructed in the ground that taps the water of an aquifer may be ''well water.'' The agency received no comments requesting modifications to this source definition. Therefore, the definition for ''well water'' is the same as FDA proposed (58 FR 393), although it is now codified at § 165.110(a)(2)(viii) as a result of the additions that FDA has made to § 165.110(a)(2).

6. Other Water Definitions

58. Several comments urged FDA to define ''natural water.'' Comments suggested that ''natural water'' means bottled spring, artesian, mineral, or well water that is unmodified by mineral addition or deletion, except that ''natural water'' may be filtered and must be sanitized with ozone or an equivalent disinfection process and treated to reduce the concentration of any substance that exceeds an allowable level established by the agency.

One comment urged FDA to define ''natural water'' as in the IBWA Model Code. IBWA defines ''natural water'' as spring, mineral, artesian, or well water that is derived from an underground formation and that is not derived from a municipal system or public water supply.

Some comments recommended that FDA define ''natural'' for use on bottled water labels because the term is often used on labels and may be misused. One comment stated that water to be called and labeled ''natural'' must come from the ground and may be sanitized with ozone or an equivalent disinfection process. It added that any removal of excessive substances should not allow that water to be labeled as ''natural.'' Another comment stated that the word ''natural'' should be used only if the mineral content of the water is not altered during the production process. Therefore, distilled, purified, or drinking water products that use reverse osmosis to remove solids, then add back minerals, could not be described as ''natural.''

One comment suggested that FDA provide for the use of the term ''natural'' in conjunction with ''mineral water'' (i.e., ''natural mineral water'') as it is allowed in the European standard. The comment stated that consumers want to be assured that the product that they are purchasing is from a natural source and has not been blended or manipulated in any fashion with surface or municipal water sources. The comment added that the use of the term ''natural'' also implies that, because of the bacterial purity of the product, chemical disinfection is not necessary.

Two comments suggested the addition of the word ''natural'' to the definition of ''spring water'' to fully ensure that the spring water has the same composition, whether collected through a bore hole or at the surface, and that it has not been treated except for the addition of carbon dioxide or the removal of iron and manganese and suspended solids.

However, two comments stated that the term ''natural water'' should not be permitted on a label because consumers do not understand what it means.

The agency considered establishing a definition for ''natural'' in a proposal on food labeling that it published in the Federal Register of November 27, 1991 (56 FR 60421 at 60466), because of the widespread use of the term and the evidence that consumers regard many uses of this term as noninformative. After considering the comments that it received in response to the November 27, 1991 proposal, the agency stated that if the term ''natural'' were adequately defined, the ambiguity surrounding use of this term that results in misleading claims could be abated (58 FR 2302 at 2407, January 6, 1993). Because of resource limitations and other agency priorities, however, FDA did not undertake rulemaking to define ''natural'' at that time. The agency stated that, while it regarded the term as meaning that nothing artificial or synthetic has been included in, or has been added to, a food that would not normally be expected to be in the food, it would maintain its policy of not restricting the use of the term except as provided for in § 101.22 (*id.*).

A number of States, AFDO, and IBWA have defined ''natural water'' (Refs. 2, 7, 11, 12, 14, and 15). All of the definitions require that the water be derived from an underground formation (spring, artesian, or well water) and be unmodified except for limited treatment (e.g., filtration and ozonation or equivalent disinfection process). Those States that have adopted the IBWA model regulation as their State regulation provide for treatment of ''natural water'' to reduce the concentration of any substance that exceeds safety standards. The IBWA model regulation also states that the water ''may be collected and transported by pumps, pipes, tunnels, trucks, or similar devices.''

The Codex Standard for Natural Mineral Waters and Edible Ices and Ice Mixes (Codex Standard) (Ref. 1) defines ''natural mineral water'' and ''naturally carbonated natural mineral water.'' These waters are obtained from underground water-bearing strata either through natural flow or drilling. Treatments permitted for ''natural mineral water'' under the Codex standard include separation from unstable constituents by decantation or filtration that is, if necessary, accelerated by previous aeration.

The agency finds that the IBWA code and State requirements are basically consistent with FDA's informal policy on ''natural'' because the product is only minimally processed. However, there are some surface waters (e.g., water collected from glacier runoff) that may only require minimal processing to be acceptable bottled waters and, thus could qualify to be called ''natural.'' Most surface waters and ground waters under the influence of surface water require additional processing to ensure that the water is consistent in quality and, thus could not be labeled as ''natural.'' Therefore, because FDA's informal policy already encompasses bottled water, the agency concludes that it is not necessary to establish a regulation that specifically defines ''natural'' for use with bottled water.

59. One comment noted that no consideration was given to the proper use of the word ''pure.'' It stated that many bottlers misuse this word.

The agency advises that while there is no specific prohibition against the use of the term ''pure,'' it has discouraged the use of the term because it is ambiguous and may be misleading (58 FR 2897 at 2903). For example, ''spring water'' and ''pure spring water'' may be identical foods, but ''pure,'' as applied to the food, implies that other identical products are ''impure'' or ''not pure'' if they do not bear the same term on their label. In addition, the agency notes that the term ''pure'' may be confused with the term ''purified,'' and consumers may be misled into believing that bottled water labeled as ''pure'' has been treated to substantially decrease the total dissolved solids content.

The agency is not convinced that it should use its resources to define the term ''pure'' at this time but will continue to discourage its use. In addition, the agency will continue to deal with this issue on a case-by-case basis.

60. Two comments asked what bottled waters made by using well water for a source, and then diluting the water with distilled or purified water to improve hardness and taste, could be called.

Blends of different types of water, such as well water and purified water,

may be appropriately labeled as ''bottled water'' or ''drinking water.'' Truthful statements may also be made on the label to inform consumers that the product is blended, with the percentage of each type of water included.

61. Two comments stated that the name ''mountain water'' should not be permitted on the label because it is misleading to consumers.

The agency is not providing for the use of the term ''mountain water'' as the name of a bottled water product. The name of the product is ''bottled water,'' ''drinking water,'' or one or more of the terms defined in § 165.110(a)(2) as appropriate. However, if the water is from a mountain source, manufacturers may include a truthful and nonmisleading statement reflecting that fact.

62. One comment stated that there are bottlers in Canada and Alaska that bottle ''glacier water'' and asked whether they could continue to use this term to label their bottled water. It provided a definition for ''glaciofluvial'' as ''of or relating to or coming from streams deriving much or all of their water from the melting of a glacier.'' The comment stated that minerals are rarely detectable in this water, let alone environmental pollutants, and noted that the water requires little if any filtration. The comments said that the water is passed through ozonation or ultraviolet light as a precaution for total and fecal coliform bacterial counts.

FDA notes that the definition that the comment provided is not a clear definition because, under it, not all of the water need come from the melting of the glacier, and the percentage of the water actually coming from the glacier would vary significantly according to the season of the year. Therefore, FDA is not providing for this term.

FDA notes that manufacturers that bottle this category of water may state in the labeling that the source of the water is glaciofluvial. However, the statement of identity for the product is ''bottled water'' or ''drinking water.''

D. Other Label Statements

1. Mineral Content of Mineral Water

The agency tentatively concluded in the January 1993 proposal that the listing of relative mineral content is useful to consumers to characterize a given mineral water product. FDA proposed to require that if the TDS is below 500 ppm, the statement ''low mineral content'' appear on the label. In addition, the agency proposed that if the TDS of mineral water is more than 1,500 ppm, the statement ''high mineral content'' must appear on the label. FDA did not propose to define the term ''light'' or other descriptive terms as they apply to mineral water because FDA tentatively concluded that the use of only the statements ''low mineral content'' and ''high mineral content'' would be less confusing to consumers. FDA proposed that the statement of mineral content appear on the principal display panel following the statement of identity in type at least one-half the size of the type used for the statement of identity but in no case of less than one-sixteenth of an inch. The agency requested comments concerning the proposed levels defining high or low mineral content.

63. A number of comments noted that § 165.110(a)(3)(i) concerning the labeling of a product as ''low mineral content'' or ''high mineral content,'' does not refer solely to ''mineral water'' and objected to this labeling if it were to apply to all bottled waters. One comment stated that the statement ''low mineral content'' would be misleading on products such as ''artesian water,'' ''spring water,'' ''well water,'' or ''bottled water'' when they in no way claim to be mineral water, and this statement would imply a less-than-normal mineral content. One comment recommended that the regulation state ''if the TDS content of mineral water is below * * *,'' so that the regulation only would apply to products labeled as mineral water.

FDA agrees with the comments. The normal mineral content of artesian water, spring water, well water, bottled water, or any other bottled water product except for the majority of mineral waters is less than 500 ppm TDS. In fact, bottled water, except for mineral water, must comply with the provisions in the quality standard for bottled water that require that if the product contains more than 500 ppm TDS, the product be labeled as substandard (§§ 165.110 (b)(4) and (c)). In the preamble to the proposal, the agency only discussed labeling a product as ''low mineral content'' or ''high mineral content'' if the product was ''mineral water'' (58 FR 393 at 397), although the agency failed to specifically mention in the regulation that it applied only to ''mineral water.'' This failure was an oversight. Therefore, the agency is modifying § 165.110(a)(3)(i) to state that if the total dissolved solids (TDS) content of mineral water is below 500 ppm, or if it is greater than 1,500 ppm, the statement ''low mineral content'' or ''high mineral content'', respectively, shall appear on the principal display panel.

64. A number of comments objected to the labeling of mineral water as ''low mineral content'' and ''high mineral content'' and requested that § 165.110(a)(3)(i) be deleted because this labeling would be confusing to consumers. One comment opposed denoting the ''low'' or ''high'' mineral content of mineral water because flavor is more affected by specific minerals than by TDS.

FDA disagrees that the label statements concerning low or high mineral content should be deleted from the regulation. As discussed previously, the agency is requiring that mineral water contain a certain amount of minerals because consumers expect that mineral water contains some minerals. Because the mineral content of mineral water may vary greatly, and because the high and low ends of the range of mineral contents may have a significant bearing on the characteristics of the water, the agency concludes that information about the mineral level is a material fact, under section 201(n) of the act, in conjunction with the term ''mineral water.'' The agency's action establishes three broad categories, but only manufacturers of mineral waters below 500 ppm TDS or above 1,500 ppm TDS need provide the additional information on the label.

FDA agrees that the taste of some mineral waters may be affected more by specific minerals than by total mineral content. Nevertheless, if a mineral water contains less than 500 ppm TDS, it is important that consumers be made aware that the product has a low mineral content, and that it may not have the mineral taste that another mineral water may have. Many State regulations have required that mineral water contain more than 500 ppm TDS (Ref. 8), and most mineral water sold in the United States has complied with this minimum so that it could be sold in those particular States. Therefore, FDA concludes that the use of the statement ''low mineral content'' on mineral water containing less than 500 ppm TDS is appropriate to alert consumers to the fact that the water may have a lower mineral content than mineral waters that they have previously purchased.

Additionally, the agency notes that, as discussed in the proposal to this final rule (58 FR 393 at 397), a mineral content of over 1,500 ppm TDS greatly affects the taste of the water no matter what the specific minerals may be. Therefore, the agency concludes that because this information is a material fact, consumers should be informed that the product contains a high mineral content.

65. Two comments held that the statement ''low mineral content water'' on mineral water could be misleading to some consumers if, for example, they interpret it as saying that the water is low in sodium. The comment stated that low mineral content mineral waters may be relatively high in sodium.

FDA disagrees that the statement ''low mineral content'' would be misleading to consumers. The term ''low'' in this statement is referring to the overall total dissolved solids content and not to any specific mineral. However, the agency agrees that some mineral waters containing between 250 and 500 ppm TDS may contain more than an insignificant amount of sodium. Under § 101.9(a), nutrition labeling is required if the product contains more than an insignificant amount of any nutrient that is required to be included in the declaration of nutrition information under § 101.9(c). If a product labeled as ''low mineral content'' is not sodium free (i.e., contains 5 or more mg sodium per serving), nutrition labeling is mandatory, and consumers will be informed that, although the product is low in mineral content, it contains more than an insignificant amount of sodium.

66. Four comments asked whether mineral waters with a mineral content greater than 1,500 ppm could be labeled as ''rich in mineral salts.''

Another comment stated there may be confusion about the term ''high mineral content'' because it appears to be substantially similar to nutrient content claims that are allowed under the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), and in fact it may be misinterpreted by many consumers as an indication that the product may be useful as a mineral supplement.

The agency finds no merit to these comments. In the Federal Register of January 6, 1993 (58 FR 2302 at 2414), FDA adopted § 101.54(b)(1), which defines the terms ''high,'' ''rich in,'' and ''excellent source of'' to mean that the food contains 20 percent or more of the reference daily intake (RDI) or the daily reference value (DRV) of the nutrient in question per reference amount customarily consumed. The claim ''high mineral content'' is not subject to § 101.54 because the term does not describe the nutrient content of the water. FDA has not defined nutrient content claims for minerals as a category, only for individual minerals. While FDA has authorized some nutrient content claims concerning mineral content of foods, such as ''high in three minerals,'' it has not authorized ''high mineral content.'' Thus, this claim only applies to mineral water.

There is no authorization in FDA's regulations for use of a synonym for ''high'' in the statement ''high mineral content'' for bottled water because the statement is not a nutrient content claim but part of the statement of identity of the product. The term ''rich'' is not appropriate in this context because it means that a product is abundantly supplied with something of value. Although the terms ''high,'' ''rich in,'' and ''excellent source of'' have been defined as synonymous nutrient content claims, not all of these terms are appropriate when used to describe the mineral content of mineral water containing more than 1,500 ppm TDS because such water may not be an ''excellent'' or ''rich'' source of minerals of nutritional significance. Use of the term ''high mineral content,'' however, provides a quantitative contrast to the term ''low mineral content'' of mineral water containing less than 500 ppm TDS.

Therefore, FDA concludes that only the declaration ''high mineral content'' is appropriate for mineral water. Given that the statement is part of the statement of identity of the product, FDA has not provided for the use of synonyms. The statement appropriately should be as simple and as straightforward as possible.

67. One comment stated that 1,500 ppm TDS as the triggering level for the label statement ''high mineral content'' is an extremely high level. The comment suggested that the statement ''exceeds the secondary maximum contaminant level of 500 ppm,'' for mineral water containing greater than 500 ppm TDS, is a better disclosure and would help to eliminate consumer confusion over the differences in water quality standards between bottled water and public tap water.

The agency disagrees with the comment. The term ''mineral water'' has traditionally implied that the water has a higher mineral content than most water, including public tap water. As discussed in the proposal (58 FR 393 at 397), all water contains some minerals, unless it has been demineralized (Ref. 16). Thus, the agency tentatively concluded that consumers expect that a product identified as ''mineral water'' would contain at least a minimum level of minerals. This expectation is reinforced by the fact that some States (Ref. 8) have only included water that contains more than 500 ppm TDS in their definition of ''mineral water.''

The label declaration ''high mineral content'' is to inform consumers that the mineral content is high in comparison to other mineral waters. As discussed in the proposal (58 FR 393 at 397), a mineral content of more that 1,500 ppm TDS greatly affects the flavor of the water. This level is consistent with the European Community definition of ''mineral water—rich in mineral salts'' (Ref. 17) and will not hinder international trade. Thus, the comment has not persuaded the agency that 500 ppm TDS is a more appropriate minimum level than 1,500 ppm TDS for a product labeled as ''mineral water, high mineral content.''

Therefore, to ensure that consumers know that the product that they are purchasing is high in minerals as compared to other mineral waters, the agency is requiring in § 165.110(a)(3)(i) that the label of mineral water containing more than 1,500 ppm TDS include the statement ''high mineral content.''

68. Several comments recommended that FDA require that TDS content appear on the label of all bottled waters because: (1) Consumers will more easily relate bottled water designations to their specific TDS ranges, (2) consumers will have a better chance of purchasing a bottled water corresponding to their tastes if they learn to associate a particular level of TDS with those tastes, and (3) it renders unnecessary the ruling that a mineral water with a TDS higher than 1,500 ppm be labeled as ''high mineral content.'' One comment stated that consumers will rapidly relate TDS content values in the range of ''thousand(s)'' with a ''high mineral taste'' without the need for arbitrary qualifiers. It added that a TDS labeling requirement works towards establishing similar standards between Canada and the United States.

One comment stated that it would be more informative to consumers to list the TDS in the side panel because concerned consumers want hard information, not generalities like the relative mineral content statements that the agency proposed. It stated that there is a gray area between 250 and 500 ppm TDS in which some waters may taste distinctive and others may taste undistinctive, like low-TDS spring water.

FDA disagrees that it should require mandatory declaration of TDS level. The agency stated in the proposal that many consumers may not understand the relevance of a specific TDS and, thus, tentatively concluded that there is no substantive basis on which to require that this information appear on the label (58 FR 393 at 397). None of the comments provided any information that showed that consumers would understand the significance of this information and that would support a conclusion different than FDA's

tentative determination. However, the agency will not object if manufacturers include information concerning the TDS content, or any information relating to a distinctive taste of a specific product, on their labels as long as the information is truthful and not misleading.

Because many consumers will not understand the relevance of a specific TDS (Ref. 16), FDA concludes that the requirement to label mineral water as ''low mineral content'' or ''high mineral content,'' as appropriate, will be generally more informative to consumers than TDS labeling. Therefore, the agency concludes that mandatory labeling of TDS is not necessary, and that there is no substantive basis on which to require that this information appear on the label.

69. One comment remarked that all bottled water should be labeled with the percentage of minerals present and the limits allowed. Another comment encouraged actual content disclosure on bottled water labels, stating that consumers have a right to know whether any substance regulated under the Safe Drinking Water Act (the SDWA) is contained in the bottled water they purchase, even though it would have to be present at a level below the Maximum Contaminant Level (MCL) established as being permissible.

The agency disagrees that this additional labeling should be required. MCL's have not been established for all minerals or other substances that may be in bottled water. FDA established the standard of quality for bottled water to require that bottled water meet certain quality specifications or else be clearly labeled as ''substandard.'' The quality standard for bottled water is based on EPA's regulations for public drinking water (40 CFR parts 141 and 143), and EPA establishes its regulations based on health and aesthetic considerations. Thus, any contaminant present at a level lower than its maximum allowable level is not considered a safety or quality concern.

Given this fact, there is no basis to require the information that the comments requested. The information would not be a material fact, and thus there would be no basis to claim that the product is misbranded if the information is not disclosed. The presence of these substances in bottled water at levels meeting the quality standard is inconsequential. The appearance of this information on the label may be confusing and may imply that the substance is present in excessive amounts when it is not. Therefore, the agency concludes that the requested additional labeling is not warranted.

70. One comment requested that FDA add the following language to § 165.110(a)(3)(i): ''Mineral water products falling between the TDS values of 500 to 1,500 mg/L do not have to add additional terms.''

The agency notes that mineral water containing more than 500 ppm TDS and less than 1,500 ppm TDS need not bear labeling on relative mineral content. Although a specific statement to this effect is not necessary in the regulation, FDA is modifying § 165.110(a)(3)(i) to state that if the TDS of mineral water is between 500 and 1,500 ppm, no additional statement need appear. The agency concludes that this modification will clarify the regulation.

71. One comment suggested that the producers of identified, sole-source bottled water products (e.g., artesian or mineral waters) that desire to market their products based on the naturally occurring mineral contents be allowed to label their products: ''Water with (or containing) naturally occurring minerals,'' provided that the product labeling clearly identifies the water's sole source and also identifies the naturally occurring minerals. It stated that such mineral identification in the labeling of natural, identified sole-source water should not require additional nutrition information.

The agency disagrees with the comment. All water, unless it has been treated to remove minerals or has had minerals added, contains naturally occurring minerals, regardless of whether it comes from an identified single source. A statement such as ''water with naturally occurring minerals'' has the potential to be misleading to consumers because it implies that the products of competitors may contain added minerals or have had minerals removed, when, in fact, they have not. However, manufacturers may use the term ''natural'' on their bottled water labels if they follow FDA's informal policy as discussed previously (see comment 58) of this document.

The agency is not defining the statement ''water with naturally occurring minerals'' for bottled water labels at this time because it has no basis to conclude that use of the statement would not be misleading, or that it would be useful to consumers. The comment did not provide sufficient information on which to base a regulation.

2. Water From a Municipal Supply

The agency proposed to require that the phrase ''from a municipal source'' appear on the principal display panel or panels as a part of the name of the food if the water is obtained from a municipal water supply, except if the water has been treated to meet the definitions of distilled water or purified water (58 FR 393 at 399). FDA also proposed to require that the statement appear on the principal display panel following the statement of identity in type at least one-half the size of the type in which the statement of identity appears but in no case less than one-sixteenth of an inch. The agency also proposed to require that the statement immediately and conspicuously precede or follow the name of the food without intervening written, printed, or graphic matter, other than statements required by proposed § 165.110(c).

72. Two comments suggested that FDA use the term ''public water supply'' as defined by EPA rather than use the term ''municipal supply.'' The comments noted that the use of the term ''public water supply'' would avoid confusion, as FDA would be using a term that is already defined and well understood. One comment stated that questions could arise about the definition of a ''municipal supply,'' such as how many people would a supply be required to serve to meet the definition of a ''municipal supply.'' Another comment stated that the term ''public water system'' is a more appropriate term because it would include the numerous water systems that are independent water purveyors not affiliated with specific municipalities.

The agency disagrees that the statement ''from a municipal source'' should be replaced with ''from a public water supply'' or ''from a public water system'' in § 165.110(a)(3)(ii). EPA defines a ''public water system'' as a system that provides piped water for human consumption and that: (1) Has at least 15 service connections, or (2) regularly serves at least 25 persons at least 60 days per year (40 CFR 141.2). Public water systems are split into two categories: Community and noncommunity water systems. Community water systems are systems that regularly serve 25 or more year-round residents (or have at least 15 service connections used by year-round residents) (40 CFR 141.2). Many factories, restaurants, schools, parks, and rest areas also operate their own supply of drinking water. However, these systems do not have the required residential community and are, thus, considered noncommunity systems.

There are two types of noncommunity water systems: Transient noncommunity or nontransient noncommunity (40 CFR 141.2).

Transient noncommunity systems serve travelers and other transients at locations such as highway rest stops, small restaurants, and public parks. The system serves at least 25 people a day for at least 60 days per year but typically not the same 25 people each day (40 CFR 141.2). On the other hand, nontransient noncommunity water systems do serve the same 25 persons for at least 6 months a year but not on a year-round residential basis (40 CFR 141.2). Schools and workplaces that have their own water supply and serve at least 25 of the same persons each day are examples of these systems.

The agency stated in the proposal (58 FR 393 at 399) that information about the actual source of a bottled water product is a material fact in light of either the explicit (e.g., use of terms such as ''spring'' or ''well'') or implied (the presentation of the product in the bottle) representation made by a bottled water product that the product is not tap water. Information about the source of the water is necessary to ensure that consumers do not incorrectly assume that because water is sold in a bottle it is not tap water.

According to 40 CFR 142.2, a ''municipality'' means a city, town, or other public body created by, or pursuant to, State law. Municipal water sources are systems that serve municipalities. Thus the term ''municipal source'' may be too narrow to encompass all types of tap water sources. Independent water purveyors and other community systems may operate similarly to municipal water sources, rely on the same types of water (e.g., surface water), use the same type of treatments of the water, and supply the water that flows from a tap. They may differ from a municipal source only in that they are not affiliated with a municipality.

Thus, FDA agrees that water from water systems that are independent water purveyors, but that are not affiliated with specific municipalities, should bear labeling that makes clear its source. Clearly, what would be considered a municipal source would be encompassed by the definition of a community water system because a source supplying an incorporated city or town would regularly serve 25 or more people on a year-round basis (or have the minimum 15 year-round service connections). The term ''community water system'' would encompass the independent water purveyors that the term ''municipal source'' would not.

Noncommunity water systems by definition would not serve a municipality. FDA notes that some bottled water firms may meet the definition of a nontransient noncommunity system if they employ at least 25 persons and use the source water as the workplace water supply. The intent of the labeling requirement was not to include these bottled water manufacturers. Their water is considered a public water system only because they choose to use their own water source and not pipe water in from another source for their workplace water supply.

Therefore, the agency concludes that bottled water from a community water system, as defined by EPA (40 CFR 141.2), must bear source labeling. FDA finds that including all community water system sources in § 165.110(a)(3)(ii) is the logical outgrowth of the January 5, 1993, proposal because the intent of the proposal, as explained above, was to cover all tap water. Thus, FDA is revising § 165.110(a)(3)(ii) to apply to bottled water coming from a community water system as defined in 40 CFR 141.2, rather than from a municipal source. Alternatively, manufacturers may label their product as ''from a municipal source'' if appropriate. (Moreover, as explained in comment 96 of this document, there may be some instances in which ''from a public water supply'' or ''from a public water system'' is appropriate.)

73. One comment disagreed with the provision that would exempt purified water from having to be labeled as from a municipal supply. It stated that the process does not change the source.

Although the agency acknowledges that purification does not change the source, FDA concludes that the exception for purified water is appropriate. As FDA stated in the proposal (58 FR 393 at 399), consumers purchase purified water because of its treatment and resultant purity rather than because of its source. In addition, because purified water and distilled water must meet the compositional requirements of the USP monograph for purified water, there are no significant compositional differences among purified and distilled waters, regardless of the source of the water. Source information for purified waters is not a material fact because the water may be significantly different in composition than other water from that particular source. Thus, the absence of source information for purified water is not misleading under section 403(a) of the act. The comment did not present any information other than the basic argument summarized above. Thus, FDA is not making any changes in response to this comment. However, manufacturers may optionally include source information on the label of purified water.

74. Several comments stated that proposed § 165.110(a)(3)(ii) implies that if bottled water from a municipal source has been treated to meet the definition of ''purified'' or ''distilled water,'' it may be exempt from the labeling declaration of ''from a municipal source,'' whether or not the product is labeled as ''purified water'' or ''distilled water.'' The comments stated that the circumstances in which the municipal source of the water need not be disclosed should be limited, as the agency apparently intended, to when the water is labeled as ''purified'' or ''distilled.'' To effect this limitation, the comments suggested that the agency add the words ''and is labeled as such'' to the regulation.

The agency agrees with the comments. In the preamble to the proposal, the agency stated that the exemption would apply only to purified water or distilled water that was labeled as such (58 FR 393 at 399). However, FDA failed to include the statement ''and is labeled as such'' in the regulation. Therefore, FDA is modifying § 165.110(a)(3)(ii) to include this requirement.

In addition, because FDA has included the alternative terms ''deionized water,'' ''demineralized water,'' ''purified drinking water,'' and ''reverse osmosis water'' in the definition of purified water, the agency is modifying § 165.110(a)(3)(ii) to include all of the terms that may be used under § 165.110(a)(2)(iv) in the exemption.

75. One comment requested that, if the source of bottled water labeled as ''sterilized water'' is a municipal source, the product be exempt from the labeling requirements in § 165.110(a)(3)(ii).

The agency agrees that use of the terms ''sterile'' or ''sterilized'' on the label of bottled water should exempt it from the requirements of § 165.110(a)(3)(ii). Sterile water has undergone a treatment to meet strict microbiological standards. Purified water is exempt from the requirements of § 165.110(a)(3)(ii) in part because the process of purification removes many substances that are typical of the source water, and also because there are no significant differences between purified waters even though the source waters may be very different. Consumers may purchase purified water and sterile water because of the specific treatment and not the source of the water. In addition, because sterile water must meet the microbiological requirements of the USP definition for ''sterile,'' there are no significant microbiological

differences among sterile waters, regardless of the source of the water. Source information for sterile waters is not a material fact because the water may be significantly different in microbiological content than water from that particular source. Thus, the absence of source information for sterile water is not misleading under section 403(a) of the act.

Therefore, the agency is modifying § 165.110(a)(3)(ii) to exempt sterile water and sterilized water that is from a community water system from the source labeling requirement.

76. One comment stated that FDA overlooked source labeling of partially purified water from a municipal source that is processed to remove some chemicals but does not meet the requirements of purified water.

FDA disagrees with the comment and affirms that water from a community water system that is partially purified (i.e., it does not meet the definition of purified water) does not qualify for an exemption from the requirements of § 165.110(a)(3)(ii). As discussed above under comment 74 of this document, there are no significant compositional differences between purified and distilled waters, regardless of the source of the water. Partially purified water, however, effectively continues to resemble the source water. Because partially purified water does not qualify for the exemption, it is covered by § 165.110(a)(3)(ii). Therefore, if the water is partially processed, and is from a community water source, the label must declare the latter fact.

77. One comment stated that it would be misleading if a country setting is shown on the label, including lakes or ponds, and the product is drinking water processed from municipal supplies via reverse osmosis systems.

FDA agrees that the use of certain graphics on a label of bottled water may be misleading to consumers if the source of the water is different than the source depicted or implied. For example, a country setting on a label may mislead consumers into believing that the product is spring water when it is not. Section 403(a) of the act specifically states that a food shall be deemed to be misbranded if its labeling is false or misleading in any particular. If a product is from a community water system, the label must clearly disclose this fact except as provided in § 165.110(a)(3)(ii).

78. Several comments stated that FDA has not provided, except in § 129.80(a), for the long-established industry practice of adding minerals to adjust the taste of water that has been previously treated to meet the definition of ''distilled'' or ''purified water.'' One comment stated that water that is purified to meet the definition for ''purified water,'' and subsequently has minerals added back to it, should be exempt from the source labeling requirement in § 165.110(a)(3)(ii) because it has a totally different composition than other water from the municipal source. It stated that the labeling could indicate that the water was purified or distilled, and that minerals had been added for flavor. Another comment stated that this approach would allow for flexibility in labeling while providing adequate information for the consumer.

FDA advises that water from a community water system that has been treated to meet the definition of ''purified water'' in § 165.110(a)(2)(iv), and is labeled as ''purified water'' or one of its alternative names, is exempt from the labeling requirements of § 165.110(a)(3)(ii). Water with minerals added for taste is considered a multi-component food, and the labeling ''from a municipal source'' describes only the water ingredient. Thus, if minerals are added to purified water for taste, and the label states that the product is ''purified water (or any of its alternative names) with minerals added for taste,'' the product is exempt from § 165.110(a)(3)(ii) because the water ingredient meets the criteria for the exemption.

79. Some comments agreed with the requirement in § 165.110(a)(3)(ii) but stated that the name of the source, be it a municipal source, water authority, or any other public water system, should be specifically included on the label so that the consumer may obtain water quality test results, such as those maintained by the public water system or the relevant regulatory agency. One comment stated that consumers may then compare water quality results of the bottler with those of the public water system selling the water to the bottler, and consumers could contact the municipal source and ascertain whether a bottler is using a municipal source that adds fluoride to its finished water.

Other comments requested that all bottlers of water list on the label the source of the product contained in the bottle. Comments asked that, for full disclosure, bottled water labels include the name of manufacturer, address of source, and well number or spring's legal name, so that consumers will know specifically from where the water comes. One comment noted that many States require the geographic source identity. Another comment added that many companies are misrepresenting their products to the consumer by vague labeling.

FDA does not object to the optional label declaration of more specific information concerning the water source because such information may be useful to some consumers. However, the agency does not agree that it should require specific water source labeling, or that the lack of such labeling means that the label is misleading and vague.

Under section 201(n) of the act, the agency must consider whether the information is a material fact whose nondisclosure will render the labeling misleading. Under this standard, it is difficult to see why the name of the specific source, be it a public water supply, spring, or well, would be a material fact. The agency requires that the product water supply for each bottled water plant be from a source that is inspected and approved by the government agency having jurisdiction (§ 129.3(a)). The product water supply must be properly located, protected, and operated, and must be easily accessible, adequate, and of a safe, sanitary quality that is in conformance at all times with the applicable laws and regulations of the government agency having jurisdiction (§ 129.35(a)(1)). Thus, the specific name of the source is not material to ensure the safety of the product.

In addition, the water must meet the requirements of the quality standard in § 165.110(b) or be labeled as substandard. Thus, the identity of the specific source is not material to ensure the quality of the product.

Finally, in this final rule FDA is providing for the use of alternative names that generally describe the source of the water (e.g., artesian, spring, and well). Thus, consumers can have confidence that bottled water labeled as being from a certain type of water source is from a source meeting an appropriate definition.

Therefore, the agency concludes that the absence of information concerning the exact water source (e.g., specific municipal source, the well number, spring's legal name, address of the source) is not a material omission that would render the labeling misleading because bottled water must meet FDA's requirements which provide the consumer with assurances as to the safety, quality, and type of source. While the agency recognizes that some States require the geographic source identity, FDA simply is not persuaded that the additional information is a material fact that must be disclosed.

The brand name and the name of the manufacturer distinguish bottled waters as much as specific source labeling

would. According to § 101.5(a), the label of a food in packaged form must specify conspicuously the name and place of business of the manufacturer, packer, or distributor. This labeling requirement provides consumers with the necessary information to contact the firm and obtain information (e.g., the name and location of the source, the well number, or the spring's legal name) that is not provided on the label if they are interested. Therefore, FDA concludes that there is no basis on which to require that information concerning the specific source of bottled water appear on the label.

3. Water for Infant Use

The agency proposed to require notice on the principal display panel of bottled water products that are promoted for infant use that such products are not sterile (if such is in fact the case), and that they should be used as directed by a physician or by infant formula preparation instructions (58 FR 393 at 400).

80. One comment stated that § 165.110(a)(3)(iii) should read: ''When the label or labeling characterizes the bottled water in any manner * * * as for feeding infants, and the product is not commercially sterile, within the meaning of the term at 21 CFR 113.3(e), the principal display panel shall bear conspicuously the phrase * * *.'' The comment stated that a qualification of the phrase ''not sterile'' to ''not commercially sterile'' would clarify that, by use of the term ''sterile,'' the agency does not intend to require that bottled water for infant food use meet the requirements of the USP monographs for sterile waters which are compendial pharmaceutical articles in themselves. It stated that there is no safety concern that necessitates that bottled water for infant use meet a different standard than the standard applicable to hermetically sealed low-acid foods, and none has been articulated by FDA in the proposal.

The agency agrees with the comment. As discussed previously, unless the label or labeling of a product that is labeled for use in feeding infants implies that the product meets USP requirements, FDA will not require that the product meet those requirements for sterility because commercial sterility is adequate. Canned infant formula is processed to be commercially sterile, as defined in § 113.3(e), and the agency sees no reason to subject bottled water for infants to stricter requirements. Therefore, the agency is modifying § 165.110(a)(3)(iii) to state that its provisions apply when the product is not commercially sterile under § 113.3(e)(3)(i).

81. A number of comments opposed the use of the phrase ''not sterile, use as directed by physician or by labeling directions for use of infant formula'' in § 165.110(a)(3)(iii). The comments stated that infants, and even adults, do not require sterile foods but need foods that are free of pathogens, and that many health care professionals do not recommend sterilizing infant formula. Some comments submitted scientific publications to support their position that infants do not need sterile foods. They pointed out that infant medicines, oral preparations (vitamins), and breast milk are not sterile.

Comments noted that it is difficult for parents to achieve and maintain sterility in infant preparations and stated that there is no difference between infant formulas prepared using a clean method and formulas prepared with sterile water. They stated that boiling bottled water that is not sterile may not be preferable to using water as it comes from the bottle because potentially harmful trace elements from the container used to boil the water may be concentrated during boiling. The comments maintained that, in some cases (e.g., areas not served by municipal supplies), bottled water may be a more reliable and superior source of water for infant use than other sources of water.

Some comments held that the requirement for the use of the phrase ''not sterile'' on infant formula or bottled water labeling is outdated, inappropriate, and may be unnecessarily alarming to consumers. They asserted that the phrase may have the unintended but harmful effect of giving a false sense of security to parents that would cause them, and perhaps cause the preparer of the infant formula, to ignore several important sources of bacterial risk.

Comments stated that the recommendations calling for sterilization were made in the 1940's and 1950's, before the widespread practice of chlorination of municipal water supplies, and that bottled water products being marketed today go through a rigorous quality control program to eliminate pathogens. They maintained that there already are adequate industry standards in place, and that the phrase ''not sterile'' is not necessary.

Some comments pointed out that all aqueous systems contain a normal, nonpathogenic microbial content, and that the absence of such a normal microbial content could in itself be indicative of the presence of a microbial antimetabolite in the water. Comments stated that a requirement for the label statement ''not sterile'' lacks technical merit and is contrary to FDA's position of not imposing plate count limitations on all food products. They stated that FDA provided no scientific rationale, hospital survey data, epidemiological health data, physician-use surveys, bottled water surveys, or any other reasonable, objective information to support this requirement. The comments held that sterilization does not provide a level of safety assurance equal to the assurance provided by the conjunction of protecting the aquifer from all risks of contamination and compliance with current good manufacturing practices (CGMP's), as demonstrated by the absence of microorganisms that are indicators of contamination (fecal bacteria).

Other comments stated that requiring a statement that the water is not sterile would serve only to eliminate certain products from the bottled water market. They held that it would be grossly misleading, unjustified, and discriminatory to the infant water industry.

Comments stated that the labeling recommended, but not required, by FDA for infant formula is to direct parents to consult with their physicians before using the product. The comments stated that this labeling of infant formula is to ensure that the parents are using the proper type and amount of formula for their babies, not because there was or should be concern about the water source used to mix the product. These comments recommended that FDA drop the requirement in § 165.110(a)(3)(iii) entirely because such labeling gives medical advice to parents. As an alternative, comments suggested that labeling could state that ''parents should consult their physician for infant use.''

Conversely, several comments supported the proposal because: (1) Infants are a high-risk group in terms of susceptibility to infections, (2) consumers will interpret a label ''water for infant use'' as not requiring any preparation before use in infant formulas, and (3) the disclosure required for bottled water marketed for use with infants or children is consistent with the objectives of FDA in promulgating these regulations. One comment added that labeling that can mislead a consumer to use nonsterile water in the belief that it is sterile may cause needless illness and possibly deaths.

One comment stated that bottled water intended for the general population is used for a significant proportion of infants. It suggested a side

panel statement on all bottled water products such as: ''If using to prepare infant formula, follow the mixing instructions on the infant formula label.'' Another comment suggested that each label reference to use for infant formula preparation be accompanied by a statement referring the consumer to the side panel usage instructions.

However, another comment that supported the intent of the disclosure statement disagreed with the proposed labeling requirement for infant water. It stated that the proposed requirement in § 165.110(a)(3)(iii) is a backward approach to public health protection for infants. The comment stated that bottled water promoted for infant use should be required to meet strict sterility requirements.

FDA has considered these comments and, based on its consideration, concludes that labeling is necessary to inform consumers that bottled water labeled for infant use may not be sterile.

The agency generally agrees with the conclusions of the scientific publications that the commenters submitted. Although the conclusions of the articles demonstrated that infants generally do not need to consume a sterile product, one publication noted that ''it is safer to feed an infant an almost sterile formula, than to feed him a formula with an unknown amount of contamination'' (Ref. 18). Use of appropriate ingredients and procedures in the preparation of infant formula is key in providing a suitable product for infant consumption.

One study, concerning the inoculation of the digestive tracts of axenic mice with the autochthonous bacteria of mineral water, was conducted on 6-week-old mice and found that the autochthonous bacteria present in the mineral water from Vittel ''Grande Source'' were not able to establish themselves (i.e., to multiply and subsist in a great number) in the digestive tracts of axenic mice (Ref. 19). However, FDA questions whether these results apply to human infants because 6-week-old mice are past an infant stage. In addition, only one source of water was used in the study, and the results cannot be extrapolated to water from other sources.

The agency agrees with the comments that stated that nursing infants do not consume a sterile product, and that infants do not necessarily need to consume sterile products. However, although the heterotrophic bacteria present in water may not be harmful to the general population, high levels of some microorganisms, particularly opportunistic pathogens, may cause illness in some infants (Ref. 20). Parents need to be informed that bottled water labeled for infant use is not sterile because, without this statement, they may be led to believe that water labeled for infant use is sterile, and that its sterility is the characteristic that makes it appropriate for infant use. Thus, the agency concludes that bottled water intended for infant use should be at least commercially sterile or be labeled to inform consumers that it is not.

There are essentially two situations in which an infant may consume infant water: (1) When it is used to reconstitute powdered infant formula or dilute concentrated liquid formula; and (2) when it is not used as an ingredient of the infant formula but is otherwise fed to infants, especially when used directly for feeding infants. If infant water was used only in the first situation, the labeling statement on infant water to ''use as directed on the infant formula labeling'' would be sufficient (and indeed, the additional statement ''use as directed by a physician'' would be redundant, since this statement is also required on the formula label). Concerns of sterility are adequately addressed on the infant formula label because under § 107.20 (21 CFR 107.20), the product label must bear instructions for sterilization of water, bottles, and nipples when necessary for preparing infant formula for use. However, the second situation does not involve other appropriate labeling information. The second situation represents circumstances in which it would be appropriate to seek physician oversight, not only because of a potential concern about sterility, but also because of the concern about excessive feeding of water (and risk of hyponatremia) to infants.

FDA agrees that once a package has been opened, it is subject to contamination. The process of preparing infant formula may also introduce other sources of contamination. The contamination of these foods from environmental sources and during preparation may not be harmful to most infants. However, parents must be aware of the fact that bottled infant water is not sterile, so that they may take special precautions if needed. Parents may be purchasing bottled infant water rather than using other sources of water including tap water and other types of bottled water specifically because they assume that the infant water is sterile.

The agency is not advocating that parents boil bottled water that is not sterile and that is intended for infants. However, parents need to use infant water as directed by their physicians or by the labeling for infant formula. The agency stated in the final rule concerning labeling requirements for infant formula that ''potable,'' ''sterile,'' or ''pure drinking water'' must be used in preparing infant formula (50 FR 1833 at 1836, January 14, 1985). As stated previously in the response to this comment, under § 107.20(a)(3), infant formula labels must bear directions for sterilization of water, bottles, and nipples when necessary for preparing infant formula for use. In addition, § 107.20(b) requires that a pictogram appear on the label depicting the major steps for preparation of that infant formula. One of the steps in the example provided in the regulation includes an accompanying statement that sterilization is recommended, and that the infant's physician will decide if it is not required.

Thus, while it is true that recommendations for sterilization of water for infant use were made before the widespread practice of chlorination of municipal water supplies, FDA's regulations provide that sterilization should occur unless the physician decides otherwise. Parents need to consult with the infant's physician to determine whether sterilization is not necessary. The labeling requirement on bottled water is necessary to inform parents that the water is not sterile. Thus, if the physician says that sterilization of the infant's water is necessary, the parents will know that it is necessary to take appropriate steps to provide the infant with sterile water.

FDA agrees that bottled water ordinarily contains a normal microbial content unless treated. As some comments pointed out, the reason for the absence of microorganisms in bottled water may be from the presence of an antimetabolite (i.e., an antimicrobial agent) in the water. The bottled water standards allow for the optional addition of safe and suitable antimicrobial agents, and the lack of microorganisms may be the result of the addition or use of these agents. As defined in § 130.3(d), ''safe and suitable'' means that the ingredient performs an appropriate function in the food, is used at a level no higher than necessary to achieve its intended purpose, and is used in conformity with established regulations. Bottled water containing a substance, such as an antimetabolite, at a level considered injurious to health is deemed to be adulterated under section 402(a) of the act.

FDA disagrees that all bottled water labels need a side panel statement concerning infant use. Under section 201(n) of the act, in conjunction with section 701(a) of the act, the agency is authorized to require labeling if the

information is a material fact with respect to consequences that may result from the usual and customary use of the article. Because most bottled water is not consumed by infants, however, and thus, infant use is not the usual or customary use of bottled water, in the absence of other relevant statements in the labeling, only a mandatory statement on bottled water for infant use is necessary to disclose a material fact under section 201(n) of the act. Therefore, the agency concludes that the comment has not provided sufficient grounds to require that all bottled water bear this statement.

In regard to the comments stating that the labeling requirement is misleading, unjustified, and discriminatory to the infant water industry, the agency has found that this information is a material fact on infant water under section 201(n) of the act because the product is targeted for an infant subpopulation that has unique needs. Manufacturers are labeling their products with a special claim, and thus the agency is establishing a special requirement, the disclosure of a fact that is material in light of the claim, for the use of this claim.

Finally, the agency does not agree that all bottled water intended for use by infants should be sterile. As already discussed under this comment, infants do not always require sterile products. Thus, it is not necessary to require that bottled infant water be sterile.

Therefore, for the reasons discussed above, FDA concludes that the label statement, ''Not sterile. Use as directed by physician or by labeling directions for use of infant formula'' is appropriate for bottled water that is labeled for use in feeding infants if the product is not commercially sterile.

82. Three comments stated that the agency should consider limiting the sodium levels of infant waters to levels lower than those authorized for adults. They suggested limiting sodium levels to a maximum of 25 mg/L.

FDA disagrees with these comments. Sodium is an important nutrient for infants, and the agency has determined that it would not be prudent to take a regulatory approach that could cause bottlers to eliminate the sodium from their infant water products. However, FDA acknowledges that there is concern that, if sodium is consumed at high levels, infants may develop a taste for it that can have consequences later in life. The agency's infant formula regulations, in § 107.100(a) (21 CFR 107.100(a)), specify that for each 100 kilocalories of formula in the form prepared for consumption as directed on the container, the formula contain at least 20 mg, and not more than 60 mg, of sodium.

Bottled water is generally not a significant source of sodium. Data on the sodium content of the U.S. water supplies were reviewed and discussed in the April 18, 1984, final rule on the declaration of sodium content (49 FR 15510 at 15524). The data revealed that 50 percent of the water sources contain less than 3.0 mg sodium per 6 fluid ounces (oz), and that 95 percent contain less than 17.7 mg sodium per 6 fluid oz. Higher sodium levels, up to 52.9 mg per 6 fluid oz, occur in only 5 percent of the water sources.

Any bottled water, including bottled infant water, containing more than an insignificant amount of sodium (5 mg or more per 240 mL serving) must bear nutrition labeling that lists the number of mg of sodium per serving. The comment's recommended maximum level of 25 mg/L sodium is equivalent to 6 mg per 240 mL serving. Thus, any bottled water at or above the comment's recommended level will, in fact, be required to bear nutrition labeling.

Therefore, the agency concludes that no maximum level for sodium is warranted for bottled water labeled for infants because sodium is an important nutrient for infants, and bottled water generally does not contain more than an insignificant amount of sodium. Parents concerned about the amount of sodium in bottled water labeled for infant use will be alerted to the presence of more than an insignificant amount of sodium through nutrition labeling.

83. Three comments stated that the agency should consider limiting the nitrate levels of infant waters to levels lower than those authorized for adults. They suggested limiting nitrate levels to a maximum of 15 mg/L when expressed as nitrate (NO_3-) (3.4 mg/L when expressed as nitrogen (N)). The comments stated that infants are particularly at risk from ingestion of large amounts of nitrates which, at high doses, can result in cases of methemoglobinemia (blue baby syndrome).

In the Federal Register of December 1, 1994 (59 FR 61529) (hereinafter referred to as the December 1994 final rule), FDA established maximum levels of 10.0 ppm for nitrate (as N), 1 mg/L for nitrite (as N), and 10 mg/L (as N) for total nitrate and nitrite in bottled water (§ 165.110(b)(4)(iii)(A)). Bottled water exceeding these levels must be labeled as substandard under § 165.110(c)(3). FDA's maximum levels are based on maximum contaminant level goals (MCLG's) established by EPA in the Federal Register of January 30, 1991 (56 FR 3526). EPA based the MCLG's on the toxicity of nitrate in humans from the reduction of nitrate to nitrite in the human body. By reacting with hemoglobin, nitrite forms methemoglobin, which will not transport oxygen to the tissues and thus can lead to asphyxia (i.e., blue babies). If sufficiently severe, asphyxia can lead to death. Concern for adverse effects of nitrate and nitrite are primarily for infants and other special populations.

Therefore, because the toxicity of nitrate and nitrite in infants and other special populations was considered in establishing EPA's MCLG's, the agency concludes that there is no basis to establish a separate level for bottled water intended for infant use.

4. Method of Preparation of Purified Water

FDA did not propose to require that the method of preparation of purified water be stated on the label, although it stated that a manufacturer may include this information on the label if it desires. FDA requested comments from interested persons on the need to include this information on the label.

84. One comment stated that the specific purification process should be identified on the label because the public has a right to know what specific treatment the water receives.

FDA disagrees with the comment. Although the information may be useful for some consumers, the agency tentatively concluded in the proposal that there was no substantive basis on which to require that this information appear on the label. Under section 201(n) of the Act, the agency must determine, among other factors, whether the information is a material fact with respect to consequences that may result from use of the article, or in light of other representations made in the labeling, to require that information appear on the label. As discussed previously, purified water is defined compositionally, and there are no significant compositional differences among purified waters prepared through the different methods. Therefore, FDA finds that the comment has not provided an appropriate basis to justify a requirement that the specific purification process appear on the label, and it is not requiring that the method of preparation be stated on the label of purified water. However, a manufacturer may include this information on the label if it so desires.

5. Other Labeling

85. One comment asked that FDA reconsider IBWA's requested provision that any bottler whose corporate name, brand name, or trademark contains the

words ''spring,'' ''well,'' ''artesian,'' ''mineral,'' or any other derivation should be required to label each bottle with the type of bottled product in typeface at least equal to the size of the typeface of the corporate name, brand name, or trademark if the type of bottled water differs from that implied in the corporate name, brand name, or trademark. It stated that this requirement may eliminate some of the misconceptions consumers have about bottled water products on which the term ''spring water'' appears as part of the corporate name.

Another comment expressed concern about labels that use trade names or registered and unregistered trademarks on water that imply a geographic origin that is different from the actual source of the water.

The agency agrees that the use of certain corporate names, brand names, and trademarks may be misleading to consumers if the source of the water is different from the source stated or implied. Section 403(a) of the Act specifically states that a food shall be deemed to be misbranded if its labeling is false or misleading in any particular. Thus, the use of terms or vignettes that state or imply that the source of the water is different than the actual source would misbrand the food. In addition, section 403(f) of the Act states that a food is misbranded if any word, statement, or other information required by or under authority of the Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. Thus, if required labeling describing the water is not appropriately conspicuous in relation to other label representations, the product is misbranded. Therefore, the agency concludes that it already has the authority to charge misbranding under the Act in the situations discussed by the comments, and that a specific regulation is not necessary. With the establishment of the standard of identity in § 165.110(a), FDA now has particular definitions of bottled water sources that will assist the agency in enforcing these misbranding provisions of the Act.

86. One comment stated that water can support the growth of bacteria, and that opening the bottle and pouring out the water exposes the remaining water to air and can constitute an ''inoculation'' with environmental bacteria. It stated that few consumers are aware that water is a suitable growth medium for bacteria, and that FDA may consider the advisability of a storage statement, such as ''refrigerate after opening,'' in the usage instructions for bottled water.

The agency does not agree that such labeling is necessary, although it would not object to manufacturers voluntarily including a statement such as ''refrigerate after opening'' on the label. The agency has established a microbiological quality standard in § 165.110(b)(2). In the Federal Register of October 6, 1993 (58 FR 52042), FDA proposed to amend the microbiological quality provision to require that bottled water be free of coliform bacteria. The agency expects to issue a final rule in that proceeding soon. Also in the October 6, 1993 proposal, FDA requested comments on other matters concerning the microbiological quality of bottled water. The agency will address these issues as appropriate.

FDA acknowledges that some bacteria can grow in bottled water, and that bottled water, unless treated in some manner, is not sterile. Innocuous bacteria are generally already present before the consumer's first use. Additional bacteria may enter a bottle of water with exposure to the air. However, the growth of bacteria is limited in bottled water because it is not a good source of nutrients for most microorganisms.

Therefore, the agency is not convinced that a statement such as ''refrigerate after opening'' is necessary on bottled water because water is not a good growth medium for microorganisms, and because the agency has already addressed microbiological standards in its quality standard.

III. Standard of Quality

FDA proposed to move the definition for bottled water from § 103.35(a)(1) to § 165.110(a)(1) and the standard of quality for bottled water from § 103.35 to § 165.110. The agency also proposed to include existing definitions for ''lot,'' ''sample,'' and ''analytical unit'' found in § 103.3 in part 165. Because FDA was proposing to remove the quality standard from § 103.35 and include it in § 165.110, FDA tentatively concluded that the definition of these terms should be moved as well.

87. One comment objected to a provision in § 165.3(b) that states that ''a sample consists of 10 subsamples (consumer units)'' because this amount of testing is too costly. It stated that a better procedure would be to analyze at least one sample for coliforms and heterotrophic plate count for each size of container and each type of product from one lot.

This comment falls outside the scope of this rulemaking. The agency did not propose to amend the current definitions but only to move these definitions to be in proximity with the bottled water standard in part 165. Therefore, FDA is not modifying the general definitions at this time. However, persons interested in an amendment of the definitions for ''lot,'' ''sample,'' and ''analytical unit'' may petition the agency, providing recommended definitions and justification for the recommendations.

A. Exemptions for Mineral Water

The agency tentatively concluded in the January 1993, proposal that certain aesthetically based allowable levels should not apply to waters with more than 500 ppm TDS. Accordingly, the agency proposed to add a footnote to the list of allowable levels in § 165.110(b)(4)(i)(A) to provide that when water is labeled as ''mineral water,'' it will be exempt from the allowable levels for color, odor, TDS, chloride, iron, manganese, sulfate, and zinc. However, FDA did not propose to include bottled waters that are not conspicuously identified with the term ''mineral'' or that are identified as ''mineral water, low mineral content'' in this exemption because consumers will not generally expect to encounter flavors affected by high mineral content in these bottled water products. In addition, the agency did not propose to exempt mineral water from the allowable levels for copper, fluoride, silver, and turbidity. The agency requested comment concerning the need to establish a separate turbidity level for mineral water.

The agency stated in the January 1993, proposal that, if it established an allowable level for aluminum, it would propose to exempt mineral water (except low-mineral-content type mineral waters) from that standard because the standard is intended to control the aesthetic properties of the water (turbidity) and not its effect on the body. In the December 1994 final rule, the agency established an allowable level of 0.2 mg/L for aluminum in bottled water. In a proposal published elsewhere in this issue of the Federal Register, the agency is proposing to exempt mineral water from the allowable level for aluminum.

88. Three comments stated that mineral water should be subject to all of the same regulations (including the TDS maximum allowable level) as bottled water with no exceptions. However, the comments provided nothing to support this position.

The agency disagrees with these comments. For the most part, mineral water is subject to the same requirements as bottled water. FDA is only exempting mineral water that contains more than 500 ppm TDS from the maximum level requirements for chloride, iron, manganese, sulfate, zinc, and total dissolved solids in § 165.110(b)(4) (see footnote 1 to § 165.110(b)(4)(i)(A)). The agency established these maximum levels based on aesthetic factors and not health or safety factors (27 FR 2152, March 6, 1962). Most mineral waters exceed the quality requirement of 500 mg/L for total dissolved solids because they contain higher levels of these minerals than other types of bottled water. The comments have not provided any basis for modifying the exemption for mineral water, only the general request that the agency do so. Given the nature of mineral water, and the fact that the exemption it is granting only has aesthetic significance, FDA finds no reason to make a change in § 165.110(b)(4) in response to these comments.

89. Several comments supported the proposed exemption from secondary aesthetic-based maximum limits in the case of mineral water. However, they urged the agency not to limit the exemption only to mineral waters containing more than 500 mg/L. They requested that all mineral waters, regardless of their TDS content, be exempt from the secondary aesthetic-based maximum limits. The comments stated that given that there is no consumer safety concern for these secondary maximum levels, there is no reason to limit the exemption to mineral waters with a TDS above 500 mg/L. One comment noted that a mineral water with 490 ppm TDS, 0.4 mg/L iron, and 0.08 mg/L manganese and a mineral water with the same iron and manganese content but with 510 ppm TDS would be identical from an analytical perspective, but one would be substandard, and the other would not.

In the January 1993 proposal (58 FR 393 at 401), FDA stated that it did not include bottled waters that are not conspicuously identified with the term ''mineral,'' or that are identified as ''mineral water, low mineral content,'' in the exemption because consumers will not generally expect to encounter flavors affected by high mineral content in these bottled water products.

The agency agrees that there are no consumer safety concerns for these secondary maximum levels. The exemption from the quality standard for mineral water is based on allowable levels that were established for aesthetic reasons and not for consumer safety. The allowable levels from which mineral water is exempted are color and odor (physical quality) and chloride, iron, manganese, sulfate, total dissolved solids, and zinc (chemical quality). Water containing less than 500 ppm TDS will not exceed the allowable levels for chloride, sulfate, or total dissolved solids because of the high allowable levels in the standard. In addition, it is unlikely that water containing less than 500 ppm TDS would exceed the allowable levels from which mineral water is exempted.

The agency must consider whether consumers would expect products labeled as ''mineral water, low mineral content'' to contain objectionable aesthetic characteristics. Clearly, consumer expectations exist that products labeled as ''mineral water'' may contain unique aesthetic characteristics (Ref. 21). Because products containing less than 500 ppm TDS are labeled as ''mineral water,'' FDA finds that consumers will be informed that the product may contain objectionable aesthetic characteristics. Therefore, FDA concludes that the exception should also apply to ''mineral water, low mineral content.'' FDA is modifying the footnote to § 165.110(b)(3) and § 165.110(b)(4)(i)(A) to include all mineral water, including that containing less than 500 ppm TDS.

90. Some comments stated that it might be appropriate for the agency to clarify in the text of the regulation that the standards for which an exemption is provided for mineral water are aesthetically based and do not relate to a health concern.

FDA agrees that the exemptions from the allowable levels in the standard are for those that are based on EPA secondary maximum contaminant levels (SMCL's), which were established for aesthetic reasons and not for health or safety reasons, although the agency is not exempting mineral water from all of the allowable levels based on EPA's SMCL's. FDA finds that the requested modification in the footnote of the regulation would clarify the intent of the exemption. Therefore, the agency is modifying the footnote to § 165.110(b) to state that the exemptions are aesthetically based allowable levels and do not relate to a health concern.

91. Some comments urged the agency to exert caution concerning certain harmless, naturally occurring minerals that the agency characterizes as possibly causing negative aesthetic effects. They urged the agency to consider the rate of consumption by consumers of mineral waters containing these compounds before making any final decision.

The agency assures the commenters that, as it considers how EPA's SMCL's should apply to bottled water and to mineral water in particular, FDA has evaluated, and will continue to evaluate, whether the aesthetic effect of the substance will be of concern to consumers. This evaluation includes a consideration of the rate of consumption of mineral water. The agency is exempting mineral water from some but not all allowable levels that are based on EPA's SMCL's. As FDA explained in response to the previous comment, FDA has formulated the quality standards to protect consumers from any adverse effects on the body, even those that may be characterized as aesthetic.

92. One comment recommended that FDA reexamine the allowable levels for fluoride in the case of carbonated mineral water packaged in bottle sizes of 1.5 L or less because consumers will not use products packaged in these types of containers as a tap water alternative, and there will be a much lower average daily intake of these products. The comment stated that it would promote fairness towards existing mineral water bottlers by setting standards in a manner that is the same as that used for other food products. It suggested that the maximum allowable concentration of fluoride be no greater than 3.0 ppm for carbonated mineral waters, where the TDS is between 500 and 1000 ppm, and up to 6.0 ppm where the TDS is above 1000 ppm.

Another comment recommended that FDA set the fluoride limit for bottled waters at 2 ppm. The comment said that this limit is a feasible one for mineral water producers to meet. As an alternative, based on the theory that children rarely consume much of the high-mineral waters that are likely to have a high fluoride level, the comment suggested that FDA permit a fluoride content of more than 2 ppm in mineral waters, provided that the label bear this prominent warning: ''Not recommended for use by children; fluoride content can contribute to a significant risk of dental mottling.''

FDA disagrees that mineral water should be exempt from the maximum levels for fluoride for bottled water. Although mineral water may not be consumed in as great a quantity as other types of water, consumers may obtain fluoride from other sources, and thus, mineral water can contribute to excessive total consumption of this mineral.

The agency notes that the quality standard sets forth maximum levels for fluoride. FDA proposed a revised allowable level for fluoride of 2.0 ppm

for naturally occurring fluoride in bottled water (53 FR 36063 at 36067, September 16, 1988). The agency will be proceeding with that rulemaking now that EPA has published a notice of intent not to revise its fluoride drinking water standards (58 FR 68826, December 29, 1993). The label of bottled water, including mineral water, containing fluoride at levels greater than the maximum allowable levels of fluoride in § 165.110(b)(4)(ii) must bear the statement ''contains excessive fluoride'' in accordance with § 165.110(c)(3).

93. One comment stated that, if in the final rule FDA allows an exemption for sulfate in mineral water containing more than 500 ppm TDS, FDA should require that all bottled water containing sulfates display labels with language similar to the following: ''Warning, this product may contain high levels of sulfate which may cause diarrhea in sensitive population groups including infants, children, and pregnant women.'' It stated that this statement should be a minimum requirement because there is evidence that sensitive population groups are susceptible to harmful effects from products that contain sulfates.

The agency notes that in the Federal Register of December 20, 1994 (59 FR 65578), EPA proposed a MCLG and a National Primary Drinking Water Regulation (NPDWR) including a MCL of 500 ppm TDS for sulfate. EPA stated that sulfate is a unique contaminant because the health effect associated with the ingestion of relatively high levels of sulfate in drinking water (i.e., ranging from loose stools to diarrhea) is acute and temporary and is expected to last approximately 2 weeks. In addition, EPA stated that the health risk only applies to persons not already acclimated to high sulfate-containing water—infants, travelers, and new residents. EPA did not propose to amend the SMCL of 250 mg/L for sulfate that is based on aesthetic effects (i.e., taste and odor).

In the Memorandum of Understanding (MOU) concerning the control of drinking water, EPA and FDA agreed that the authority to control substances in drinking water should be vested with EPA to avoid duplicative and inconsistent regulation. Therefore, FDA is not establishing a maximum allowable level for sulfate in mineral water at this time. However, if EPA establishes an MCL for sulfate in public drinking water, in accordance with section 410 of the act (21 U.S.C. 349), FDA will consider amending the bottled water quality standard to establish a maximum allowable level for sulfate in mineral water.

The agency is exempting mineral water from the allowable level for sulfate of 250 ppm at this time because some mineral waters exceed this aesthetically determined level without causing any adverse effects (Ref. 22). However, if mineral water contains sulfate, or any other substance, at a level that is injurious to health, it is deemed to be adulterated and subject to regulatory action.

94. One comment stated that under the January 1993 proposal, bacteriologically and chemically pure artesian or mineral water, for example, that is safe for consumers would have to bear the label statement ''abnormal color and smell,'' even if the ''abnormal'' color and smell results from perfectly normal, naturally occurring dyes and gasses that are constituent to its source. The comment contended that these substances make the water unique by their individual combination and are often sought or favored by consumers, both domestically and internationally. It stated that the designation ''abnormal'' on unadulterated, uncontaminated water is an inappropriate requirement for labeling. It stated that it is especially inappropriate when the source waters are unique, identified as to their source, and otherwise pure, natural, and uncontaminated.

FDA established the physical quality standards concerning color and odor based on EPA SMCL's. These allowable levels were established for aesthetic reasons and not to ensure consumer safety. The primary purpose of a quality standard is to establish the minimum acceptable quality criteria for a product when it is offered to consumers. The quality standard for bottled water is based on the normal range of waters, and a consumer's expectation is also based on the normal range of waters. Thus, the label needs to respond to that expectation and not be tailored to individual situations. Because bottled water that does not meet the color and odor quality standard may be objectionable to consumers, the labeling requirements established in the standard continue to be appropriate for bottled water in general.

Therefore, bottled water (e.g., artesian water) that is not exempted from the quality standard and that exceeds the maximum allowable levels for color or odor must bear the label statements ''Abnormal Color'' or ''Abnormal Odor'' as required by § 165.110(c)(2). However, the agency points out that in the case of mineral water, products that do not meet the color and odor quality standard are exempted from the standard.

B. Substandard Chemical Quality Labeling

In the January 1993 proposal, FDA tentatively concluded that the general phrase, ''Contains Excessive Chemical Substances,'' may not be adequate for mineral water and proposed that the label or labeling of mineral water list the specific names of any substances present in amounts that exceed the allowable levels to which mineral water is subject (e.g., ''Contains Excessive Fluoride,'' ''Contains Excessive Trihalomethanes'').

95. Two comments objected to allowing bottlers to distribute a product that does not meet the water quality standards. One comment stated that the purpose of water quality standards is to prevent products that are below acceptable standards from being distributed to consumers. It noted that given the emphasis by the bottled water industry on the quality of bottled water versus tap water, it is quite doubtful that bottlers would print any substandard notice on the product label. Another comment questioned whether consumers would be able to interpret the significance of the phrase ''contains excessive chemical substances'' on a label. It requested that FDA require at a minimum that the specific chemical substances be listed similar to FDA's proposal for substandard mineral water.

One comment questioned whether bottled water exceeding the microbiological standards should be sold at all, regardless of how it is labeled.

FDA notes that under section 403(h)(1) of the act, a food is deemed to be misbranded if it is a food for which a standard of quality has been prescribed by regulation, and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard. Bottled water may be sold even though it contains a substance at a level that exceeds the maximum allowable levels in the quality standard so long as that substance does not adulterate the food under section 402 of the act. However, the agency points out that most of the maximum allowable levels in the bottled water quality standard are identical to EPA MCL's, and EPA establishes its levels based on health considerations. Therefore, many substances, including microorganisms (e.g., coliforms), present in amounts exceeding FDA's maximum allowable levels could be present at levels that are injurious to health.

The agency disagrees with the request that it require, at a minimum, that the specific chemical substances that exceed the maximum allowable levels in § 165.110(b)(4) to be listed on the label instead of providing the exception in § 165.110(c)(3) if the bottled water is not mineral water. The chemical content of mineral waters generally exceeds one or more allowable levels in the bottled water standard, and thus, consumers would expect mineral water to normally contain excessive chemicals. As discussed above, the agency has exempted mineral water from certain allowable levels in the quality standard on this basis. Consumers would not expect bottled water that is not mineral water to contain any excessive chemicals because the quality standard is based on the normal range of waters.

Therefore, the agency concludes that the statement ''contains excess chemical substances'' is appropriate for bottled water other than mineral water, and that it is not necessary to require more specific labeling because consumers will be alerted to the presence of chemical substances in amounts that exceed the maximum allowable levels. However, the agency does not object to the labeling of bottled water that declares the substandard presence of specific chemicals in lieu of the more general statement ''contains excess chemical substances.''

FDA notes that it has made a number of editorial modifications in § 165.110(c), including deleting and renumbering several of the provisions that appeared in the proposal, for clarity.

IV. Current Good Manufacturing Practices

A. Product Water, Operations Water, and Compliance Procedures

On January 5, 1993, the agency proposed to update the references in § 129.35 and to delete the exclusion for mineral water from testing requirements in § 129.80(g). FDA also proposed to permit firms that use a municipal water system as the source of their water to substitute municipal testing results showing full compliance with the EPA primary and secondary drinking water regulations (or a certificate to this effect) for the source water chemical contaminant testing required in § 129.35(a)(3). In addition, the agency proposed to permit firms that use a nonmunicipal water source as the source of their water to reduce the frequency of testing and the number of chemical contaminants for which they test source water if they can document that such reduction is consistent with a waiver that the State has issued under EPA regulations (§ 129.35(a)(4)(ii)).

96. Several comments suggested that FDA use the term ''public water supply'' as defined by EPA rather than use the term ''municipal supply.'' (See previous discussion in comment 72.)

The agency notes that it used the term ''municipal water system'' in proposed source water testing exemptions in § 129.35(a)(4) (58 FR 393 at 407). However, FDA agrees that in the context of this section, the term ''public water system'' is more appropriate because it includes water that is covered by EPA's drinking water regulations and State programs established under EPA programs. The intent of FDA's testing exemptions was to apply to water based on whether or not the source was a public water system. Therefore, the agency is modifying § 129.35(a)(4)(i) to include firms that use a public water system for source water and § 129.35(a)(4)(ii) to include firms that do not use a public water system.

97. One comment requested that all types of nonmunicipal sources maintain documentation on file that establishes that the source has been evaluated and determined to meet the design, operation, and maintenance requirements of the government agency having jurisdiction.

The agency advises that firms must have source approval of their product water and must maintain records of the source approval. According to § 129.3(a), an ''approved source,'' when used in reference to a plant's product water or operations water, means a source of water and the water therefrom, whether it be from a spring, artesian well, drilled well, municipal water supply, or any other source, that has been inspected, and the water sampled, analyzed, and found to be of a safe and sanitary quality, according to the applicable laws and regulations of the State and local government agencies having jurisdiction. The presence in the plant of current certificates or notifications of approval from the government agency or agencies having jurisdiction constitutes approval of the source and the water supply. Therefore, no action is necessary in response to the comment.

98. Comments stated that no standards are set to protect a well or spring and its recharge area against the intrusion of contaminants. One comment stated that there should be very strict rules governing ownership, control, and protection of the recharge area of any well or spring.

FDA agrees that the recharge area of any well or spring is a critical area. However, the agency disagrees that it is necessary to establish requirements concerning ownership, control, and protection of the recharge area of any well or spring because it has already established requirements in parts 129 and 165 to guard against the presence of contaminants in bottled water, whether from the recharge area or any other source of contamination.

First of all, the source of the water must be an approved source, and the water found to be of a safe and sanitary quality by the government agency approving the source (§ 129.35(a)). Such source approval could include the source of recharge to determine whether the water will be of a safe and sanitary quality.

In addition to meeting the requirements of part 129, bottled water must meet the requirements of the quality standard in § 165.110(b) or be labeled as substandard in accordance with § 165.110(c). The quality standard lists allowable levels for many common contaminants of recharge areas (e.g., pesticides and nitrates).

Finally, as stated in § 165.110(d), bottled water containing a substance at a level considered injurious to health under section 402(a)(1) of the act is deemed to be adulterated, regardless of whether or not the water bears a label statement of substandard quality. Therefore, the agency concludes that consumers are protected against problems that may occur in the recharge area of a spring or well used as a source for any bottled water product.

99. One comment stated that any water under the influence of surface water must be treated as surface water and should never be called ''spring water,'' ''well water,'' or ''natural water,'' regardless of whether it was collected from a spring or pumped from a well.

Another comment stated that, in general, the microbiological standards in the proposed regulation are weak and do not address the issue of ground water under the influence of surface water. The comment urged FDA to incorporate appropriate source approval standards similar to those of the State of North Carolina as a means to ensure safe bottled spring and well waters.

One comment requested that FDA state that spring water must not be under the direct influence of surface water. The comment stated that a requirement, such as an initial water particulate test during the rainy season, should be considered for spring water.

The agency agrees that any water under the direct influence of surface water is not ground water, regardless of whether it was collected from a spring or pumped from a well. EPA defines

''ground water under the direct influence of surface water'' in 40 CFR 141.2 as any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as *Giardia lamblia,* or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlates to climatological or surface water conditions. The manifestation of any of these factors evidences that the source is under the direct influence of surface water and is, therefore, not a ground water source. The definitions of ''spring water,'' ''artesian water,'' ''mineral water,'' and ''well water'' that FDA is adopting in this document require that the source be a ground water source.

EPA has published a *Consensus Method for Determining Groundwaters Under the Direct Influence of Surface Water Using Microscopic Particulate Analysis (MPA)* (Ref. 23). The consensus method is the result of a collaborative effort combining the experiences and knowledge of contributors from around the country into an acceptable consensus method. This guidance may be used to determine whether ground water is under the direct influence of surface water. This determination may be considered as part of the source approval conducted by the State or local agency having jurisdiction because, under § 129.3(a), source water must be found to be of a safe and sanitary quality.

FDA adds that it published a proposal, to amend the quality standard for bottled water to require that bottled water be free of coliform bacteria (58 FR 52042). In that proposed rule, FDA also addressed other matters concerning the microbiological quality of bottled water and requested comments on whether the agency should establish quality standard regulations for other microorganisms that may be present in bottled water and pose a health hazard. The agency will discuss the comments that it received in response to that proposal in that rulemaking.

100. One comment recommended added testing for bacteriological contaminants, trihalomethanes, lead, and copper in those situations where the bottled water manufacturers will be permitted to substitute municipal test results for the testing requirements of § 129.35(a)(3). It stated that additional testing is necessary for these contaminants because of contamination that could occur in the water distribution system.

One comment stated that allowing bottled water producers that use a municipal water source to substitute municipal testing results for the source testing requirements is reasonable only if the final product testing requirements are retained.

FDA disagrees that it should require additional testing by bottled water manufacturers who substitute public water system test results for source water testing. However, the agency agrees with the comment that stated that the substitution of public water system test results for source water testing is appropriate only if the final product is tested according to the requirements in § 129.80(g). The testing exemptions for microbiological contaminants that FDA established previously (§ 129.35(a)(3)(i)) and for chemical contaminants that FDA is establishing in this rulemaking (§ 129.35(a)(4)(i)) apply to the source water testing requirement only. Part 129 also requires testing of product water (i.e., after processing but prior to packaging) and finished product. Under § 129.80(a), product water samples must be taken after processing and before bottling by the plant and analyzed as often as is necessary to ensure uniformity and the effectiveness of the processes performed by the plant. In addition, under § 129.80(g)(1) and (g)(2), a bottled water plant must analyze a representative sample of the finished product of each type of bottled drinking water at least once a week for the presence of bacteria and at least annually for chemical contaminants.

The agency concludes that no additional chemical or microbiological testing requirements are necessary for bottled water manufacturers who use public water systems and who substitute testing results from the public water system for source water testing requirements in part 129 because FDA requires that product water and finished product water be regularly tested, and if any contaminant is contributed by the water distribution system it will be detected by the required testing. The testing requirements in § 129.80 have functioned satisfactorily since FDA adopted them in 1979 (44 FR 12173, March 6, 1979), and the agency finds no reason to amend them. FDA points out that its adoption of the source water testing exemptions in § 129.35(a)(4) in no way changes how product water and finished product water are to be tested.

101. Two comments objected to § 129.35(a)(4)(ii) regarding a waiver for nonmunicipal water used by firms for the purposes of manufacturing bottled water. They stated that under proposed § 129.35(a)(4)(ii), a firm could reduce the number of contaminants for which it tests, and the frequency with which it performs testing, if it can document that such reduction is consistent with a waiver that the State has issued under EPA regulations. The comments stated that FDA should not allow a manufacturer to establish that such a waiver exists but should require the governmental entity regulating the source to make such a determination.

The agency disagrees with the comments. Firms may reduce the frequency of testing and the number of chemical contaminants for which they test source water if they can document that such reduction is consistent with a State-issued waiver under EPA regulations for public water systems. State waivers may either eliminate the requirement for a 3-year compliance period (e.g., pesticides/polychlorinated biphenyl's (PCB's)) or reduce the frequency of testing (e.g., inorganics and volatile organic chemicals). Waivers are either based on a review of established criteria (''a waiver by rule'') or on a vulnerability assessment. In the Federal Register of January 30, 1991 (56 FR 3526 at 3562), EPA discussed the criteria for waivers by ''rule'' and ''vulnerability assessment.''

EPA may rescind waivers issued by a State where EPA determines that the State has issued a significant number of inappropriate waivers. If a waiver is rescinded, the firm must monitor in accordance with the requirements in § 129.35.

States develop their own specific vulnerability assessment procedures that use the general guidelines established by EPA. If a State chooses not to develop these procedures, firms cannot receive waivers and must monitor the source water in accordance with § 129.35.

Therefore, firms cannot decrease the amount of testing that they perform unless the State has issued a waiver to them. The presence of a current State-issued document in the plant will certify that testing of source water may be reduced. The reduction in testing is only for those contaminants covered by the waiver. If the State has not issued such a waiver, the firm must annually test for all contaminants.

FDA points out that the State-issued waiver from chemical testing requirements in § 129.35(a)(4) applies only to source water testing, and that the product water must be tested in accordance with § 129.80(a). Moreover, the finished product must be tested for all substances in accordance with § 129.80(g). Thus, FDA concludes that no modification of § 129.35(a)(4)(ii) is warranted.

102. One comment recommended that § 129.35(a)(4)(ii) be modified to require that at least two complete samples for

all contaminants be made before any reduction in testing is allowed, even when the State has issued a waiver. It stated that there can be great variation in contaminant levels in both surface and ground water sources, even with withdrawal points that are in close proximity. The comment claimed that a requirement for initial sampling is the only way to ensure that waivers are appropriate, and that, where firms make use of this testing exception, they should be required to maintain the data from initial sampling and support documentation on State waivers indefinitely rather than for the 2-year period typically required for test data.

The agency disagrees with the comment. As EPA explained in the Federal Register of January 30, 1991 (56 FR 3526 at 3562), waivers are granted on a contaminant-by-contaminant basis. Waivers for pesticides/PCB's and volatile organic chemicals (VOC's) may be granted after the firm conducts a vulnerability assessment, and the State determines that the source is not vulnerable based on that assessment. A waiver must be renewed every 3 years (*id*.). Waivers for inorganic contaminants (except nitrate/nitrite) may be granted for up to 9 years. If a firm does not receive a waiver, it must comply with the requirements in § 129.35.

The vulnerability assessment is based on a two-step waiver procedure. Step 1 determines whether the contaminant was used, manufactured, stored, transported, or disposed of in the area. In the case of some contaminants, an assessment of the contaminant's use in the treatment or distribution of water may also be required. ''Area'' is defined as the watershed area for a surface water system or the zone of influence for a ground water system and includes effects in the distribution system. If the State determines that the contaminant was not used, manufactured, stored, transported, or disposed of in the area, then the system may obtain a ''use'' waiver. Systems receiving a ''use'' waiver are not required to continue on to Step 2 to determine susceptibility. EPA anticipated that most ''use'' waivers will be for pesticides/PCB's, the use of which can be determined more easily than for VOC's. Obtaining a use waiver for the VOC's will be limited because VOC's are ubiquitous in the United States (56 FR 3526 at 3562).

If a use waiver cannot be given, that is, if the State cannot make a determination that the contaminant was not used, manufactured, stored, transported, or disposed of in the area, a system may conduct an assessment to determine susceptibility (Step 2). Susceptibility considers prior occurrence or vulnerability assessment results, environmental persistence and transport of the chemical, the extent of source protection, and EPA Wellhead Protection Program reports. Systems with no known ''susceptibility'' to contamination based upon an assessment of the above criteria may be granted a waiver by the State. If ''susceptibility'' cannot be determined, a system is not eligible for a waiver (56 FR 3526 at 3563).

EPA also established guidelines for decreased monitoring of inorganic chemicals (56 FR 3526 at 3564). States may decide, based on prior analytical results, variation in analytical results, and system changes such as pumping rates or stream flows/characteristics, to allow firms to reduce the monitoring frequency to no less than 9 years. To qualify for this waiver, at a minimum, three previous compliance samples must have been reliably and consistently less than the MCL.

The above minimum guidelines, along with any additional State requirements, provide adequate consumer protection because a firm must perform appropriate testing before a waiver will be issued. In addition, the use or susceptibility requirements of the program provide assurances that a contaminant is not present in the area. Finally, the waiver does not extend to testing of the product water and the finished product. Thus, FDA concludes that the requirements for obtaining the waiver adequately address consumer safety concerns.

Firms must document that they have a current State-issued waiver, and that the waiver complies with State requirements even though the waiver may have been issued prior to the 2-year record retention time period required by § 129.80(h). Records of the waiver must be retained for not less than 2 years after the waiver expires to meet the requirements of § 129.80(h). This retention requirement ensures that all testing records, exemptions from testing, and source approval requirements are documented for the same production batch of bottled water. However, the agency sees no need for manufacturers to maintain these records indefinitely, and the comment has not provided grounds for such a requirement.

103. One comment asked whether FDA is requiring the same sampling frequency as is required for public systems under EPA's Phase II rules (56 FR 3526) by including the waiver process in this regulation. The comment stated that, for example, inorganics could be tested at a frequency of once every 9 years according to EPA regulations. It asked whether FDA feels that such a frequency of testing provides adequate protection of source water.

The agency notes that manufacturers must comply with all the source testing requirements in § 129.35(a)(3) unless they have received a State-issued waiver for specific contaminants. As discussed above, under EPA's Phase II rules (56 FR 3526), States may issue waivers only if circumstances affecting the source and the area surrounding the source make it unlikely that the contaminant will be present. Based on its review of the evidence on these factors, the State may issue a waiver decreasing the frequency of testing from 3 to 9 years depending on the contaminant.

FDA believes that the use of a State-issued waiver is an appropriate substitute for source water testing because a State must require that the water be tested before issuing the waiver, and that the conditions relevant to the occurrence of the contaminant confirm that it is unlikely that the contaminant will be present. Again, FDA affirms that the finished bottled water must be tested at least annually for chemical contaminants and comply with FDA regulations.

104. One comment stated that, because the source has no bearing on the final product for purified or distilled water, there was reason to question whether it was necessary for a bottler that bottles only purified water to have annual chemical and radiological tests of its source water.

FDA disagrees with the comment. Source testing is important to ensure the purity of the source water. The source water must be of reasonable quality to ensure that the finished product complies with the quality requirements. If a source contains excessively high levels of some contaminants, these contaminants may not be adequately removed in the purification process. Therefore, the agency concludes that the source water for purified water should not be exempt from all the requirements of part 129. However, the agency notes that there are source water testing exemptions in § 129.35(a)(4) that may apply to the source water for purified water. If applicable, these exemptions could replace or reduce the source testing requirements for chemical contaminants.

105. One comment expressed concern about FDA regulating the testing of source water if FDA would preempt State agencies from setting standards for source water that are equivalent to State Drinking Water Standards. The comment held that the State should have the authority to set more stringent standards for source water when there is

a safety issue. It noted that water bottled in a State should have at least the same health-based quality standards as public drinking water in that State. The comment questioned whether FDA has jurisdiction over source water and was opposed to FDA regulating the water quality standards for source water, which are under the jurisdiction of the States or EPA.

The agency notes that it is not amending its regulations with respect to the testing of source water except to provide that bottlers using a public water supply may substitute certificates showing compliance with EPA's requirements for chemical contaminants for testing results, and that bottlers may use a State-issued waiver for some chemical contaminants. Section 129.35(a)(3) specifies the frequency of testing of source water for chemical, radiological, and microbiological contaminants. This sampling is in addition to any that is performed by government agencies having jurisdiction. The source is approved by the State or local government agency having jurisdiction and must comply with the applicable laws of that agency, even though those laws are more stringent than FDA requirements. FDA has traditionally relied on the laws of the State or locality having jurisdiction. Therefore, FDA concludes that there is no basis for the concern expressed by the comment.

B. Additional Definitions

Although the agency did not propose definitions for ''bottled water plant,'' ''plant operator,'' or ''water dealer,'' or to revise the definition for ''bottled drinking water,'' as IBWA requested, FDA requested comment from interested persons on the need to define or amend the definitions of these terms.

106. One comment recommended that FDA define ''bottled water plant.'' It stated that such a definition would enable States that have bottled water regulations to adopt a uniform definition.

The agency has decided that it is not necessary to adopt a definition for ''bottled water plant.'' Part 110, concerning CGMP in manufacturing, packing, and holding human food, applies to bottled water along with part 129. Under § 110.3(k), ''plant'' means the building or facility or parts thereof, used for or in connection with the manufacturing, packaging, labeling, or holding of human food. Thus, ''bottled water plant'' can be fairly interpreted, under FDA's regulations, to mean the building or facility or parts thereof, used for or in connection with the manufacturing, packaging, labeling, or holding of bottled water. In its petition, IBWA defined ''bottled water plant'' as any place or establishment in which bottled water is prepared for sale. The State of California defines ''water-bottling plant'' as any facility in which bottled water is produced (Ref. 2). Thus, FDA concludes that the definition in § 110.3(k) is adequate because it is consistent with the common definition of a bottled water plant, and that a specific definition for this term in part 129 is not necessary.

C. Unregulated Contaminants

IBWA requested revision of part 129 to provide for additional source and final product testing requirements in § 129.35 to detect and control specific unregulated contaminants. The agency did not propose to require such testing because firms are free to test for contaminants not listed in the quality standard, and they must employ appropriate quality control procedures to ensure that food is suitable for human consumption (§ 110.80). In addition, bottled water that contains a poisonous or deleterious substance is subject to regulatory action under the adulteration provisions of the act. Producers that knowingly produce and distribute adulterated bottled water may be subject to the criminal penalties of the act.

107. One comment requested that FDA amend § 129.35 to require testing of bottled water products (on at least an annual basis) for those substances listed in EPA's requirements for monitoring of unregulated contaminants. It stated that this requirement should be made immediately applicable to all bottled water producers.

The agency disagrees with the comment. Under section 1445(a) of the SDWA, EPA was required to promulgate monitoring requirements for unregulated contaminants. EPA established monitoring requirements for 51 synthetic organic chemicals in the Federal Register of July 8, 1987 (52 FR 25690), and promulgated monitoring requirements for an additional 30 synthetic organic chemicals and inorganic chemicals in the Federal Register of January 30, 1991 (56 FR 3526), that were not regulated by NPDWR's to assist EPA in establishing future NPDWR's. EPA did not establish regulations that would set forth maximum levels of these contaminants, only the requirement that public water systems monitor for them.

FDA does not believe that it is necessary to mandate testing for unregulated contaminants in bottled water because such testing is for EPA monitoring and information purposes only. As EPA identifies the need to regulate a substance from its monitoring activities, and subsequently adopts MCL's for them, FDA will promulgate applicable regulations for bottled water under section 410 of the act (21 U.S.C. 349). The comment did not provide a basis to establish a requirement for additional testing. It only requested that FDA do so. Therefore, the agency concludes that amending § 129.35 in the manner suggested by the comment is not warranted.

108. One comment stated that additional final product testing should be required for any contaminants that can enter the water through the water system or through the bottles. It stated that these contaminants, given their low levels, may not be poisonous or immediately deleterious but should not be in bottled water. The comment stated that several years ago, a California firm used a new clear resin that was subsequently found to be leaching cyclohexanes, among other things. It stated that at least one consumer injury was reported when a particularly bad batch of resin was used. The comment cited another instance of chemicals entering the water from improperly cured new piping. It stated that in these instances, the required source water monitoring for additional contaminants would not have uncovered the problem in the finished product.

FDA disagrees that it should establish additional finished product testing requirements for chemical contaminants derived from processing equipment or packaging. Substances that get into the product from product contact surfaces can vary from manufacturer to manufacturer and from lot to lot. The agency considers these substances to be indirect food additives. Thus, any product that contains such a substance whose use has not been regulated by FDA will be deemed to be adulterated under section 402(a)(2)(C) of the act (21 U.S.C. 342(a)(2)(C)) in that it contains an unsafe food additive.

Under § 129.40(a), all plant equipment and utensils must be suitable for their intended use. Included under the coverage of this section are all collection and storage tanks, piping, fittings, connections, bottle washers, fillers, cappers, and other equipment that may be used to store, handle, process, package, or transport product water. All product water contact surfaces must be constructed of nontoxic and nonabsorbent material that can be adequately cleaned and sanitized and that is in compliance with section 409 of the act (21 U.S.C. 348). Furthermore, § 129.80(f) requires that only nontoxic containers and closures be used. ''Nontoxic materials'' is

defined in § 129.3(e) as materials for product water contact surfaces, used in the transporting, processing, storing, and packaging of bottled drinking water, that are free of substances that may render the water injurious to health or that may adversely affect the flavor, color, odor, or bacteriological quality of the water. Therefore, the agency concludes that there are already adequate provisions in part 129 to address the comment's concern, and that no modifications are necessary.

D. Microbiological Control Standards

IBWA requested revision of § 129.40 to include microbiological control standards that included prohibitions from processing and bottling water with equipment that has been used to produce milk, fruit juice, or any other food product likely to contribute nutrients for microbiological growth. FDA was not persuaded by the information that IBWA submitted that the revision was needed.

109. A number of comments stated that FDA did not provide a sufficient rationale for not requiring that firms use dedicated equipment (i.e., equipment used solely for one product) for processing bottled water. One comment stated that dedicated equipment, with the exception of fillers, is an important precaution to maintain the quality of bottled water.

One comment stated that FDA should prohibit equipment used for milk production from being also used for bottled water production to protect consumers from potential health hazards. It stated that there is a greater potential of microbiological contamination of bottled water if it is produced using equipment that is also used for milk production. Another comment stated that high coliform and other bacteria counts from either inadequate cleaning or inadequately trained personnel improperly maintaining or operating the equipment has been a problem with at least one California dairy that also bottles water.

Several comments were concerned that FDA proposed no restriction on the use by water bottlers of: (1) Equipment used to transport, store, process, or bottle nonfood products (e.g., pesticides, toxic chemicals); and (2) equipment used to transport, store, process, or bottle food products likely to contaminate bottled water with nutrients for microbial growth. The comments stated that these equipment use restrictions are important public health safeguards.

Conversely, other comments supported FDA's position that dedicated lines for bottled water should not be a requirement. The comments noted that only good sanitation will ensure a low probability of microbiological contamination. One comment stated that the rationale used by the agency is supportable based on the performance history of the dairies and soft drink manufacturers that also produce bottled water.

One comment stated that certified results confirmed that bottled water produced by dairy plants equalled or exceeded the bacterial quality of that produced by dedicated water bottlers. It stated that all bottlers should be subject to the same quality and testing regulations.

One comment from a dairy stated that a requirement for dedicated equipment would eliminate that dairy from the bottled water market. The comment stated that, because the firm is experienced in high quality sanitation practices from bottling fluid milk products, it is confident of its ability to meet regulatory product standards for consumer safety.

One comment stated that, although milk, fruit juice, and other food processing operations should not be prohibited from processing bottled water, additional operational requirements should be imposed on these types of processing plants because of the likelihood of mineral deposits building up inside feed lines. The comment stated that these mineral deposits tend to shield bacteria and other pathogens from disinfection if standard disinfection practices are used.

FDA disagrees with the comments that stated that it should require dedicated equipment for processing bottled water. Under § 129.37(a), the product water-contact surfaces of all multiservice containers, utensils, pipes, and equipment used in the transportation, processing, handling, and storage of product water must be clean and adequately sanitized. All product water-contact surfaces must be inspected by plant personnel as often as necessary to maintain the sanitary condition of such surfaces and to ensure that they are free of scale, oxidation, and other residues. The presence of any unsanitary condition, scale, residue, or oxidation must be immediately remedied by adequate cleaning and sanitizing of that product water-contact surface before it is used again.

Section 129.40(a)(2) requires that all product water contact surfaces be constructed of nontoxic and nonabsorbent material that can be adequately cleaned and sanitized and that is in compliance with section 409 of the act. Furthermore, § 129.80(d) states that sanitizing operations must be adequate to effect sanitization of the intended product water-contact surfaces and any other critical area. Therefore, the agency concludes that there already are appropriate regulations in part 129 that adequately address the concerns of the comments.

As FDA stated in the proposal (58 FR 393 at 403), dedicated equipment will not ensure that the goal of production of foods with a low probability of microbiological contamination will be met. Only good sanitation will ensure that this goal is achieved. FDA does not require dedicated equipment for any other food and is not persuaded that dedicated equipment is necessary for bottled water. Bottled water containing any substance considered injurious to health is adulterated under section 402(a)(1) of the act.

Microbiological standards exist for bottled water in § 165.110(b)(2). Manufacturers must ensure that bottled water meets the microbiological quality standards in § 165.110(b)(2) or label the product as substandard. If the product is deemed to be adulterated, it cannot be sold at all.

In the Federal Register of October 6, 1993 (58 FR 52042), the agency proposed to amend the quality standard to require that bottled water be free of coliform bacteria. In addition, FDA addressed other matters concerning the microbiological quality of bottled water and requested comments on whether it should establish quality standard regulations for other microorganisms that may be present in bottled water and may pose a health risk. The agency intends to discuss the comments that it received in response to that proposal in that rulemaking.

E. Processes and Controls

IBWA requested revision of certain requirements in part 129 pertaining to filtration and germicidal treatment. FDA did not propose the requested revisions but stated that it would consider adopting them in other rulemakings. As stated above, the agency has proposed to amend the quality standard for bottled water to require that bottled water be free of coliform bacteria (58 FR 52042). In that proposal, FDA also addressed other matters concerning the microbiological quality of bottled water and requested comments on whether the agency should establish quality standard regulations for other microorganisms that may be present in bottled water and may pose a health risk. The agency will discuss the comments that it received in response to that proposal in that rulemaking.

110. Several comments urged FDA to require mandatory disinfection of

bottled water with ozone or an equivalent disinfection process. Two comments stated that failure to require treatment of mineral water with ozone or an equivalent disinfectant process would reduce the level of public health protection now provided.

However, some comments stated that bottled water need not be disinfected if it meets the standards of the European Economic Community Directive 80/777/EEC for Natural Mineral Water, July 15, 1980 (European Community), which mandates that numerous and frequent microbiological analyses of the water be done to ensure its potability in lieu of disinfection. One comment stated that mandatory disinfection of mineral water that includes bottled water products covered by the ERCS for ''natural mineral waters'' would constitute interstate commerce restraints and inappropriate regulations.

The agency does not consider it necessary at this time to require disinfection of bottled water. FDA acknowledges the strict standards for bottling water that have been adopted by the European Community and by other countries, and that, when water from protected sources is bottled under strict hygienic conditions, disinfection may not be necessary. However, the agency has established microbiological quality standards in § 165.110(b)(2), and bottled water that does not comply with the microbiological quality standard must be labeled with a statement of substandard quality, in accordance with § 165.110(c)(1). In addition, any bottled water containing a substance at a level considered injurious to health is deemed to be adulterated regardless of whether or not the label bears a statement of substandard quality. FDA has authority to take regulatory action against such product under section 402(a)(1) of the act.

Under the SDWA, EPA monitors drinking water and establishes regulations to protect the public from the adverse health effects of contaminants in public drinking water. FDA's microbiological standard, like other bottled water standards, follows EPA's requirements for drinking water. Thus, even though the microbiological standard was established for quality purposes and not safety, FDA concludes that it is adequate to protect the public health. The agency points out that should EPA require disinfection of drinking water, FDA will consider mandatory disinfection of bottled water.

F. Laboratory and Personnel Approval

IBWA requested that the CGMP regulations be revised to include requirements for certification of laboratories that analyze water and of supervisory personnel. The agency stated in the proposal that the act did not provide authority to the agency to require such approval, and that even if such authority were provided by the act, the agency lacked the resources to monitor analytical laboratories and personnel in the absence of a significant public health problem. Under § 129.35(a)(3)(iii), analysis of samples may be performed for the plant by competent commercial laboratories. The agency did not receive comments concerning laboratory personnel.

111. A number of comments urged FDA to require the use of certified laboratories to test bottled water. Comments stated that laboratories performing analyses should be validated in some manner to ensure their competency, although FDA need not be the validator. One comment stated that the public is better and more consistently protected by requiring that certified laboratories conduct the required analyses.

One comment stated that the compliance of bottled water with quality standards is directly related to the competence and reliability of the laboratories that perform the analysis for contaminants. It stated that it is not clear what FDA means by ''competent commercial laboratories.'' It asked, concerning the criteria that would be used to determine whether a laboratory is competent, who would determine whether a laboratory meets these criteria, and how would a bottler be able to determine that a laboratory is able to provide valid test results. The comment stated that the term ''competent'' is too vague and will not promote uniformity. Another comment stated that the use of uncertified, ''competent'' laboratories provides little assurance that contaminants, even when present, will be detected.

Comments stated that, because EPA requires that determinations of compliance with its MCL's be based on data generated by a certified drinking water laboratory, it would be consistent with the spirit of the MOU between FDA and EPA for FDA also to require the use of certified laboratories. The comments stated that FDA would not have to expend resources because certification programs are in place and administered by the States, with laboratories bearing the cost. They added that FDA's adoption of a laboratory certification requirement would be consistent with its stated intent of incorporating EPA drinking water analytical methods for determining compliance with bottled water quality standards.

Comments stated that bottled water laboratory testing certification is a major problem that must be addressed by FDA. They stated that, currently, a number of State regulatory agencies require that bottled water sold in their States be tested in one of their State-certified laboratories, and that this issue causes undue replication expenses for multiple State licensing and hinders free interstate commerce.

One comment stated that water bottlers should be encouraged to perform laboratory tests on site. It stated that transportation to a certified laboratory can require considerable time and can delay results. The comment stated that while it is important for a certified laboratory to serve as a reference, water bottlers would best serve the public by performing analyses on site.

The agency disagrees that it should require the use of certified laboratories to test bottled water. Under § 129.35(a)(3)(iii), analysis of the water samples may be performed for the plant by competent commercial laboratories. Thus, laboratories used to analyze bottled water must be competent whether or not they have been certified competent. A competent laboratory is one that is capable of performing the required analyses and of obtaining valid and accurate results from its analyses. Any laboratory that has been certified by EPA or a State to test drinking water is deemed to be a competent laboratory. EPA- and State-certified laboratories may be used for comparative purposes against other commercial laboratories or a plant's own laboratory. To clarify that the agency believes that EPA- and State-certified laboratories are appropriate to perform water analyses to demonstrate compliance with parts 129 and 165, FDA is amending § 129.35(a)(3)(iii) to specifically cite EPA- and State-certified laboratories as examples of competent laboratories. Failure to have been certified will not preclude a laboratory from being considered competent, but the existence of such certification will eliminate any doubt about the laboratory's competency.

FDA agrees with the comment that stated that water bottlers should be encouraged to perform laboratory tests on site. Manufacturers of many types of foods effectively perform their own routine laboratory tests on their products. To the extent possible, bottled water manufacturers should perform routine tests on bottled water. For example, testing for microbiological quality must be conducted at least once a week for source water (§ 129.35(a)(3)), as often as necessary for product water (§ 129.80(a)), and at least once a week

for the finished product (§ 129.80(g)(1)). Manufacturers can obtain quick, reliable results using their own laboratories versus the time it would take to send the samples to a commercial laboratory. However, firms must ensure the competency of their labs.

The comments have not convinced the agency that the public health will be better protected by requiring the use of certified laboratories. Regardless of the laboratory used for testing, water containing any substance at a level considered injurious to health is deemed to be adulterated (see section 402(a)(1) of the act and § 165.110(d)). Thus, the agency concludes that the public health is already protected.

The MOU between FDA and EPA delineates jurisdiction over types of drinking water but does not consider the issue of certified laboratories. Although FDA incorporates EPA methods into the quality standard, FDA has yet to be convinced that only EPA- or State-certified laboratories are capable of using EPA methods.

In response to the comment concerning States requiring additional testing in laboratories certified in their own States, the agency points out that regardless of whether it required the use of certified labs, the CGMP regulations are not preemptive and does not preclude States from establishing stricter requirements for bottled water sold in their States.

G. Annual Plant Inspection

IBWA requested that FDA revise the CGMP regulations to include a requirement for annual plant inspections to ensure compliance with the regulations. FDA stated in the January 1993, proposal that without a clear indication of a significant public health problem that could not be corrected by other means, there is no basis for FDA to adopt such a requirement for bottled water. FDA recognized, however, that IBWA requires third party inspection of its member firms, and FDA encourages such self-regulated programs within industry.

112. A number of comments stated that FDA did not provide sufficient rationale for not imposing annual plant inspection requirements on the growing bottled water industry. Several comments stated that annual inspections would reduce the likelihood that bottlers would be out of compliance for extended periods of time. One comment stated that, irrespective of who performs the inspection, FDA should require inspections at least biannually for bottled water plants. It added that FDA could contract with State regulatory agencies to accomplish these inspections.

Some comments encouraged FDA to consider third party inspections because third party inspections would ensure compliance with the regulations without requiring FDA to increase resource requirements. One comment urged FDA to modify § 129.80(g) to include a requirement for annual inspections by a qualified third party organization because it would address expressed State government concerns. It stated that some State governments require that companies submit a report issued by a recognized organization that inspects bottled water systems for compliance with part 129 (i.e., NSF International or other organization, State, or country with an inspection protocol as stringent as NSF's).

The agency disagrees with the comments and affirms that, in the absence of a significant public health problem, the hazards from bottled water do not warrant this requirement.

The monitoring/inspectional aspect of FDA's program is carried out by its field force. The agency monitors and inspects bottled water products and processing plants as part of its compliance programs for foods. There are roughly 30 compliance programs for foods covering the full range of potential food safety problems, including chemical contaminants, pesticides, filth, and food additives. About one-half of the programs are for imported foods. They provide broad guidance to the field on the agency's inspectional priorities. The agency's work plan further specifies the number of inspections, sample collections, wharf exams, analyses, and other activities in each program by district. The districts have considerable latitude as to the establishments that they inspect and the products that they examine to allow for adequate coverage of local problems and regionalized industry.

Bottled water establishments are covered under the general food safety program. Bottled water plants, along with carbonated beverage bottling plants and warehouses, generally are assigned low priority for inspection. Priorities are based on factors such as the potential for a public health problem and the violation rate of the industry. When compared to products such as low-acid canned foods and products in which *Listeria* or *Salmonella* have a significant potential to develop, bottled water products are a relatively low public health problem.

FDA's experience over the years has supported that ranking (Ref. 24). Studies of bottled water products have generally not found significant problems in these products (*id*). Consequently, bottled water plants shipping in interstate commerce are inspected about once every 4 years, unless the firm is violative. The frequency of inspection of violative firms is accelerated depending on the number, significance, and recurrence of violations. Furthermore, the districts follow up on consumer and trade complaints and other leads, as appropriate, on potentially violative bottled water products.

FDA also contracts with the States to perform some bottled water plant inspections. The FDA district offices are generally in contact with their State counterparts to exchange information about compliance problems, inspectional coverage, and new food establishments. In addition to FDA inspection, the State and local governments have their own inspection and licensing programs. Therefore, FDA concludes that it need not mandate annual plant inspections for bottled water.

113. One comment suggested that FDA consider establishing specific criteria for the operation of a bottled water plant to ensure that there is compliance with CGMP's for bottled water manufacturing. It stated that it is a lot easier for an inexperienced person to establish a bottling facility for water, capable of producing high volumes of product, than it is to start up with other food products. The comment held that an effective licensing program is needed far more for this type of product than for other foods and beverages because of a greater risk to the public.

Another comment suggested that FDA establish for its quality standards some type of monitoring timeframes along with deadlines for submission of monitoring results from State-approved drinking water laboratories.

FDA notes that it has established a CGMP regulation in part 129 for the processing and bottling of drinking water. Thus, FDA has established regulations on how to operate a bottled water plant. Bottled water produced in violation of part 129 is adulterated under section 402(a)(4) of the act in that the food has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

Part 129 requires monitoring of the source water, product water, and finished product. According to § 129.35(a)(3), samples of source water must be taken and analyzed at a minimum frequency of once each year for chemical contaminants and once every 4 years for radiological

contaminants. Additionally, source water obtained from somewhere other than a public water system is to be sampled and analyzed for microbiological contaminants at least once each week. Test and sample methods must be consistent with the minimum requirements set forth in § 165.110(b).

Product water samples must be taken after processing and before bottling, and analyzed as often as is necessary to assure the uniformity and the effectiveness of the processes performed by the plant (§ 129.80(a)).

The compliance procedures for the finished product are set forth in § 129.80(g). A firm must test a representative sample of each product for bacteriological contamination at least once a week. To ensure chemical, physical, and radiological quality, a manufacturer must take and analyze at least annually a representative sample of each product. The finished bottled water must comply with the quality standard in § 165.110(b).

Plants must retain all records required by part 129 for not less than 2 years, and these documents must be available for official review at reasonable times (§ 129.80(h)). These records must be available for FDA plant inspections. The agency notes that it does not have the resources to review bottled water test results except during FDA plant inspections.

Thus, while FDA has not established a licensing requirement for water bottlers, it has established a regulatory regime to ensure the safety and quality of bottled water products.

H. Recall Procedures

IBWA requested that FDA establish specific recall procedures for bottlers and dealers in the CGMP regulations. In the January 1993 proposal FDA found no basis for this requested revision.

114. A number of comments stated that FDA did not provide sufficient rationale in the proposal for not establishing specific recall procedures for bottlers and dealers in the growing bottled water industry.

One comment stated that, although there should not be specific recall procedures in the regulations, language that requires that a written recall plan or document be maintained by the bottler should be included in the FDA regulations. It stated that the existence of such a plan would ensure a quick response by a bottler in the event that a recall is necessary.

The agency notes that part 7 (21 CFR part 7), subpart C provides guidelines on policy, procedures, and industry responsibilities for recalls. In § 7.59, FDA advises firms to: (1) Prepare and maintain a current written contingency plan for use in initiating and effecting a recall; (2) use sufficient coding of regulated products to make possible positive lot identification and to facilitate effective recall of all violative lots; and (3) maintain such product distribution records as are necessary to facilitate locating of products that are being recalled. Such records should be maintained for a period of time that exceeds the shelf life and the expected use of the product.

The agency notes that recall is a voluntary action that takes place because manufacturers and distributors carry out their responsibility to protect the public health and from products that present risks of injury or gross deception or are otherwise defective. Recall is an alternative to an FDA court action for removing distributed products from interstate commerce.

FDA is not aware of any circumstances that establish that there is a unique problem with recalls of bottled water. Therefore, FDA concludes that the guidelines for recall procedures for foods are adequate. If a firm refuses to undertake a recall that is requested by FDA, or where FDA has reason to believe that a recall would not be effective, determines that a recall is ineffective, or discovers that a violation is continuing, it may initiate seizure, multiple seizure, or other court action.

V. Other Matters

A. Ozone

The agency proposed to specify in § 184.1563(d) that the term ''bottled water,'' for purposes of this section, does not include mineral water with TDS greater than 500 ppm. The agency stated that this action is necessary to ensure that FDA's rulemaking on the definition of bottled water in § 165.110 does not inadvertently have the effect of expanding the permitted uses of ozone.

115. Two comments objected to the exclusion of mineral water from ozonation. One of the comments stated that this exclusion conflicts with other FDA proposals to include mineral water as a bottled water. It stated that California has permitted the ozonation of mineral water for many years, and that ozonation is by far the most common means of germicidal water treatment that California mineral water firms use.

Another comment stated that there is no known reason to preclude ozonation as the antimicrobial agent for mineral water with TDS's greater than 500 ppm, provided that the maximum residual level requirements are met. It stated that the difference between mineral water and bottled water is only how much ozonation is required, at what temperature, and for how long a period of time.

The agency has reconsidered its January 1993, proposal in light of these comments and of its original decision to affirm the use of ozone in bottled water as generally recognized as safe (GRAS). In that decision (47 FR 50209, November 5, 1982), FDA noted its 1968 opinion that ozone used to disinfect potable water is GRAS if it is used in accordance with CGMP and with the recommendations of the U.S. Public Health Service. The only restriction was that the water must be potable. FDA also noted the continuous use of ozone in Europe for disinfecting municipal water for nearly 70 years without any evidence of toxicity. To ensure that the levels of any oxidation products formed are low and safe, the agency included a requirement in the GRAS affirmation regulation that the starting water, before ozonation, meet the microbiological, physical, chemical, and radiological quality standards for bottled water specified in § 103.35 (b) through (e). FDA considers this requirement to be a clarification of what it considered to be CGMP, namely, that ozone would not be used to disinfect polluted water.

A restriction on the use of ozone in mineral water with TDS greater than 500 ppm does not specifically address the goal of the proposal which was to ensure that the level of oxidation products do not exceed the levels anticipated when the GRAS affirmation regulation was issued. The oxidation products of concern from the use of ozone that were considered in establishing the GRAS regulation were those from dissolved organic material, whereas the increased solids content of mineral water consists primarily of minerals (inorganic material). Moreover, the restriction in the GRAS affirmation regulation that the use of ozone in disinfecting water be in accordance with CGMP means that only water that meets the new standard in § 165.110(b), which limits the amount of dissolved organic material that may be present, will be processed with ozone. Therefore, FDA has decided that there is no need to include the restriction limiting the TDS to 500 ppm for mineral water in the GRAS affirmation regulation for ozone.

Of relevance in this regard is the fact that bromate can be formed when ozone is used on waters that contain sufficient levels of bromide (a mineral component). EPA has conducted an evaluation of bromate and classified it as a probable human carcinogen because bromate administered to rodents in their

drinking water has been shown to produce several types of tumors in both sexes. EPA has proposed an MCLG for bromate of zero and an MCL of 10 micrograms (µg)/L (59 FR 38668, July 29, 1994). In the event EPA establishes an MCL for bromate in drinking water, then in accordance with section 410 of the Act FDA will propose to establish an allowable level for bromate in bottled water in § 165.110(b). The agency further emphasizes that water that is treated with ozone that results in bromate levels that may be injurious to health is adulterated under section 402(a)(1) of the Act.

B. Nutrition Labeling

116. One comment stated that it was concerned with the level of sodium that is allowed under the current regulations, while still allowing the label to claim that the food is ''sodium free'' or ''salt free.'' It stated that FDA permits the label to claim ''sodium free'' up to 21.1 ppm in bottled water. The comment noted that bottlers who use ion exchange in their treatment process can actually add sodium to the bottled water. The comment expressed concern about any regulation that permits advertising of ''sodium free'' when there actually is sodium in the bottled water.

The agency discussed this aspect of its ''sodium-free'' regulation in the Federal Register of January 6, 1993 (58 FR 2302 at 2321) and stated that it believes that it is appropriate to apply the term ''free'' to a nutrient when a food contains that nutrient in a dietetically trivial or physiologically inconsequential amount, even though the nutrient is present at a level at or near its reliable limit of quantitation. With modern analytical methods, the level at which the presence of a nutrient may be quantified is becoming increasingly smaller.

For example, there are almost no foods that can be said to be truly sodium free, yet the level of sodium present in some foods has no impact on the diet. The Daily Recommended Value for sodium is 2,400 mg. Thus, the agency concluded that a food containing less than 5 mg per reference amount customarily consumed (reference amount) could be considered sodium free because 5 mg is a dietarily insignificant fraction of 2,400 mg. The reference amount for bottled water is 240 mL. Therefore, the claim ''sodium free'' may be used on a bottled water label if the sodium content is less than 5 mg per 240 mL serving (21 ppm). If a ''sodium free'' claim is made, the bottled water must bear nutrition labeling in accordance with § 101.9.

The agency points out that although the term ''salt'' is not synonymous with ''sodium,'' salt refers to sodium chloride. Under § 101.61(c)(1), the term ''salt free'' may be used on the label or in labeling of foods only if the food is ''sodium free.''

FDA recognizes that some sodium may be added to water during ion exchange treatment. The label of the bottled water product treated in this manner could still qualify to bear the statement ''sodium free'' if the sodium content of the final product is less than 5 mg per 240 mL serving. However, if the sodium content is 5 mg or greater per 240 mL serving, the bottled water must bear nutrition labeling and could not be labeled as ''sodium free.''

117. One comment asked that bottled water have a qualified exception from the nutrition labeling regulations except when a claim is made that the water contains a significant level of a nutrient or nutrients. It stated that in that event, nutrition labeling for the nutrient for which the claim is made would be required. The comment stated that, for example, if a bottled water bore a claim of ''no sodium'' or ''no calories,'' it could be accompanied, on the information panel, by a statement, ''not a significant source of _____'' with the blank filled in with the items claimed in the statement. Another comment questioned why the declaration ''sodium free'' would trigger a nutritional panel for information on fat and calories when it is common knowledge that water does not contain these nutrients.

One comment requested that FDA exempt bottled water products other than mineral water from nutrition labeling. It stated that consumers do not expect any nutrition from bottled water, except perhaps for some minerals in mineral water. It suggested that bottled water with less than 250 ppm TDS (i.e., bottled water that is not mineral water) be exempted from nutrition labeling, even if fluoride is added. It stated that label space was a problem.

FDA notes that the requested exemptions and modifications for nutrition labeling fall outside the scope of this rulemaking. However, FDA discussed these issues in the final rule on nutrition labeling of January 6, 1993 (58 FR 2079 at 2149), and stated that:

> A recent IOM [Institute of Medicine] report, ''Food Labeling: Toward National Uniformity'' (Ref. 25), noted that many States have expressed concern about the heightened potential for consumer confusion because of the increased number of bottled water products on the market and the aggressive marketing and advertising claims of superiority made for them. Thus, FDA maintains its position that nutrition information relating to food must be provided for all products, including bottled and mineral water, that contain more than insignificant amounts of any of the nutrients or food components that are required to be listed, or whose label, labeling, or advertising contains a nutrient content claim or any other nutrition information in any context. For products that qualify for the simplified format, if manufacturers voluntarily declare nutrients allowable under § 101.9(c) that are not among the 14 required nutrients (e.g., potassium), the required statement ''Not a significant source of _____,'' must be used, with the blank filled in with the name of any of the 14 required nutrients or food components that are not present or are present in insignificant amounts. Moreover, if a product is voluntarily enriched or fortified with added vitamins or minerals, any such nutrients must be declared using the simplified format and followed by the above statement. Thus, a product labeled as ''bottled water, minerals added'' will have to bear nutrition labeling.
>
> * * * * *
>
> Bottled water products containing juice or other flavors are subject to the same nutrition labeling requirements as any other food. If a product meets the criteria for no nutritional significance, and no claims are made, then nutrition labeling is not required. A ''sodium free'' declaration on bottled water or on any other food label will trigger nutrition labeling, because such a claim promotes the nutritional properties of the product.

As discussed previously under comment 92 of this document, if fluoride is added to bottled water, and the label bears a statement to indicate this addition, other than in the ingredient statement, the label must bear nutrition labeling that complies with the simplified format.

C. Preemption

118. Comments from several States objected to the Federal standards of identity for bottled water preempting any State standards that are not identical to it, as some States have established regulations for bottled water that are more stringent than the FDA standard. One comment stated that it is a fundamental right of a State to make regulations and standards that are at least as stringent as or more stringent than Federal regulations and standards. It contended that FDA's role is more appropriately to establish Federal rules that will protect the public health and prevent fraudulent claims from being made that might mislead consumers of bottled water products. Another State held that it has made great efforts to ensure that bottled water meets standards at least as stringent as those set forth in EPA's primary drinking water regulations.

A number of comments requested that FDA more clearly explain the scope of

the preemption provision, and that it specifically address whether the agency interprets Federal preemption to apply to certain State requirements (i.e., labeling restrictions, laboratory certification, and certain testing requirements).

Comments asserted that many State regulations are costly and do not provide consumers with any more protection than is likely to be provided by those proposed by FDA. One comment stated that FDA should emphasize that a given State should not be allowed to place an undue burden on interstate commerce by requiring that analyses be performed only in laboratories that are certified by that State, or that analyses be performed according to an unduly restrictive frequency unrelated to public health protection. The comment added that regulatory activity by the States in areas such as standards and environmental protection is causing difficulties for those seeking to import goods into the United States.

FDA notes that, under section 403A(a)(1) of the act (21 U.S.C. 343–1(a)(1)), a State may not establish or continue in effect a standard of identity for a food that is the subject of a standard of identity under section 401 of the act if the State standard is not identical to the Federal standard. Section 403A(a)(1) of the act only effects preemption with respect to matters on which a Federal requirement exists. If there is no Federal requirement to be given preemptive effect, preemption does not occur.

Under § 100.1(c)(4), if the State requirement is identical to the Federal law, there is no issue of preemption. In addition, if the State requirement does the same thing that the Federal law does, even if the words are not exactly the same, then it is effectively the same requirement as the Federal requirement. FDA's view, as embodied in § 100.1(c)(4), is that such a State or local requirement is consistent with the Federal requirement. Therefore, the only State requirements that are subject to preemption are those that are affirmatively different from the Federal requirements on matters that are covered by section 403A(a) of the act.

FDA acknowledges that some stringent State laws will be preempted by less restrictive Federal regulations. However, one of the goals of the national uniformity provisions of the 1990 amendments was to give industry some relief from some types of State requirements that interfere with their ability to market products in all 50 States in an efficient and cost-effective manner (Statement of Rep. Madigan, 136 Congressional Record H12954 (October 26, 1990)). Thus, in enacting the 1990 amendments, Congress apparently decided that even though Federal requirements may preempt more restrictive State requirements in certain instances, the net benefits from national uniformity in these aspects outweigh the loss in consumer protection that may occur as a result.

The agency notes that certain State laws and regulations will not be preempted because FDA's requirements have not been given preemptive effect. Therefore, a State will not be precluded from enforcing its provisions in such circumstances. The agency points out, for example, that FDA has not sought to give preemptive effect to part 129. Therefore, if a State has stricter requirements than those in part 129, the State standard is not preempted by the Federal requirement.

The agency advises that, in those instances where a State requirement is preempted and the State believes that there are significant protections of the public that will be lost as a result, the State may petition the agency to modify the standard in question. FDA intends to give careful consideration to any such petitions that it receives.

119. Some comments contended that many States have bottlers whose products do not cross State lines, thereby avoiding compliance with FDA regulations. They suggested that the regulation should include all bottlers regardless of intrastate/interstate sales.

One comment from a State contended that by proposing to apply these standards only to interstate manufacturers, FDA establishes an undue logistical burden on regulatory agencies, as they would have to establish two levels of regulation. The comment argued that more consistent regulation is possible by applying the same standards to all bottled water firms that desire to sell their products in a particular State.

The agency advises that the act only applies to food that is in, or is intended to be shipped in, interstate commerce. Sections 301 and 304 of the act (21 U.S.C. 331 and 334) specifically describe prohibited acts and liability for seizure of food that is held for sale in, is in, or has been shipped in interstate commerce. FDA encourages States to apply the Federal standard to both interstate and intrastate commerce to eliminate two levels of regulation and to avoid undue logistical burdens.

VI. Conclusions

After review and consideration of the comments received in response to the January 1993 proposal, FDA concludes that it should amend part 129 and establish part 165 as set forth in the proposal but with the specific modifications to the proposed regulation discussed in this document. For the purposes of this final rule, certain changes, in addition to those discussed in this document, were made for editorial purposes, clarity, and consistency only. These changes do not modify any matter of substance.

VII. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (58 FR 393, January 5, 1993). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VIII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is ''economically significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affect in a material way a sector of the economy, competition, or jobs. A regulation is considered ''significant'' under Executive Order 12866 if it raises novel legal or policy issues.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. In compliance with the Regulatory Flexibility Act, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

In the economic assessment to the proposal in this rulemaking (58 FR 393), FDA considered the costs and benefits of taking this action. FDA estimated compliance costs to be between $18 million and $21 million and benefits to be approximately $35 million plus the value of any increase in interstate

commerce that might occur because of the elimination of conflicting State regulations. Thus, benefits were estimated to exceed costs by from $14 million to $17 million, plus the value of any increase in interstate commerce in bottled water.

The comments to the proposal discussed three issues relevant to the economic assessment. The first issue involves the ability of the product definitions adopted in this final rule to communicate information about bottled water products to consumers. The second issue involves the cost of label changes. The third issue involves the economic consequences of the definitions and labeling requirements adopted in this final rule for particular bottled water manufacturers.

A. Ability of Definitions To Communicate Information to Consumers

Some comments suggested or provided data indicating that some of the definitions for particular types of bottled water adopted in this final rule may not correspond to some consumers' current ideas about the essential features of various types of bottled water. The implication of these comments is that the definitions adopted in this final rule will generate confusion over the characteristics of these products.

Although FDA acknowledges that some of the definitions may not correspond to some consumers' current ideas about the essential features of some types of bottled water, this phenomenon does not necessarily imply that confusion over these products will be increased by this final rule. In States in which these products are not currently defined, the terms currently used to refer to various bottled water products may also not correspond to some consumers' current ideas about the essential features of those types of bottled water. Similarly, in States in which these products are already defined, the State definitions may also not correspond to some consumers' current ideas about the essential features of those types of bottled water.

Other comments suggested that alternative definitions could be adopted that would be more consistent with most consumers' current ideas about the essential features of various types of bottled water than the definitions adopted in this final rule. These comments imply confusion will be greater under the definitions adopted in this final rule than under the alternative definitions. Similarly, some comments suggested definitions already adopted by particular States are more consistent with consumers' current ideas about the essential features of various types of bottled water than the definitions adopted in this final rule. These comments imply confusion will be increased if existing state definitions are superseded by the definitions adopted in this final rule.

For example, a number of comments suggested that most consumers believe ''spring water'' must be extracted from the natural orifice of a spring and not from a bore hole. This final rule defines ''spring water'' to include water extracted from both the natural orifice of a spring and from a bore hole tapping the underground formation feeding the spring. The comments imply the definition of ''spring water'' adopted in this final rule will generate greater confusion over the characteristics of this product than would a definition specifying that ''spring water'' be extracted from the natural orifice of a spring. As discussed in the preamble to this document, FDA believes that these comments are in error, and that most consumers do not believe ''spring water'' must be extracted from the natural orifice of a spring.

Another comment discussed the results of a survey in which the majority of respondents thought ''artesian well water'' flowed to the surface due to natural pressure. In contrast, the geological definition of an artesian well does not imply water from this type of well flows to the surface due to natural pressure. The definition of ''artesian well water'' adopted in this final rule is consistent with the geological definition of an artesian well and does not require that this type of water flow to the surface due to natural pressure. The comment suggested the definition adopted in this final rule will create more confusion over the characteristics of this product than would a definition specifying that ''artesian well water'' flows to the surface due to natural pressure.

FDA acknowledges that many consumers may be unaware of the geological definition of an ''artesian well,'' and that, in the short run, the definition of ''artesian well water'' adopted in this final rule may lead some consumers to be confused over the characteristics of this product. However, in the long run, this confusion will be less than the confusion that would be generated if FDA failed to adopt a definition for this term or adopted a definition that failed to correspond to the accepted geological definition of an artesian well. Adopting a standardized definition for this term will increase the ability of interested consumers to interpret this term. Adopting a standardized definition consistent with accepted geological terminology will increase the ability of interested consumers to attain information on this type of water.

Comments also discussed a number of other elements of the definitions adopted in this final rule. These comments are addressed in the preamble to this document. These comments do not provide sufficient information to establish that alternative definitions would be more consistent with most consumers' current ideas about the essential features of various types of bottled water than the definitions adopted in this final rule.

B. The Cost of Label Changes

Comments provided a wide range of estimates of the cost of relabeling bottled water products to conform to the proposed definitions and labeling requirements. One comment suggested label changes will cost $2,000 per product, per location, not including the cost of the actual label. Another comment suggested the cost of each label plate change alone will be $200. Another comment suggested it will cost a single firm ''hundreds of thousands of dollars'' to change their labels.

In the economic assessment of the proposal in this rulemaking, FDA used an average relabeling cost of $45,000 per label change. This cost estimate was based on information previously provided by a bottled water manufacturer. Although the comments suggest the cost of relabeling may be highly variable across firms, and that the cost of relabeling may be lower than $45,000 per label for many firms, the comments do not provide sufficient information to determine an appropriate adjustment in the average cost of relabeling.

Some comments implied that changes in advertising would also be required to accommodate the product definitions established under this final rule. In the economic assessment to the proposal in this rulemaking, FDA did not consider these costs because FDA believed the proposed definitions were sufficiently broad that no firm legally selling a given type of bottled water would be unable to do so because of the proposed regulation.

One comment suggested 44 brands of bottled water currently marketed as mineral water in the United States would no longer be able to be marketed as mineral water under this final rule. However, the only brands listed in this comment were Mountain Valley, Volvic, and Poland Spring. Based on the information available to the agency, this comment is in error. It appears that no

mineral water is actually being marketed under these brand names.

Another comment suggested most of the mineral water sold in the world, including the U.S. market, is produced in Europe, and that these products currently exhibit a wide range of total dissolved solids (TDS) levels, from under 100 mg/L to over 1,000 mg/L. The implication of this comment is that some mineral water produced in Europe with less than 250 ppm TDS is currently being marketed as mineral water in the United States and would no longer be able to be marketed as mineral water under this final rule. However, this comment did not identify any European brands that would actually be affected in this manner, and FDA is not aware of any such brands.

FDA, therefore, has no information that this final rule will require extensive modification of existing advertising.

C. Economic Consequences of Definitions and Other Labeling Requirements on Particular Bottled Water Manufacturers

A number of comments suggested that the definitions and the labeling requirements in this final rule will have a negative impact on the sales of some bottled water products and thus a negative impact on some bottled water manufacturers.

Two comments suggested that some water currently sold as mineral water would no longer be able to be sold as mineral water under this final rule, and that this would have a negative impact on the sales of those products. This issue is different from the advertising cost issue, which is the context in which these same comments were discussed in the preceding section. However, FDA's response to these comments is the same in this context as in the context of advertising costs. FDA is not aware of any brand of mineral water that will no longer be able to be marketed as mineral water under this final rule.

Another comment noted the definition of ''bottled water'' does not allow for the addition of ingredients such as minerals for flavor, sodium fluoride, flavors which comprise less than one percent by weight, and carbon dioxide. According to this comment, many products currently sold simply as ''bottled water'' contain these ingredients, and that by causing these products to be labeled differently, this final rule will generate a tremendous adverse economic impact on the firms producing these products. FDA believes this comment is in error because it is currently illegal to sell water containing these ingredients as simply ''bottled water,'' and FDA is not aware of any products that are labeled in this manner.

Another comment suggested that if drinking water is not recognized by FDA as a specific type of bottled water, severe economic repercussions would occur for companies that currently sell bottled drinking water. This final rule does not define ''drinking water'' as a specific type of bottled water, although it does allow for the use of the term ''drinking water'' as a synonym for ''bottled water.'' However, this comment provided no information to support the claim that consumers believe drinking water is a specific type of bottled water. In addition, nearly all bottled water sold in the United States meets the conditions suggested in this comment as being peculiar to drinking water. Therefore, FDA does not believe the sales of drinking water will be significantly affected by this final rule.

Another comment suggested that the additional labeling requirements for bottled water marketed for use in infant formula will cause a negative impact on the sales of these products and will effectively destroy this product line. However, the comment provided no information to support this claim. Therefore, there is no basis for FDA to take any action in reliance on this comment.

D. Conclusions

The economic assessment to the proposal in this rulemaking (58 FR 393) estimated net benefits of $14 million to $17 million plus the value of any increase in interstate commerce that might occur because of the elimination of conflicting State regulations.

The previous economic assessment did not consider the potential effect of the definitions and labeling requirements on the level of consumer confusion over bottled water products. Accounting for this effect will probably increase estimated net benefits. However, FDA has insufficient information to estimate this increase in net benefits.

In addition, the definitions and labeling requirements adopted in this final rule may result in a decrease in the sales of some products and an increase in the sales of other products. However, FDA has insufficient information to determine the size or significance of these effects.

Therefore, FDA estimates that the benefits of this final rule will exceed the costs by $14 million to $17 million, plus the value of any increase in interstate commerce which might occur because of the elimination of conflicting State regulations and the value of any reduction in consumer confusion over these products.

IX. Effective Date

FDA proposed that any final rule that was issued based upon the proposal would become effective 180 days following issuance of the final rule.

120. One comment asked FDA to consider the cost and phase- in considerations for bottled water companies whose main business involves 3-, 5-, or 6-gallon reusable polycarbonate silk-screened bottles. The comment stated that these bottles, which are generally recycled when no longer fit for use, cost approximately $4 to $5 each and have a normal life span of 5 to 7 years, although they can last 10 years or longer. It stated that a company with about $6 million in sales has an inventory of about 200,000 bottles or a bottle investment of $800,000 to $1,000,000. The comment maintained that any change in labeling requirements has major potential expense implications for bottlers using 3-, 5-, or 6-gallon polycarbonate silk screened bottles. It held that any relabeling of these bottles with adhesive labels can be costly and presents potential problems in the washing process. It asked that consideration be given to extended phase-in periods for reusable bottles where a change in labels is required because of the new regulations.

Under section 403(g) of the act, a food is deemed to be misbranded if it purports to be, or is represented as, a food for which a definition and standard of identity has been prescribed by regulation unless it conforms to such definition and standard, and its label bears the name of the food specified in the definition and standard. Thus, all bottled water labels must bear appropriate labeling in conformance with an effective standard of identity.

FDA recognizes that some bottled water labels will have to be modified to comply with the standard of identity for bottled water, even though the definitions are based on current meanings of terms. The agency has provided for additional nomenclature (e.g., ''drinking water'') in this final rule, and as a result, many label changes that the comment may have anticipated will not be required.

However, FDA realizes that it may be a hardship for some firms to make required label changes on reusable polycarbonate silk-screened bottles because these bottles are used for years before replacement, and replacement of an entire stock would be burdensome by the effective date of this final rule. Therefore, the agency is allowing an

alternative means of compliance whereby the labeling information required by the standard of identity that is otherwise required on reusable polycarbonate silk- screened bottles may be placed on the customer invoice or bill of lading that is provided with each delivery. This alternative means of compliance is provided in lieu of having the labeling information required by the standard of identity permanently affixed to an existing bottle as otherwise required by section 201(k) of the act. This alternative means of compliance only applies to information on the polycarbonate silk-screened bottles and does not apply to information on the bottle cap.

The special labeling provision is provided for currently existing containers. As a firm replaces the polycarbonate silk-screened bottles presently in use with new ones, the required information must be permanently affixed to the new bottles. To fulfill the intent of the act, all labeling on the invoice or bill of lading must be in compliance with FDA requirements. The agency notes that this alternative means of compliance is consistent with that established for nutrition labeling under § 101.9(g)(9).

X. References

The following information has been placed on display in the Dockets Management Branch (address above), and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday.

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2. State of California, Chapter 639, Assembly Bill No. 170, September 15, 1987.

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4. Barness, Lewis A., Nutrition and Oral Health, ''Pediatric Nutrition Handbook,'' 3d Ed., American Academy of Pediatrics, Elk Grove Village, IL, 1993.

5. Heath, R.C., United States Geological Survey, ''Basic Ground-Water Hydrology,'' Water-Supply Paper 2220, United States Government Printing Office, 1989.

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8. Davis, S.A., memorandum to file, ''A Comparison of Definitions for Mineral Water,'' May 11, 1995.

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10. Sax, N.I., and R.J. Lewis, Sr., ''Hawley's Condensed Chemical Dictionary,'' Van Nostrand Reinhold Company, 1987.

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13. Guralnik, David B., ''Webster's New World Dictionary of the American Language,'' Warner Books, Inc., 1983.

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18. Lathrop, Donald B., ''Bacteriological Counts on Infant Formulas Mixed in the Home,'' *Archives of Pediatrics*, 73:451, 1956.

19. Ducluzeau, R., S. Dufresne, and J.M. Bochand, ''Inoculation of the Digestive Tract of Axenic Mice with the Autochthonous Bacteria of Mineral Water,'' *European Journal of Applied Microbiology*, 2:127, 1976.

20. ''Guidelines for Drinking-Water Quality,'' vol. 1, d. ed., World Health Organization, 1993.

21. Mottram, V.H., ''Human Nutrition,'' Edward Arnold Publishers, Ltd., 1963.

22. Allen, H.E., M.A. Halley-Henderson, C.N. Hass, ''Chemical Composition of Bottled Mineral Water,'' *Archives of Environmental Health*, vol. 44 (No. 2), p. 102, March/April 1989.

23. Vasconcelos, J. and S. Harris, ''Consensus Method for Determining Groundwaters Under the Direct Influence of Surface Water Using Microscopic Particulate Analysis,'' USEPA Manchester Environmental Laboratory, Port Orchard, WA, October 1992.

24. Troxell, T., ''Role of the FDA in Regulating Bottled Water,'' Proceedings of the Bottled Water Workshop, A Report Prepared for the Use of the Subcommittee on Energy and Commerce, U.S. House of Representatives, U.S. Government Printing Office, Washington, DC, 1990.

25. Committee on State Food Labeling, Food and Nutrition Board, Institute of Medicine, National Academy of Sciences, ''Food Labeling: Toward National Uniformity,'' National Academy Press, Washington DC, 1992.

List of Subjects

21 CFR Part 103

Beverages, Bottled water, Food grades and standards.

21 CFR Part 129

Beverages, Bottled water, Food packaging, Reporting and recordkeeping requirements.

21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

21 CFR Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Chapter I is amended as follows:

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

1. The authority citation for 21 CFR part 103 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 410, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 349, 371, 379e).

Subpart B—[Reserved]

2. Subpart B, consisting of § 103.35 *Bottled water*, is removed and reserved.

PART 129—PROCESSING AND BOTTLING OF BOTTLED DRINKING WATER

3. The authority citation for 21 CFR part 129 continues to read as follows:

Authority: Secs. 402, 409, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 348, 371, 374); sec. 361 of the Public Health Service Act (42 U.S.C. 264).

4. Section 129.35 is amended by revising paragraphs (a)(3)(ii) and (a)(3)(iii) and by adding new paragraph (a)(4) to read as follows:

§ 129.35 Sanitary facilities.

* * * * *

(a) * * *

(3) * * *

(ii) Test and sample methods shall be those recognized and approved by the government agency or agencies having jurisdiction over the approval of the water source, and shall be consistent with the minimum requirements set forth in § 165.110(b) of this chapter.

(iii) Analysis of the sample may be performed for the plant by competent commercial laboratories (e.g., Environmental Protection Agency (EPA) and State-certified laboratories).

(4) *Source water testing exemptions.* (i) Firms that use a public water system for source water may substitute public water system testing results, or certificates showing full compliance with all provisions of EPA National Primary and Secondary Drinking Water Regulations pertaining to chemical contaminants (40 CFR parts 141 and 143), for the testing requirements of § 129.35(a)(3).

(ii) Firms that do not use a public water system as the source of their water may reduce the frequency of their testing of that source, as well as the number of chemical contaminants for which they test the source water, if they can document that such reduction is consistent with a State-issued waiver under EPA regulations (40 CFR parts 141 and 143).

(iii) The finished bottled water must comply with bottled water quality standards (21 CFR 165.110(b)) and section 402(a)(1) of the act dealing with adulterated foods.

* * * * *

5. Section 129.80 is amended by revising the introductory text of paragraph (g) to read as follows:

§ 129.80 Processes and controls.

* * * * *

(g) *Compliance procedures.* A quality standard for bottled drinking water is established in § 165.110(b) of this chapter. To assure that the plant's production of bottled drinking water complies with the applicable standards, laws, and regulations of the government agency or agencies having jurisdiction, the plant will analyze product samples as follows:

* * * * *

6. New part 165 is added to read as follows:

PART 165—BEVERAGES

Subpart A—General Provisions

Sec.
165.3 Definitions.

Subpart B—Requirements for Specific Standardized Beverages

165.110 Bottled water.

Authority: Secs. 201, 401, 403, 403A, 409, 410, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 343A, 348, 349, 371, 379e).

Subpart A—General Provisions

§ 165.3 Definitions.

(a) A *lot* is:

(1) For purposes of determining quality factors related to manufacture, processing, or packing, a collection of primary containers or units of the same size, type, and style produced under conditions as nearly uniform as possible and usually designated by a common container code or marking, or in the absence of any common container code or marking, a day's production.

(2) For purposes of determining quality factors related to distribution and storage, a collection of primary containers or units transported, stored, or held under conditions as nearly uniform as possible.

(b) A *sample* consists of 10 subsamples (consumer units), one taken from each of 10 different randomly chosen shipping cases to be representative of a given lot, unless otherwise specified in a specific standard in this part.

(c) An *analytical unit* is the portion(s) of food taken from a subsample of a sample for the purpose of analysis.

Subpart B—Requirements for Specific Standardized Beverages

§ 165.110 Bottled water.

(a) *Identity*—(1) *Description.* Bottled water is water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents. Fluoride may be optionally added within the limitations established in § 165.110(b)(4)(ii). Bottled water may be used as an ingredient in beverages (e.g., diluted juices, flavored bottled waters). It does not include those food ingredients that are declared in ingredient labeling as ''water,'' ''carbonated water,'' ''disinfected water,'' ''filtered water,'' ''seltzer water,'' ''soda water,'' ''sparkling water,'' and ''tonic water.'' The processing and bottling of bottled water shall comply with applicable regulations in part 129 of this chapter.

(2) *Nomenclature.* The name of the food is ''bottled water,'' ''drinking water,'' or alternatively one or more of the following terms as appropriate:

(i) The name of water from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer is ''artesian water'' or ''artesian well water.'' Artesian water may be collected with the assistance of external force to enhance the natural underground pressure. On request, plants shall demonstrate to appropriate regulatory officials that the water level stands at some height above the top of the aquifer.

(ii) The name of water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure is ''ground water.'' Ground water must not be under the direct influence of surface water as defined in 40 CFR 141.2.

(iii) The name of water containing not less than 250 parts per million (ppm) total dissolved solids (TDS), coming from a source tapped at one or more bore holes or springs, originating from a geologically and physically protected underground water source, may be ''mineral water.'' Mineral water shall be distinguished from other types of water by its constant level and relative proportions of minerals and trace elements at the point of emergence from the source, due account being taken of the cycles of natural fluctuations. No minerals may be added to this water.

(iv) The name of water that has been produced by distillation, deionization, reverse osmosis, or other suitable processes and that meets the definition of ''purified water'' in the United States Pharmacopeia, 23d Revision, January 1, 1995, which is incorporated by reference in accordance with 5 U.S.C. 551(a) and 1 CFR part 51. (Copies may be obtained from the United States Pharmacopial Convention, Inc., 12601 Twinbrook Pkwy., Rockville, MD 20852 and may be examined at the Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC), may be ''purified water'' or ''demineralized water.'' Alternatively, the water may be called ''deionized water'' if the water has been processed by deionization, ''distilled water'' if it is produced by distillation, ''reverse osmosis water'' if the water has been processed by reverse osmosis, and ''_____ drinking water'' with the blank being filled in with one of the defined terms describing the water in this paragraph (e.g., ''purified drinking water'' or ''deionized drinking water'').

(v) The name of water that, after treatment and possible replacement of carbon dioxide, contains the same amount of carbon dioxide that it had at emergence from the source may be ''sparkling bottled water.''

(vi) The name of water derived from an underground formation from which water flows naturally to the surface of the earth may be ''spring water.'' Spring water shall be collected only at the spring or through a bore hole tapping the underground formation feeding the spring. There shall be a natural force causing the water to flow to the surface through a natural orifice. The location of the spring shall be identified. Spring water collected with the use of an external force shall be from the same underground stratum as the spring, as shown by a measurable hydraulic connection using a hydrogeologically

valid method between the bore hole and the natural spring, and shall have all the physical properties, before treatment, and be of the same composition and quality, as the water that flows naturally to the surface of the earth. If spring water is collected with the use of an external force, water must continue to flow naturally to the surface of the earth through the spring's natural orifice. Plants shall demonstrate, on request, to appropriate regulatory officials, using a hydrogeologically valid method, that an appropriate hydraulic connection exists between the natural orifice of the spring and the bore hole.

(vii) The name of water that meets the requirements under ''Sterility Tests'' <71> in the United States Pharmacopeia, 23d Revision, January 1, 1995, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR 51. (Copies may be obtained from the United States Pharmacopeial Convention, Inc., 12601 Twinbrook Pkwy., Rockville, MD 20852 and may be examined at the Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC), may be ''sterile water.'' Alternatively, the water may be called ''sterilized water.''

(viii) The name of water from a hole bored, drilled, or otherwise constructed in the ground which taps the water of an aquifer may be ''well water.''

(3) *Other label statements.* (i) If the TDS content of mineral water is below 500 ppm, or if it is greater than 1,500 ppm, the statement ''low mineral content'' or the statement ''high mineral content'', respectively, shall appear on the principal display panel following the statement of identity in type size at least one-half the size of the statement of identity but in no case of less than one-sixteenth of an inch. If the TDS of mineral water is between 500 and 1,500 ppm, no additional statement need appear.

(ii) When bottled water comes from a community water system, as defined in 40 CFR 141.2, except when it has been treated to meet the definitions in paragraphs (a)(2)(iv) and (a)(2)(vii) of this section and is labeled as such, the label shall state ''from a community water system'' or, alternatively, ''from a municipal source'' as appropriate, on the principal display panel or panels. This statement shall immediately and conspicuously precede or follow the name of the food without intervening written, printed, or graphic matter, other than statements required by paragraph (c) of this section, in type size at least one-half the size of the statement of identity but in no case of less than one-sixteenth of an inch.

(iii) When the label or labeling of a bottled water product states or implies (e.g., through label statements or vignettes with references to infants) that the bottled water is for use in feeding infants, and the product is not commercially sterile under § 113.3(e)(3)(i) of this chapter, the product's label shall bear conspicuously and on the principal display panel the statement ''Not sterile. Use as directed by physician or by labeling directions for use of infant formula.''

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

(b) *Quality.* The standard of quality for bottled water, including water for use as an ingredient in beverages (except those described in the labeling as ''water,'' ''carbonated water,'' ''disinfected water,'' ''filtered water,'' ''seltzer water,'' ''soda water,'' ''sparkling water,'' and ''tonic water''), is as follows:

(1) *Definitions.* (i) *Trihalomethane* (THM) means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

(ii) *Total trihalomethane* (TTHM) means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane, dibromochloromethane, bromodichloromethane and tribromomethane), rounded to two significant figures.

(2) *Microbiological quality.* Bottled water shall, when a sample consisting of analytical units of equal volume is examined by the methods described in applicable sections of ''Standard Methods for the Examination of Water and Wastewater,'' 15th Ed. (1980), American Public Health Association, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (copies may be obtained from the American Public Health Association, 1015 15th St., NW., Washington, DC 20005, or a copy may be examined at the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC, or at the Center for Food Safety and Applied Nutrition, 200 C St., SW., Washington, DC), meet the following standards of microbiological quality:

(i) *Multiple-tube fermentation method.* Not more than one of the analytical units in the sample shall have a most probable number (MPN) of 2.2 or more coliform organisms per 100 milliliters and no analytical unit shall have an MPN of 9.2 or more coliform organisms per 100 milliliters; or

(ii) *Membrane filter method.* Not more than one of the analytical units in the sample shall have 4.0 or more coliform organisms per 100 milliliters and the arithmetic mean of the coliform density of the sample shall not exceed one coliform organism per 100 milliliters.

(3) *Physical quality.* Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the method described in applicable sections of ''Standard Methods for the Examination of Water and Wastewater,'' 15th Ed. (1980), which is incorporated by reference (the availability of this incorporation by reference is given in paragraph (b)(2) of this section), meet the following standards of physical quality:

(i) The turbidity shall not exceed 5 units.

(ii) The color shall not exceed 15 units.[1]

(iii) The odor shall not exceed threshold odor No. 3.[1]

(4) *Chemical quality.* (i)(A) Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the methods described in paragraph (b)(4)(i)(B) of this section, meet standards of chemical quality and shall not contain chemical substances in excess of the following concentrations:

Substance	Concentration in milligrams per liter
Arsenic	0.05
Chloride[1]	250.0
Iron[1]	0.3
Manganese[1]	0.05
Phenols	0.001
Sulfate[1]	250.0
Total dissolved solids[1]	500.0
Zinc[1]	5.0
Organics:	
Endrin (1,2,3,4,10,10-hexachloro-6,7-epoxy 1, 4, 4a, 5, 6, 7, 8, 8a-octa-hydro-1,4-endo, endo-5,8-dimethane naph-thalene)	0.0002
Total Trihalomethanes	0.10

[1] Mineral water is exempt from allowable level. The exemptions are aesthetically based allowable levels and do not relate to a health concern.

(B) Analyses conducted to determine compliance with paragraph (b)(4)(i)(A) of this section shall be made in accordance with the methods described in the applicable sections of ''Standard Methods for the Examination of Water

and Wastewater,'' 15th Ed. (1980), or ''Methods for Chemical Analysis of Water and Wastes,'' Environmental Monitoring and Support Laboratory (EMSL), EPA–600/4–79–020, March 1983, U.S. Environmental Protection Agency (EPA), both of which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(C) Analyses for organic substances shall be determined by the appropriate methods set forth below. The methods in paragraphs (b)(4)(i)(C)(*1*) and (C)(*2*) of this section are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and are described in ''Standard Methods for Examination of Water and Wastewater,'' 15th Ed. (1980). Copies may be obtained from the American Public Health Association, 1015 Fifteenth St., NW., Washington DC 20005, and examined at the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington DC, or the Center for Food Safety and Applied Nutrition, 200 C St. NW., Washington DC. The methods in paragraphs (b)(4)(i)(C)(*3*) and (C)(*4*) are cross-referenced in 40 CFR part 141, subpart C, Appendix C.

(*1*) ''Methods for Organochlorine Pesticides in Industrial Effluents;''

(*2*) ''Methods for Chlorinated Phenoxy Acid Herbicides in Industrial Effluents,'' November 28, 1973;

(*3*) ''Part I: The Analysis of Trihalomethanes in Finished Waters by the Purge and Trap Method;'' which is cross-referenced in 40 CFR part 141, subpart C, appendix C;

(*4*) ''Part II: The Analysis of Trihalomethanes in Drinking Water by Liquid/Liquid Extraction,'' Method 501.2 which is cross-referenced in 40 CFR part 141, subpart C, appendix C;

(ii)(A) Bottled water packaged in the United States to which no fluoride is added shall not contain fluoride in excess of the levels in Table 1 and these levels shall be based on the annual average of maximum daily air temperatures at the location where the bottled water is sold at retail.

TABLE 1

Annual average of maximum daily air temperatures (°F)	Fluoride concentration in milligrams per liter
53.7 and below	2.4
53.8–58.3	2.2
58.4–63.8	2.0
63.9–70.6	1.8
70.7–79.2	1.6
79.3–90.5	1.4

(B) Imported bottled water to which no fluoride is added shall not contain fluoride in excess of 1.4 milligrams per liter.

(C) Bottled water packaged in the United States to which fluoride is added shall not contain fluoride in excess of levels in Table 2 and these levels shall be based on the annual average of maximum daily air temperatures at the location where the bottled water is sold at retail.

TABLE 2

Annual average of maximum daily air temperatures (°F)	Fluoride concentration in milligrams per liter
53.7 and below	1.7
53.8–58.3	1.5
58.4–63.8	1.3
63.9–70.6	1.2
70.7–79.2	1.0
79.3–90.5	0.8

(D) Imported bottled water to which fluoride is added shall not contain fluoride in excess of 0.8 milligram per liter.

(iii) Having consulted with EPA as required by section 410 of the Federal Food, Drug, and Cosmetic Act, the Food and Drug Administration has determined that bottled water, when a composite of analytical units of equal volume from a sample is examined by the methods listed in paragraphs (b)(4)(iii)(E) through (b)(4)(iii)(F), and (b)(4)(iii)(G) of this section, shall not contain the following chemical contaminants in excess of the concentrations specified in paragraphs (b)(4)(iii)(A) through (b)(4)(iii)(D) of this section.

(A) The allowable levels for inorganic substances are as follows:

Contaminant	Concentration in milligrams per liter (or as specified)
Barium	2.
Cadmium	0.005.
Chromium	0.1.
Copper	1.0.
Lead	0.005.
Mercury	0.002.
Nitrate	10 (as nitrogen).
Nitrite	1 (as nitrogen).
Total Nitrate and Nitrite.	10 (as nitrogen).
Selenium	0.05.

(B) The allowable levels for volatile organic chemicals (VOC's) are as follows:

Contaminant (CAS Reg. No.)	Concentration in milligrams per liter
Benzene (71–43–2)	0.005
Carbon tetrachloride (56–23–5)	0.005
o-Dichlorobenzene (95–50–1)	0.6
p-Dichlorobenzene (106–46–7)	0.075
1,2-Dichloroethane (107–06–2)	0.005
1,1-Dichloroethylene (75–35–4)	0.007
cis-1,2-Dichloroethylene (156–59–2)	0.07
trans-1,2-Dichloroethylene (156–60–5)	0.1
1,2-Dichloropropane (78–87–5)	0.005
Ethylbenzene (100–41–4)	0.7
Monochlorobenzene (108–90–7)	0.1
Styrene (100–42–5)	0.1
Tetrachloroethylene (127–18–4)	0.005
Toluene (108–88–3)	1
1,1,1-Trichloroethane (71–55–6)	0.20
Trichloroethylene (79–01–6)	0.005
Vinyl chloride (75–01–4)	0.002
Xylenes (1330–20–7)	10

(C) The allowable levels for pesticides and other synthetic organic chemicals (SOC's) are as follows:

Contaminant (CAS Reg. No.)	Concentration in milligrams per liter
Alachlor (15972–60–8)	0.002
Atrazine (1912–24–9)	0.003
Carbofuran (1563–66–2)	0.04
Chlordane (57–74–9)	0.002
1,2-Dibromo-3-chloropropane (96–12–8)	0.0002
2,4-D (94–75–7)	0.07
Ethylene dibromide (106–93–4)	0.00005
Heptachlor (76–44–8)	0.0004
Heptachlor epoxide (1024–57–3)	0.0002
Lindane (58–89–9)	0.0002
Methoxychlor (72–43–5)	0.04
Pentachlorophenol (87–86–5)	0.001
PCB's (as decachlorobiphenyl) (1336–36–3)	0.0005
Toxaphene (8001–35–2)	0.003
2,4,5-TP (Silvex) (93–72–1)	0.05

(D) The allowable levels for certain chemicals for which EPA has established secondary maximum contaminant levels in its drinking water regulations (40 CFR part 143) are as follows:

Contaminant	Concentration in milligrams per liter
Aluminum	0.2
Silver	0.1

(E) Analyses to determine compliance with the requirements of paragraph (b)(4)(iii)(A) of this section shall be conducted in accordance with an applicable method and applicable revisions to the methods listed in paragraphs (b)(4)(iii)(E)(*1*) through (b)(4)(iii)(E)(*13*) of this section and described, unless otherwise noted, in ''Methods for Chemical Analysis of Water and Wastes,'' U.S. EPA, Environmental Monitoring and Support Laboratory (EPA–600/4–79–020), March 1983, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Office of Plant and Dairy Foods and Beverages (HFS–305), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St., SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(*1*) [Reserved]

(*2*) Barium shall be measured using the following methods:

(*i*) Method 208.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 208.1—''Atomic Absorption; direct aspiration,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(A) of this section.

(*iii*) Method 200.7—''Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Office of Plant and Dairy Foods and Beverages (HFS–305), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St., SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(*3*) [Reserved]

(*4*) Cadmium shall be measured using the following methods:

(*i*) Method 213.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*ii*) Method 200.7—''Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development,(EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*2*)(*iii*) of this section.

(*5*) Chromium shall be measured using the following methods:

(*i*) Method 218.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*ii*) Method 200.7—''Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*iii*) of this section.

(*6*) Copper shall be measured as total recoverable metal without filtration using the following methods:

(*i*) Method 220.2—Atomic Absorption; furnace technique, in ''Methods for Chemical Analysis of Water and Wastes,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 220.1—Atomic Absorption; direct aspiration, in ''Methods for Chemical Analysis of Water and Wastes,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*iii*) Method 200.7—''Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Office of Plant and Dairy Foods and Beverages (HFS–305), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(*iv*) Method 200.8—''Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Rev. 4.4, April 1991. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*7*)(*iii*) of this section.

(*v*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry,'' Revision 1.2, April 1991. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*2*)(*iii*) of this section.

(*7*) [Reserved]

(8) Lead shall be measured as total recoverable metal without filtration using the following methods:

(*i*) Method 239.2—Atomic Absorption; furnace technique, in ''Methods for Chemical Analysis of Water and Wastes,'' which is incorporated by reference in accordance

with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*2*)(*iii*) of this section.

(*ii*) Method 200.8—''Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Revision 4.4, April 1991. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*7*)(*iii*) of this section.

(*iii*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry,'' Rev. 1.2, April 1991. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*2*)(*iii*) of this section.

(*9*) Mercury shall be measured using the following methods:

(*i*) Method 245.1—''Manual cold vapor technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 245.2—''Automated cold vapor technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*10*) [Reserved]

(*11*) Nitrate and/or nitrite shall be measured using the following methods:

(*i*) Method 353.3—''Spectrophotometric cadmium reduction,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 353.2—''Colorimetric, automated, cadmium reduction,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(*iii*) Method 300.0—''The Determination of Inorganic Anions in Water by Ion chromatography,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service, Port Royal Rd., Springfield, VA 22161, or may be examined at the Office of Plant and Dairy Foods and Beverages (HFS–305), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC.

(*iv*) Method 353.1—''Colorimetric, automated, hydrazine reduction,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*12*) Selenium shall be measured using the following methods:

(*i*) Method 270.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 270.3—''Atomic Absorption; gaseous hydride,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*13*) [Reserved]

(F) Analyses to determine compliance with the requirements of paragraphs (b)(4)(iii)(B) and (b)(4)(iii)(C) of this section shall be conducted in accordance with an applicable method or applicable revisions to the methods listed in paragraphs (b)(4)(iii)(F)(*1*) through (b)(4)(iii)(F)(*20*) of this section and described, unless otherwise noted, in ''Methods for the Determination of Organic Compounds in Drinking Water,'' Office of Research and Development, Environmental Monitoring Systems Laboratory EPA/600/4–88/039, December 1988, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, or may be examined at the Office of Plant and Dairy Foods and Beverages (HFS–305), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(*1*) Method 502.1—''Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography,'' Rev. 2.0, 1989, (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*2*) Method 502.2—''Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series,'' Rev. 2.0, 1989 (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*3*) Method 503.1—''Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography,'' Rev. 2.0, 1989 (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*4*) Method 524.1—''Measurement of Purgeable Organic Compounds in Water by Packed Column Gas Chromatography/Mass Spectrometry,'' Rev. 3.0, 1989 (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*5*) Method 524.2—''Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry,'' Rev. 3.0, 1989 (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*6*) Method 504—''1,2-Dibromoethane (EDB) and 1,2-Dibromo-3-Chloropropane (DBCP) in Water by Microextraction and Gas Chromatography,'' Rev. 2.0, 1989 (applicable to dibromochloropropane (DBCP) and ethylene dibromide (EDB)), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*7*) Method 505—''Analysis of Organohalide Pesticides and Commercial Polychlorinated Biphenyl (PCB) Products in Water by Micro-Extraction and Gas Chromatography,'' Rev. 2.0, 1989 (applicable to alachlor, atrazine, chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, toxaphene and as a screen for polychlorinated biphenyl's (PCB's)), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*8*) [Reserved]

(*9*) Method 507—''Determination of Nitrogen- and Phosphorus-Containing Pesticides in Water by Gas Chromatography with a Nitrogen-Phosphorus Detector,'' Rev. 2.0, 1989 (applicable to alachlor and atrazine), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*10*) Method 508—''Determination of Chlorinated Pesticides in Water by Gas Chromatography with an Electron Capture Detector,'' Rev. 3.0, 1989 (applicable to chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, toxaphene, and as a screen for PCB's), which is incorporated

by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*11*) Method 508A—''Screening for Polychlorinated Biphenyls by Perchlorination and Gas Chromatography,'' Rev. 1.0, 1989 (used to quantitate PCB's as decachlorobiphenyl if detected in methods 505 or 508) in paragraph (b)(4)(iii)(F)(*7*) or (b)(4)(iii)(F)(*9*) of this section, respectively), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*12*) Method 515.1—''Determination of Chlorinated Acids in Water by Gas Chromatography with an Electron Capture Detector,'' Rev. 5.0, May 1991 (applicable to 2,4-D, 2,4,5–TP (Silvex) and pentachlorophenol), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*13*) Method 525.1—''Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry,'' Rev. 2.2, May 1991 (applicable to alachlor, atrazine, chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, and pentachlorophenol), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*14*) Method 531.1—''Measurement of N-Methylcarbamoyloximes and N-Methylcarbamates in Water by Direct Aqueous Injection HPLC with Post Column Derivatization,'' Rev. 3.0, 1989 (applicable to carbofuran), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(*F*) of this section.

(*15*) [Reserved]

(G) Analyses to determine compliance with the requirements of paragraph (b)(4)(iii)(D) of this section shall be conducted in accordance with an applicable method and applicable revisions to the methods listed in paragraphs (b)(4)(iii)(G)(*1*) and (b)(4)(iii)(G)(*2*) of this section and described, unless otherwise noted, in ''Methods of Chemical Analysis of Water and Wastes,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*1*) Aluminum shall be measured using the following methods:

(*i*) Method 202.1—''Atomic Absorption; direct aspiration technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(*ii*) Method 202.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*iii*) Method 200.7—''Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991. The revision is contained in ''Methods for the Determination of Metals in Environmental Samples,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of the incorporation by reference is given in paragraph (b)(4)(iii)(E)(*2*)(*iii*) of this section.

(*iv*) Method 200.8—''Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Rev. 4.4, April 1991. The revision is contained in ''Methods for the Determination of Metals in Environmental Samples,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*iii*) of this section.

(*v*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption, Spectrometry,'' Rev. 1.2, April 1991. The revision is contained in ''Methods for the Determination of Metals in Environmental Samples,'' June 1991, which is incorporated by reference in accordance with 5. U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*7*)(*iii*) of this section.

(*2*) Silver shall be measured using the following methods:

(*i*) Method 272.1—''Atomic Absorption, direct aspiration,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 272.2—''Atomic Absorption, furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*iii*) Method 200.7—''Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991. The revision is contained in ''Methods for the Determination of Metals in Environmental Samples,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*iii*) of this section.

(*iv*) Method 200.8—''Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Rev. 4.4, April 1991. The revision is contained in ''Methods for the Determination of Metals in Environmental Samples,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*iii*) of this section.

(*v*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption, Spectrometry,'' Rev. 1.2, April 1991, in ''Methods for the Determination of Metals in Environmental Samples,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*iii*) of this section.

(*3*) and (*4*) [Reserved]

(*5*) *Radiological quality.* (i) Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the methods described in paragraph (b)(5)(ii) of this section, meet standards of radiological quality as follows:

(A) The bottled water shall not contain a combined radium-226 and radium-228 activity in excess of 5 picocuries per liter of water.

(B) The bottled water shall not contain a gross alpha particle activity (including radium-226, but excluding radon and uranium) in excess of 15 picocuries per liter of water.

(C) The bottled water shall not contain beta particle and photon radioactivity from manmade radionuclides in excess of that which would produce an annual dose equivalent to the total body or any internal organ of 4 millirems per year calculated on the basis of an intake of 2 liters of the water per day. If two or more beta or photon-emitting radionuclides are present, the sum of their annual dose equivalent to the total body or to any internal organ shall not exceed 4 millirems per year.

(ii) Analyses conducted to determine compliance with paragraph (b)(5)(i) of this section shall be made in accordance with the methods described in the applicable sections of ''Standard Methods for the Examination of Water and Wastewater,'' 15th Ed. (1980), and ''Interim Radiochemical Methodology for Drinking Water,'' U.S. EPA, EMSL,

EPA–600/4–75–008 (Revised), March 1976, both of which are incorporated by reference. The availability of these incorporations by reference is given in paragraph (b)(2) of this section.

(c) *Label statements.* When the microbiological, physical, chemical, or radiological quality of bottled water is below that prescribed by paragraphs (b)(2) through (b)(5), of this section, the label shall bear the statement of substandard quality specified in § 130.14(a) of this chapter except that, as appropriate, instead of or in addition to the statement specified in § 130.14(a) the following statement(s) shall be used:

(1) ''Contains Excessive Bacteria'' if the bottled water fails to meet the requirements of paragraph (b)(2) of this section.

(2) ''Excessively Turbid'', ''Abnormal Color'', and/or ''Abnormal Odor'' if the bottled water fails to meet the requirements of paragraph (b)(3) (i), (ii), or (iii), respectively, of this section.

(3) ''Contains Excessive _____,'' with the blank filled in with the name of the chemical for which a maximum contaminant level in paragraph (b)(4) of this section is exceeded (e.g., ''Contains Excessive Arsenic,'' ''Contains Excessive Trihalomethanes'') except that ''Contains Excessive Chemical Substances'' may be used if the bottled water is not mineral water.

(4) ''Excessively Radioactive'' if the bottled water fails to meet the requirements of paragraph (b)(5) of this section.

(d) *Adulteration.* Bottled water containing a substance at a level considered injurious to health under section 402(a)(1) of the act is deemed to be adulterated, regardless of whether or not the water bears a label statement of substandard quality prescribed by paragraph (c) of this section.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

7. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

8. Section 184.1563 is amended by revising paragraph (c) to read as follows:

§ 184.1563 Ozone.

* * * * *

(c) In accordance with § 184.1(b)(2), the ingredient is used to treat food only within the following specific limitations:

Category of food	Maximum treatment level in food	Functional use
Bottled water that prior to ozonation meets the microbiological, physical, chemical, and radiological quality standards of § 165.110 (b)(2) through (b)(5) of this chapter.	Not to exceed current good manufacturing practice. Current good manufacturing practice results in a maximum residual level at the time of bottling of 0.4 milligram of ozone per liter of bottled water.	Antimicrobial agent, § 170.3 (o)(2) of this chapter.

Dated: November 3, 1995.

William K. Hubbard,

Acting Duputy Commissioner for Policy.

[FR Doc. 95–27798 Filed 11–7–95; 8:45 am]

BILLING CODE 4160–01–P

Federal Register

Monday
November 13, 1995

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 165
Beverages; Bottled Water; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 95N–0203]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to exempt mineral water from the allowable level for aluminum in FDA's quality standard for bottled water. The agency is also proposing to update the testing methods referenced in the quality standard for bottled water. Elsewhere in this issue of the Federal Register, the agency is publishing a final rule to establish a standard of identity for bottled water. This proposal addresses two related issues that fell outside the scope of that rulemaking. FDA tentatively concludes that the proposed actions will promote honesty and fair dealing in the interest of consumers.

DATES: Written comments by January 29, 1996. The agency intends to make any final rule based upon this proposal effective 60 days following the date of publication of the final rule in the Federal Register.

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: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4681.

SUPPLEMENTARY INFORMATION:

I. Background

On January 5, 1993 (58 FR 393), FDA published a proposal in the Federal Register to establish a standard of identity in § 165.110(a) (21 CFR 165.110(a)) for bottled water. At the same time, the agency proposed to recodify the standard of quality for bottled water, which is currently found in § 103.35 (21 CFR 103.35), to § 165.110(b), (c), and (d). In addition, FDA proposed to define ''artesian water,'' ''ground water,'' ''mineral water,'' ''purified water,'' ''spring water,'' and ''well water.''

Elsewhere in this issue of the Federal Register, FDA is issuing a final rule that implements those proposed actions. However, two related issues, which fell outside the scope of that rulemaking, are discussed in this document along with the comments that the agency received on those matters.

A. Exemption for Aluminum

In the January 5, 1993, proposal (58 FR 393 at 396), FDA proposed to include mineral water in the standard for bottled water and, thus, to subject mineral water to the requirements of the quality standard for bottled water. Some allowable levels in the quality standard are based on the Environmental Protection Agency (EPA) secondary maximum contaminant levels (SMCL's) that are established for aesthetic reasons and not for consumer safety. Mineral water with a high mineral content may not meet these allowable levels. Therefore, the agency tentatively concluded that certain aesthetically based allowable levels should not apply to mineral waters (58 FR 393 at 400). Elsewhere in this issue of the Federal Register, FDA is exempting mineral water from the allowable levels for color, odor, total dissolved solids, chloride, iron, manganese, sulfate, and zinc.

FDA stated in the January 5, 1993, proposal that if it established an allowable level for aluminum, it would propose to exempt mineral water from that standard because the standard is intended to control aesthetic properties of the water, and not its effect on the body (58 FR 393 at 401). EPA established an SMCL of 0.2 milligram per liter (mg/L) for aluminum because of increased turbidity of the water and to prevent post-treatment precipitation in public water distribution systems ((56 FR 3526, January 30, 1991). On December 1, 1994 (59 FR 61529), FDA established an allowable level of 0.2 mg/L for aluminum in bottled water in § 103.35(d)(3)(iv) (recodified as § 165.110(b)(4)(iii)(D) elsewhere in this issue of the Federal Register).

In response to the January 5, 1993, proposal, FDA received one comment that expressed concern about the proposed allowable level for aluminum in bottled water and with exempting aluminum in mineral water from the quality standard, because there are some data that suggest that there may be a link between aluminum and Alzheimer's Disease and other adverse health effects. It recommended that FDA maintain an allowable level of 0.2 mg/L for aluminum in all bottled water.

The agency disagrees with the comment. EPA established a SMCL for aluminum to control aesthetic properties of the water (turbidity) and not its effect on the body. Aluminum has been found to be neurotoxic when injected into the brains of animals and in renal patients dosed inappropriately with aluminum salts. However, the current evidence suggests that aluminum neither causes Alzheimer's disease nor contributes to the expression of Alzheimer's disease (Ref. 1).

Therefore, the agency tentatively concludes that it is appropriate to exempt mineral water from the allowable level of 0.2 mg/L for aluminum in § 165.110(b)(4)(iii)(D) because it is an aesthetically-based (turbidity) allowable level. Accordingly, the agency is proposing to add a footnote to the list of allowable levels in § 165.110(b)(4)(iii)(D) to provide that when water is labeled as ''mineral water,'' it will be exempt from the allowable level for aluminum. FDA is not proposing to include bottled waters that are not conspicuously identified with the term ''mineral'' in this exemption because consumers will not generally expect to encounter aesthetic effects typical of high mineral content waters in these bottled waters products. In addition, the agency is not proposing to exempt mineral water from the allowable level for turbidity because high turbidity may interfere with disinfection and microbiological determinations. This exemption parallels the exemptions in § 165.110(b)(3) and (b)(4)(i)(A) that FDA is establishing in a final rule published elsewhere in this issue of the Federal Register that exempts mineral water from certain other aesthetically based allowable levels.

B. Updating References

In the proposal to establish a standard of identity for bottled water (58 FR 393, January 5, 1993), the agency proposed to update the methods referenced in § 165.110(b)(2) and (b)(3) for testing water for the listed contaminants to the ''Standard Methods for the Examination of Water and Wastewater,'' 17th edition (1989). Several comments received in response to that proposal stated that § 165.110(b)(2) and (b)(3) should be updated and should reference ''Standard Methods for the Examination of Water and Wastewater,'' 18th edition (1992). However, because the agency failed to state in the proposal that it intended to update the references to the latest edition, the comments' requested change did not fall within the scope of that rulemaking, and a separate rulemaking was necessary to effect that change.

Title 1, part 51 of the Code of Federal Regulations (1 CFR part 51) requires the filing and updating of material that has

been incorporated by reference in the Code of Federal Regulations. The purpose of the requirement is to ensure the public availability and accuracy of material that has been incorporated from other sources.

In the Federal Register of October 6, 1993 (58 FR 52042), FDA proposed to update the reference in § 165.110(b)(2) to the 18th edition. The agency expects to adopt that modification in a final rule that will be published in the near future. However, to ensure the accuracy of methods for testing bottled water, that are referenced in § 165.110(b)(3), FDA is proposing to update them to reference ''Standard Methods for the Examination of Water and Wastewater,'' 18th edition (1992). If subsequent editions of the methods referenced are published before the completion of this rulemaking, the agency intends to update the references in § 165.110(b)(2) and (b)(3) to reflect the most recent edition.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impact of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is ''economically significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is considered ''significant'' under Executive Order 12866 if it raises novel legal or policy issues. The Regulatory Flexibility Act requires agencies to minimize the economic impact of their regulations on small entities. FDA finds that this proposed rule is neither an economically significant nor significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, the agency certifies that the proposed rule will not have a significant impact on a substantial number of small entities.

Updating the references is not expected to significantly affect the content of those references or the cost of complying with regulations citing those references. FDA requests comments on any costs generated by updating the references as proposed.

Exempting mineral water from the allowable level for aluminum in bottled water does not represent a change from the current situation. There is currently no limitation on the amount of aluminum in mineral water. Similarly, there is no limitation on the amount of aluminum in mineral water under this proposal (other than a level that is injurious to health). The current situation is the baseline in comparison with which costs and benefits of proposed actions are measured. Therefore, there are neither costs nor benefits associated with exempting mineral water from the allowable level for aluminum in bottled water.

IV. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Humphreys, S., Contaminants, Standards, and Monitoring Branch (HFS–308F), Center for Food Safety and Applied Nutrition, Food and Drug Administration, memo to Shellee Davis, May 26, 1995.

V. Comments

Interested persons may, on or before January 29, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 165 be amended as follows:

PART 165—BEVERAGES

1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: Secs. 201, 401, 403, 403A, 409, 410, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 343A, 348, 349, 371, 379e).

2. Section 165.110 is amended by revising the introductory text of paragraph (b)(3) and by revising paragraph (b)(4)(iii)(D) to read as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(3) Physical quality. Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the method described in applicable sections of ''Standard Methods for the Examination of Water and Wastewater,'' 18th ed. (1992), which is incorporated by reference (the availability of this incorporation by reference is given in paragraph (b)(2) of this section), meet the following standards of physical quality:

* * * * *

(4) * * *

(iii) * * *

(D) The allowable levels for certain chemicals for which EPA has established secondary maximum contaminant levels in its drinking water regulations are as follows:

Contaminant	Concentration in milligrams per liter
Aluminum	0.2[1]
Silver	0.1

[1] Mineral water is exempt from the allowable level. The exemption is an aesthetically based allowable level and does not relate to a health concern.

* * * * *

Dated: November 3, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–27799 Filed 11–7–95; 8:45 am]

BILLING CODE 4160–01–F

Federal Register

Monday
November 13, 1995

Part V

The President

Notice of November 8, 1995—Continuation of Emergency Regarding Weapons of Mass Destruction

Federal Register
Vol. 60, No. 218
Monday, November 13, 1995

Presidential Documents

Title 3—

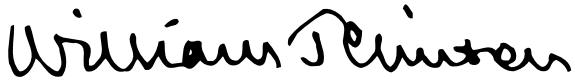
The President

Notice of November 8, 1995

Continuation of Emergency Regarding Weapons of Mass Destruction

On November 14, 1994, by Executive Order No. 12938, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (''weapons of mass destruction'') and the means of delivering such weapons. Because the proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on November 14, 1994, must continue in effect beyond November 14, 1995. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Executive Order No. 12938.

This notice shall be published in the Federal Register and transmitted to the Congress.



THE WHITE HOUSE,
November 8, 1995.

[FR Doc. 95–28124
Filed 11–8–95; 4:49 pm]
Billing code 3195–01–P

Federal Register

Monday
November 13, 1995

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al.

Federal Acquisition Regulation: Contingent Fee Representation; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 4, 13, 31, 52, and 53

[FAR Case 93–009]

Federal Acquisition Regulation; Contingent Fee Representation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing revising the Federal Acquisition Regulation (FAR) to delete the provision requiring an offeror to provide a contingent fee representation and agreement and to submit a statement of contingent or other fees. Also, the proposed rule rescinds the information collection requirement under Office of Management and Budget (OMB) Clearance Number 9000–0003, Contingent Fee Representation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before January 12, 1996, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 93–009 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 93–009.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 3.404(b) requires the contracting officer to insert the provision at 52.203–4, Contingent Fee Representation and Agreement, in all solicitations, with five exceptions. The provision requires offerors to provide a contingent fee representation as requested by the contracting officer. When the representation is answered affirmatively, the offeror must also provide a complete Standard Form (SF) 119, Statement of Contingent or Other Fees or a signed statement indicating the SF 119 was previously submitted to the same contracting office. The proposed rule revises FAR 3.404 to remove the solicitation provision and removes the accompanying subparts 3.406, 3.407, and 3.408 which deal with the SF 119. FAR 3.409 and 3.410 have been renumbered.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* There is a slight beneficial impact on small entities since offerors will no longer be required to provide contingent fee representations and agreements or to submit statements of contingent or other fees. The contingent fee underlining policy still remains in place. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 93–009), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 1, 3, 4, 13, 31, 52, and 53

Government procurement.

Dated: November 3, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Parts 1, 3, 4, 13, 31, 52, and 53 be amended as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR Parts 1, 3, 4, 13, 31, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

1.106 [Amended]

2. Section 1.106 is amended in the list of ''FAR Segments'' and ''OMB Control Numbers'' following the introductory text by removing ''52.203–4'' and ''9000–0003'', and ''SF 119'' and ''9000–0003''.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.404 is revised to read as follows:

3.404 Contract clause.

The contracting officer shall insert the clause at 52.203–5, Covenant Against Contingent Fees, in all solicitations and contracts exceeding the simplified acquisition threshold in part 13 other than those for commercial items (see parts 2 and 12).

3.405 through 3.408–2 [Removed]

4. Sections 3.405 through 3.408–2 are removed.

3.409 and 3.410 [Redesignated as 3.405 and 3.406]

5. 3.409 and 3.410 are redesignated as 3.405 and 3.406.

6. The newly designated 3.406 is amended by revising the first sentence to read as follows:

3.406 Records.

For enforcement purposes, agencies shall preserve any specific evidence of one or more violations of 3.405(a), together or with all other pertinent data, including a record of actions taken.

* * *

PART 4—ADMINISTRATIVE MATTERS

7. Section 4.803 is amended by revising (a)(11) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(11) Contractor's certifications and representations.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.111 [Amended]

8. Section 13.111 is amended by removing paragraph (c) and redesignating paragraphs (d) through (j) as (c) through (i).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–38 [Amended]

9. Section 31.205–38 is amended at the end of paragraph (f) by removing the parenthetical ''(see 3.408–2)''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203–4 [Reserved]

10. Section 52.203–4 is removed and reserved.

52.203–5 [Amended]

11. Section 53.203–5 is amended in the introductory paragraph by removing ''3.404(c)'' and inserting ''3.404''.

PART 53—FORMS

53.203 [Amended]

12. Section 53.203 is amended by removing paragraph (a) and the designation of paragraph (b).

53.301–119 [Removed]

13. Section 53.301–119 is removed.

[FR Doc. 95–27742 Filed 11–9–95; 8:45 am]

BILLING CODE 6820–EP–M

Federal Register

Monday
November 13, 1995

Part VII

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 985

Spearmint Oil Produced in the Far West; Hearing on Proposed Amendment; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. AO–79–2; FV95–985–4]

Spearmint Oil Produced in the Far West; Hearing on Proposed Amendment of Marketing Order No. 985

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing: correction.

SUMMARY: This action corrects language in the text of the notice of hearing to consider amending Marketing Order No. 985, which regulates spearmint oil grown in the Far West. Language is added to exempt certain employees of the Office of the General Counsel who may be assigned to represent the Spearmint Oil Administrative Committee at the hearing from the prohibition of discussing the merits of this rulemaking proceeding on an ex parte basis.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127 or FAX (202) 720–5698; or Robert Curry, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, OR 97204–2807; telephone: (509) 326–2724 or FAX (509) 326–7440.

SUPPLEMENTARY INFORMATION: This action makes a correction in a notice of hearing which appeared in the Federal Register (60 FR 52869, October 11, 1995). This correction adds language to exempt designated employees of the Department of Agriculture's Office of General Counsel assigned to represent the Spearmint Oil Administrative Committee in the rulemaking proceeding from the prohibition of discussing the merits of this case on an ex parte basis. This Committee, which is appointed by the Secretary, is responsible for administering the Order. This action adds language to the sixth full paragraph in the third column on page 52869. In the last sentence of the paragraph after the words ''Office of the General Counsel'', the following language is added '', except designated employees of the General Counsel assigned to represent the Spearmint Oil Administrative Committee in this rulemaking proceeding.''

Dated: Novemember 8, 1995.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 95–28079 Filed 11–9–95; 8:45 am]

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S. 1322/P.L. 104–45

Jerusalem Embassy Act of 1995 (Nov. 8, 1995; 109 Stat. 398)

(Upon expiration of the 10-day period prescribed by the Constitution of the United States, S. 1322 became law on Nov. 8, 1995, without the President's approval.)

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*87–149	(869–026–00150–2)	41.00	July 1, 1995
*150–189	(869–026–00151–1)	25.00	July 1, 1995
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300–399	(869–022–00151–5)	18.00	July 1, 1994
400–424	(869–022–00152–3)	27.00	July 1, 1994
425–699	(869–022–00153–1)	30.00	July 1, 1994
700–789	(869–026–00157–0)	25.00	July 1, 1995
790–End	(869–026–00158–8)	15.00	July 1, 1995
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
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102–200	(869–026–00161–8)	15.00	July 1, 1995
201–End	(869–026–00162–6)	13.00	July 1, 1995
42 Parts:			
1–399	(869–022–00160–4)	24.00	Oct. 1, 1994
400–429	(869–022–00161–2)	26.00	Oct. 1, 1994
430–End	(869–022–00162–1)	36.00	Oct. 1, 1994
43 Parts:			
1–999	(869–022–00163–9)	23.00	Oct. 1, 1994
1000–3999	(869–022–00164–7)	31.00	Oct. 1, 1994
4000–End	(869–022–00165–5)	14.00	Oct. 1, 1994
44	(869–022–00166–3)	27.00	Oct. 1, 1994
45 Parts:			
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500–1199	(869–022–00169–8)	32.00	Oct. 1, 1994
1200–End	(869–022–00170–1)	26.00	Oct. 1, 1994
46 Parts:			
1–40	(869–022–00171–0)	20.00	Oct. 1, 1994
41–69	(869–022–00172–8)	16.00	Oct. 1, 1994
70–89	(869–022–00173–6)	8.50	Oct. 1, 1994
90–139	(869–022–00174–4)	15.00	Oct. 1, 1994
140–155	(869–022–00175–2)	12.00	Oct. 1, 1994
156–165	(869–022–00176–1)	17.00	[7] Oct. 1, 1993
166–199	(869–022–00177–9)	17.00	Oct. 1, 1994
200–499	(869–022–00178–7)	21.00	Oct. 1, 1994
500–End	(869–022–00179–5)	15.00	Oct. 1, 1994
47 Parts:			
0–19	(869–022–00180–9)	25.00	Oct. 1, 1994
20–39	(869–022–00181–7)	20.00	Oct. 1, 1994
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2 (Parts 252–299)	(869–022–00188–4)	13.00	Oct. 1, 1994
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49 Parts:			
1–99	(869–022–00193–1)	24.00	Oct. 1, 1994
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400–999	(869–022–00197–3)	35.00	Oct. 1, 1994
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1200–End	(869–022–00199–0)	15.00	Oct. 1, 1994
50 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.