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Thursday
December 7, 1995

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WASHINGTON, DC

[Two Sessions]

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WHERE:	Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called ''Reminders''. The Reminders will have two sections: ''Rules Going Into Effect Today'' and ''Comments Due Next Week''. Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect ''today''. Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board

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

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG83

Prevailing Rate Systems; Technical Corrections and Clarifications

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to correct and clarify certain matters relating primarily to pay administration under the Federal Wage System. This rule corrects errors and eliminates ambiguities in the administration of the system.

EFFECTIVE DATE: January 8, 1996..

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On July 14, 1995, OPM published a proposed rule to correct and clarify matters relating primarily to pay administration under the Federal Wage System. The purpose is to correct errors and eliminate ambiguities in the administration of the system. The proposed rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the proposed rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Subpart B—Prevailing Rate Determinations

2. Section 532.241 is amended by revising paragraph (a)(1) to read as follows:

§ 532.241 Analysis of usable wage survey data.

(a)(1) The lead agency shall compute a weighted average rate for each appropriated fund survey job having at least 10 unweighed matches and for each nonappropriated fund job having at least 5 unweighed matches. The weighted average rates shall be computed using the survey job data collected in accordance with §§ 532.235 and 532.247 and the establishment weight.

* * * * *

3. In § 532.267, paragraph (c)(1) is revised to read as follows:

§ 532.267 Special wage schedules for aircraft, electronic, and optical instrument overhaul and repair positions in Puerto Rico.

* * * * *

(c) * * *

(1) Surveys shall, at a minimum, include the air transportation and electronics industries in SIC's 3571, 3572, 3575, 3577, 3663, 3669, 3672, 3674, 3679, 3695, 3812, 4512, 4513, 4522, 4581, 5044, and 5045.

* * * * *

Subpart D—Pay Administration

4. In § 532.401, the definition of *Change to a lower grade* is removed, a new definition for *Change to lower grade* is added, and the definition of *Promotion* is revised to read as follows:

§ 532.401 Definitions.

* * * * *

Change to lower grade means a change in the position of an employee who, while continuously employed—

(1) Moves from a position in one grade of a prevailing rate schedule established under this part to a position in a lower grade of the same type prevailing rate schedule, whether in the same or different wage area;

(2) Moves from a position under a prevailing rate schedule established under this part to a position under a different prevailing rate schedule (e.g., WL to WG) with a lower representative rate; or

(3) Moves from a position not under a prevailing rate schedule to a position with a lower representative rate under a prevailing rate schedule.

* * * * *

Promotion means a change in the position of an employee who, while continuously employed—

(1) Moves from a position in one grade of a prevailing rate schedule established under this part to a position in a higher grade of the same type prevailing rate schedule, whether in the same or different wage area;

(2) Moves from a position under a prevailing rate schedule established under this part to a position under a different prevailing rate schedule (e.g., WG to WL) with a higher representative rate; or

(3) Moves from a position not under a prevailing rate schedule to a position with a higher representative rate under a prevailing rate schedule.

* * * * *

5. In § 532.405, paragraph (d) is added to read as follows:

§ 532.405 Use of highest previous rate.

* * * * *

(d) The highest previous rate may be based upon a rate of pay received during a temporary promotion, so long as the temporary promotion is for a period of not less than 1 year. This limitation does not apply upon permanent placement in a position at the same or higher grade.

6. In § 532.415, paragraph (c) is revised to read as follows:

§ 532.415 Application of new or revised wage schedules.

* * * * *

(c) In applying a new or revised wage schedule, the scheduled rate of pay of an employee paid at one of the steps of the employee's grade on an old wage schedule shall be adjusted upward to the newly adjusted rate for the same numerical step of the grade whenever

there is an increase in rates. Except when there is a decrease in wage rates because of a statutory reduction in scheduled rates, the employee is entitled to pay retention as provided in 5 CFR 536.104(a)(3).

[FR Doc. 95–29700 Filed 12–06–95; 8:45 am]

BILLING CODE 6325–01–M

APPALACHIAN REGIONAL COMMISSION

5 CFR Part 1900

Repeal of Employee Responsibilities and Conduct Regulations for Appalachian Regional Commission Federal Employees (Federal Staff)

AGENCY: Appalachian Regional Commission (ARC or Agency).

ACTION: Final rule.

SUMMARY: The Appalachian Regional Commission is issuing as a final rule regulations for the officers and employees of the Agency's Federal staff which repeal its superseded employee standards of conduct and cross-reference the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture Regulations (Regulations) issued by the Office of Government Ethics (OGE).

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Guy Paul Land, Counsel to the Federal Co-Chairman, Appalachian Regional Commission, 1666 Connecticut Avenue NW., Washington DC 20235, 202–884–7660.

SUPPLEMENTARY INFORMATION: On August 7, 1992, OGE published Standards of Ethical Conduct for Employees of the Executive Branch. The Standards, which are codified at 5 CFR part 2635, became effective on February 3, 1993. They established uniform ethical conduct standards applicable to all executive branch personnel and hence are applicable to ARC Federal employees. On April 7, 1993, OGE also published the Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture Regulations which are applicable to all executive branch employees. The Financial Disclosure Regulations, which are codified at 5 CFR part 2634, took effect upon publication except for the rules on confidential disclosure which became effective on October 5, 1992. These Regulations are also applicable to ARC Federal employees. As a result of the implementation by OGE of the Standards of Conduct and Financial Disclosure Regulations for executive branch personnel, on the effective date of this final rule, the Agency's regulations on employee Responsibilities and Conduct, 5 CFR part 1900, will be amended to remove sections 1900.735–101 through 1900.735–108 and add a new section 1900.100 to provide a cross-reference to the Executive Branch Standards and Financial Disclosure Regulations.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), the Appalachian Regional Commission finds good cause exists for waiving the general notice of proposed rulemaking as to this final rule. The notice is being waived because this rulemaking relating to ARC Federal employees concerns matters of agency organization, practice and procedure. Further, it is in the public interest that the final rule, which repeals superseded ARC regulations and promulgates a cross-reference to the currently effective branch-wide Standards and Financial Disclosure Regulations, become effective upon publication in the Federal Register.

Executive Order 12866

In promulgating this final regulation, the Appalachian Regional Commission adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This final rule has not been reviewed by the Office of Management and Budget under that Executive order, since it deals with agency organization, management, and personnel matters and is not in any event deemed ''significant'' thereunder.

Regulatory Flexibility Act

The Appalachian Regional Commission has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it affects only ARC Federal employees.

Paperwork Reduction Act

The Appalachian Regional Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 1900

Conflict of interests, Government employees.

Approved: November 30, 1995.

Jesse L. White, Jr.,

Federal Co-Chairman, Appalachian Regional Commission.

For the reasons set forth in the preamble, the Appalachian Regional Commission is revising part 1900 of title 5 of the Code of Federal Regulations to read as follows:

PART 1900—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority: 5 U.S.C. 7301, 40 U.S.C. App. 106.

Section 1900.100 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Officers and employees of the Appalachian Regional Commission Federal Staff are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 3635 and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[FR Doc. 95–29884 Filed 12–6–95; 8:45 am]

BILLING CODE 6130–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Services, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480).

The purposes of these changes are: To eliminate the potential for certain conflicts of interest; to keep the costs of the Public Law 480, title I program as low as possible; to insure that all persons seeking to participate in supplying and shipping commodities financed under Public Law 480, title I, receive fair and equitable treatment; and to reflect a reorganization of administrative functions within the Department of Agriculture.

EFFECTIVE DATE: See **SUPPLEMENTARY INFORMATION** for compliance requirements.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, P.L. 480 Operations Division, Export Credits,

Foreign Agricultural Service, U.S. Department of Agriculture, Room 4549 South Building, 14th and Independence SW., Washington, D.C. 20250–1033. Telephone: (202) 720–3664.

SUPPLEMENTARY INFORMATION: This final rule is issued in conformance with Executive Order 12866. It has been determined to be significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act. The General Sales Manager has certified that this rule will not have a significant economic impact on a substantial number of small entities. Although this rule regulates certain activities of shipping agents in the Department's foreign assistance activities, the limitations imposed should not adversely impact upon the volume of business handled by any particular small business entity. A copy of this final rule has been submitted to the General Counsel, Small Business Administration.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. The final rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The final rule would not have retroactive effect. The rule does not require that administrative remedies be exhausted before suit may be filed.

Background

The Secretary of Agriculture implements title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480). This function is delegated to the General Sales Manager, Foreign Agricultural Service. On November 12, 1992, the Foreign Agricultural Service (FAS) published a proposed rule (57 FR 53607) to amend the regulations governing the financing of the sale and exportation of agricultural commodities made available under title I, Public Law 480. Corrections to the proposed rule were published November 27, 1992 (57 FR 56406).

Comments suggesting revisions to the proposed rule are discussed below, except those that were outside the scope of the proposed rule or of an editorial nature. FAS has made minor editorial changes and other changes to respond to some of the comments received, and to reflect the redesignation of certain offices within the Department of Agriculture involved in the administration of the title I, Public Law 480 program.

Discussion of Comments

Ocean Transportation-Related Services. The proposed rule would have prohibited a shipping agent from providing expediting services to a vessel owner at discharge ports. FAS proposed this change in order to eliminate the potential for a conflict of interest that might arise if a shipping agent representing a charterer were also to receive a fee from the vessel owner to expedite discharge operations, with the result that the agent might show favoritism to the owner in subsequent freight solicitations.

The comments received stressed that the rule would eliminate a possible source of revenue for shipping agent firms, with greater impact on small businesses, and could thereby reduce the number of shipping agents participating in the title I, Public Law 480 program.

FAS will not adopt this aspect of the proposed rule because any adverse impact upon the operations of the title I, Public Law 480 program from the hypothesized conflict of interest is speculative and, therefore, would not justify the harmful effect on competition and smaller businesses. Because the title I program requires strict competitive bidding procedures in the procurement of freight, there is little potential for favoritism in the vessel selection process.

Affiliates. The proposed rule would have expanded the current definition of ''affiliate'' to include two legal entities that are owned or controlled by the same legal entity. Currently, a firm cannot be a shipping agent during the same fiscal year in which it, or its affiliate, provides ocean transportation-related services. If the definition of affiliate were expanded as proposed, presumably more firms would be subject to this prohibition. The proposal was intended to prevent a participant from selecting a firm as shipping agent because that firm could offer ocean transportation-related services at a discount.

One comment argued that there was no reason to be concerned because an independent but indirectly affiliated company acting as a title I shipping agent could not derive inappropriate benefits from a related entity providing wholly different services with respect to, for example, title III shipments. This comment also recommended CCC return to the practice of determining conflicts of interest on a ''transaction-by-transaction'' basis, an approach followed prior to the Food, Agriculture, Conservation, and Trade Act of 1990. Two comments noted that the proposed expansion of the definition of affiliate would eliminate from competition any multinational freight forwarder, including at least one firm currently active as a shipping agent.

FAS has determined not to expand the affiliate definition in this rule because it may, in fact, hinder operations under other assistance programs. Although it is theoretically possible, for example, that a firm providing inland transportation services overseas could influence selection of its ''affiliated'' shipping agent through the prospect of discounted services, we have no reason to believe this has taken place. Thus, there is no empirical basis to justify expanding the definition of ''affiliates,'' especially where to do so would reduce the number of firms able to provide ocean transportation-related services in other programs, such as titles II and III of Public Law 480, or would reduce the number of firms from which participants may select a shipping agent.

Section 407(c)(4) of Public Law 480 requires that CCC analyze the potential for conflict of interest over the term of a fiscal year, rather than on a transaction-by-transaction basis. Therefore, returning to the transaction-by-transaction basis is not an option available to CCC.

Another comment proposed that FAS expand the definition of affiliate to cover all situations where two legal entities are owned by the same individuals and operate from the same offices using the same employees.

Although FAS is not adopting a rule that would automatically consider two firms in this situation as affiliates, FAS will investigate questionable situations to determine if two firms may legally be considered as one firm or if one firm may be considered as the *alter ego* of an officer or director of another company when applying the existing affiliation rules. We also note that the existing ''affiliate'' definition includes firms with common officers or directors or investments between firms and these

factors would likely encompass the situation suggested by the comment.

Subcontractors of A.I.D. Freight Agents. One comment argued that subcontractors of freight agents employed by the Agency for International Development (A.I.D.) should be eligible to act as title I shipping agents because section 407(d)(3) of Public Law 480 did not specifically refer to subcontractors; and that to preclude such subcontractors from participating as title I, Public Law 480 shipping agents would be an unwarranted extension of the statute.

The proposed rule specifically precluding subcontractors of freight agents employed by A.I.D. from acting as shipping agents under title I, Public Law 480 is a codification of FAS's prior interpretation of the scope of section 407(d)(3). See 47 FR 53609. This interpretation, concurred in by A.I.D., is reasonable given the subcontractor's active involvement in arranging ocean transportation.

No Competitive Advantage. The proposed rule included a prohibition against shipping agents affording competitive advantage to any particular supplier of commodities or ocean transportation. One comment suggested the rule should prohibit limiting competition among suppliers of commodities or ocean transportation by artificially or unreasonably restricting the quantity purchased or size of vessel which can be offered. Such a specific prohibition is unnecessary because FAS reviews each proposed commodity and freight invitation for bids to eliminate any restrictions that cannot be justified as furthering the purposes of the title I program.

A second comment contended that the proposed rule was too broad and prohibited a prudent business person from maintaining regular contact with others in the business and unduly limited the exchange of information that could benefit an importing country in planning its purchases. The comment further questioned whether FAS could effectively enforce the prohibition.

This comment misinterpreted the proposed rule. The rule does not prohibit a shipping agent from gathering information, such as price trends or crop quality, from trade sources and passing the information to its principal. Nor does it prevent an agent from pursuing normal business contacts. The rule simply highlights an important aspect of the fair and impartial performance of an agent's duties. FAS will request investigations of alleged violations of this regulation; the agent may be suspended or debarred from the program if violations are established.

Independent Contractors. The proposed rule required that an independent contractor hired by a shipping agent to perform functions of a shipping agent must furnish to FAS the same information and documentation as the agent. One comment stated that this rule was too loosely drafted and encompassed certain unintended relationships; *i.e.*, a shipping agent may hire ''independent contractors'' to perform any of a number of services.

FAS disagrees and has adopted the proposed rule as written because it clearly specifies that the requirement applies only to persons hired by a shipping agent ''to perform functions of a shipping agent.'' This very narrow category of persons should be subject to the same standards as the shipping agent itself to prevent evasion of the regulations.

Payment or Other Benefit. The proposed rule prohibited participants from receiving certain enumerated benefits, such as office space, equipment, and travel expenses, from the agents they selected. This was intended to make it more likely that participants would select agents on merit and to eliminate the possibility that participants might favor larger companies, which could more easily afford to offer these benefits. One comment, submitted by a small firm, objected to this provision because it would prevent a participant from financing trips to the United States by potential buyers, thus stifling an important opportunity for market development. The commentor recommended that the rule permit certain payments, such as reasonable travel expenses directly related to the procurement of commodities.

FAS will not adopt the rule as proposed because improper actions or payments made in connection with the selection of a shipping agent would already be prohibited by the Foreign Corrupt Practices Act. Also, while the efficient operation of the title I, Public Law 480 program would suffer from incompetent agents, FAS cannot conclude that the payment of benefits which are consistent with existing law results in the use of incompetent agents.

CCC will, however, change the current rule by prohibiting ''payments, kickbacks, or other illegal benefits'' in connection with the agent's selection so that the rule, consistent with other existing laws, clearly encompasses any corrupt financial payment to a country in connection with the agent's selection. This adequately protects CCC's financial interest in the program.

Limitation on Brokerage Payments. The proposed rule would have capped a shipping agent's commission at ⅔ of the maximum total commission which CCC can finance (2.5% of the value paid for freight) in order to allow for a commission to a shipping broker under the cap. A number of comments from shipping agents stated that such a cap would drive some shipping agent firms out of business; would not reduce freight rates; and would not have any effect on the decision of vessel owners whether to use a ships broker in offering a vessel. Other comments, primarily from ships brokers, urged that FAS change the rule to limit the shipping agent's commission to 1.25% (one-half of the maximum commission which CCC can finance) even if the vessel owner does not use a ships broker in the transaction.

The comments suggest that any reduction in freight rates as a result of a cap on shipping agents' commissions is unlikely. Absent this benefit to the program, FAS does not see any need to change the current regulations because we have not identified any adverse impact on the program from the existing regulation.

Contracts Required. FAS proposed to require that suppliers of ocean transportation furnish, if requested by FAS, copies of relevant lightening, stevedoring and bagging contracts, whether or not CCC financed ocean freight or ocean freight differential in connection with the voyage. Since the final rule no longer contains the limitations on commissions and affiliates that were published in the proposed rule, this requirement will apply only when CCC is financing a portion of the ocean freight. FAS has revised the final rule to clarify that it is the supplier of ocean transportation which must provide these contracts, if requested by CCC. USDA will not delay issuance of the commodity supplier's copy of the Form CCC–106 pending receipts of the contracts. FAS will use this information in monitoring compliance with the supplier reporting requirements contained in § 17.12 of the regulations.

However, CCC will require, as proposed, that, when CCC finances any part of the ocean freight, the participant or its agent must provide copies of liner booking notes to USDA before USDA releases Form CCC–106. This will also continue to be the practice with respect to copies of charter parties.

Non-Reversible Laydays and Despatch. Currently, CCC shares despatch with the participant and laydays are reversible. The proposed rule provided that CCC would share

despatch earnings at the load port with the commodity supplier thereby encouraging quicker loading and lower freight rates. Comments suggested that CCC should not share in any despatch since it is not involved in loading and discharge operations. These comments also suggested that the vessel operator should pay despatch to the commodity supplier at loading and to the charterer at discharge, pointing out that such a change would more closely reflect commercial practices and possibly expedite vessel operations.

CCC agrees with these comments. Accordingly, the few rule eliminates CCC's sharing in any despatch earnings. With this change, title I procedures in this regard will follow those of the title III, Public Law 480 program administered by A.I.D.

Several other changes to the rule follow from this change. There is no longer any need for CCC to delay payment of the final 5 percent of the ocean freight or ocean freight differential pending completion of demurrage/despatch calculations. Therefore, the final rule also provides that 100% of the ocean freight or ocean freight differential is payable when the vessel and cargo arrive at the first port of discharge, and, in the event of a force majeure, 100% of the freight will be payable. Further, the amount of security that CCC will require before it advances payments for ocean freight or ocean freight differential is increased from 95% to 100% to reflect the increased freight payable on arrival. Participants and vessel owners should recognize that, because CCC will not share in despatch, CCC will not be responsible for resolving disputes involving calculation of laytime or payment of demurrage or despatch.

The final rule adopts non-reversible laydays to reflect the fact that different parties will be sharing in despatch at load and discharge. Several comments noted that a change to non-reversible laydays would disadvantage importing countries because these countries may be more likely to owe demurrage if they cannot offset time lost at discharge against time gained at loading. FAS proposed this change in order to reflect commercial practices in the shipping trade that would benefit title I, Public Law 480 by reducing freight rates. Countries which can turn vessels around quickly at the discharge port will benefit by retaining the entire despatch earned.

Commodity Letters of Credit. The proposed change in § 17.15(h)(1) addressed a specific situation that occurred under the tile I program. Suppliers of ocean transportation under title I have issued bills of lading containing a provision noting a lien on the cargo if they have loaded commodities before they have been advised that an acceptable freight letter of credit has been opened to their benefit. This has unfairly delayed commodity suppliers from receiving payment from the bank because letters of credit typically contain a documentary requirement for a ''clean bill of lading.'' This practice, if allowed to continue, could have increased program costs by placing an unreasonable burden on commodity suppliers. The final rule adopts the proposal to specifically require that commodity letters of credit allow for payment even if the bill of lading states that the vessel owner has a lien on the cargo. The vessel owner may include such a statement on bills of lading and, of course, may refuse to load and may claim detention if there is no freight letter of credit.

Miscellaneous Change to Supplier Reporting Requirements. The proposed rule also added, as a clarification, a list of specific items that must be reported to CCC pursuant to section 17.12 of the regulations. This section implements section 407(b) of Public Law 480. In reviewing this matter, FAS has determined that it would also be helpful to the trade to specify that suppliers must also report payments to foreign governments or their agencies. While FAS has interpreted the current regulations to require reports of payments to foreign government agencies (because they fall within the class of persons included in the term ''representative of the importer or participant''), FAS believes that this interpretation should be reflected in the regulations. Therefore, the final rule amends § 17.12 of the regulations by specifying that suppliers must also report payment of commissions, fees or other compensation to the participant, or any agency of the participant.

Effective Date

The provisions of this rule shall apply to contracts entered into under purchase authorizations issued on or after January 8, 1996 and to USDA acceptance of nominations of shipping agents received after January 8, 1996 covering services provided during U.S. fiscal year 1996 (October 1, 1995–September 30, 1996) and each U.S. fiscal year thereafter.

Paperwork Reduction Act

Most reporting and recordkeeping requirements contained in this final rule have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. OMB has assigned control number 0551–0005 to this information collection. Reporting and recordkeeping requirements in this final rule that have not been previously approved by OMB are not effective until approved by OMB.

List of Subjects in 7 CFR Part 17

Agricultural commodities; exports; finance; maritime carriers.

Accordingly, 7 CFR Part 17, Subpart A, is amended as follows:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 7 U.S.C. 1701–1705, 1736a, 1736c, 5676; E.O. 12220, 45 FR 44245.

2. The zip codes ''20250–1000'' is revised to read ''20250–1033'' each time it appears in §§ 17.1(f), 17.7(c)(4)(i), 17.10(b)(5), 17.14(c)(2) and paragraphs (B)(6)(a) and (F)(4)(a) in Appendix A.

3. Section 17.2 is amended by removing definitions of ''ASCS'' and ''ASCS offices'' in paragraph (a) and adding definitions of ''FSA'' and ''FSA offices'' in alphabetical order, and by adding definitions of ''expediting services,'' ''ocean transportation brokerage,'' and ''ocean transportation-related services'' in paragraph (c) to read as follows:

§ 17.2 Definitions of terms. * * *

(a) *Terms relating to the United States, its agencies and officials.*

* * * * *

''FSA'' means the Farm Service Agency, U.S. Department of Agriculture.

''FSA offices'' means the FSA offices listed in § 17.21 and any other offices or agencies which may succeed to the functions of these offices.

* * * * *

(c) *Other terms.*

* * * * *

Expediting services means services provided to the vessel owner at the discharge port in order to facilitate the discharge and sailing of the vessel; this may include assisting with paperwork, obtaining permits and inspections, supervision and consultation.

* * * * *

Ocean transportation brokerage means services provided by shipping agents related to their engagement to arrange ocean transportation and services provided by ships brokers related to their engagement to arrange employment of vessels.

Ocean transportation-related services means furnishing the following services: lightening, stevedoring, and bagging (whether these services are performed at

load or discharge), and inland transportation, i.e., transportation from the discharge port to the designated inland point of entry in the destination country, if the discharge port is not located in the destination country.

* * * * *

4. Part 17 is provided by revising the term ''ASCS'' to read ''FSA'' wherever it appears.

5. Section 17.5 is amended by changing the term ''Assistant General Sales Manager'' to read ''Deputy Administrator, Export Credits'' in paragraph (a)(1), (d)(1) and (2), (e), and (g)(1) and (2), removing and reserving paragraph (a)(3), revising paragraph (a)(4), adding a new paragraph (a)(5), adding ''section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985,'' after ''any title of the Act,'' in paragraphs (b)(2) and (3), revising paragraphs (c)(7) and (8), and revising the last sentence of paragraph (d)(2) to read as follows:

§ 17.5 Agents for the participant or importer.

(a) *General.*

* * * * *

(3) [Reserved]

(4) A freight agent employed by the Agency for International Development under titles II and III and is not eligible to act as an agent for the participant or importer during the period of such employment. A subcontractor of such freight agent is not eligible to act as an agent for the participant or importer during the period of its subcontract.

(5) A shipping agent may not take any action which would give a competitive advantage to any supplier of commodities or ocean transportation. This includes, but is not limited to, providing advance notice of IFB's or amendments, or selectively enforcing IFB or contract requirements.

* * * * *

(c) *Information to be furnished.* A person nominated to act as an agent of the participant or importer, and any independent contractor that may be hired by such person to perform functions of a shipping agent, shall furnish to the Deputy Administrator, Export Credits, the following information or documentation as may be applicable:

* * * * *

(7) For USDA acceptance of a nomination covering services provided during U.S. fiscal year 1996 (October 1–September 30) and each U.S. fiscal year thereafter, a written statement signed by such person:

(i) Certifying that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not engaged in, and will not engage in, supplying commodities under any title of the Act or the Food for Progress Act of 1985 or furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether any part of the ocean transportation is financed by the U.S. Government; and that the person has not served and will not serve as an agent, broker, consultant or other representative of firms engaged in providing such commodities, ocean transportation and ocean transportation-related services;

(ii) Certifying that, for ocean transportation brokerage services provided during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not shared and will not share freight commissions with the participant, the importer, or any agent, broker, consultant or other representative of the participant or the importer, whether CCC finances any part of the ocean freight. CCC will consider as sharing a commission a situation where the agent forgoes part or all of a commission and the supplier of ocean transportation pays a commission directly to the participant, the importer, or any other person on behalf of the participant or the importer. (See also § 17.8(c)(8), which prohibits address commissions or payments); and

(iii) Undertaking that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, affiliates of such person have not engaged in and will not engage in the activities or actions prohibited in this paragraph (c)(7).

(8) A certification that neither the person nor any affiliates has arranged to give or receive any payment, kickback, or illegal benefit in connection with the person's selection as agent of the participant or importer.

(d) *USDA acceptance.*

* * * * *

(2) * * * USDA will withdraw such acceptance if the agent of the participant or importer, or any of the affiliates of such agent, violates the certifications or undertakings made pursuant to paragraph (c)(7) of this section.

* * * * *

6. The address of the Kansas City FSA Commodity Office is revised to read ''U.S. Department of Agriculture, P.O. Box 419205, Kansas City, Missouri 64141–6205'' in §§ 17.7(c)(4)(iii), 17.14(c)(1), and paragraphs (V)(1), (6) and (10) and paragraphs (W)(1), (6) and (10) in Appendix A.

7. Section 17.7 is amended by adding the following text at the end of paragraph (c)(6):

§ 17.7 Eligibility of suppliers and selling agents.

* * * * *

(c) *Commodity suppliers (approval).* * * *

* * * * *

(6) * * * Such performance security shall be in addition to the amount of the standard performance security required of all offerors in the Invitation for Bids. This additional performance security shall conform to the requirements in the Invitation for Bids for the performance security, and may be combined with the standard performance security into a single performance security. Upon successful completion of one or more contracts by the supplier, CCC may remove the requirement for the additional performance security.

§ 17.10 [Amended]

* * * * *

8. Section 17.10 is amended by revising the telephone number to read ''(202) 720–5780'' in paragraph (a) introductory text and in paragraph (b)(5).

9. Section 17.12 is amended by revising paragraph (a), and revising the last sentence of paragraph (c) to read as follows:

§ 17.12 Reports required from suppliers of commodities and ocean transportation.

(a) *General.* Suppliers of—

(1) Agricultural commodities financed under the Act, and

(2) Vessels on which such commodities are transported, if ocean freight or ocean freight differential with respect thereto is financed by CCC, shall report to the General Sales Manager any commission, fee or other compensation of any kind which in connection with the supplying of such commodities or vessels is paid or to be paid by the supplier to any agent, broker, consultant or other representative of the importer or participant; to the participant; or to any agency, including a corporation owned or controlled by the importer or participant, to which the supplier furnishes such commodities or vessels. This includes, but is not limited to, payments to such entities for services such as lightening, stevedoring, discharging, and bagging if such services are included in the ocean freight contract as being for the account of the vessel owner; freight commissions; address commissions; bank commissions; inward freight

commissions; agency fees; consular fees; stevedoring overtime; brokerage fees; dispatcher's fees; outport agent's services; freight forwarding fees; supervision fees and payments for expediting services.

(3) Suppliers shall report any such payment delivered to an agent, broker, or other representative of the importer or importing country even if the payment is not designated for the agent.

* * * * *

(c) *Reporting.* * * * Suppliers shall submit reports to the General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250–1001.

* * * * *

10. Section 17.14 is amended by revising the introductory text of paragraph (d), removing the first sentence of the introductory text in paragraph (e), revising paragraph (e)(3), revising ''95 percent'' to read ''100 percent'' in the first sentence of paragraph (e)(4) and removing the second and third sentences of paragraph (e)(4), removing paragraph (e)(5) and redesignating paragraph (e)(6) as (e)(5), removing paragraph (k)(8), revising the heading of paragraph (1) revising paragraphs (l) (1) and (2), removing and reserving paragraphs (l) (3) and (4), revising paragraphs (l) (5) and (6), revising ''95 percent'' to read ''100 percent'' in the second sentence of paragraph (l)(7) and the first sentence of paragraph (l)(8), removing the second and third sentences of paragraph (l)(8), revising paragraph (m), and removing and reserving paragraph (n) to read as follows:

§ 17.14 Ocean transportation.

* * * * *

(d) *Advice of vessel approval.* USDA will give written approval of charters and liner bookings on Form CCC–106, Advice of Vessel Approval. The Form CCC–106 will state whether the vessel is approved as a dry cargo liner, dry bulk carrier, or tanker, and whether CCC will finance any part of the ocean freight. If CCC agrees to finance any portion of the ocean freight, the importing country or its agent shall forward a copy of the charter party or liner booking note immediately after execution to the Director, P.L. 480 Operations Division, FAS (or the Director, Kansas City FSA Commodity Office, for cotton), for review and approval prior to issuance of Form CCC–106–2. CCC may also require the supplier of ocean transportation to submit copies of lightening, stevedoring, or bagging contracts for any voyage for which CCC finances ocean freight or ocean freight differential. USDA will issue Form CCC–106, Advice of Vessel Approval, as follows:

* * * * *

(e) *Special charter party provisions required when any part of ocean freight is financed by CCC.*

* * * * *

(3) The ocean freight is earned and that 100 percent thereof is payable by the charterers when the vessel and cargo arrive at the first port of discharge, subject to paragraph (e)(4) of this section, and to the further condition that if a force majeure as described in paragraph (l)(7) of this section results in the loss of part of the vessel's cargo, 100 percent of the ocean freight is payable on the part so lost. This provision does not relieve the carrier of the obligation to carry to other points of discharge if so required by the charter party.

* * * * *

(1) *Reimbursement for ocean freight or ocean freight differential separately financed.* (1) When the Form CCC–106 states that a notice of arrival is not required, CCC will reimburse 100 percent of the ocean freight or ocean freight differential, as appropriate, upon presentation of required documents.

(2) When the Form CCC–106 states that a notice of arrival is required, CCC will reimburse up to 100 percent of the ocean freight or ocean freight differential, as appropriate, before the vessel arrives at the first port of discharge if the supplier has furnished CCC, as security, a letter of credit, acceptable in amount and form to CCC and issued by a U.S. bank.

(3) [Reserved]

(4) [Reserved]

(5) The amount of security required by CCC under paragraph (2) of this section may be computed as follows: 100 percent of the ocean freight or ocean freight differential, as appropriate, on the basis of either:

(i) The tonnage stated in the charter party (without tolerance), if the supplier does not furnish to CCC a copy of the ocean bill of lading, or

(ii) The tonnage shown on the ocean bill of lading, times the ocean freight rate or ocean freight differential rate, as appropriate, shown on the related Form CCC–106, if the supplier furnishes to CCC a copy of the ocean bill of lading.

(6) On receipt of an acceptable letter of credit, the Controller will waive the notice of arrival requirement established by § 17.18(d)(2).

* * * * *

(m) *Demurrage/Despatch.* CCC will not finance demurrage and CCC will not share in despatch earnings. Owners and commodity suppliers will settle laytime accounts at load port(s) and owners and charterers will settle laytime accounts at discharge port(s). Under no circumstances shall CCC be responsible for resolving disputes involving calculation of laytime or the payment of demurrage or despatch.

(n) [Reserved]

* * * * *

11. Section 17.15 is amended by revising the first sentence of paragraph (h)(1) to read as follows:

§ 17.15 Letter of commitment method of financing.

* * * * *

(h) *Issuance of letters of credit.* * * *

(1) *General.* The application or request for, and any agreement relating to, any letter of credit issued, confirmed, or advised in connection with a letter of commitment to a banking institution, may contain such provisions as the approved applicant and the banking institution may agree on, and the approved applicant and the banking institution may agree to any extension of the life of, or any other modification of, or variation from, the provisions of any such letter of credit: *Provided,* That such provisions and any such extension, modification or variance shall be in no respect inconsistent with or contrary to the provisions of the letter of commitment; in the event of any such inconsistency or conflict, the provisions of the letter of commitment shall prevail with respect to CCC financing: *And provided further,* That when a letter of credit provides for acceptance of time drafts, such letter of credit (or application therefor) shall specify that the discount and acceptance fees shall be for the account of the importer: *And provided further,* That commodity letters of credit must allow payment to the commodity supplier even if the bill of lading states that the vessel owner has placed a lien on the cargo. * * *

* * * * *

§ 17.18 [Amended]

12. Section 17.18 is amended by removing paragraph (d)(6) and redesignating paragraph (d)(7) as (d)(6).

13. Section 17.21 is revised to read as follows:

§ 17.21 FSA Offices.

(a) Kansas City Commodity Office, FSA, U.S. Department of Agriculture, P.O. Box 419205, Kansas City, Missouri 64141–6205.

(b) Financial Management Division, FSA, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

14. Section 17.22 is revised to read as follows:

§ 17.22 Recordkeeping and access to records.

Suppliers and agents of the participant or importer shall keep accurate books, records and accounts with respect to all contracts entered into hereunder, including those pertaining to ocean transportation-related services and records of all payments by suppliers to representatives of the importer or participant, if CCC finances any part of the ocean freight. Suppliers and agents shall permit authorized representatives of the U.S. Government to have access to their premises during regular hours to inspect, examine, audit and make copies of such books, records and accounts. Suppliers and agents shall retain such records until the expiration of three years after final payment under such contracts.

§ 17.23 [Removed]

15. Section 17.23 is removed.

Signed at Washington, DC on August 22, 1995.

Christopher E. Goldthait,

General Sales Manager, Foreign Agricultural Service; and Vice President, Commodity Credit Corporation.

[FR Doc. 95–29527 Filed 12–6–95; 8:45 am]

BILLING CODE 3410–10–M

Agricultural Marketing Service

7 CFR Part 52

[FV–95–328]

United States Standards for Grades of Frozen Okra

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document amends the existing U.S. standards for frozen okra to remove references to trimmed pods. This change will allow producers of frozen okra the option to pack whole and cut okra without trimming. Also, a conforming change is made to language in the standards removing the reference to ''apparent untrimmed pods.'' This change enables the frozen okra industry to produce frozen okra more efficiently and better meet market needs.

DATES: Effective December 7, 1995. Comments received by January 8, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, D.C. 20090–4693. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, D.C. 20090–6456, Telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the United States Standards for Grades of Frozen Okra (7 CFR Part 52) to improve grade standards. The standards are effective under the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1622, 1624), hereinafter referred to as the Act.

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

The Department is issuing this rule in conformance with Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challange to the provisions of this rule.

The AMS Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, P.L. 96–354 (5 U.S.C. 601 *et seq.*), because it reflects current marketing practices. In addition, these standards are voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards.

The American Frozen Food Institute (AFFI) has petitioned for emergency relief from a requirement in the United States frozen okra standards. AFFI is a trade association representing over 560 food industry companies that account for over 90 percent of frozen food production in the United States. The frozen okra industry requested that USDA revise the grade standards for frozen okra so that producers of frozen okra will have the option to pack whole and cut okra without trimming and still meet the requirements of the United States Standards for Grades of Okra. The U.S. grade standards are voluntary standards. However, there is widespread use of the standards for frozen okra in contract requirements.

When the United States grade standards were first issued, okra was cut by hand. With the advent of mechanical harvesting, the techniques of harvesting have changed. Also processing equipment, including electronic sorters, has improved the quality such that the frozen okra industry can control quality more effectively without extensive handling.

Moreover, AFFI stated in its petition to revise the standards that since the frozen okra standards were last revised in 1969, new varieties have been established which leave the stems edible and tender when harvested with pods of the desirable length for freezing. AFFI noted that all other forms of whole okra including fresh, pickled, etc., are marketed untrimmed. AFFI also stated that the cost associated with trimming frozen whole okra was approximately $.0625 per pound of okra. Based on 1994 United States production of 65,114,000 pounds of frozen okra sold, trimming okra costs U.S. processors of frozen okra approximately $4,069,625 each year. AFFI claimed that in the time it takes to revise the frozen okra standard through ordinary channels, frozen okra processors could incur costs of more than $8 million.

Based on all the information received, USDA is changing the grade standards by amending the product description in §§ 52.1511 and 52.1512, Styles, in the United States Standards for Grades of Frozen Okra. Also, in § 52.1517(c)(5)(i), ''apparent untrimmed pods'' is removed from the standards as a defect since it no longer applies.

No additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers. This change is expected to facilitate marketing of frozen okra.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule upon publication in the Federal Register because the harvesting season for okra has already begun, the standards are voluntary, and this revision of the standards that permits the industry to more efficiently meet market needs, may reduce costs to the consumers. This rule also provides a 30-day comment period. The Department will consider all comments received

within the comment period prior to finalizing this rule.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For the reasons set forth in the preamble, 7 CFR Part 52 is amended as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS [1]

Subpart—United States Standards for Grades of Frozen Okra

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

Authority: 7 U.S.C. 1622–1624.

2. § 52.1511 is revised to read as follows:

§ 52.1511 Product description.

Frozen okra is the product prepared from clean, sound, succulent, and edible fresh pods of the okra plant (Hibiscus esculentus) of the green variety. The product may or may not be trimmed, is properly prepared and properly processed, and is then frozen and stored at temperatures necessary for preservation.

§ 52.1512 [Amended]

3. In § 52.1512, paragraph (a) immediately following the words ''consists of trimmed'' the words '', or untrimmed'' are added and in paragraph (b) the words '', or untrimmed'' are added after the words ''is trimmed''.

§ 52.1517 [Amended]

4. § 52.1517 is amended by removing paragraph (c)(5)(i) and redesignating paragraphs (c)(5)(ii) through (c)(5)(vi) as paragraphs (c)(5)(i) through (c)(5)(v), respectively.

Dated: December 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–29790 Filed 12–06–95; 8:45 am]

BILLING CODE 3410–02–P

[1] May include the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, condiments.

7 CFR Part 52

[FV–95–329]

United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule amends the existing U.S. grade standards for Frozen Field Peas and Frozen Black-Eye Peas and removes the color attributes requirements for frozen black-eye peas and frozen cream peas to have ''obvious green color''. This change allows producers of frozen field peas and frozen black-eye peas the option to pack black-eye peas and cream peas without the requirement that these peas have an ''obvious green color''. The requirement for obvious green colored peas has forced changes in current harvesting practices and required that food processors supplement their pack with imported peas, of similar varieties, in order to meet the ''Grade A'' color requirement. Removing the requirement for green color resolves this issue for the industry since crops are harvested later in the season under current harvesting practices. This revision enables the frozen food industry to produce frozen black-eye peas and frozen field peas more efficiently.

DATES: Effective December 7, 1995. Comments received by January 8, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, PO Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, PO Box 96456, Washington, DC 20090–6456, Telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas (7 CFR part 52) to improve grade standards. The standards are effective under the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1622, 1624), hereinafter referred to as the Act.

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

The Department of Agriculture is issuing this rule in conformance with Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The AMS Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96–354 (5 U.S.C. 601 *et seq.*), because it reflects current marketing practices. In addition, these standards are voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards.

The American Frozen Food Institute (AFFI) has petitioned for emergency relief from a requirement in the United States grade standards for frozen field peas and frozen black-eye peas. AFFI is a trade association representing over 560 food industry companies that accounts for over 90 percent of frozen food production in the United States. The frozen food industry requested USDA revise the grade standards to bring it in line with current harvesting and marketing practices. This would give economic relief to the frozen field pea and black-eye pea industry.

The U.S. grade standards are voluntary standards. However, there is widespread use of the standards in contracts.

When these grade standards were promulgated in 1976, it included a ''Grade A'' color requirement for frozen black-eye peas and cream peas that approximately 14 percent of these type peas have an obvious green color. This requirement was applicable when hand harvesting techniques forced growers to harvest their crops earlier in the growing season which allowed for a high percentage of immature peas. Today, modern mechanical harvesting techniques allow growers to harvest these types of peas with more mature pods that are easily shelled.

The requirement for these types of peas to have an obvious green color has caused undue economic stress on the industry. Frozen field pea and black-eye pea processors must purchase imported, hand-harvested peas and blend them with domestic crops to meet the ''Grade A'' color requirement. AFFI estimates that 10 million pounds of imported peas must be purchased by U.S. processors per year at an approximate annual cost of more than $2 million.

Based on all the information received, USDA is amending Section 52.1669 in the United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas by removing the color attributes requirements for frozen black-eye peas and frozen cream peas from the text and Table III of this section.

No additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers.

This change is expected to facilitate marketing of frozen field peas and frozen black-eye peas.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule upon publication in the Federal Register because, the harvesting season for field peas and black-eye peas has already begun, the standards are voluntary, and this revision of the standards that permits the industry to more efficiently meet market needs, also reduces costs to the consumers. This rule also provides a 30-day comment period. The Department will consider all comments received within the comment period prior to finalizing this rule.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and record keeping requirements, Vegetables.

For the reasons set forth in the preamble, the U.S. Department of Agriculture proposes to amend 7 CFR part 52 to read as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS [1]

Subpart—United States Standards for Grades of Frozen Black-eye Peas and Frozen Field Peas

1. The authority citation for Part 52 is revised to read as follows:

Authority: 7 U.S.C. 1622–1624.

2. In § 52.1669, paragraphs (a), (b), and Table III in paragraph (c) are revised to read as follows:

§ 52.1669 Classification of color and grade compliance.

(a) *General.* The requirement for ''color attributes'' is applicable for Grade A classification only. ''Color attributes'' do not apply to units of black-eye peas, cream peas, or units of ''snaps'' in the style of ''frozen peas with snaps.''

(b) *Color attributes.* ''Color attributes'' are defined as follows:

(1) ''Crowder peas.'' Each unit with a color that is characteristic of very young peas.

(2) ''Field peas'' and ''mixed types.'' Each unit with a color that is characteristic of very young peas.

(c) * * *

TABLE III.—COLOR ATTRIBUTES

Absolute limit (AL)	Minimum number permitted	
Number of sample units	73	119
	Field peas, and mixed types	Crowder peas
1	84	133
2	175	276
3	268	421
4	362	566
5	456	712
6	551	859
7	646	1006
8	741	1153
9	837	1148
10	932	1596
11	1028	1596
12	1124	1744
13	1220	1892
14	1315	2040
15	1411	2188
16	1508	2336
17	1604	2485
18	1700	2633
19	1796	2782
20	1892	2930
21	1989	3079
Acceptable quality Level (AQL) [1]	14.0	21.50

[1] May include the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, condiments.

[1] Based on an average count of 1400 units for ''White Acre'' peas and 700 units for all other types per 10 ounce package.

Dated: December 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–29791 Filed 12–6–95; 8:45 am]

BILLING CODE 3410–02–P

Federal Crop Insurance Corporation

7 CFR Parts 401, 443, and 457

RIN 0563–AB43

General Crop Insurance Regulations, Various Endorsements; Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Various Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby amends the General Crop Insurance Regulations, Hybrid Sorghum Seed and Rice Endorsements; the Hybrid Seed Crop Insurance Regulations; and the Common Crop Insurance Regulations, Small Grains, Cotton, Extra Long Staple Cotton, Sunflower Seed and Coarse Grains Crop Insurance Provisions, applicable beginning with the 1996 crop year for spring planted crops with contract change dates on or after the effective date of this rule, by revising prevented planting coverage. The intended effect of this regulation is to expand prevented planting benefits available under the various policies being amended.

DATES: The effective date of this rule is November 30, 1995. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through January 8, 1996.

ADDRESSES: For information collection comments submission, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the

Cost-Benefit Analysis and Regulatory Flexibility Analysis to the General Crop Insurance Regulations; Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations for implementation of the prevented planting provisions, 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. The sunset review date established for Small Grains is July 1, 1998; Coarse Grains, Cotton, Extra Long Staple Cotton and Sunflower Seed is March 1, 1999; Hybrid Seed is October 1, 1997; Hybrid Sorghum Seed is May 1, 2000; and Rice is August 29, 1998.

This rule has been determined to be ''economically significant'' for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (''OMB'').

A Cost-Benefit Analysis is completed and is available to interested persons at the address listed above. In summary, the analysis finds that the expected Treasury costs of these changes are expected to range between $2.1 and $20.8 million. Added costs are due to higher reimbursements to reinsured companies and for premium subsidies for producers. The estimates assume the majority of producers will decline the coverage for the substitute crop, opting instead for a reduced premium on the intended crop. Nationwide, premium rates will increase 6 to 7 percent for the added coverage. As examples of monetary impacts, this means an average increase in the producer paid premium of 20–25 cents per acre for wheat in the Northern Plains; 30 cents for corn in Iowa; and 60–90 cents per acre for upland cotton. However, the premium rate increases will not be uniform. Instead, the highest risk areas (such as lowlands along rivers and similar conditions) can expect greater increases in premium to cover the added risk. Producers who farm such lands are expected to be the primary group that will retain this added coverage and elect to pay the additional premium. The changes to the prevented planting rules will provide producers with added assistance in extreme weather conditions in a manner that maintains the actuarial integrity of the Federal crop insurance program.

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were submitted to OMB for their approval under section 3507(j) of the Paperwork Reduction Act of 1995, and received emergency approval through February 28, 1996. The agency is also seeking a valid approval for 3 years under section 3507(d). Public comments are due by January 8, 1996.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including General Crop Insurance Regulations, Hybrid Seed Crop Insurance Regulations and Common Crop Insurance Regulations.'' The information to be collected includes: a crop insurance acreage report, an insurance application and continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Some respondents may provide additional information for the purpose of selecting insurance options that apply to specific crops or specific areas in which a crop is produced. Potential respondents to this information collection are growers of crops that are eligible for Federal Crop Insurance.

The information requested is necessary for the insurance company and FCIC to provide insurance, provide reinsurance, determine eligibility, determine the correct parties to the agreement, determine and collect premiums or other monetary amounts (or fees), and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,750,015 respondents. The total annual burden on the public for this information collection is 2,668,750 hours. The total annual burden has increased from the 1995 requirements to reflect the paperwork burden on the reinsured companies.

Comments were invited on the information collection requirements during the proposed rule stage. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through January 8, 1996, on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Bonnie Hart, Information Management Branch, Consolidated Farm Service Agency, U.S. Department of Agriculture, Washington, D.C. 20250. Copies of the information collection may be obtained from Bonnie Hart at the above address. Telephone (202) 690–2857.

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 provisions 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.

The amount of work required of the insurance companies and FSA offices delivering the policies and the procedures therein may increase significantly from the amount of work currently required to deliver previous policies to which this regulation applies. Therefore, this action has been reviewed under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and a Regulatory Flexibility Analysis is available to interested persons at the address listed above.

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 not have retroactive effect prior to the effective date. 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 requirements of the National Appeals Division under

Public Law 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.

Background

Current regulations do not allow an insured producer to obtain a prevented planting guarantee for one crop and plant a substitute crop intended for harvest in the same crop year on the same land. By this rule a producer who purchases limited or additional coverage beginning with the 1996 crop year for spring crops with contract change dates on or after the effective date of this rule, will be eligible to: (1) Receive a prevented planting guarantee equal to 25 percent of the guarantee for timely planted acreage (20 percent for hybrid seed (corn) and 17.5 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is planted to a substitute crop after the 10th day after the final planting date for the intended crop (10th day after the latest final planting date for each specific crop insured under the Small Grains Crop Provisions) and, as applicable, a 0/92 or 50/92 program benefit; (2) exclude eligibility for prevented planting coverage when a substitute crop is planted in return for a reduction in the premium; and (3) receive prevented planting coverage on double cropped acreage (except for ELS cotton) if the producer can provide proof that planting of a second crop (double crop) following the harvest of an initial crop in the same crop year is a farming practice normally followed by that producer.

By this rule, the prevented planting provisions will also: (1) Allow all insured producers to receive a 0/92 or 50/92 program benefit, as applicable, and a crop insurance prevented planting guarantee equal to 50 percent of the guarantee for timely planted acreage (40 percent for hybrid seed (corn) and 35 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is not planted to a substitute crop; (2) eliminate the provisions that require acreage eligible for a prevented planting guarantee to be prorated to all units that could have been planted in the crop year; (3) change the date that notice of loss is required from 3 days after the final planting date, or the date the producer discovers that planting will not be possible within the late planting period, to the acreage reporting date; and (4) allow prevented planted acreage planted with a conserving use cover crop to be hayed and grazed without affecting prevented planting benefits.

On Wednesday, November 8, 1995, FCIC published a proposed rule in the Federal Register at 60 FR 56257 to revise prevented planting coverage under various policies. Following publication of that proposed rule, the public was afforded 15 days to submit written comments, data, and opinions. A total of 14 comments were received: 3 from Regional Service Offices; 5 from reinsured companies; 4 from crop insurance trade associations; 1 from a grower association; and 1 from a congressional office. The comments received and FCIC responses are as follows:

Comment: One comment received from the crop insurance industry indicated that the proposed changes for 1996 are less than timely, as 1996 training and marketing activities have already begun for the crops affected by the proposed rule. The comment recommends that FCIC move to process the final rule as soon as practical to minimize confusion in the 1996 crop year.

Response: FCIC agrees that the 1996 prevented planting regulations need to be published and implemented as quickly as possible.

Comment: Two comments received from the crop insurance industry recommended that whatever the final prevented planting provisions are, they should stand for the crop year without further change.

Response: FCIC agrees with the comment and is committed to limit changes unless deemed essential.

Comment: One comment received from the FSA stated that canola crop provisions need to be included and amended to conform to the 1996 prevented planting changes since the canola policy has prevented planting provisions.

Response: FCIC disagrees because canola is a pilot policy that has not been published in the Federal Register. No change will be made.

Comment: One comment received from the crop insurance industry noted that the term ''Consolidated Farm Service Agency'' is used in the provisions and that the term used should now be ''Farm Service Agency.''

Response: FCIC agrees and has made the necessary changes.

Comment: One comment received from the legal counsel of a reinsured company stated that FCIC's proposed rulemaking is in violation of the Administrative Procedure Act.

Response: The Office of General Counsel approved FCIC's proposed regulation for legal sufficiency. The short comment period was necessary due to pressure to provide an adequate program to producers by the applicable contract change dates. FCIC believes that adequate time was given for the public to comment, based on the number and length of comments received.

Comment: One comment received from the crop insurance industry indicated that administrative costs and errors and omission exposure will increase at the point of sale to the extent the provisions must be explained adequately.

Response: FCIC agrees that the provisions must be clearly communicated to avoid the exposures indicated in the comment. FCIC is making every effort to provide the new provisions as early as possible to allow adequate time for training, etc.

Comment: Four comments received from the crop insurance industry indicated the need to allow modification of the already approved 1996 Standard Reinsurance Agreement to recognize the increased administrative and underwriting costs associated with the increased benefits and potential adverse selection associated with this rule. This modification, in the form of an optional amendment, would allow the reinsured company the option of assigning policies with prevented planting losses to FCIC or to pre-designate that such policies will fall to a different fund and/or have a different retention percentage than that designated in the reinsured company's plan of operation. In addition, one of the comments proposes that provisions regarding excess loss adjustment expense that are being considered for the 1995 crop year be adopted for the 1996 Standard Reinsurance Agreement. One comment indicates that the proposal may be characterized as implementing into the subject policies the prevented planting benefits that were administratively adopted during the 1995 crop year, and that the changes made in 1995 appear to have significantly increased administrative and underwriting costs. One comment stated that reinsured companies must be provided with a means under the Standard Reinsurance Agreement to either cede the entire premium and losses associated with prevented planting to FCIC or to cede the premium and losses to a risk fund other than that in which the rest of a policy is placed. Until the adequacy of the rating can be tested, FCIC must bear all or substantially all of the risk of loss

(and any gain) associated with these policies if a company is unwilling or unable to. One comment stated that FCIC has failed to minimize moral hazard and has proposed a program that it expects will be adversely selected against and will therefore damage the integrity and actuarial soundness of the crop insurance program. Without providing private insured companies with a means to cede the increased risk associated with the proposed provisions entirely or almost entirely to FCIC, the proposed rule would force private companies to bear losses due to programmatic decisions which they had no control over.

Response: FCIC has promulgated premium rates that reflect the 1996 prevented planting provisions; thus, FCIC is not compelled to provided additional options to select among reinsurance funds or assume all the risk associated with the program change. Promulgation of premium rates prior to publication of this final rule was permissible because the actuarial material also contained the premium rate that would be used if this rule were not made final. The additional excess loss adjustment expenses provided for the 1995 crop year were made to offset the expense of loss adjustments when the Company had to re-open completed claims, and to clear a considerable number of notices of loss to determine if payable prevented planting claims existed. It was also expected that additional expense was incurred to re-train agents and loss adjusters on the prevented planting changes and loss procedures. FCIC believes that administrative expense reimbursement and excess loss adjustment expense provided under the Standard Reinsurance Agreement effective for the 1996 reinsurance year are adequate to cover such expenses for the 1996 crop year.

Comment: One comment received from the insurance industry indicated concern over whether enough premium differential is included in the prevented planting rates to adequately cover prevented planting payments on so called 0/92 acres. The comment indicated that providing both guaranteed deficiency payments and prevented planting payments invites policyholders to make an economic decision not to plant, and that these decisions will adversely impact the insurer. The comment indicated reservation over whether enough rate could be charged to counter this adverse selection opportunity.

Response: Guaranteed deficiency payments such as under the so called 0/92 and 50/92 programs are independent of crop insurance payments. Therefore, the risk of insurance against prevented planting should be unaffected. However, farm management decisions can be and should be made based on economics. The 0/92 and 50/92 benefits already have a significant influence on producer reaction. There now is a moral hazard that a producer may be influenced to collect a prevented planting payment in addition to the 0/92 or 50/92 payment; however, the extent of the moral hazard is unknown. That moral hazard is greatly influenced by the assessment of the 0/92 and 50/92 program in any given year. For example, if the guaranteed deficiency payments are decreased or expected to decrease, then the 0/92 and 50/92 program payments are also minimized and the moral hazard for additional prevented planting payments are likely to disappear. The reverse is also true if the guaranteed deficiency payments are expected to increase. Therefore, the moral hazard can only be approximated by adding an additional rate to counter the expected adverse selection potential of the dual payments. County rates were increased based on the probability that some additional losses will accrue given the influence of the so called 0/92 or 50/92 program.

Comment: One comment received from the legal counsel of a reinsured company indicated an inconsistency with the coverage provided and the Federal Crop Insurance Reform Act of 1994 (the ''Reform Act''). The Reform Act indicates that for CAT coverage a prevented planting benefit will be paid only if a producer is unable to plant another crop. Current crop provisions and the proposed provisions provide a prevented planting benefit if a producer is prevented from planting the insured crop and elects not to plant a substitute crop.

Response: FCIC agrees that this issue must be analyzed and modifications made if found necessary. However, the comment is not germane to this rule because it applies to regulations already in place.

Comment: One comment received from the legal counsel of a reinsured company states that the proposed provisions are in conflict with section 506(o) of the Federal Crop Insurance Act (the ''Act'') which directs FCIC ''to take such actions as are necessary to improve the actuarial soundness of the Federal multiperil crop insurance coverage.'' Reasons cited include: (1) Increased moral hazard, particularly if market prices (and/or yields) are expected to be low and net returns for a substitute crop or 0–50/92 benefits are expected to be high; (2) elimination of provisions that required prevented planting acreage to be prorated to all units that could have been planted to the insured crop; and (3) the addition of provisions that provide prevented planting benefits for producers who follow a double-cropping practice without sufficient premium to offset the risk.

Response: In addition to maintaining an actuarially sound insurance program, FCIC is mandated to maintain fair and effective coverage for agricultural producers. FCIC must also make the administration of its programs efficient and practical. Virtually all insurance providers have indicated that previous provisions requiring proration of eligible acreage were complex, unmanageable, and not fair to producers in many cases. Producers have been eligible to collect deficiency payments on planted acres and certain prevented planting acreage. There is no justification for denying those benefits when producers are eligible for crop insurance benefits provided premium rates reflect the increased risk of loss. FCIC has developed premium rates for prevented planting based on sound rating principles, including those prevented planting situations that may develop in double-cropping areas. If data is available indicating that rates are insufficient to offset the risk, FCIC requests submission of such data so that it can be reviewed and any necessary changes can be made.

Comment: One comment received from a commodity group and one comment received from the crop insurance industry stated that they have concerns about projected premium increases. They request that producers have the option of excluding prevented planting coverage in its entirety. Producers need to be able to assess the rate increase before purchasing crop insurance coverage to see if prevented planting coverage is economically feasible for them. They stated that the projected average cost increase is 6–8 percent and in some high rate areas may be as much as 20 percent. Producers cannot afford another premium increase.

Response: Prevented planting coverage was made an integral part of the policy following the 1993 crop year to lessen the need for ad hoc disaster assistance for growers who were prevented from planting. If allowed to opt out of the coverage, FCIC believes that large numbers of growers would exclude the coverage. This assessment is based on the experience of 1993. This would result in a great deal of pressure either to institute insurance coverage after a loss has occurred or a great deal

of pressure for some other form of financial assistance.

Comment: One comment received from members of the House of Representatives of the United States Congress stated that most of West Texas has been given a large multiperil rate increase on cotton that producers simply cannot afford. They have been informed that some counties have suffered as much as a 20 percent rate increase for 1996. They stated that the provisions suggest that the primary benefits account for a 6–7 percent rate increase even if the secondary coverage is rejected. The impact analysis estimates the majority of producers will decline the coverage for the alternate crop, opting instead for a reduced premium on the intended crop. They stated that the prevented planting benefits appear to account for at least 13 percent of the 20 percent rate increase. They feel the prevented planting provisions should be modified to allow producers to reject all prevented planting coverage in return for an additional reduction in premium in the amount of the 6–7 percent FCIC claims the primary coverage for prevented planting is worth. They stated that producers cannot afford a premium increase to pay for prevented planting coverage they do not need. In 1995, West Texas experienced a rate increase that was largely absorbed by a 30–42.5 percent increase in subsidy payments. The 1996 rate increase will be borne by producers alone. This increase is an unnecessary burden on the agricultural community.

Response: The rate increase not associated with the 1996 prevented planting program change is necessary to make the cotton crop insurance program actuarially sound. Primary prevented planting benefits account for only 0.2 percent to 0.4 percentage points of premium rate. Therefore, growers opting out of the primary prevented planting coverage would receive a very small credit. FCIC believes that basic prevented planting coverage should remain an integral part of the policy to ensure growers are covered in the event that prevented planting occurs (also see response to comment above).

Comment: Seven comments received from the crop insurance industry and one comment received from FSA recommended amending the definition of prevented planting because: (1) The definition includes reference to ''most producers in the surrounding area'' and the term ''most'' is not defined. As a result there is no way to apply the definition to any particular policyholder when there is a dispute over whether or not planting was actually prevented; (2) The day after the final planting date, a producer could plant a substitute crop and receive a prevented planting benefit; and (3) The provisions must require prevented planting conditions to have to exist through the whole late planting period before any prevented planting payment is due because: (a) Prevented planting should never have been allowed for producers who quit planting by the final planting date and made no effort to plant within the late planting period; (b) allowing the producer to declare prevented planting on the day after the final planting date defeats the purpose of the late planting provision and submits the program to unwarranted risk; (c) the producer may not plant an alternative crop or enter into 0/92 until after the late planting period has expired for the original crop and still collect a prevented planting payment (with the obvious requirement that weather conditions continue to prevent planting in the late planting period); (d) the prevented planting payment payable when an alternative crop is planted must be reduced from that level available if no alternative crop is planted; (e) in no circumstance could the producer switch to an alternative crop prior to the end of the late planting period and still collect a prevented planting payment (they would be free to plant whatever crop they wanted at any time, they just should not expect to collect a prevented planting payment on the original crop if they do not go through the late planting period of the original crop); and (f) moral hazards and abuse are created when producers are allowed to collect a substitute crop immediately after the final planting date. In most cases producers will plant the crop into the late planting period as a normal practice, but now we have created a disincentive to do so.

Response: FCIC agrees that a more definitive term than ''most'' should be used and has replaced it with the term ''majority'' to reflect that more than 50 percent of the producers must have been prevented from planting.

This definition was designed to accommodate extremely varied production areas and farming practices; including those in which growers do not plant after the final planting date and those in which growers often do plant a crop within the late planting period. Some farming areas have relatively short growing seasons which make the prospect of a successful crop doubtful if planted much beyond the final planting date. Other areas have much longer growing seasons and often allow a successful crop to be grown even if planted after the final planting date. In both long and short growing areas, some farming practices, such as the production of silage, allow a grower to plant after the final planting date and still produce an acceptable crop. Changing the definition to require that prevented planting conditions must have existed through the end of the late planting period before any prevented planting coverage would be provided would not accommodate growers who normally do not plant after the final planting date.

FCIC agrees producers should be encouraged to plant their initially intended crop after the final planting date when it is practical to do so. Therefore, FCIC has amended these regulations to specify that prevented planting coverage will not be provided when a producer, prevented from planting the initially intended crop, plants a substitute crop within ten days after the final planting date for the initially intended crop.

Comment: One comment received from the crop insurance industry suggested that FCIC's actuaries re-evaluate: (1) When the late planting period should start (i.e., final planting date); (2) whether the late planting period should be shortened; and (3) whether or not eligibility for a prevented planting payment should trigger at the time that shortened period is exhausted.

Response: These evaluations are on-going. FCIC requests that any person who has data affecting these matters make it available for consideration.

Comment: One comment received from a commodity group stated that they oppose the lower percentage level of insurance guarantee proposed for prevented planted cotton compared to other commodities. They contend the criteria that should be used to determine coverage for prevented planting should be applied consistently among commodities.

Response: Data used by FCIC to determine prevented planting benefits indicated cotton producers incur a larger percentage of total production costs after planting than do producers of corn and other grain crops. Additional post-plant costs incurred by cotton producers include those for pest control and the costs associated with the ginning and handling of cotton. Therefore, no change will be made. FCIC is willing to work with producer groups and other interested parties to review existing data to revise levels of benefits when analyses indicate it is necessary.

Comment: One comment received from the crop insurance industry recommended increasing the standard

prevented planting payment from the current 50 percent to 60 percent.

Response: The prevented planting payment of 50 percent adequately compensates the producer for the loss of production, taking into consideration cost, not incurred. FCIC has discovered that increasing the standard prevented planting payment reduces the incentive for producers to plant the intended crop by the end of the late planting period when it is possible and increases the cost to the program. Therefore, FCIC will not change the standard prevented planting payment.

Comment: One comment received from counsel for a reinsured company on behalf of the crop insurance industry stated that the Reform Act contains a provision that allows a reduction in the benefit amount paid to a producer to reflect out-of-pocket expenses not incurred by a producer as a result of not planting, growing, or harvesting the crop for which a prevented claim is made. The comment indicates that this proposed rule is silent regarding this requirement for limited and additional coverage, but that FCIC is required by the Reform Act to include this provision for CAT coverage.

Response: Prior to enactment of the Reform Act, prevented planting production guarantees for all coverages and crops were at least 50 percent lower than the guarantee for a timely planted crop to avoid compensating producers in excess of their actual losses and provide actuarially sound coverage. This has not changed.

Comment: One comment received from the crop insurance industry stated that the inclusion of drought as an insurable peril and lack of any firm definitions or procedural guidelines subjects the Company and FCIC to abuse and fraud.

Response: FCIC does not believe that inclusion of drought as an insurable peril substantially subjects the company and FCIC to abuse and fraud. The burden is on the producer to prove that drought prevented a producer from planting. Further, the Soil Conservation and Extension Services have advised producers on occasion not to plant because it was so dry that planting the ground could result in severe wind erosion. The rule also requires a majority of producers to be affected by the cause of loss.

Comment: One comment received from the crop insurance industry recommended that in an effort to increase the incentive to plant the original crop as opposed to simply collecting insurance and farm program benefits, it might be advisable to consider reducing the late planting period from 25 to 20 days, with the reductions in guarantees over the 20 days totalling 25 percent, to leave the person with a guarantee equal to 75 percent of their original level—(i.e. 1 percent per day for the first 10 days and 1.5 percent per day for the second 10 days).

Response: Under the current formula, the production guarantee is reduced only 1 percent for each of the first ten days and 2 percent for days 11–25. FCIC believes this formula provides adequate incentive for producers to plant crops early in the late planting period to keep their insurance production guarantee at the highest level possible. Changing the length of the late planting period and the percents of reduction could result in over insurance and increased crop insurance indemnities. Therefore, no change will be made.

Comment: One comment received from FSA recommended that acreage that is planted to the insured crop after the late planting period be designated as late planted with a 50 percent reduction in guarantee. They stated that it is very confusing to have this acreage designated as prevented planting.

Response: If acreage is prevented from being planted through the late planting period due to an insurable cause of loss, and is planted to the insured crop after the late planting period, the acreage will receive a 50 percent reduction in guarantee and must be reported as prevented planting acreage. This information is needed by FCIC for analytical purposes in reviewing crop insurance premium rates. Therefore, no change will be made.

Comment: One comment received from the crop insurance industry recommended that the cover crop planted on prevented planting acres could only be hayed or grazed by the producer's own livestock. The producer could not sell hay or charge others to let livestock graze.

Response: FCIC disagrees because it increases costs, is administratively difficult to enforce, and is contrary to legislative directives to simplify procedures. Therefore, no change will be made.

Comment: One comment received from the crop insurance industry indicated that the ''background'' section of the proposal indicates that prevented planting acreage may be planted to a conserving use cover crop that may be hayed and grazed without limitation, but that the actual policy language indicates only that a cover crop not for harvest may be planted. The comment suggests modifying the policy language to indicate that haying and grazing is permissible if this is the intent.

Response: Paragraph 12(a)(3)(i) of the Hybrid Sorghum Seed Endorsement states that prevented planting coverage is available ''if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed * * *'' This provision is also contained in a similar location in the proposed regulations for other crop policies. Therefore, no change is required. However, the ''background'' section will be amended to reflect that a conserving use cover crop may be hayed or grazed without affecting prevented planting benefits.

Comment: One comment received from FSA stated that under the provision allowing for a production guarantee of 50 percent (40 percent for hybrid seed (corn) and 35 percent for cotton, ELS cotton and rice) of the timely planted guarantee, prevented planting compensation should not be allowed when the cover crop is hayed or grazed because the producer is receiving a benefit from that crop.

Response: FCIC agrees that some value is gained when a cover crop is hayed or grazed. However, this benefit is of limited value in comparison with the income that would be gained if the intended crop could have been planted. In addition, the feed value obtained varies widely and may be negligible in some situations. It is FCIC's opinion that the administrative costs associated with keeping track of the disposition of feed production outweigh any benefit that could be derived.

Comment: Eleven comments received from FSA and the crop insurance industry recommended eliminating the provision which provides a prevented planting guarantee equal to 25 percent of the production guarantee for timely planted acres (20 percent for hybrid seed (corn) and 17.5 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is planted to a substitute crop for harvest. The following reasons were given: (1) This protection was not intended or mandated by the Reform Act; (2) the previous disaster programs never provided this type of protection; (3) there is no budget to cover the subsidy or administrative expense for this protection; (4) the indemnity would be paid even if the substitute crop provided more economic value than the intended crop that was prevented from planting; (5) the moral risk is high; (6) there has been little demand for this kind of protection from producers, insurance companies or agents and if, or when, the demand occurs a ''pilot program'' should be developed and

implemented; (7) if a plan like this is offered it should be offered as a separate policy without government subsidy and delivered by the private insurance industry without any cost to the government; (8) the premium for the 25 percent protection (20 percent for hybrid seed (corn) and 17.5 percent for cotton, ELS cotton, and rice) has been increased as much as 30 percent in some counties. This protection should be offered as an option or a separate endorsement that does not affect the cost of the basic protection or require the producer to sign an exclusion; (9) the rating varies within a state from 5 percent to 30 percent for no apparent reason; (10) it puts extreme pressure on the final planting date. For example, producers contemplating switching from corn to soybeans would normally plant whenever they thought they were better off with a normal soybean yield versus a reduced corn yield, but now some producers will want to wait until the final planting date for corn so they can have the prevented planting guarantee when planting a substitute crop; (11) intended acres are very hard to administer; (12) every crop could potentially show one crop as prevented planting with a substitute crop planted (i.e. a producer could report prevented planting corn with planted soybeans on field A and prevented planting soybeans with planted corn on field B when the producers intentions were to plant half of the fields to soybeans and half to corn); (13) it encourages producers to manipulate the program to the detriment of the American taxpayer; (14) acreage on which the producer is able to plant a crop for harvest is not acreage that is prevented from being planted; (15) the definition of ''indemnity'' in the Basic Insurance Principles states, ''For insurance purposes, it means that the producer is restored to approximately the same position from an economic standpoint that was occupied before the loss occurred. * * * Never, under any circumstances, would a gain be permitted.'' Under this provision, a gain is almost a given; (16) a producer would not plant two crops on the same acreage in the same crop year, except for a producer who normally double crops. That is unfair to producers in areas without excessive moisture who plant only one crop and may receive an indemnity on only that crop, not an additional 25 percent on an imaginary crop; (17) any time a producer can opt out of automatic coverage, adverse selection is assured; (18) the more endorsements, options, and exclusions that are added to a policy, the greater the likelihood of producers being unaware of all of their policy provisions and obligations which increases the appeals, litigation cases, agent error and omissions occurrences, and Congressional referrals; (19) the rate increases and factors that were used are inaccurate; (20) factors used to decrease premium if a producer opts out of this coverage are excessive; (21) the prevented planting provisions must increase the incentive to plant the original crop and decrease any incentive to simply not plant and collect insurance benefits; (22) adverse selection will also occur as producers will be able to opt out of prevented planting for a reduced charge; and (23) the most recent GAO report addresses the inadequacy of the current premium rates and that the programs rate structure was undermined when the Department provided more benefits in 1995 under the prevented planting provision and, if history is any indication, then premium rates will remain inadequate.

Response: FCIC understands the concerns of the crop insurance industry, government employees, and others. Although the Reform Act did not mandate this protection, FCIC's decision to develop the proposed regulations for prevented planting was based on broad policy concerns that had to be considered along with actuarial concerns.

When the present prevented planting provisions were developed for the 1994 crop year, FCIC knew that changes would be needed in future years as experience was gained. Many producers were prevented from planting in the 1995 crop year and voiced discontent with those provisions. It was concluded that there was an inconsistency in coverage that resulted in three different levels of claims payments for producers similarly affected by excessive moisture. Specifically, producers who planted an insured crop that failed were eligible for crop insurance indemnities for a loss in production; producers who were prevented from planting an insured crop and did not plant a subsequent crop were eligible for a crop insurance prevented planting payments, but producers who were prevented from planting an insured crop and planted a substitute crop were not eligible for any crop insurance payments. FCIC believes that this third group should be eligible for crop insurance payments to make them whole.

To maintain actuarial integrity 1996 crop insurance premium rates were recalculated to reflect the prevented planting coverage changes. FCIC believes the coverage changes merely give producers another insurance choice when they are prevented from planting their initially intended crops. FCIC agrees producers should be encouraged to plant their initially intended crop after the final planting date when it is practical to do so. Therefore, FCIC is amending this regulation so that when Producers are prevented from planting their initially intended crop and plant a substitute crop within ten days after the final planting date for the initially intended crop, a prevented planting production guarantee will not be provided for such acreage. In addition, FCIC believes producers will make every effort to plant the crop of the greatest economic value as soon as possible. It would make little sense to delay planting to receive the 25 percent prevented planting payment and run the risk of not getting any crop planted. FCIC believes this amendment will help maintain the actuarial soundness of the prevented planting coverage.

The proposed regulations do not provide the option to delete the primary prevented planting coverage. They do provide producers the option of declining eligibility for a prevented planting production guarantee when a substitute crop is planted. Producers may wish to delete this coverage in return for a reduction in the premium they are required to pay. Based on the forgoing reasons, no change will be made.

Comment: One comment received from the crop insurance industry suggested that the option to receive prevented planting benefits and plant a substitute crop should be continuous until cancelled and should only be completed for producers who want the additional coverage, not for producers declining the coverage.

Response: FCIC has determined that all producers should have complete prevented planting coverage unless they elect to exclude such coverage when a substitute crop is planted for harvest. Experience in 1993 indicates that most producers were unaware of the availability of prevented planting coverage when it was a separately purchased coverage. Therefore, no change will be made.

Comment: One comment received from counsel of a reinsured company stated that the policy provisions should be amended to read, ''Proof that you had the inputs available to plant and produce a crop other than a crop you planted the past year or a crop that is part of a regular rotation of the acres planted and for which you had insurance with the expectation of at least producing * * *.''

Response: FCIC does not agree. The intent of prevented planting coverage is to provide coverage for the intended crop for the current crop year. FCIC does not intend to interfere with producers' responses to market signals. Therefore, no change will be made.

Comment: Two comments received from the crop insurance industry expressed concern regarding how insurers will police provisions dealing with a substitute crop and recommended clarifying the following issues in the final rule. The comments state that it is difficult if not impossible to determine the crop and acreage originally intended to be planted and that the provisions will provide an opportunity for producers to claim prevented planting on acreage originally intended to be planted to a substitute crop. One of the comments further questioned whether a minor oilseed crop planted by a grower participating in the so called 0/92 program would be considered a substitute crop or not.

Response: The acreage reporting provisions rely on the producer to indicate the specific acreage and crop that were prevented from being planted. On the surface these provisions would indicate a significant vulnerability, especially with regard to the substitute crop provisions. However, other provisions, including those that limit maximum eligible acreage and those that reduce eligible acreage by the amount of any timely and late planted acreage substantially reduce this vulnerability. For example, if a producer indicates acreage is prevented from being planted to corn and plants grain sorghum as a substitute crop, any other acreage planted to corn on the farm would reduce the amount of corn acreage eligible for a prevented planting production guarantee. Likewise, the acreage planted to grain sorghum would reduce the amount of any grain sorghum acreage that may have originally been eligible to receive a prevented planting production guarantee. Other provisions that give the insurer the right to require a producer to provide proof that the inputs were available to plant and produce the crop will also reduce vulnerabilities that might otherwise be associated with this coverage. A minor oilseed crop may be considered a substitute crop if it is planted after the originally intended crop was prevented from being planted. Growers qualifying for prevented planting coverage in this situation may qualify for the so called 0/92 program if the minor oilseed can be planted as a substitute crop under that program. Participation in the so called 0/92 program is not required to be eligible for crop insurance prevented planting benefits.

Comment: One comment received from the crop insurance industry expresses concern that the wording that advises the producer of the choice to exclude prevented planting coverage is not prominent enough in the policy. The comment also suggests, concurrent with the final rule, that guidelines meeting Standard Reinsurance Agreement requirements be issued addressing the form ''approved by us'' that is required to opt out of prevented planting coverage when a substitute crop is planted.

Response: Provisions indicating a producer's choice to exclude this coverage are contained in appropriate locations within the policy. On or before the sales closing date for the intended crop, a producer may ''opt out'' of prevented planting coverage when a substitute crop is planted by entering the appropriate option code on the crop insurance application or contract change form.

Comment: One comment received from the crop insurance industry and one comment received from FSA stated that the provision that requires a producer to provide proof that they had the inputs available to plant and produce a crop adds complication to the loss adjustment process and likely adds little to the ability to determine the producer's intent. If the provision is not eliminated, one of the comments recommends issuance, concurrent with the final rule, of procedure addressing what constitutes proof that the inputs were available.

Response: Proof that the producer had the available inputes is not mandatory in all cases. Such proof should be required when producers are claiming they are prevented from planting a crop which they have never historically planted or there are other suspicious circumstances. Procedure is being drafted in the loss adjustment handbooks to include what constitutes such proof. Therefore, no change is necessary.

Comment: One comment received from FSA indicated that they did not understand why producers would request deleting the prevented planting provisions from a policy.

Response: The producers would not have the option of deleting the prevented planting provisions from the policy, instead they would be allowed only to exclude eligibility for that portion of the prevented planting coverage available when a substitute crop is planted in return for a reduction in the premium rate attributed to such coverage.

Comment: One comment received from FSA stated that it seems pointless to add a requirement for producers to provide proof that they had inputs available to plant and produce the intended crop because seed and chemical receipts are too easily obtained by persons willing to manipulate FCIC's procedures.

Response: FCIC disagrees with the comment. Falsifying such records could subject the producer, seed or chemical distributor to criminal or civil sanctions. Further, inputs such as seed and chemical receipts verify the intentions to plant and produce the insured crop. The producer who provides false documentation is, of course, open to substantial criminal and civil liability. Failure to produce this evidence when requested is cause for FCIC to deny prevented planting coverage. Therefore, no change will be made.

Comment: One comment received from the crop insurance industry recommended deletion of the extended insurance period provisions for carry-over insureds. The comment indicated that the current sales closing date of March 15 in an area with normal planting times during April and May makes the likelihood of a prevented planting cause prior to March 15 very remote. If the provision is not deleted, it was recommended that the provision be clarified to address whether or not buying up from the CAT level for 1996 falls under the first year or the subsequent year provisions.

Response: The Reform Act requires prevented planting coverage be provided for the period between the sales closing date of the previous crop year and the sales closing date of the current crop year. Therefore, no change will be made.

Comment: One comment received from the crop insurance industry recommended that acreage of hybrid seed crops (and any other crop grown under a contract) eligible for prevented planting coverage be limited to the same number of acres under contract for the crop year.

Response: FCIC agrees with the comment and has revised the hybrid corn and hybrid sorghum seed crop provisions accordingly.

Comment: One comment received from the crop insurance industry recommended clarification of provisions that limit the eligible acreage to the number of acres planted to the insured crop during the previous crop year. Specifically, the comment asked if this provision means the number of acres the producer planted the previous year or the number of acres planted on the land in question; and what happens if the

land changes hands from one year to the next or the producer farms different land from one year to the next.

Response: FCIC agrees that the provision may be interpreted incorrectly. The intent is to limit eligible acreage within a FSA farm serial number to the total number of acres planted to the insured crop on the FSA farm serial number the previous crop year unless we agree to a greater number. The crop provisions have been clarified accordingly.

Comment: One comment received from the crop insurance industry and two comments received from FSA question how the insurance provider was to agree in writing to insure eligible acreage. They also recommended that procedure be issued, concurrently with the final rule, to indicate the parameters and required elements of an ''agreement in writing'' to increase the number of acres that would be eligible for prevented planting coverage.

Response: Presently, it is up to the insurance provider to develop a process by which they agree in writing when the producer requests to increase their eligible prevented planting acreage. FCIC agrees that further instructions are needed and will incorporate such instructions into the 1996 Catastrophic Risk Protection Handbook and the Crop Insurance Handbook.

Comment: One comment received from the crop insurance industry recommended adding language to provisions regarding determination of eligible acreage that limits the eligible acreage to that indicated on a ''report of intended acreage.'' The comment further suggests that language be added to indicate that such report meets the criteria for the agreement in writing that is necessary to exceed the printed policy limitations for eligible acreage.

Response: FCIC does not require nor prohibit the use of a ''report of intended acreage.'' However, coverage and premium are based on the actual acreage report filed by the producer, not the report of intended acreage. Therefore, no change is made. FCIC will consider the use of the ''report of intended acreage'' as an ''agreement in writing'' to exceed the printed policy limitations for eligible acreage.

Comment: One comment received from the crop insurance industry stated that reference to the final planting date in the paragraph which states, ''prevented planting coverage will not be provided for any acreage * * * that does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit'' must be clarified. They did not understand if it applied to the final planting date for the planted crop or the final planting date for the other crop which the producer wants to declare as prevented planting.

Response: In FCIC's opinion, this provision does not require clarification. This provision requires information regarding inputs only for the originally intended crop. Therefore, no change is made.

Comment: One comment received from the crop insurance industry recommended deletion of the provision that states ''Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.'' The comment suggests replacing this provision with the following: ''Any acreage you report that does not qualify for prevented planting will be deleted from your acreage report.''

Response: FCIC disagrees with the comment. The recommended replacement language that states ''does not qualify for prevented planting'' is not specific enough regarding the eligible acres for prevented planting. Producers need to understand that acreage deleted from the acreage report consists of both the acreage in excess of the number of acres eligible for prevented planting coverage and acres in excess of the number of eligible acres physically located in a unit.

Comment: One comment received from FSA suggested that if the ''Freedom to Farm'' concept is adopted and the producer is not restricted to a required number of acres of a crop, it will be difficult to believe the acreage reported as ''intended to be planted.''

Response: At this time legislative changes in the farm bill are uncertain and it would be premature for FCIC to make changes based on assumptions. FCIC will make the necessary changes based on the law ultimately enacted. The restriction with regard to prior year's planted acreage continues regardless of changes in acreage bases.

Comment: One comment received from FSA stated that the following phrase ''acreage that is less than 20 acres or 20 percent of the acreage in the unit will be considered intended to be planted to the insured crop planted on the adjoining acreage, unless you can show that you had the inputs available to plant and produce another insured crop on the acreage before the final planting date,'' will allow prevented planting coverage on less than 20 acres or 20 percent of the acreage in the unit if a producer could prove he was going to plant that to another crop. This scenario is unlikely and we are just allowing a loophole for producers to get prevented planting coverage on their potholes.

Response: The proposed provisions state that, ''Prevented planting coverage will not be provided for any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less * * *'' was intended to be used only to verify the crop intended to be planted on the acreage. For example, assume that a producer has one section of land comprised of three separate adjacent fields. The first field consists of the east ⅓ of the section (100 insurable acres), the second field consists of the central ⅓ of the section (100 acres of which 85 acres are not insurable), and the third field consists of the west ⅓ of the section (100 insurable acres). If the producer planted corn on the first and the third fields and is prevented from planting the 15 insurable acres in the second (middle/adjacent) field, the 15 acres will be considered to have been intended to be planted to corn, unless the producer can show that inputs were available to plant and produce another crop on those 15 acres. If inputs are not available for another crop, the 15 acres would not be eligible for prevented planting because at least 20 acres in the unit were not prevented from planting.

Comment: One comment received from the crop insurance industry stated that the language should be modified (subsection 13(d)(4)(iv)(D) of the Coarse Grains Provisions) to read: On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for such acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four crop years;

Response: FCIC agrees with the comment and has revised the provisions accordingly.

Comment: One comment received from the crop insurance industry stated that the language should be modified (subsection 13(d)(4)(iv)(E) of the Coarse Grains Provisions) to read: On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on such acreage in the same crop year (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

Response: FCIC agrees with the comment and has revised the provisions accordingly.

Comment: One comment received from the crop insurance industry stated that it is currently impossible to monitor the requirement that all acreage prevented from being planted be reported, especially when it is small acreage and production from planted acreage will likely exceed the combined guarantee. If this reporting requirement is retained, guidelines must be established to be able to enforce and possibly penalize, if not reported completely. Now may be the time to initiate reporting of intended acreage to be planted the following year at the same time that production is reported for the current crop year.

Response: FCIC agrees that this potential exists and will continue to monitor this problem and to work on a solution. However, no change will be made at this time.

Comment: One comment received from FSA suggested deleting the following sentence because it is repetitious, ''If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received.''

Response: FCIC disagrees that the provision is repetitious. For CAT policies only, this provision specifically disallows more than one prevented planting benefit per acre for a crop year regardless of a past history of double cropping. It also prohibits a prevented planting production guarantee on acreage if another crop is planted for the insured crop year. Both of these benefits may be provided in certain situations under limited and additional coverage. Therefore, no change is made.

Comment: One comment received from an attorney on behalf of the crop insurance industry indicated that allowing both a so called 0/92 or 50/92 payment and a crop insurance prevented planting benefit is contrary to law. The comment states that the interim rule allowing both payments (published at 60 FR 35832 (July 12, 1995)) was a move back to ad hoc disaster payments.

Response: The so called 0/92 and 50/92 payments are not payments for prevented planting. Producers do not have to have been prevented from planting to collect 0/92 or 50/92 payments. Payments under these programs are intended to compensate producers for price deficiencies (i.e. the difference between the target price and the market price. Since payments under the 0/92 and 50/92 programs are available for producers with crop failure, it would be inconsistent to deny the same benefit to producers who are prevented from planting.

Comment: One comment received from the crop insurance industry suggested that additional definitions and clarifications need to be made that spell out the qualifications for double-cropped acreage such as what proof is needed and how many years of records are needed. Otherwise, they recommend excluding double cropped acreage.

Response: The prevented planting provisions specify that the producer must provide adequate records of acreage and production that show the acreage has been double-cropped for each of the last four years. Therefore, no change is necessary.

Comment: Two comments received from the crop insurance industry regarding allowing prevented planting payments on double-crop situations stated that: (1) It will generate additional prevented planting claims on acreage that would otherwise not be double-cropped. If these provisions are retained, ''adequate records of acreage and production in each of the last four years'' must be clearly defined to assure that the specific acreage has a definite history of double-cropping; and (2) two prevented planting payments in double cropping situations may add unwanted incentives to encourage the farming of fragile and marginal lands in more arid regions.

Response: FCIC does not believe that additional claims will be made for acreage that would not normally be double-cropped. The crop provisions clearly indicate that records of both acreage and production for the previous four crop years must be provided to qualify for benefits for more than one crop in a crop year. This provision should discourage claims on acreage that has not been double-cropped in the past. FCIC does not believe this benefit will encourage tillage of fragile and marginal lands in more arid regions. Growers will not double-crop this land for four consecutive years to qualify for prevented planting benefits in the fifth year.

So that these policy changes can take effect beginning with 1996 spring-planted crops, good cause is shown to make this rule effective immediately upon filing with the Federal Register and without the 30-day period required by the Administrative Procedure's Act to avoid the pressures on FCIC to make changes after the contract change date as a result of a large number of producers being prevented from planting such as occurred during the 1995 crop year which resulted in confusion among producers, insurance companies, and FSA with respect to the program changes and increased losses.

Prevented planting changes to these policies were made by interim rule for the 1995 crop year. Experience with those modifications require certain changes which have been made by this rule. However, the present policy effective for crop year 1995 fall-planted crops and scheduled to be effective for 1996 spring-planted crops do not adequately protect the producer who suffers a prevented planting loss. The contract change date for 1996 spring-planted crops is November 30, 1995, and this rule must be effective for those crops. Therefore, good cause is shown to make this rule effective in less than 30 days after publication.

List of Subjects

7 CFR Part 401

Crop insurance, Hybrid sorghum seed, Reporting and recordkeeping requirements, Rice.

7 CFR Part 443

Crop insurance, Hybrid seed, Reporting and recordkeeping requirements.

7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements, Small grains, Cotton, ELS cotton, Sunflower seed and coarse grains.

Final Rule

In this document, 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 part 401) by amending the Hybrid Sorghum Seed (§ 401.109) and Rice (§ 401.120) Endorsements; the Hybrid Seed Crop Insurance Policy (7 CFR 443.7(d)); and the Common Crop Insurance Regulations (7 CFR part 457) by amending the Small Grains (§ 457.101), Cotton (§ 457.104), Extra Long Staple Cotton (§ 457.105), Sunflower Seed (§ 457.108), and Coarse Grains (§ 457.113) Crop Insurance Provisions; applicable beginning with the 1996 crop year for spring crops with contract change dates on or after November 30, 1995.

Accordingly, 7 CFR parts 401, 443, and 457 are amended 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), 1506(p).

2. Section 401.109 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) of the Hybrid Sorghum Seed Endorsement to read as follows:

§ 401.109 Hybrid sorghum seed endorsement.

* * * * *

12. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 insured crop acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 13(o)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the amount of insurance for such acreage will be fifty percent (50%) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 100 dollars per acre (200 dollars multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 8b through e; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting amount of insurance will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) An amount of insurance equal to twenty-five percent (25%) of the amount of insurance for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 50 dollars per acre (200 dollars multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the yield upon which your amount of insurance is based.

(3) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a hybrid sorghum seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the hybrid sorghum seed coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) Eligible acreage will not exceed the number of acres required to be grown in the current crop year under a contract executed with a seed company prior to the acreage reporting date.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be

reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting amount of insurance the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

* * * * *

§ 401.109 [Amended].

3. Section 401.109 is amended by revising paragraph 13(o) to read as follows:

* * * * *

13. Meaning of Terms

* * * * *

(o) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

4. Section 401.120 is amended by revising paragraphs 10(a)(3), 10(b), and 10(d) of the Rice Endorsement to read as follows:

§ 401.120 Rice endorsement.

* * * * *

10. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 10(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting rice (see subsection 11(h)), you may elect:

(i) To plant rice during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 10(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be 700 pounds per acre (2000 pounds multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 7b and c; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be 350 pounds per acre (2000 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for rice in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a rice crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the rice coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to rice on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to rice during the crop years that you certified to determine your yield.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of rice acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of rice on one optional unit and 40 acres of rice on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report) of the General Crop Insurance Policy (§ 401.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

* * * * *

5. Section 401.120 is amended by revising paragraph 11(h) to read as follows:

* * * * *

11. Meaning of Terms

* * * * *

(h) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

PART 443—[AMENDED]

6. The authority citation for 7 CFR part 443 is revised to read as follows:

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

7. Section 443.7(d) is amended by revising paragraphs 17(a)(3), 17(b), and 17(d) of the Hybrid Seed Crop Insurance Policy to read as follows:

§ 443.7 The application and policy.

* * * * *

(d) * * *

17. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by:

(i) Forty percent (0.40) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty percent (0.20) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 17(d)(1)(iii))).

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 insured crop acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 18(w)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with paragraph 17(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the amount of insurance for such acreage will be forty percent (40%) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 80 dollars per acre (200 dollars multiplied by 0.40). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsection 9e.; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting amount of insurance will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) An amount of insurance equal to twenty percent (20%) of the amount of insurance for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your amount of insurance for timely planted acreage is 200

dollars per acre, your prevented planting amount of insurance would be 40 dollars per acre (200 dollars multiplied by 0.20). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the yield upon which your amount of insurance is based.

(3) In addition to the provisions of section 7 (Insurance Period), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a hybrid seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the hybrid seed coverage remains in effect for the 1997 crop year (is not terminated or canceled during or after the 1996 crop year, except the policy may have been canceled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) Eligible acreage will not exceed the number of acres required to be grown in the current crop year under a contract executed with a seed company prior to the acreage reporting date.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, Type and Practice), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting amount of insurance the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

* * * * *

8. Section 443.7(d) is amended by revising paragraph 18(w) to read as follows:

* * * * *

18. Meaning of Terms

* * * * *

(w) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

PART 457—[AMENDED]

9. The authority citation for 7 CFR part 457 is revised to read as follows:

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

10. Section 457.101 is amended by revising paragraph l(p) of the Small Grains Crop Provisions to read as follows:

§ 457.101 Small Grains Crop Insurance.

* * * * *

1. Definitions

* * * * *

(p) *Prevented planting*—Inability to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

11. Section 457.101 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) to read as follows:

* * * * *

12. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented

from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the latest final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 1(p)), you may elect:

(i) To plant the insured crop during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be 50 percent (50%) of the production guarantee for timely planted acres. In counties for which the Special Provisions designate a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted acreage of the insured crop. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 15 bushels per acre (30 bushels multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 11(c) through (e); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the latest final planting date for the insured crop; or

(B) A production guarantee equal to twenty-five percent (25%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the latest final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre (30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for wheat for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the wheat coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage,

acreage for all units will be combined and be reduced by the number of acres of the insured crop that are timely planted and late planted, if the late planting period is applicable. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted acreage of the insured crop in counties for which the Special Provisions designates a spring final planting date, or the acreage reporting date for fall-planted acreage of the insured crop in counties for which the Special Provisions designates a fall final planting date only. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

* * * * *

12. Section 457.104 is amended by revising paragraph 1(n) of the Cotton Crop Provisions to read as follows:

§ 457.104 Cotton crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

13. Section 457.104 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) to read as follows:

* * * * *

12. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting cotton (see subsection 1(n)), you may elect:

(i) To plant cotton during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 245 pounds per acre (700 pounds multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 11 (c) and (d); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 122.5 pounds per acre (700 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a cotton crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the cotton crop in the county. If the cotton coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to cotton on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to cotton during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of cotton acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of cotton on one optional unit and 40 acres of cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

* * * * *

14. Section 457.105 is amended by revising paragraph 1(l) of the ELS Cotton Crop Provisions to read as follows:

§ 457.105 Extra long staple cotton crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(l) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

15. Section 457.105 is amended by revising paragraphs 12(a)(2) and 12 (b) through (h) to read as follows:

* * * * *

12. Prevented Planting

(a) * * *

(2) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 12(b)(2))).

The total of the two calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 100 acres in the unit.

(b) If you were prevented from planting ELS cotton (see subsection 1(l)), you may elect:

(1) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the final planting date. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, your prevented planting production guarantee would be 210 pounds per acre (600 pounds multiplied by 0.35). If you elect to plant the insured crop after the final planting date, production to count for such acreage will be determined in accordance with subsections 11(c) through (f); or

(2) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 122.5 pounds per acre (700 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(c) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(d) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance

period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase an ELS cotton crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the ELS cotton coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(e) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(f) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(1) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(2) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(i) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(ii) The number of acres planted to ELS cotton on the FSA Farm Serial Number during the previous crop year; or

(iii) One hundred percent (100%) of the simple average of the number of acres planted to ELS cotton during the crop years that you certified to determine your yield.

(3) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(4) Prevented planting coverage will not be provided for any acreage:

(i) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(ii) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(iii) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(iv) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year;

(v) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(2)(i) of this section, or a substitute crop allowed in paragraph (a)(2)(ii) of this section);

(vi) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(vii) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(5) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of ELS cotton acres timely planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of ELS cotton on one optional unit and 40 acres of ELS cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero. (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(g) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(h) Late planting provisions are not available under these crop provisions.

* * * * *

16. Section 457.108 is amended by revising paragraph 1(l) of the Sunflower Seed Crop Provisions to read as follows:

§ 457.108 Sunflower seed crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(1) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

17. Section 457.108 is amended by revising paragraphs 13(a)(3), 13(b), and 13(d) to read as follows:

* * * * *

13. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 13(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date .

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting sunflowers (see subsection 1(l)), you may elect:

(i) To plant sunflower seed during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be 450 pounds per acre (900 pounds multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 12 (c) through (e); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to twenty-five percent (25%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be 225 pounds per acre (900 pounds multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a sunflower seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the sunflower seed coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to sunflower seed on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to sunflower seed during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of sunflower acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of sunflower seed on one optional unit and 40 acres of sunflower seed on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e.,100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

* * * * *

18. Section 457.113 is amended by revising paragraph 1(n) of the Coarse Grains Crop Provisions to read as follows:

§ 457.113 Coarse grains crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

19. Section 457.113 is amended by revising paragraphs 13(a)(3), 13(b), and 13(d) to read as follows:

* * * * *

13. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 13(d)(1)(iii)).)

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 1(n)), you may elect:

(i) To plant the insured crop during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 15 bushels per acre (30 bushels multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 12(c) through (g); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to twenty-five percent (25%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre (30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for corn for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for corn in the county. If the corn coverage remains in effect for the 1997 crop year (is not terminated or canceled during or after the 1996 crop year, except the policy may have been canceled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if

you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e.,100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

Done in Washington, DC, on November 27, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–29606 Filed 11–30–95; 4:56 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 129CE, Special Condition 23–ACE–84]

Special Conditions; Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C airplanes modified by Elliott Aviation Technical Products Development, Inc., Moline, Illinois. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is December 7, 1995. Comments must be received on or before January 8, 1996.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 129CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 129CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

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 these special conditions.

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: ''Comments to Docket No. 129CE.'' The postcard will be date stamped and returned to the commenter.

Background

On September 7, 1995, Elliott Aviation Technical Products Development, Inc., P.O. Box 100, Quad City Airport, Moline, IL 61266–0100, made an application to the FAA for a supplemental type certificate (STC) for the Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C airplanes. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C airplanes is given in Type Certification Data Sheet No. A24CE plus the following: § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–41; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designated according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions are normally issued according to § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis in accordance with § 21.101(b)(2).

Elliott Aviation Technical Products Development, Inc., plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions required that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C airplanes, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior rulemaking actions. For example, the Dornier 228–200 (53 FR 14782, April 26, 1988), the Cessna Model 525 (56 FR 49396. September 30, 1991), and the Beech Models 200, A200, and B200 airplanes (57 FR 1220, January 13, 1992). It is unlikely that additional public comment would result in any significant change from those special conditions already issued. For these reasons, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions without notice. Therefore, these special conditions are being made effective upon publication

in the Federal Register. However, as previously indicated, interested persons are invited to comment on these special conditions if they so desire.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C airplanes:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on November 28, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29869 Filed 12–6–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 19, 24, 146 and 151

[T.D. 95–99]

Technical Amendments to the Customs Regulations

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

ACTION: Final rule.

SUMMARY: This document makes various minor technical changes and corrections to the Customs Regulations, in accordance with Customs policy of periodically reviewing its regulations to ensure that they are current.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: For part 151: William Kotlowy, Cargo Control, (202–927–1364).

For parts 19, 24 and 146: Marcus Sircus, Trade Compliance, (202–927–0510).

SUPPLEMENTARY INFORMATION:

Background

The technical amendments summarized below are made with respect to parts 19, 24, 146 and 151, Customs Regulations (19 CFR parts 19, 24, 146 and 151).

Discussion of Changes

1. The warehouse fee suspension authorized in § 9501 of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 58c(e)(6)(C)(ii)) is recognized by eliminating the references to this fee contained in §§ 19.2(a), 19.3(a), 19.17(a) and 24.21(b)(2), Customs Regulations (19 CFR 19.2(a), 19.3(a), 19.17(a) and 24.21(b)(2)). It is noted that § 19.5, which provided for the assessment of a fee to establish, alter or relocate a bonded warehouse, and for an annual operation fee with respect thereto, was previously removed from the Customs Regulations (see T.D. 92–81, 57 FR 37692, 37697 (August 20, 1992) and 60 FR 42431 (August 16, 1995)).

2. Furthermore, the foreign trade zone fee suspension also authorized in section 9501 of the Omnibus Budget Reconciliation Act of 1987 (see 19 U.S.C. 58c(e)(6)(C)(i)) is acknowledged by removing and reserving § 146.5, Customs Regulations (19 CFR 146.5), which required the assessment of an activation fee and an annual fee in relation to a zone. In addition, the references to this fee appearing in §§ 146.6(b)(1), 146.7(a) and (b), and 146.82(a)(6) are likewise deleted, with these provisions being amended as appropriate.

3.a. Generally, imported merchandise may not be opened, examined or inspected until it has been entered under some form of entry for consumption or warehouse. Exceptions to this general requirement are set forth in § 151.4, Customs Regulations (19 CFR 151.4).

In particular, § 151.4(c)(2), under the conditions prescribed therein, permits an operation not amounting to a manufacture to be performed in connection with imported merchandise entered or withdrawn for transportation under bond or for exportation, provided that the permitted operation is approved by both the applicable Customs field office and the Commissioner of Customs. Customs has since decided, however, that this approval authority may simply remain at the field office level. To implement this change of policy, § 151.4(c)(2) is amended by removing the reference to the Commissioner of Customs. By simplifying the approval procedure as described, this amendment confers a benefit upon both the importing public as well as Customs itself.

3.b. Section 151.5(c) requires that the Government be reimbursed for the compensation and other expenses of the Customs officer who must supervise a permitted operation under § 151.4(b) and (c). It is stated that such compensation would be computed in accordance with § 19.5(b), Customs Regulations (19 CFR 19.5(b)). However, pursuant to T.D. 82–204, 47 FR 49355, 49365, 49374–49375 (November 1, 1982), the procedure for computing the charges for reimbursable Customs services then contained in § 19.5, including the compensation of Customs officers as detailed in § 19.5(b), was transferred to § 24.17(d) of the Customs Regulations (19 CFR 24.17(d)). See also the Notice of Proposed Rulemaking in this matter, 47 FR 9225, 9231 (March 4, 1982). (As previously noted, § 19.5, due to the warehouse fee suspension, was later removed from the Customs Regulations in its entirety.)

Accordingly, § 151.5(c) is amended by removing the reference to ''§ 19.5(b)'' and inserting in place thereof a reference to ''§ 24.17(d)''.

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Because the amendments merely conform to existing law or regulation, or simplify an administrative procedure resulting in a benefit to the importing public as noted above, notice and public procedure in this case are inapplicable and unnecessary pursuant to 5 U.S.C. 553(b)(B), and, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the aforesaid requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Nor do these amendments result in a ''significant regulatory action'' under E.O. 12866.

Drafting Information: The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 19

Customs duties and inspection, Imports, Exports, Warehouses.

19 CFR Part 24

Accounting, Canada, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

19 CFR Part 146

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

19 CFR Part 151

Examination, Sampling and testing of merchandise.

Amendments to the Regulations

Parts 19, 24, 146 and 151, Customs Regulations (19 CFR parts 19, 24, 146 and 151), are amended as set forth below.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

§ 19.2 [Amended]

2. Section 19.2(a) is amended by removing its second sentence and its last sentence.

§ 19.3 [Amended]

3. Section 19.3(a) is amended by removing its last sentence.

§ 19.3 [Amended]

4. Section 19.17(a) is amended by removing the phrase, ‘‘, accompanied by the fee to establish a warehouse as prescribed by § 19.5’’.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 261, 267, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1450, 1624; 31 U.S.C. 9701, unless otherwise noted.

* * * * *

§ 24.21 [Amended]

2. Section 24.21(b)(2) is removed and reserved.

PART 146—FOREIGN TRADE ZONES

1. The general authority citation for part 146 continues to read as follows, and the specific authority for § 146.5 is removed:

Authority: 19 U.S.C. 66, 81a-81u, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

§ 146.5 [Amended]

§ 146.6 [Amended]

2. Sections 146.5 and 146.6(b)(1) are removed and reserved.

§ 146.7 [Amended]

3. Section 146.7(a) is amended by removing from its second sentence the phrase, ‘‘the fee required in § 146.5 and’’.

4. Section 146.7(b) is amended by removing its last sentence.

§ 146.82 [Amended]

5. Section 146.82(a)(6) is removed and reserved.

PART 151—EXAMINATION, SAMPLING AND TESTING OF MERCHANDISE

1. The general authority citation for part 151, and the specific authority for subpart A, continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 20 and 21, Harmonized Tariff Schedule of the United States (HTSUS)), 1624. Subpart A also issued under 19 U.S.C. 1499. * * *

* * * * *

§ 151.4 [Amended]

2. Section 151.4(c)(2) is amended by removing the word ‘‘both’’, and by removing the phrase ‘‘and the Commissioner of Customs’’, where appearing therein.

§ 151.5 [Amended]

3. Section 151.5(c) is amended by removing the reference to ‘‘§ 19.5(b)’’, and by adding in place thereof, ‘‘§ 24.17(d)’’.

George J. Weise,

Commissioner of Customs.

Approved: November 6, 1995.

Dennis M. O’Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–29844 Filed 12–6–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 60

[AG Order No. 2000–95]

Authorization of Federal Law Enforcement Officers to Request the Issuance of a Search Warrant

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Rule 41(h) of the Federal Rules of Criminal Procedure authorizes the Attorney General to designate categories of federal law enforcement officers who may request the issuance of search warrants. This rule adds special agents to the Office of Investigations of the Office of Inspector General of the newly created Social Administration to the list of federal law enforcement agencies and officers who are authorized to request the issuance of search warrants under Rule 41, Federal Rules of Criminal Procedure. This rule also adds special agents of the Office of Inspector General of the Department of Health and Human Services to the list of law enforcement officers authorized to request the issuance of a search warrant.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Terry R. Lord, Acting Chief, or Donald B. Nicholson, Attorney, General Litigation and Legal Advice Section, Criminal Division, Department of Justice, Washington, DC 20530 (202–514–1026) (not a toll-free number).

SUPPLEMENTARY INFORMATION: Previous authorizations by the Attorney General under Rule 41(h) were made by Order No. 510–73 (38 FR 7244, March 19, 1973), as amended by Order No. 521–73 (38 FR 18389, July 10, 1973), Order No. 826–79 (44 FR 21785, April 12, 1979), Order No. 844–79 (44 FR 46459, August 8, 1979), Order No. 960–81 (46 FR 52360, October 27, 1981), Order No. 1026–83 (48 FR 37377, August 18, 1983), Order No. 1137–86 (51 FR 22282, June 19, 1986), Order No. 1143–86 (51 FR 26878, July 28, 1986), Order No. 1188–87 (52 FR 19137, May 21, 1987), Order No. 1327–89 (54 FR 9430, March 7, 1989), and Order No. 1344–89 (54 FR 20123, May 10, 1989).

The Social Security Independence and Program Improvement Act of 1994, Public Law 103–296, removes the Social Security Administration (SSA) from its historical position as a component of the Department of Health and Human Services (HHS), and establishes SSA as an independent agency effective March

31, 1995. The Act provides that there will be an Inspector General in SSA, appointed in accordance with the Inspector General Act of 1978, as amended (5 U.S.C. App.3). Appropriate personnel from the HHS Office of Inspector General transferred to SSA to staff the new OIG. Ongoing investigations pertaining to programs and operations of SSA also were transferred.

Since 1979, the Office of Inspector General of the Department of Health and Human Services has been designated as among the agencies with law enforcement officers authorized to request the issuance of search warrants under 28 CFR Part 60. To make this authority explicit, this rule amends § 60.2 of 28 CFR Part 60 by designating special agents of the Office of Inspector General of the former parent agency, the Department of Health and Human Services (§ 60.2(q)), and adding special agents of the Office of Investigations of the Office of Inspector General of the newly-created Social Security Administration (new § 60.2(p)). It also adds the Office of Investigations of the Office of Inspector General, Social Security Administration as new § 60.3(a)(18). The Office of Investigations, Office of Inspector General, Department of Health and Human Services will continue to be separately designated in § 60.3(a)(3).

Because the material contained herein is a matter of Department of Justice practice and procedure, the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date is inapplicable. This rule has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866. It has been determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and accordingly this rule has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Attorney General has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

This rule will not have a substantial direct impact upon the states, on the relationship between the national government and the states, or on 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 Federalism Assessment.

List of Subjects in 28 CFR Part 60

Law enforcement officers, Search warrants.

By virtue of the authority vested in me by Rule 41(h) of the Federal Rules of Criminal Procedure, Part 60 of Chapter I of Title 28, Code of Federal Regulations is hereby amended as follows:

PART 60—AUTHORIZATION OF FEDERAL LAW ENFORCEMENT OFFICERS TO REQUEST THE ISSUANCE OF A SEARCH WARRANT

1. The authority citation for Part 60 is revised to read as follows:

Authority: Rule 41(h), Fed. R. Crim. P (18 U.S.C. appendix).

2. Section 60.2 is amended by adding paragraphs (p) and (q), to read as follows:

§ 60.2 Authorized categories.

* * * * *

(p) Any special agent of the Office of Inspector General, Social Security Administration.

(q) Any special agent of the Office of Inspector General, Department of Health and Human Services.

3. Section 60.3 is amended by adding a new paragraph (a)(18) to read as follows:

§ 60.3 Agencies with authorized personnel.

* * * * *

(a) * * *

(18) Social Security Administration, Office of Inspector General

* * * * *

Dated: November 28, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–29490 Filed 12–6–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–209]

Kentucky Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Kentucky regulatory program (hereinafter referred to as the ''Kentucky program'' under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky proposed revisions to the Kentucky Administration Regulations (KAR) pertaining to outcrop barrier pillars at 405 KAR 16:010 and 405 KAR 18:010. The amendment is intended to provide additional safeguards and clarify ambiguities.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982 Federal Register (47 FR 21404). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated August 2, 1994, (Administrative Record No. KY–1305) Kentucky submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. Kentucky is revising 405 KAR 16:010 pertaining to surface mining activities affecting outcrop barrier pillars and 405 KAR 18:010 pertaining to underground mining activities affecting outcrop barrier pillars.

OSM announced receipt of the proposed amendment in the September 6, 1994, Federal Register (59 FR 46013), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 6, 1994.

By letter dated January 11, 1995 (Administrative Record No. KY–1332), Kentucky proposed additional revisions to 405 KAR 16:010 and 405 KAR 18:010. Based upon the additional revisions to

the proposed program amendment submitted by Kentucky, OSM reopened the public comment period in the February 17, 1995, Federal Register (60 FR 9314) and provided an opportunity for a public hearing on the adequacy of the revised amendment. The public comment period closed on March 20, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes.

A. 405 KAR 16:010—General Provisions/Surface Mines

Kentucky proposes to revise 405 KAR 16:010 to add provisions for the protection of unmined barriers of coal left by underground mining. At new section (8), Kentucky is prohibiting the removal of coal from an unmined barrier of coal left by an underground mine where the underground workings dip toward and approach the land surface, unless the Natural Resources and Environmental Protection Cabinet (Cabinet) has otherwise approved the removal. The Cabinet shall approve the removal if all other applicable requirements of 405 KAR Chapters 7–24 and KRS Chapter 350 are met and at least one of the following conditions is met: (a) The removal will not adversely affect the stability of the unmined barrier of coal; (b) the removal will completely eliminate or significantly reduce underground workings; (c) the removal will eliminate or significantly reduce an existing or potential threat to the health or safety of the public resulting from the existing underground workings; (d) the removal will eliminate or significantly reduce existing or potential adverse impacts to the quantity or quality of ground or surface water resulting from the existing underground workings; or (e) the unmined barrier of coal is not necessary to protect the health or safety of the public or to protect the quantity or quality of ground or surface water.

Kentucky's intent behind this regulation is to reduce the occurrences of a ''blowout,'' which is a rapid release to the land of a large volume of water impounded in underground mine workings. (Administrative Record No. KY–1305.) While there is no Federal counterpart to the Kentucky regulation, the regulation's intent is not inconsistent with section 102 of SMCRA which established SMCRA to protect, *inter alia,* society and the environment from the adverse effects of surface coal mining operations. Therefore, the Director finds the proposed regulation at 405 KAR 16:010, section (8) not inconsistent with SMCRA and the Federal regulations.

B. 405 KAR 18:010—General Provisions/Underground Mines

Kentucky proposes to revise 405 KAR 18:010 to add provisions for protection against the sudden release of water accumulated in underground workings to the land surface. At new section (6), Kentucky is requiring that, except where surface openings are approved in the permit, an unmined barrier of coal shall be left where the underground workings dip toward and approach the land surface. The Cabinet shall waive this requirement if it determines that the proposed operation meets the applicable requirements of 405 KAR Chapters 7–24 and KRS 350 and either of the following provisions: (a) The applicant has demonstrated in the permit application to the satisfaction of the Cabinet, based upon the geologic and hydrologic conditions in the permit area, that accumulation of water in the under ground workings cannot be reasonably expected to occur; or (b) adequate measures to prevent accumulation of water in the underground workings have been included in the permit application and have been approved by the Cabinet. Kentucky is also requiring that if an unmined barrier of coal is required, it shall be of sufficient width to prevent failure and sudden release of water accumulated in underground workings to land surface. The Cabinet may determine, on a case-by-case basis, the width of the unmined barrier of coal. The width shall not be less than that given by the formula: $W = 50 + H$, where W is the minimum width in feet and H is the maximum hydrostatic head in feet that can build up on the unmined barrier of coal. The Cabinet may approve a width less than the minimum indicated by the formula if the applicant has demonstrated in the permit application to the Cabinet's satisfaction that the lesser width will achieve the purpose of this regulation.

While there is no direct Federal counterpart to the Kentucky regulation, the Director finds as more fully stated in the previous finding that the proposed regulation at section (6) of 18:010 to not be consistent with SMCRA and the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment submitted on August 2, 1994. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

The Director reopened the public comment period and provided an opportunity for a public hearing on the revised amendment submitted on January 11, 1995. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

One public comment was received. The Kentucky Resources Council, Inc. generally supported the amendment but recommended that the outcrop barrier width potentially be increased based on site-specific data to prevent the discharge of water through any existing fractures and bedding planes to prevent surface instability and slides. The Director notes that Kentucky may determine, on a case-by-case basis, the width of the outcrop barrier needed to prevent the discharge of water. Kentucky, in its October 14, 1994, Statement of Consideration stated that the width may be potentially increased if Kentucky deems it necessary.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment submitted on August 2, 1994, and revised on January 11, 1995, from various Federal agencies with an actual or potential interest in the Kentucky program. The U.S. Department of the Interior, Fish and Wildlife Service and the Bureau of Mines, and the U.S. Department of Agriculture, Forest Service, concurred without comment.

The U.S. Department of the Interior, Bureau of Land Management, commented that leaving outcrop barriers in place serves a useful purpose but where feasible, drifts should be located updip to prevent drainage from improperly sealed openings. It cited a situation in West Virginia where a blowout occurred which created acid mine drainage. Kentucky's proposed regulations at 405 KAR 16:010 and 18:010 both require that before an unmined coal barrier is removed, the operation must meet all applicable requirements of 405 KAR Chapters 7–24. Section 8(1) of 405 KAR 18:060 allows gravity discharges of water, except for those drift mines subject to section 8(2), if the discharge complies with the performance standards and any

additional KPDES permit requirements. Section 8(2) of 405 KAR 18:060 requires that the entries and accesses of drift mines used after May 18, 1982, must be located to prevent any gravity discharge from the mine when it is located in acid or iron producing coal seams. Therefore, Kentucky's regulations are designed to prevent acid mine drainage from occurring in the situation described by the commenter.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) had three comments concerning 405 KAR 16:010 section 8. Its first comment was that the phrase ''unmined barrier of coal left by an underground mine'' be replaced with ''outcrop barrier'' to add specificity to the proposed revisions. It was also concerned that a misinterpretation of the term ''unmined barrier of coal left by an underground mine'' could mean that barrier pillars could be left in place as operations retreat from mining causing stress in the overlying strata. Its second comment was that the method of mining be specified. Finally, MSHA was concerned about subsection (2)(b) of 405 KAR 16:010 section 8, which allows the removal of the barrier if the removal will completely eliminate or significantly reduce existing underground workings. It was concerned that subsection (2)(b) could allow the removal of the outcrop barrier even if it caused the collapse of the overlying strata. It recommended that if the removal of the barrier is done by augering or highwall mining then an adequate amount of the barrier should be left in place to support the highwall during mining because the overburden would cave in after the barrier was removed, thereby increasing the hazard of highwall collapse to miners.

In response to the first comment, the Director finds the meaning of the term ''unmined barrier of coal left by an underground mine'' sufficiently clear from the context of its use in the proposed regulation because it specifically refers to those underground workings that dip toward and approach the land surface. Also any concern about the retention of barrier pillars during the retreat phase of mining is misplaced. The removal of barrier pillars during the retreat phase of mining occurs during underground mining. Chapter 16 applies to surface coal mining operations. In response to the second comment, the Director again notes that Chapter 16 of Title 405 of the Kentucky Regulations only applies to surface coal mining operations. Therefore, no clarification is necessary since Chapter 16 deals exclusively with surface activities.

Finally, the Director disagrees with MSHA's concerns that section 8(2)(b) may create a hazard to miners. Kentucky's statute at KRS 350.028(5) prevents the Kentucky SMCRA from superseding, amending, modifying or repealing the Federal Coal Mine Health and Safety Act of 1969 and its amendments. In addition, to eliminate or significantly reduce the existing underground workings the coal pillars and outcrop barrier would have to be removed. Augering and highwall mining could not be used to remove coal pillars left in the underground workings and it could only remove a portion of the coal outcrop barrier. Remining would be the method of surface mining used to eliminate or significantly reduce the existing underground workings, not augering or highwall mining. To completely eliminate or significantly reduce underground workings by surface mining methods, the operator must remine the area which includes removing the overburden (thus eliminating the possibility of a collapsing highwall) and then mining by conventional strip mining methods.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On August 11, 1994, OSM solicited EPA's concurrence with the proposed amendment. On August 25, 1994, EPA gave its written concurrence (Administrative Record No. KY–1310).

V. Director's Decision

Based on the above finding(s), the Director approves the proposed amendment as submitted by Kentucky on August 2, 1994, and revised on January 11, 1995.

The Federal regulations at 30 CFR Part 917, codifying decisions concerning the Kentucky program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 1, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 917.15 is amended by adding paragraph (zz) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(zz) Revisions to the following rules, as submitted to OSM on August 2, 1994, and revised on January 11, 1995, are approved effective December 7, 1995:

405 KAR 16:010

Sections 1, 6, 7, and 8 General Provisions/ Surface Mines

405 KAR 18:010

Sections 4, 5, and 6 General Provisions/ Underground Mines

[FR Doc. 95–29876 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH80–2–7241; FRL–5340–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving, in final, Ohio's 1990 base-year ozone precursor emissions inventories for the Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain and Youngstown-Warren-Sharon ozone nonattainment areas as revisions to the Ohio State Implementation Plan (SIP). The emissions inventories were submitted to satisfy a Federal requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions for the year 1990. The Ohio ozone nonattainment areas covered by this rulemaking are Canton (Stark County); Cincinnati-Hamilton (Butler, Clermont, Hamilton and Warren Counties); Cleveland-Akron-Lorain (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); and Youngstown-Warren-Sharon (Mahoning and Trumbull Counties).

EFFECTIVE DATE: This action will be effective January 8, 1996.

ADDRESSEES: Copies of the State submittal and USEPA's analysis of it are available for inspection at the following location (it is recommended you contact William Jones at (312) 886–6058 before visiting the Region 5 office): J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: William Jones, Environmental Engineer, Regulation Development Section, Regulation Development Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6058.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(a)(1) of the Clean Air Act Amendments of 1990 (Act) requires States with ozone nonattainment areas to submit a comprehensive, accurate and current inventory of actual ozone precursor emissions (which includes volatile organic compounds (VOC), nitrogen oxides (NO_X), and carbon monoxide (CO)) for each ozone nonattainment area by November 15, 1992. This inventory must include anthropogenic base-year (1990) emissions from stationary point, area, non-road mobile, and on-road mobile sources, as well as biogenic (naturally occurring) sources in all ozone nonattainment areas. The emissions inventory must be based on conditions that exist during the peak ozone season (generally the period when peak hourly ozone concentrations occur in excess of the primary ozone National Ambient Air Quality Standard—NAAQS). Ohio's annual ozone season is from April 1 to October 31 of each year.

II. Criteria for Evaluating Ozone Emissions Inventories

Guidance for preparing and reviewing the emission inventories is provided in the following USEPA guidance documents or memoranda: ''State Implementation Plans; General Preamble for the Implementation of Title I of the Act,'' (Preamble) as published in the April 16, 1992 Federal Register (57 FR 13498); ''Emission Inventory Requirements for Ozone State Implementation Plans,'' (EPA–450/4–91–010) dated March 1991; a memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, entitled ''Public Hearing Requirements for the 1990 Base-Year Emissions Inventories for Ozone and Carbon Monoxide Nonattainment Areas,'' dated September 29, 1992; ''Procedures for the Preparation of Emissions Inventories for Carbon Monoxide and Precursors of Ozone, Volumes I and II,'' (EPA–450/4–91–016 and EPA–450/4–91–014) (Procedures; Volumes I and II) dated May 1991; and ''Procedures for Emissions Inventories Preparation, Volume IV: Mobile Sources,'' (EPA–450/4–81–026d) (Procedures; Volume IV) dated 1992.

As a primary tool for the review of the quality of emission inventories, the USEPA has also developed three levels (I, II, and III) of emission inventories checklists. The Level I and II checklists are used to determine that all required components of the base-year emission inventory and associated documentation are present. These reviews also evaluate the level of quality of the associated documentation and the data provided by the State and assess whether the emission estimates were developed according to the USEPA guidance. The Level III review evaluates crucial aspects and the overall acceptability of the emission inventory submittal. Failure to meet one of the ten critical aspects would lead to disapproval of the emissions inventory submittal.

Detailed Level I and II review procedures can be found in the USEPA guidance document entitled ''Quality Review Guidelines for 1990 Base Year Emissions Inventories,'' (Quality Review) (EPA–454/R–92–007) dated August 1992. Level III criteria were attached to a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Emission Inventory Issue,'' dated June 24, 1993. The Level I, II, and III checklists used in reviewing this emissions inventory submittal are attached to a USEPA technical support document dated October 3, 1995.

III. State Submittal

On March 15, 1994, the Ohio Environmental Protection Agency (OEPA) submitted a revision to the ozone portion of Ohio's SIP which consisted of the 1990 base-year ozone emissions inventory for the following

ozone nonattainment areas in Ohio: Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain, Columbus, Dayton-Springfield, Toledo and Youngstown-Warren-Sharon. The USEPA has completed its review of the emissions inventories submitted for the Canton (which includes Stark County), Cincinnati-Hamilton (which includes Butler, Clermont, Hamilton and Warren Counties), Cleveland-Akron-Lorain (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties) and Youngstown-Warren-Sharon (which includes Mahoning and Trumbull Counties) ozone nonattainment areas. Revisions to the March 1994 submittal were submitted on June 8 and August 18, 1995 for these areas. These revisions addressed deficiencies highlighted in USEPA's proposed rulemaking. The 1990 base-year emissions inventories submitted for the Toledo and Dayton-Springfield were approved in a rulemaking published in the Federal Register on March 22, 1995 (60 FR 15053). The emissions inventory submitted for the Columbus area will be addressed in a separate rulemaking.

Inventory Preparation Plan/Quality Assurance Plan

All States were required to submit an Inventory Preparation Plan (IPP) to USEPA for review and approval by October 1, 1991. The IPP documents the procedures utilized in the development of an emissions inventory and contains the quality assurance and quality control plan (QA/QC). On March 19, 1992, the State of Ohio submitted a final ozone emissions IPP. On April 15, 1992, USEPA informed the State that the IPP was not approvable at the time. Subsequently, USEPA has worked with the State to correct deficiencies in the IPP. With the March 1994 SIP revision request, the State submitted documentation of how the emissions inventory was prepared, as well as a quality assurance report for the point, area, and mobile source portions of the emissions inventory. The USEPA finds that this documentation and quality assurance report are acceptable to meet the requirements of an IPP.

Point Source Emissions Inventory

For each nonattainment area, the State submitted a point source emissions inventory of all facilities that emit at least 10 tons per year (tpy) of VOC, or 100 tpy NO_X or CO. The State also included sources that emit 100 tpy of VOC, CO, or NO_X located in a 25-mile boundary surrounding each nonattainment area. The point source emissions inventory contains general facility information, number of sources, production schedules and related emissions for each source, emissions limitation, control efficiency and rule effectiveness (RE), as applicable, and total emissions on an annual and daily ozone season basis.

The following methods were employed by the State to identify sources to be included in the 1990 base-year emissions inventory: The 1989 records for plants in the Emissions Inventory System (EIS) were checked and plants meeting the VOC, CO or NO_X criteria were revised with 1990 emissions data; the air permit records were reviewed for plants that are candidates for inclusion in the point source inventory; and current industrial directories and the Toxic Release Information System (TRIS) database were checked for additional point source emissions. For facilities in the point source inventory, the State acquired the emissions data by means of the following: Mail surveys; plant inspections; telephone calls; and air permit files.

The USEPA reviewed the point source emissions data by cross referencing the point source inventory to the following sources: (1) USEPA's guidance document entitled ''Major CO, NO_2, and VOC Sources in the 25–Mile Boundary Around Ozone Nonattainment Areas, Volume I: Classified Ozone Nonattainment Areas,'' (EPA–450/4–92–005a) February 1992; a 1990 TRIS Retrieval; and a 1990 Aerometric Information Retrieval Systems (AIRS) Facility Subsystem—Emission to Compliance Comparison Report.

Where a source was governed by a regulation or a control device, the emissions limit was stated. A RE factor was then applied in the determination of emissions. In accordance with USEPA guidance, a standard RE factor of 80 percent was utilized, unless otherwise justified.

Area Source Emissions Inventory

Area source emissions were calculated using State-specific data as well as USEPA guidance documents and technical memoranda developed for various categories. The State utilized emission factors from Procedures; Volumes I and IV, and AP–42 and provided necessary documentation. The following area source categories were included in the emissions inventory: Gasoline loading and distribution, dry cleaning, degreasing, architectural surface coatings, traffic markings, automobile refinishing, graphic arts, cutback asphalt, pesticide application, commercial/consumer solvents, bakeries, waste management practices (landfills), leaking underground storage tanks, incineration of solid waste, stationary fossil fuel combustion, and fires (structural, open burn, etc.). Vehicle refueling emissions were included as part of the mobile source emissions inventory.

The area source inventory was reviewed utilizing USEPA's guidance documents, and the Level I and II checklists, to ensure that all source categories and their related emissions (and emission factors) were included in the area source emissions inventory. Seasonal adjustments, rule effectiveness, and rule penetration factors were applied as indicated in the State submittal.

On-Road Mobile Source Emissions Inventory

Development of Emission Factors

In the development of the mobile source emissions inventory, the State utilized USEPA's mobile source emissions model, Mobile 5a, for the determination of emissions factors for eight vehicle types and twelve roadway types. Hard-copy documentation of the input and output files are provided in the State's submittal. Where available, the State-specific inputs were utilized in the development of the input files for Mobile 5a.

Development of Vehicle Miles Travelled (VMT)

Canton, Cleveland-Akron-Lorain and Youngstown-Warren-Sharon Areas: The 1990 VMT for each roadway type was developed by the Ohio Department of Transportation (ODOT). ODOT maintains data on each section of highway in the State of Ohio. VMT were developed by the State Road Inventory System and reported through the Highway Performance Monitoring System (HPMS) to the Federal Highway Administration (FHWA).

Each roadway section daily VMT (dVMT) is computed as the annual average daily traffic (AADT) for that section times the length of the section. The county DVMT is the sum of the DVMT for each highway functional classifications in the county. The total dVMTs are then summed as a statewide total. The statewide totals are then compared by functional class to the 1990 HPMS submittal. For those classifications were traffic counts are available for all or nearly all their sections, the totals were essentially the same. For those with more off-systems roads, the resulting totals were larger than the HPMS's submittal value (as expected). Correction factors were computed from the two sets of totals and applied to the individual cells.

ODOT used permanent and portable vehicle classification equipment to develop the vehicle mix by functional classification of highway. Traficomp III vehicle classification equipment are used to support the HPMS data collection effort. A software program called OHIO CONVERT formats vehicle classification data into the FHWA Vehicle Classification categories.

Cincinnati-Hamilton Area: For the Cincinnati-Hamilton area, the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) was responsible for the development of the mobile source emissions inventory. OKI developed this inventory for the Ohio and Kentucky portions of the interstate nonattainment area. OKI utilized the OKI Travel Demand Model to estimate the traffic volume on each roadway segment and an OKI utility program to which calculates the loaded speed, VMT and emissions for each roadway segment.

The OKI travel demand model is a computerized travel demand forecasting model for the entire interstate nonattainment area. The model uses a four phase sequential travel demand forecasting process of trip generation, distribution modal choice and assignment. The OKI Travel Demand Model is composed of TRANPLAN programs and Fortran programs written by OKI.

The model takes zonal demographic data and the transportation network as inputs and produces estimated traffic volumes on each roadway segment in the network. Traffic zones are the analysis units in the model. The OKI region is divided into 909 zones. The output of the model is a loaded highway network which contains information for each link such as initial speed, capacity, distance, functional class district number area type and forecasted traffic.

Off-Road Mobile Source Emissions Inventory

Canton, Cincinnati-Hamilton and Youngstown-Warren-Sharon Areas: The State developed emissions estimates for the following off-road categories according to USEPA guidance: Aircraft, railroad locomotives, recreational boating, off road motorcycles, agricultural equipment, construction equipment, industrial equipment, and lawn and garden equipment. Documentation was provided as to the sources of emissions factors utilized and were submitted in the area source emissions inventory portion of the submittal.

Cleveland-Akron-Lorain Area: The State utilized emissions estimates for non-road emissions developed by the Office of Mobile Sources (OMS - USEPA) in October 1992, in accordance with USEPA requirements for the Cleveland-Akron-Lorain off-road mobile source emissions inventory. These OMS emissions estimates are provided for off-road diesel engines, as well as two-stroke and four-stroke gasoline engines, including off-road motorcycles, construction equipment, farm equipment, lawn and garden equipment, industrial equipment, and recreational vessels. In addition, the State included in the off-road mobile source inventory emissions from aircraft, railroads, and commercial vessels, which are not included in the OMS data. These estimates were developed using emissions factors from AP–42 and activity factors gathered from various sources.

The off-road mobile source inventory was reviewed utilizing the Level I and II checklists and USEPA's guidance documents to ensure that all source categories and their related emissions factors were included in the off-road mobile source emissions inventory.

Biogenic Emissions Inventory

The State of Ohio developed the naturally occurring (biogenic) emissions for the Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain and Youngstown-Warren-Sharon areas according to a USEPA's guidance document entitled ''User's Guide to the Personal Computer Version of the Biogenic Emissions Inventory System (PC-BEIS),'' (EPA–450/4–91–017) dated July 1991. Meteorological data utilized in PC-BEIS was collected in accordance with USEPA guidance. The ten warmest days from the period between 1988 to 1990 with the highest hourly peak ozone concentrations in each ozone nonattainment areas was collected and reviewed. As required by USEPA guidance, the corresponding ozone concentration to the fourth highest daily maximum temperature for each nonattainment area was selected and utilized in the model. The State provided hard copy documentation as to the meteorological inputs utilized and PC-BEIS output files for the biogenic emissions inventory for the Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain and Youngstown-Warren-Sharon nonattainment areas.

IV. Approval of the Emissions Inventories

In a letter addressed to Robert Hodanbosi, Chief, Division of Air Pollution Control, OEPA, dated March 23, 1995, USEPA provided comments on the 1990 base-year ozone emissions inventories submitted for the Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain and Youngstown-Warren-Sharon areas. These comments addressed corrections that would be needed before the inventories could be finally approved.

In a letter dated June 8, 1995, the State of Ohio provided a response to comments on the area, on-road and off-road mobile, and biogenic source emissions. The USEPA has reviewed these responses and finds that the State has satisfied the Agency's comments and that the emissions inventory for the area, on-road mobile, non-road mobile, and biogenic sources is approvable.

At the time of the proposed rulemaking, the State had not responded to the point source emissions inventory comments that were stated in the March 23, 1995, letter (these comments addressed possible facilities that may be required to be included in the point source emissions inventory). The USEPA proposed to approve the State's point source emissions inventory contingent upon the State's response (and completion of USEPA's review) to the point source emissions comments.

In a letter dated August 18, 1995, the State of Ohio provided a response to comments on the point source emissions inventory. The USEPA has reviewed these responses and finds that the State has satisfied the Agency's comments and that the emissions inventory for point sources is approvable.

V. Summary of Ozone Emissions Inventory

The following summary indicates the emissions inventories for an average ozone summer weekday for the Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain and Youngstown-Warren-Sharon ozone nonattainment areas. The emissions are stated in tons per ozone season weekday:

CANTON OZONE NONATTAINMENT AREA

[Tons per day]

Source type	VOC	CO	NO_X
Point Sources	12.36	40.17	6.74
Area Sources	18.93	1.54	0.98
On-Road Mobile Sources	31.66	188.59	16.24
Off-Road Mobile Sources	23.72	63.00	15.89
Biogenic Sources	36.66	.....	.....
Totals	123.33	293.30	39.85

CINCINNATI-HAMILTON OZONE NONATTAINMENT AREA

[Tons per day]

Source type	VOC	CO	NO_X
Point Sources	70.43	88.79	280.67
Area Sources	64.48	5.41	2.29
On-Road Mobile Sources	125.84	793.16	130.68
Off-Road Mobile Sources	37.37	274.57	34.45
Biogenic Sources	109.04	.....	.....
Totals	407.16	1161.93	448.09

CLEVELAND-AKRON-LORAIN OZONE NONATTAINMENT AREA

[Tons per day]

Source type	VOC	CO	NO_X
Point Sources	82.22	208.69	245.59
Area Sources	120.86	12.64	9.54
On-Road Mobile Sources	248.37	1402.01	176.58
Off-Road Mobile Sources	80.19	808.32	70.92
Biogenic Sources	195.37	.....	.....
Totals	727.01	2431.66	502.63

YOUNGSTOWN-WARREN-SHARON OZONE NONATTAINMENT AREA

[Tons per day]

Source type	VOC	CO	NO_X
Point Sources	16.71	18.74	23.25
Area Sources	27.80	13.02	7.00
On-Road Mobile Sources	48.98	293.54	29.87
Off-Road Mobile Sources	13.48	87.88	10.99
Biogenic Sources	50.26	.....	.....
Totals	157.23	413.18	71.11

VI. Proposed Rulemaking Action and Solicitation of Public Comment

On July 10, 1995, USEPA published a rulemaking proposing to approve the emissions inventories submitted by the State of Ohio for the Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain, and Youngstown-Warren-Sharon ozone nonattainment areas (refer to 60 FR 35535). No comments were submitted to USEPA on this proposed action. Also, the proposed rulemaking discussed the use of a letter notice procedure for final approval of this SIP revision. The USEPA has decided to take final action through the Federal Register and not use the letter notice procedure for this action.

VII. Final Action

The USEPA is approving, in final, Ohio's 1990 base-year ozone precursor emissions inventories for the Canton (Stark County); Cincinnati-Hamilton (Butler, Clermont, Hamilton and Warren Counties); Cleveland-Akron-Lorain (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); and Youngstown-Warren-Sharon (Mahoning and Trumbull Counties) ozone nonattainment areas. These emissions inventories were submitted as revision to Ohio's State Implementation Plan.

VIII. General Provisions

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the

procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

IX. Regulatory Process

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

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

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

Through submission of the state implementation plan or plan revisions approved in this action, the State has elected to adopt the program provided for under section 110 of the Clean Air Act. The rules and commitments being approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs or $100 million or more to State, local, or tribal governments in the aggregate or to the private sector. Approval of Ohio's emissions inventories does not impose any new requirements on small entities.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 20, 1995.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1885 is amended by adding new paragraph (v) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(v) Approval—The 1990 base-year ozone emissions inventory requirement of Section 182(a)(1) of the Clean Air Act has been satisfied for the Canton (Stark County); Cincinnati-Hamilton (Butler, Clermont, Hamilton and Warren Counties); Cleveland-Akron-Lorain (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); and Youngstown-Warren-Sharon (Mahoning and Trumbull Counties) areas.

[FR Doc. 95–29755 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[Region II Docket No. 146, NJ23–1–7243(a); FRL–5322–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of New Jersey; Revised Policy Regarding Applicability of Oxygenated Fuels Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On June 9, 1995, the New Jersey Department of Environmental Protection (NJDEP) submitted requests to redesignate the Camden County nonattainment area and nine not-classified areas from nonattainment to attainment for carbon monoxide (CO). Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving the New Jersey requests because they meet the redesignation requirements set forth in the CAA, which include the submittal of maintenance plans.

In addition, EPA is approving two related State Implementation Plan (SIP) submissions by NJDEP. On November 15, 1992, NJDEP submitted a final 1990 base year emission inventory for CO emissions. This includes emissions data for the entire State for all sources of CO in New Jersey's CO nonattainment areas. NJDEP also submitted contingency measures in the event the State fails to maintain the national ambient air quality standards for CO or if its vehicle miles travelled forecast is exceeded. In this action, EPA is approving New Jersey's CO emissions inventory submission and contingency measures.

EFFECTIVE DATES: This final rule is effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: William S. Baker, Chief, Air Programs Branch,

Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 20th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Energy, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866, (212)637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

Camden County was designated nonattainment for CO under the provisions of sections 186 and 187 of the CAA. Because the area had a design value of 11.6 parts per million based on 1988 and 1989 data, the area was classified moderate. [See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR part 81, section 81.331.] This design value was based on ambient CO data recorded in the City of Philadelphia, which is in the Philadelphia-Wilmington-Trenton Consolidated Metropolitan Statistical Area (CMSA). For moderate CO nonattainment areas, the CAA requires that air quality must attain the National Ambient Air Quality Standard (NAAQS) by December 31, 1995. The last exceedance of the CO NAAQS in Camden County occurred in 1989.

In addition, nine areas were designated as not-classified nonattainment under section 107(d)(1)(C) of the CAA. Three of these not-classified areas, the City of Trenton, the City of Burlington and the Borough of Penns Grove (part), are located within the Philadelphia-Wilmington-Trenton CMSA. Five of the not-classified areas, the Borough of Freehold, the City of Morristown, the City of Perth Amboy, the City of Toms River and the Borough of Somerville, are located in the New York-Northern New Jersey-Long Island (NY–NJ–LI) CMSA. The remaining not-classified area is the City of Atlantic City, which is not contained within a CMSA. The oxygenated gasoline requirements applicable to each of these areas depend upon its location in the State. These requirements are discussed in section III.5 of this notice.

The nine areas were considered ''not-classified'' because air quality data collected during the period 1988 and 1989 showed that the NAAQS were met or because the data were not available. In those instances where air quality was no longer being monitored, concentrations measured in prior years had fallen well below the CO NAAQS.

In an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on September 28, 1995, the State of New Jersey submitted CO redesignation requests and maintenance plans for Camden County and the nine not-classified areas. This submittal contained evidence that public hearings were held on September 8, 1995.

II. Evaluation Criteria

Section 107(d)(3)(E) of the CAA provides five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS.
2. The area must have a fully approved SIP under section 110(k) of the CAA.
3. The air quality improvement must be permanent and enforceable.
4. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.
5. The area must meet all applicable requirements under section 110 and Part D of the CAA.

III. Review of State Submittal

EPA has determined that the information received from the NJDEP constitutes complete redesignation requests under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2.

Additionally, the New Jersey redesignation requests for Camden County and the nine not-classified areas meet the five requirements of section 107(d)(3)(E), noted earlier. The following is a brief description of how the State has fulfilled each of these requirements.

1. Attainment of the CO NAAQS

New Jersey has quality-assured CO ambient air monitoring data showing that Camden County and the nine not-classified areas have met the CO NAAQS. These requests are based on an analysis of quality-assured CO air monitoring data which is relevant to the maintenance plan and to the redesignation request. To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard per year over at least two consecutive years. CO monitoring data from calendar year 1990 through calendar year 1994 shows that no violations of the CO NAAQS have occurred. Camden County and the nine not-classified areas have complete quality assured data showing no more than one exceedance of the NAAQS per year over the most recent two complete years of data (1993 and 1994). In fact, the nine not-classified areas have not violated the NAAQS since 1987. In addition, the most recent ambient CO data for calendar year 1995 shows no exceedances of the NAAQS to date in Camden County or in the nine not-classified areas. EPA finds that all of these areas have met the first statutory criterion for attainment of the CO NAAQS (40 CFR 50.9 and appendix C).

Furthermore, air quality data for the Philadelphia portion of the Philadelphia-Wilmington-Trenton CMSA shows that the remainder of the nonattainment area has met the CO NAAQS since 1990. Therefore, air quality in the entire CMSA has been meeting the CO standards since 1990.

2. Fully Approved SIP Under Section 110(k) of the CAA

New Jersey's September 28, 1995 CO SIP revision is fully approved by EPA as meeting all the requirements of section 110(a)(2)(I) of the CAA, including the requirements of Part D (relating to nonattainment), which were due prior to the date of New Jersey's redesignation request. The 1990 CAA required that nonattainment areas meet specific new requirements depending on the severity of the nonattainment classification. Requirements for Camden County and the nine not-classified areas include the preparation of a 1990 emission inventory with periodic updates and the development of contingency measures. Each of these requirements added by the 1990 CAA are discussed in greater detail below.

A. Part D New Source Review Requirements

Consistent with the October 14, 1994 EPA guidance from Mary D. Nichols entitled ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' EPA is not requiring full approval of a Part D NSR program by New Jersey as a prerequisite to redesignation to attainment. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully approved Part D NSR program so long as the program is not relied upon for maintenance. New Jersey has not relied on a NSR program for CO sources to maintain attainment. Because Camden

County and nine not-classified areas are being redesignated to attainment by this action, New Jersey's Prevention of Significant Deterioration requirements will be applicable to new or modified sources in Camden County and the nine not-classified areas.

B. Emission Inventory

New Jersey submitted a CO base year inventory for the entire State to EPA on November 15, 1992. On November 21, 1994, New Jersey submitted a technical update to the CO emission inventory for Bergen, Essex, Hudson, Passaic, and Union Counties. On September 28, 1995, New Jersey updated the CO emission inventory for the Camden County moderate nonattainment area and nine not classified nonattainment areas. These inventories are required under section 187(a)(1) of the CAA.

New Jersey's base year inventory used a three month CO season of November 1990 through February 1991. The inventory included emissions estimates from stationary point, stationary area, on-road mobile, and nonroad mobile sources of CO. These emission estimates were prepared in accordance with EPA guidance.

Table A presents a summary of the CO peak season daily emissions estimates in tons per winter day for Camden County and the nine not classified areas. Table B presents a summary of the CO peak season daily emissions estimates in tons per winter day for the remaining nonattainment areas in the State.

TABLE A.—SUMMARY OF CO PEAK SEASON DAILY EMISSIONS ESTIMATES

Nonattainment Area	1990 Base year CO emission inventory (tons per day)	2007 Projected CO emission inventory (tons per day)
City of Atlantic City	98	80
City of Burlington	225	200
Borough of Freehold	245	205
City of Morristown	251	192
Borough of Penns Grove (part)	47	37
City of Perth Amboy	320	279
Borough of Somerville	135	113
City of Toms River	145	142
City of Trenton	154	135
Total for Not Classified Areas	1620	1383
Camden County	252	218
Total for Camden County	252	218

TABLE B.—SUMMARY OF CO PEAK SEASON DAILY EMISSIONS ESTIMATES

Nonattainment area	1990 Base year CO emission inventory (tons per day)
Bergen County	506
Essex County	377
Hudson County	222
Passaic County	303
Union County	273
Total for Northern Nonattainment Counties	1681

Section 110(k) of the CAA contains provisions regarding emission inventory submittals. The EPA has determined that New Jersey's 1990 base year CO emissions inventory submitted on November 15, 1992 and updated on November 21, 1994 and September 28, 1995, meets these requirements. For further details, the reader is referred to the Technical Support Document, which is available for review at the addresses provided previously.

C. Contingency Measures

Under section 187(a)(3) of the CAA, the State is required to include adopted contingency measures in the event the State fails to attain the national ambient air quality standards by the required date or if the vehicle miles travelled forecast is exceeded beyond the allowable limit as defined in the January, 1992 guidance document, ''Section 187 VMT Forecasting and Tracking Guidance.''

EPA is approving New Jersey's transportation control measures (TCMs) with these redesignation requests. These TCMs cover three major program areas: Traffic flow improvements, park & ride lots, and increased ridesharing. The State included its employee commute options (ECO) program as an additional contingency measure. EPA will be taking action on New Jersey's ECO program submittal as a requirement of the State's ozone SIP in a separate Federal Register notice since there are specific requirements an ECO program must meet in order to be approved as part of an ozone SIP, but not as a contingency measure in a CO SIP.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

New Jersey has implemented a number of measures to control motor vehicle CO emissions. Emission reductions achieved through the implementation of these control measures are enforceable. These measures include the Federal Motor Vehicle Control Program, Federal reformulated gasoline, New Jersey's pre-1990 modifications to its inspection and maintenance (I/M) program, and local transportation control measures.

The State of New Jersey has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed Camden County to attain the NAAQS since 1990 and the nine not-classified areas to attain since 1986.

4. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. In this notice, EPA is approving the State of New Jersey's maintenance plans for Camden County and the nine not-classified areas because EPA finds that New Jersey's submittal meets the requirements of section 175A.

A. Attainment Emission Inventory

As previously noted, on November 15, 1992, the State of New Jersey submitted a comprehensive inventory of CO emissions for Camden County and the nine not-classified areas. The inventory includes emissions from area, stationary, and mobile sources using 1990 as the base year for calculations. Although the 1990 inventory can be considered representative of attainment conditions because the NAAQS were not violated during 1990, New Jersey established CO emissions for the redesignation year, 1995, as well as a forecast for the year 2007 in its redesignation request. These estimates were derived from the State's 1990 emissions inventory and assumptions

about economic and vehicle miles travelled growth.

B. Demonstration of Maintenance-Projected Inventories

Total CO emissions were projected from 1990 base year out to 2007. These projected inventories were prepared in accordance with EPA guidance. The projections in Table A show that future CO emissions are not expected to exceed the level of emissions in the base year after the benefits of the Federal Motor Vehicle Control Program, reformulated gasoline and pre-1990 basic I/M program are taken into consideration. It should be noted that the NJDEP demonstrated that Camden County and the nine not-classified areas will maintain the CO standard without the need for an oxygenated fuels program.

As a result of this projection, New Jersey took into account the effects of growth due to economic activities and population on stationary and off-highway sources.

C. Monitoring Network

New Jersey has committed to continue to operate its existing air monitoring network and quality assurance program in accordance with 40 CFR part 58 to ensure the development of complete and accurate emission inventory and air monitoring data.

D. Verification of Continued Attainment

Continued attainment of the CO NAAQS in Camden County and the nine not-classified areas depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has also committed to submit periodic inventories of CO emissions every three years beginning in 1996 and continuing at least through 2007.

E. Contingency Plan

The level of CO emissions in Camden County and the nine not-classified areas will largely determine their ability to stay in compliance with the CO NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS based upon some unforeseeable condition. In order to meet this challenge, the CAA requires states to develop contingency measures to offset these conditions.

New Jersey will be using an enhanced I/M program as its contingency measure. New Jersey is implementing enhanced I/M to meet other requirements of the CAA and it has the additional benefit of reducing CO emissions. However, New Jersey will not wait for a triggering mechanism before implementing this measure. Instead, the State will implement this program as quickly as is practicable. Operation of this program is expected to begin in 1996.

5. Meeting Applicable Requirements of Section 110 and Part D

In section III.2. of this notice EPA sets forth the basis for its conclusion that New Jersey has a fully approved SIP which meets the applicable requirements of section 110 and Part D of the CAA. EPA notes that section 110 also requires that states include in their SIPs, where applicable, oxygenated gasoline programs. EPA has concluded that Camden County is no longer required to have an oxygenated gasoline program in the applicable SIP because the entire Philadelphia-Wilmington-Trenton CMSA is in fact attaining the CO NAAQS. In addition, for redesignation purposes, an oxygenated gasoline program does not have to be a part of the applicable SIP for the nine not classified nonattainment areas.

Camden County

The Camden County low moderate nonattainment area had a CO design value greater than 9.5 parts per million at the time of the enactment of the Clean Air Act Amendments of 1990 and thus was originally required to have an oxygenated gasoline program by November 1, 1992 as a part of the SIP for this area. In this notice, however, EPA is finding that the entire Philadelphia-Camden nonattainment area is currently attaining the CO NAAQS (See section III.1). Under a new interpretation of section 211(m)(6) discussed in this section, once EPA determines that a CO nonattainment area is actually attaining the CO NAAQS and that the area demonstrates it does not need oxygenated gasoline to maintain the NAAQS, section 211(m) no longer requires the submittal of a SIP revision for the area embodying an oxygenated gasoline program so long as the area continues to maintain the standard. Thus, because EPA finds that the Philadelphia-Camden nonattainment area is actually attaining the NAAQS and that Camden County has demonstrated that it does not need oxygenated gasoline for maintenance, Camden County is no longer required to have an oxygenated gasoline program in the applicable SIP. As a consequence, Camden County may be redesignated notwithstanding the lack of a section 211(m) oxygenated gasoline program since such a program is not an applicable requirement for purposes of evaluating the redesignation request for Camden County pursuant to section 107(d)(3)(E).

In this notice, EPA is refining its previous interpretation of when section 211(m) requires a state to include an oxygenated gasoline program in its SIP. Section 211(m)(1) requires states with nonattainment areas with a design value of at least 9.5 ppm to submit a SIP revision containing oxygenated gasoline requirements. Section 211(m)(6), however, states: ''*Nothing in this subsection shall be interpreted as requiring* an oxygenated gasoline program *in an area which is in attainment* for CO, except that in a CO area which is redesignated as attainment for CO, the requirements of this subsection shall remain in effect to the extent such program is necessary to maintain such standard * * *'' (emphasis added).

Previously, EPA has looked to an area's designation as nonattainment to determine whether oxygenated gasoline is required. However, section 211(m)(6) refers specifically to an area ''which is in attainment,'' not to one which is designated attainment. EPA interprets this language to mean that as soon as EPA determines that an entire nonattainment area is actually in attainment, even prior to redesignation, section 211(m) no longer requires an oxygenated gasoline program for that area.

This interpretation is based on the plain language of the statute and is supported by the general CAA structure for applying provisions for SIP requirements to nonattainment areas. Section 211(m)(6) provides that nothing in section 211(m) is to be interpreted as requiring an oxygenated gasoline program in an area that is ''in attainment;'' it does not state that nothing in section 211(m) is to be interpreted as requiring an oxygenated gasoline program in an area ''designated attainment.'' The two issues are distinct, however. Whether an area is ''in attainment'' depends solely on a determination of whether an area is attaining the NAAQS (a determination based on the air quality of the area), whereas an area's designation as attainment or nonattainment depends on other factors as well as its own air quality. [See section 107(d)(1) and (d)(3)(E).] Congress has drawn distinctions between the issue of whether an area has attained the standard and its designation as attainment. [See, e.g., section 107(d)(3)(E) (attainment of the standard is one of several criteria for being redesignated attainment); section 182(f) (NO_X RACT requirements may be waived for nonattainment areas if it is

determined that NO_X reductions would not contribute to attainment of the standard).]

Moreover, this interpretation is a reasonable reading that gives section 211(m)(6) legal effect. Section 175A states that nonattainment area requirements continue in force and effect until an area is redesignated to attainment; by implication, once the area is redesignated, the requirements no longer apply except as needed for maintenance or as contingency measures. Section 211(m)(6) would be a redundant restatement of this principle if it meant only that redesignated areas were no longer subject to oxygenated gasoline requirements. Furthermore, EPA notes that provisions such as section 211(m)(6) are not reflected in other nonattainment area provisions, such as the inspection/maintenance requirements, further supporting EPA's interpretation.

The effects of this interpretation of section 211(m) are limited in several respects. Where a state that is in fact attaining the CO NAAQS has an oxygenated gasoline program as part of an approved SIP, the program would remain in the SIP; section 211(m)(6) only would allow the state to submit a SIP revision to remove the program, and then only if it is not needed for maintenance and its removal complied with section 110(l). Also, the entire nonattainment area must be actually achieving the CO NAAQS before oxygenated gasoline would not be required for any portion of the MSA or CMSA in which an area is located. Furthermore, unless the area is redesignated to attainment, the oxygenated gasoline program requirement would again become effective upon a subsequent violation of the standard. In addition, as this interpretation is based on the language of section 211(m)(6), it does not extend beyond the oxygenated gasoline requirements to other CAA SIP requirements.

The Nine Not Classified Areas

For various reasons, none of the nine not-classified nonattainment areas being redesignated to attainment in today's notice are required to have an oxygenated gasoline program in their approved SIP in order to be redesignated. None of the areas had a CO design value of 9.5 parts per million or greater and, therefore, none of the nine areas would have been required to have an oxygenated gasoline program. However, oxygenated gasoline programs had been required in eight of these nine areas because they are located in a CMSA containing a moderate CO nonattainment area in which section 211(m) required a program. The ninth area, Atlantic City, was and is not required to have an oxygenated fuel program in its SIP nor is it a part of a CMSA where the program is required.

Three of the not-classified areas, the City of Trenton, the City of Burlington and the Borough of Penns Grove (part), are located within the Philadelphia-Wilmington-Trenton CMSA. While these areas had once been required to have an oxygenated gasoline program due to their location in the same CMSA as the Camden Area, as the Camden Area is no longer required to have a program, they are also no longer required to have a program.

EPA is proceeding with the redesignation of the remaining five not-classified nonattainment areas in the NY-NJ-LI CMSA notwithstanding the lack of an approved SIP requiring the sale of oxygenated fuels in these five areas. These areas are, the Borough of Freehold, the City of Morristown, the City of Perth Amboy, the City of Toms River and the Borough of Somerville. EPA believes that these five areas satisfy the requirement of section 107(d)(3)(E) of the CAA in that they have a fully-approved SIP meeting all of the section 110 and Part D requirements applicable to the area. The reasons for this view are based on a combination of factors.

The requirements of section 211(m) concerning the sale of oxygenated gasoline in the NY-NJ-LI CMSA do not apply to the five not-classified areas by virtue of their own classification, designation or design value. Rather, oxygenated fuel is required to be sold in these areas because they are located within a CMSA containing a moderate CO nonattainment area with a design value of greater than 9.5 parts per million.

The requirements concerning the sale of oxygenated fuels in areas that are located within a CMSA in which a CO nonattainment area with a design value of 9.5 parts per million or greater exist regardless of the designation or classification of those areas as attainment, nonattainment or not-classified. Thus, the applicability of the requirements concerning the sale of oxygenated fuels in the five not-classified areas will not be affected by the redesignation of those areas to attainment. Furthermore, the State of New Jersey remains subject to a requirement to submit a SIP revision requiring the sale of oxygenated fuel in the New Jersey portion of the NY-NJ-LI CMSA because nonattaining areas of the CMSA remain subject to the section 211(m) requirements.

For purposes of applying the provisions of section 107(d)(3)(E) concerning requirements applicable to an area seeking redesignation, EPA believes it reasonable and appropriate to view the oxygenated fuel requirements of section 211(m) as applying only to an area within a CMSA whose design value triggered the applicability of the program, but not to the peripheral areas within the same CMSA that are subjected to the program by virtue of their location within that CMSA. Nonetheless, the redesignation to attainment of the five not-classified areas located in the NY-NJ-LI CMSA will not remove the mandate that the State is required to submit a SIP revision to implement an oxygenated fuel program throughout the CMSA.

IV. Final Action

EPA is approving the Camden County and nine not-classified CO maintenance plans because they meet the requirements set forth in section 175A of the CAA. In addition, the Agency is approving the requests for redesignating Camden County and the nine not-classified areas to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA is also approving New Jersey's 1990 base year CO emissions inventory and contingency measures.

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

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this direct final action will be effective February 5, 1996 unless, by January 8, 1996, adverse or critical comments are received.

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

adverse comments are received, the public is advised that this rule will be effective in 60 days. [See 47 FR 27073 and 59 FR 24059.]

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

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

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

Through submission of this state implementation plan or plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 187 of the CAA. These rules may bind state, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose any mandate upon the state, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated annual costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

Under 5 U.S.C. 605(b), I certify that redesignations do not have a significant economic impact on a substantial number of small entities. [See 46 FR 8709.]

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(l) of the CAA, petitions for judicial review of this rule must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. [See 307(b)(2).]

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Dated: October 24, 1995.

William J. Muszynski,

Deputy Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding paragraph (c)(57) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(57) The redesignation and maintenance plan for Camden County and the Nine not-classified areas (the City of Trenton, the City of Burlington, the Borough of Penns Grove (part), the Borough of Freehold, the City of Morristown, the City of Perth Amboy, the City of Toms River, the Borough of Somerville, and the City of Atlantic City) submitted by the New Jersey Department of Environmental Protection on September 28, 1995, as part of the New Jersey SIP. The 1990 Baseline CO Emission Inventory for the State of New Jersey was submitted on November 15, 1992 and a Technical Update was submitted on November 21, 1994.

(i) Incorporation by reference.

(A) ''New Jersey Carbon Monoxide State Implementation Plan Redesignation And Maintenance Plan For Camden County,'' section 5.f, effective date September 28, 1995.

(B) ''New Jersey Carbon Monoxide State Implementation Plan Redesignation and Maintenance Plan for the Nine Not-Classified Nonattainment Areas,'' section 5.f, effective date September 28, 1995.

(ii) Additional material.

(A) ''New Jersey Carbon Monoxide State Implementation Plan Redesignation And Maintenance Plan For Camden County'' with appendices, September 28, 1995.

(B) ''New Jersey Carbon Monoxide State Implementation Plan Redesignation and Maintenance Plan for the Nine Not-Classified Nonattainment Areas'' with appendices, September 28, 1995.

3. Section 52.1582 is amended by redesignating paragraph (d) to (d)(1) and adding new paragraph (d)(2) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide.

* * * * *

(d) * * *

(d)(2) The base year carbon monoxide emission inventory requirement of section 187(a)(1) of the 1990 Clean Air Act Amendments has been satisfied for the entire State. The inventory was submitted on November 15, 1992 and amended on September 28, 1995 by the New Jersey Department of Environmental Protection as a revision to the carbon monoxide State Implementation Plan.

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.331, the table for ''New Jersey-Carbon Monoxide'' is amended by revising the entry for Camden County to read as follows:

§ 81.331 New Jersey.

* * * * *

NEW JERSEY—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Atlantic City Area:				
Atlantic County (part) The City of Atlantic City	February 5, 1996	Attainment.		
Burlington Area:				
Burlington County (part) City of Burlington	February 5, 1996	Attainment.		
Freehold Area:				
Monmouth County (part) Borough of Freehold	February 5, 1996	Attainment.		
Morristown Area:				
Morris County (part) City of Morristown	February 5, 1996	Attainment.		
New York-N. New Jersey-Long Island Area:				
Bergen County		Nonattainment		Moderate > 12.7ppm.
Essex County		Nonattainment		Moderate > 12.7ppm.
Hudson County		Nonattainment		Moderate > 12.7ppm.
Passaic County (part):				
City of Clifton		Nonattainment		Moderate > 12.7ppm.
City of Patterson		Nonattainment		Moderate > 12.7ppm.
City of Passaic		Nonattainment		Moderate > 12.7ppm.
Union County		Nonattainment		Moderate > 12.7ppm.
Penns Grove Area:				
Salem County (part) Borough of Penns Grove. Those portions within 100 yards of the intersections of U.S. Route 130 and County Roads 675 & 607.	February 5, 1996	Attainment.		
Perth Amboy Area:				
Middlesex County (part) City of Perth Amboy	February 5, 1996	Attainment.		
Philadelphia-Camden County Area:				
Camden County	February 5, 1996	Attainment.		
Somerville Area:				
Somerset County (part) Borough of Somerville	February 5, 1996	Attainment.		
Toms River Area:				
Ocean County (part) City of Toms River	February 5, 1996	Attainment.		
Trenton Area:				
Mercer County (part) City of Trenton	February 5, 1996	Attainment.		
AQCR 043 NJ NY Connecticut Interstate (Remainder of)		Unclassifiable/ Attainment..		
Middlesex County (part) area outside of Perth Amboy.				
Monmouth County (part) area outside of Freehold.				
Morris County (part) area outside of Morristown.				
Passaic County (part) area outside Clifton, Patterson, and Passaic.				
Somerset County (part) area outside of Somerville.				
AQCR 045 Metro. Philadelphia Interstate (Remainder of)		Unclassifiable/ Attainment.		
Burlington County (part) Area outside Burlington.				
Gloucester County.				
Mercer County (part) Area outside Trenton.				
Salem County (part) Area outside Penns Grove Area.				
AQCR 150 New Jersey Intrastate		Unclassifiable/ Attainment.		
Atlantic County (part) Area outside Atlantic City.				
Cape May County.				
Cumberland County.				
Ocean County (part) Area outside Toms River.				
AQCR 151 NE PA—Upper Delaware Valley		Unclassifiable/ Attainment.		
Hunterdon County.				
Sussex County.				

NEW JERSEY—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Warren County.				

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95–29818 Filed 12–6–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[FL63–1–7143a; FRL–5340–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Florida Change in National Policy Regarding Applicability of Conformity Requirements to Redesignation Requests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 7, 1995, the State of Florida, through the Florida Department of Environmental Protection (FDEP), submitted a maintenance plan and a request to redesignate the Tampa area from marginal nonattainment to attainment for ozone (O_3). The Tampa O_3 nonattainment area consists of Hillsborough and Pinellas Counties. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data are available to warrant such revisions and the CAA redesignation requirements are satisfied. In this action, EPA is approving Florida's request because it meets the maintenance plan and redesignation requirements set forth in the CAA, and EPA is also approving the 1990 base year emission inventory for the Tampa area.

DATES: This action will be effective February 5, 1996, unless adverse or critical comments are received by January 8, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Joey LeVasseur, at the EPA Regional Office listed below.

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

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

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

Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

Hillsborough County Environmental Protection Commission, 1410 North 21st Street, Tampa, Florida 33605.

Pinellas County Department of Environmental Management, Division of Air Quality, 300 S. Garden Avenue, Clearwater, Florida 34616.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 ext.4215. Reference file FL63–1–7143a.

SUPPLEMENTARY INFORMATION: The Clean Air Act, as amended in 1977 (1977 Act) required areas that were designated nonattainment based on a failure to meet the O_3 national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. The Tampa-St. Petersburg-Clearwater area (Tampa), comprised of Hillsborough and Pinellas Counties, was designated under section 107 of the 1977 Act as nonattainment with respect to the O_3 NAAQS on March 3, 1978. [43 FR 8964, 40 CFR 81.310] In accordance with section 110 of the 1977 Act, the State submitted a part D O_3 SIP on April 30, 1979, which was supplemented on August 27, 1979, and January 23, 1980, which EPA conditionally approved on March 18, 1980, and fully approved on May 14, 1981, as meeting the requirements of section 110 and part D of the 1977 Act.

On November 15, 1990, the CAA Amendments of 1990 were enacted (1990 Amendments). [Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q] The nonattainment designation of Tampa was continued by operation of law pursuant to section 107(d)(1)(C)(i) of the 1990 Amendments. Furthermore, it was classified as marginal for O_3 according to section 181(a)(1). (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.310).

Tampa more recently has ambient monitoring data that show no violations of the O_3 NAAQS, during the period 1990 through 1994. In addition, there have been no exceedances reported for the 1995 O_3 season. Therefore, in an effort to comply with the 1990 Amendments and to ensure continued attainment of the NAAQS, Florida submitted an O_3 maintenance SIP for the Tampa area on February 7, 1995, and also requested redesignation of the area to attainment with respect to the O_3 NAAQS.

The 1990 Amendments revised section 107(d)(1)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;
2. The area must meet all relevant requirements under section 110 and part D of the CAA;
3. The area must have a fully approved SIP under section 110(k) of the CAA;
4. The air quality improvement must be permanent and enforceable; and
5. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

The Florida redesignation request for the Tampa area meets the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how the State has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. Attainment of the O_3 NAAQS

The Florida request is based on an analysis of quality assured O_3 air quality data which is relevant to the maintenance plan and to the redesignation request. The ambient O_3 data for the calendar years 1990 through

1992 shows an exceedance rate of less than 1.0 per year of the O_3 NAAQS in the Tampa area. (See 40 CFR 50.9 and Appendix H). In addition, there have been no ambient air exceedances in 1993, 1994 or to date in 1995 for O_3. Because the Tampa area has complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the Tampa area has met the first statutory criterion of attainment of the O_3 NAAQS. Florida has committed to continue monitoring in this area in accordance with 40 CFR part 58.

2. Meeting Applicable Requirements of Section 110 and Part D

On May 14, 1981, EPA fully approved Florida's SIP for the Tampa area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act (46 FR 26640). The 1990 Amendments, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA has reviewed the SIP to ensure that it contains all measures that were due under the 1990 Amendments prior to or at the time the State submitted its redesignation request. EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation request to be approved, the state has met all requirements that applied to the subject area prior to the submission of a complete redesignation request. Requirements of the CAA that come due subsequently continue to be applicable at those later dates (see section 175A(c)) and, if the redesignation is disapproved, the state remains obligated to fulfill those requirements.

A. Section 110 Requirements

Although section 110 was amended by the 1990 Amendments, the Tampa SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, (see 57 FR 27936 and 23939, June 23, 1993), many are duplicative of other requirements of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

B. Part D Requirements

Before Tampa may be redesignated to attainment, it also must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). The Tampa area was classified as marginal (See 56 FR 56694, codified at 40 CFR 81.530). Therefore, in order to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176, and is subject to requirements of subpart 2 of part D.

B.1. Subpart 1 of part D—Section 172(c) Plan Provisions

Under section 172(b), the Administrator established that States containing nonattainment areas shall submit a plan or plan revision meeting the applicable requirements of section 172(c) no later than three years after an area is designated as nonattainment, i.e., unless EPA establishes an earlier date. EPA had not determined that these requirements were applicable to classified O_3 nonattainment areas on or before February 7, 1995, the date that the State of Florida submitted a complete redesignation request for the Tampa area. Therefore, the State was not required to meet these requirements for purposes of redesignation. EPA has determined that the section 172(c)(2) reasonable further progress (RFP) requirement was not applicable to the Tampa redesignation. Also the section 172(c)(9) contingency measures and additional section 172(c)(1) non-RACT reasonable available control measures (RACM) beyond what may already be required in the SIP are no longer necessary.

The section 172(c)(3) emissions inventory requirement has been met by the submission and approval (in this action) of the 1990 base year inventory required under subpart 2 of part D, section 182(a)(1).

As for the section 172(c)(5) NSR requirement, EPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. See memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment. The rationale for this view is described fully in that memorandum, and is based on the Agency's authority to establish *de minimis* exceptions to statutory requirements. See *Alabama Power Co.* v. *Costle,* 636 F. 2d 323, 360–61 (D.C. Cir. 1979). However, the State of Florida does have a fully approved part D NSR rule.

Finally, for purposes of redesignation, the Tampa SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, were satisfied. As noted above, EPA believes the SIP satisfies all of those requirements.

B.2. Subpart 1 of Part D—Section 176 Conformity Plan Provisions

Section 176(c) of the CAA requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as to all other Federal actions (''general conformity''). Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed States that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)).

EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62118), and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to 40 CFR 51.396 of the transportation conformity rule and 40 CFR 51.851 of the general conformity rule, the State of Florida is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, the State of Florida is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by

December 1, 1994. The conformity rules for Florida have not yet been approved.

Although this redesignation request was submitted to EPA after the due dates for the SIP revisions for transportation conformity [58 FR 62188] and general conformity [58 FR 63214] rules, EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

Therefore, with this notice, EPA is modifying its national policy regarding the interpretation of the provisions of section 107(d)(3)(E) concerning the applicable requirements for purposes of reviewing an ozone redesignation request. Under this new policy, for the reasons just discussed, EPA believes that the ozone redesignation request for the Tampa area may be approved notwithstanding the lack of submitted and approved state transportation and general conformity rules.

B.3. Subpart 2 of Part D—Section 182(a) Requirements

The CAA was amended on November 15, 1990, Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. EPA was required to classify O_3 nonattainment areas according to the severity of their problem. The Tampa area was designated as marginal O_3 nonattainment (See 40 CFR 81.310). Because this area is marginal, the area must meet section 182(a) of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 182. Below is a summary of how the area has met the requirements of these sections.

(1) Emissions Inventory

The CAA required an inventory of all actual emissions from all sources, as described in section 172(c)(3) by November 15, 1992. On November 16, 1992, FDEP submitted an emission inventory for the Tampa area. This notice is approving the base year inventory for the Tampa area.

(2) Reasonably Available Control Technology (RACT)

To be redesignated, all SIP revisions required by section 182(a)(2)(A) and 182(b)(2) concerning RACT requirements must have been submitted to EPA and fully approved. Florida has met all RACT requirements.

(3) Emissions Statements

Section 182(a)(3) of the CAA required a SIP submission by November 15, 1992, to require stationary sources of NO_X and VOCs to provide statements of actual emissions. Florida submitted an annual emissions statement SIP revision on November 13, 1992. This revision was approved in the Federal Register on August 4, 1994.

3. Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the 1990 Amendments, EPA has determined that the Tampa area has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed above.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended CAA, EPA approved the Florida SIP control strategy for the Tampa nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. The control measures to which the emission reductions are attributed are VOC RACT regulations, the Federal Motor Vehicle Control Program (FMVCP), and lower Reid Vapor Pressure (RVP). VOC emissions from stage I sources were reduced by 40% in 1990 due to VOC RACT. The FMVCP reduced VOC emissions from motor vehicles by 14.2% from 1988 to 1990. The reduction in RVP from 10.8 psi in 1988 to 9.0 psi in 1990 has reduced summertime VOC mobile source emissions by 30.8%.

In association with its emission inventory discussed below, the State of Florida has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the VOC emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of existing EPA-approved state and federal measures contribute to the permanence and enforceability of reduction in ambient O_3 levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems. In this notice, EPA is approving the State of Florida's maintenance plan for the Tampa area because EPA finds that Florida's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 16, 1992, the State of Florida submitted comprehensive inventories of VOC, NO_X, and CO emissions from the Tampa area. The inventories include biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1990. EPA is approving the 1990 base year inventory in this document.

The State submittal contains the detailed inventory data and summaries by county and source category. The comprehensive base year emissions inventory was submitted in the NEDS format. Finally, this inventory was prepared in accordance with EPA guidance. It also contains summary

tables of the base year and projected maintenance year inventories. EPA's TSD contains more in-depth details regarding the base year inventory for the Tampa area.

VOC EMISSIONS INVENTORY SUMMARY

[Tons per day]

	1990	1994	1997	2000	2005
Stationary Point	16.59	24.52	25.16	25.86	26.64
Stationary Area	101.00	104.61	109.44	114.34	120.13
On-Road Mobile	166.12	90.96	87.97	84.73	87.43
Non-Road Mobile	51.41	55.36	57.56	59.76	62.58
Biogenics	97.89	97.89	97.89	97.89	97.89
Total	433.01	373.07	378.02	382.59	394.67

NO_x EMISSIONS INVENTORY SUMMARY

[Tons per day]

	1990	1994	1997	2000	2005
Stationary Point	319.76	336.02	317.83	320.02	338.84
Stationary Area	9.96	10.67	11.08	11.48	12.08
On-Road Mobile	121.47	109.89	114.00	111.80	113.25
Non-Road Mobile	41.60	44.61	47.01	49.40	52.61
Total	492.79	501.19	489.92	492.70	516.78

CO EMISSIONS INVENTORY SUMMARY

[Tons per day]

	1990
Stationary Point	33.49
Stationary Area	16.36
On-Road Mobile	942.60
Non-Road Mobile	365.54
Total	1357.99

B. Demonstration of Maintenance—Projected Inventories

Total VOC and NO_X emissions were projected from 1990 base year out to 2005, with interim years of 1994, 1997, and 2000. These projected inventories were prepared in accordance with EPA guidance. The projections show that VOC emissions are expected to decrease 38.34 tons or 8.85% from the level of the base year inventory during this time period. The NO_X emissions do show a slight increase of 23.99 tons or 4.87% from 1990 to 2005, but the State has demonstrated as discussed below that the projected increases will not adversely affect the maintenance of the O_3 NAAQS.

The Empirical Kinetics Modeling Approach (EKMA) was used to demonstrate the impact of NO_X emission increases on maximum O_3 formation. The EKMA analysis showed that the projected future mix of emissions will not cause a violation of the NAAQS. EPA EKMA guidance documents were used in developing model inputs. The model was run using 1988 meteorological conditions and monitored O_3, NO_X and nonmethane organic compound (NMOC) concentration data for May 16, 1988, June 3, 1988, and June 23, 1988, and was run in the EKMA calculate mode. These days had observed O_3 maximum concentrations of 0.118, 0.113, and 0.115 parts per million (ppm) respectively. The monitored NMOC/NO_X ratios of 6.876, 8.298, and 5.180 were used as input. The EKMA predicted a minimum decrease in O_3 concentration of 1.5% from 1990 to 2005.

The model output indicated a continual decrease in the maximum model-predicted O_3 with each increase in NO_X emissions over the 1990 base case inventory. Additionally, the modeling indicated that the mix of emissions as indicated in the 2005 inventory (11.4% VOC reductions and 4.8% NO_X increase over the 1990 inventory) produced lower O_3 levels than the base case. Thus, the analysis indicates that, not withstanding the projected increase in NO_X emissions, the Tampa area should continue to maintain the standard throughout the maintenance period.

C. Contingency Plan

The level of VOC emissions in the Tampa area will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, Florida has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. In the case of a violation of the O_3 NAAQS, the plan contains a contingency to implement additional control measures such as reinstatement of NSR, less volatile or reformulated gasoline, expansion of control strategies to adjacent counties for VOC and/or NO_X and to new CTG categories, or an

enhanced vehicle emissions inspection program. A complete description of these contingency measures and their triggers can be found in the State's submittal. EPA finds that the contingency measures provided in the State submittal meet the requirements of section 175A(d) of the CAA.

D. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

In this action, EPA is approving the Tampa area O_3 maintenance plan submitted on February 7, 1995, because it meets the requirements of section 175A. In addition, the Agency is approving the request and redesignating the Tampa nonattainment area to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA is also approving the 1990 base year emissions inventory for the Tampa area submitted on November 16, 1992. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 5, 1996, unless, within 30 days of its publication, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 5, 1996.

The O_3 SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the O_3 NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NOX emission limitations and restrictions contained in the approved O_3 SIP. Changes to O_3 SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation [section 173(b) of the CAA] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

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

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Unfunded Mandates

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

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen Dioxide, Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 19, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520, is amended by adding paragraph (c)(89) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(89) The maintenance plan for Tampa, Florida, submitted by the Florida Department of Environmental Protection on February 7, 1995.

(i) Incorporation by reference. Tampa Redesignation Request and Attainment/Maintenance Plan for the Tampa Bay Florida Ozone Nonattainment Area including Emissions Inventory Summary and Projections adopted on November 16, 1994.

(ii) Other material. None.

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.310 the ''Florida-Ozone'' table is amended by removing the entry for ''Tampa-St. Petersburg-Clearwater Area;'' and by adding entries for Hillsborough and Pinellas Counties in alphabetical order; and by revising the entry ''Rest of State'' to read ''Statewide.''

§ 81.310 Florida.

* * * * *

FLORIDA-OZONE

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/ Attainment		
* * * *	*	* *		
Hillsborough County	February 5, 1996.			
* * * *	*	* *		
Pinellas County	February 5, 1996.			
* * * *	*	* *		

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 95–29817 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5341–7]

Clean Air Act Interim Approval of Operating Permits Program; San Diego Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating direct final interim approval of the title V operating permits program submitted by the California Air Resources Board, on behalf of the San Diego Air Pollution Control District (San Diego or District), for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources. In addition, today's action promulgates direct final approval of San Diego's mechanism for receiving delegation of section 112 standards as promulgated.

DATES: This direct final rule is effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the District's submittal and other supporting information used in developing this direct final rule are available for public inspection (docket number CA SD–95–1–OPS) during normal business hours at the following location: Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (Act)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70), require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years

after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing interim approval of the operating permit program submitted by San Diego should adverse or critical comments be filed.

If EPA receives adverse or critical comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on February 5, 1996.

B. Federal Oversight and Sanctions

This interim approval, which may not be renewed, extends until February 9, 1998. During this interim approval period, San Diego is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If San Diego fails to submit a complete corrective program for full approval by August 7, 1997, EPA will start an 18-month clock for mandatory sanctions. If San Diego then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that San Diego has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that San Diego has come into compliance. In any case, if, six months after application of the first sanction, the District still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves San Diego's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date San Diego has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that San Diego has come into compliance. In all cases, if, six months after EPA applies the first sanction, the District has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if San Diego has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the District's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for San Diego upon interim approval expiration.

II. Direct Final Action and Implications

A. Analysis of State Submission

The analysis contained in this notice focuses on specific elements of San Diego's title V operating permits program that must be corrected to meet the minimum requirements of part 70. The full program submittal; the Technical Support Document (TSD), which contains a detailed analysis of the submittal; and other relevant materials are available for inspection as part of the public docket (CA-SD–95–1–OPS). The docket may be viewed during regular business hours at the address listed above.

1. Support Materials

San Diego's title V program was submitted by the California Air Resources Board (CARB) on April 22, 1994 and found to be complete on June 9, 1994. On April 4, 1995, the District amended the regulatory portion of its submittal. On October 10, 1995, EPA received from CARB, on behalf of the District, a revised fee program and an updated program description. Enabling legislation for the State of California and the Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in San Diego's submittal. The San Diego submission does contain a Governor's letter requesting source category-limited interim approval, District implementing and supporting regulations, and all other program documentation required by section 70.4. An implementation agreement is currently being developed between San Diego and EPA.

2. Regulations and Program Implementation

San Diego's title V implementing regulation, District Regulation XIV, was first adopted on January 18, 1994. After preliminary review of Regulation XIV, EPA identified numerous regulatory deficiencies and communicated the potential disapproval issues to San Diego in letters dated September 6, 1994 and December 13, 1994. In response, San Diego revised Regulation XIV. The amended regulation was adopted on March 7, 1995 and submitted to EPA by CARB, on behalf of the District, on April 4, 1995. San Diego's program description was also revised to reflect the changes made to Regulation XIV. EPA is therefore evaluating and acting on the March 7, 1995 version of Regulation XIV.

San Diego's title V implementing regulations substantially meet the requirements of 40 CFR part 70, sections 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; section 70.7 for public participation and permit modifications; section 70.5 for criteria that define insignificant activities; section 70.5 for complete application forms; and section 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are a few deficiencies in the program that are outlined under section II.B.1. below as interim approval issues and further described in the TSD.

a. Insignificant Activities

Section 70.5(c) states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Section 70.5(c) also states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.4(b)(2) requires states to include in their part 70

programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Under part 70, a state must request and EPA may approve as part of that state's program any activity or emission level that the state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

San Diego submitted an extensive list of insignificant activities that the District determined to be insignificant based on having ''relatively low potential to emit'' (Regulation XIV, Appendix A). While the potential to emit criterion is an acceptable mechanism for identifying insignificant units, the District did not provide emissions level cut-offs for many of the listed units. For instance, Regulation XIV, Appendix A(p)(17) exempts most refrigeration units regardless of size. Such units, if they have a charge rate of 50 pounds or more of a Class I or II ozone-depleting compound, would be subject to applicable requirements and could not be considered insignificant. EPA believes that in order to have fully approvable insignificant activities provisions, the listed units should not confuse the regulated community's obligation to provide all information needed to determine the applicability of, or to impose, any applicable requirement.

For interim approval, EPA is relying on several rules in Regulation XIV that affect the scope and usage of insignificant activities. Specifically, Rule 1401(a) ensures that the District's permit exemption rule, Rule 11, will not interfere with title V applicability determinations. Similarly, Rule 1401(b)(4) ensures that emissions from insignificant units will be included in all title V applicability determinations. In addition, Rules 1411, 1414(f)(1), 1414(f)(3)(iii) (A)&(B), 1414(f)(4) and the application ''Completeness Criteria'' guidance document require the permit application to include all information necessary to determine whether and how an applicable requirement applies at a source, regardless if a unit qualifies as insignificant. Finally, Rules 1401(b)(4) and 1401(c)(24) prohibit activities that are subject to an applicable requirement (other than two specified generic facility-wide requirements) from qualifying as an insignificant activity. For full approval, San Diego must revise its list of insignificant activities for title V permitting as discussed in section II.B.1.5. of this notice.

b. Variances

San Diego's Hearing Board has the authority to issue variances from requirements imposed by State and local law. *See* California Health and Safety Code sections 42350 *et seq.* In the legal opinion submitted for California operating permit programs, California's Attorney General states that ''[t]he variance process is not part of the Title V permitting process and does not affect federal enforcement for violations of the requirements set forth in a Title V permit.'' (Emphasis in original.)

EPA regards the State and District variance provisions as wholly external to the program submitted for approval under part 70, and consequently, is not taking action on those provisions of State and local law. EPA has no authority to approve provisions of state or local law, such as the variance provisions referred to, that are inconsistent with the Act. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR § 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

c. Reporting of Permit Deviations

Part 70 requires prompt reporting of deviations from permit requirements, and San Diego has not defined ''prompt'' in its program. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviations likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

d. Temporary Authorization

San Diego's title V regulation provides for the issuance of a ''temporary authorization'' which allows a source to operate without an operating permit. Temporary authorizations are not required by part 70, but they exist in San Diego's title V program in order to maintain consistency with the District's existing local permitting program. San Diego structured its temporary authorization mechanism to ensure that the issuance of temporary authorizations would not interfere with any of the requirements established under part 70. Specifically, temporary authorizations may only be issued to sources that have met the requirements of section 112(g) or the preconstruction permitting requirements under parts C or D of title I; i.e., the same scope of sources that do not have to submit applications for title V permits or title V permit modifications until 12 months after commencing operation (section 70.5(a)(1)(ii)). Furthermore, possession of a temporary authorization does not affect a source's obligation to submit a title V permit application, and the temporary authorization expires on the date that a complete title V permit application is due.

e. Enhanced New Source Review

San Diego's title V permit program provides for enhanced preconstruction review, an optional process that allows sources to satisfy both new source review and title V permit modification requirements at the same time. Any modification processed pursuant to San Diego's enhanced preconstruction review procedures may be incorporated into the title V permit as an administrative permit amendment. These enhanced procedures obviate the need to undergo two application, public notice, and permit issuance/revision processes for the same change.

f. Applicability

EPA found during its review of the San Diego title V program that the District's applicability provisions are consistent with part 70 and fully approvable, but that there is atypical language which warrants a brief discussion in this notice. First, the requirement to count fugitive hazardous air pollutant emissions in major source determinations is contained in the definition of ''potential to emit'' rather than the definition of ''major stationary source.'' The term ''potential to emit'' is used to define ''major stationary source.'' (See Regulation XIV, Rules 1401(c)(25) and (36).)

Second, a broad applicability exemption for all non-major stationary sources (Rule 1401(b)(1)) appears at first glance to be in conflict with the part 70 requirement to permit non-major affected sources and solid waste incineration units subject to section 129(e) of the Act (section 70.3(b)). However, San Diego's regulation provides that the applicability exemptions in Rule 1401(b)(1) apply only when referenced in the applicability section (Rule 1401(a)(2) and (3)); i.e., to non-major sources subject to sections 111 or 112 of the Act. (See Regulation XIV, Rule 1401(a)(2–4).) San Diego's program description confirms this reading (section III.B.1.b., p.2). In any case, if EPA completes a rulemaking that would require a non-major source to obtain a title V permit, the non-major stationary source exemption would not apply for that source (Rule 1401(b)(1)).

g. Federally Mandated New Source Review

In order to have an approvable title V program, permits must assure compliance with all federal applicable requirements. The part 70 definition of ''applicable requirement'' includes ''any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;'' (section 70.2, definition of ''applicable requirement,'' subsection (2)) i.e., major and minor new source review and prevention of significant deterioration requirements.

Rather than citing parts C or D of title I, San Diego's definition of ''federally enforceable requirement'' states that requirements imposed by ''federally mandated new source review'' or prevention of significant deterioration regulations are applicable requirements. The use of the term ''federally mandated new source review'' is unclear. Under San Diego's definition, ''federally mandated new source review'' is linked to ''emission thresholds specified in federal law or in the approved State Implementation Plan (SIP).'' (See Regulation XIV, Rule 1401(c)(19).) The District has a SIP-approved minor new source review program that is triggered by *any emissions increase*, which could be construed as an emissions threshold of zero, and therefore all NSR, major and minor, is federally mandated. (See Regulation II, Rule 10(a).) Yet, San Diego has contended that minor NSR is not always federally mandated, leaving the term ''federally mandated new source review'' subject to conflicting interpretations.

The District must revise either the definition of ''federally mandated new source review'' or the definition of ''federally enforceable requirement'' to clearly include minor new source review as an applicable requirement under title V. However, San Diego's program is approvable for an interim period because the District's approved SIP contains a minor new source review program, and San Diego's definition of ''federally enforceable requirement'' also includes ''[a]ny standard or other requirement provided for in the State Implementation Plan'' (Regulation XIV, Rule 1401(c)(18)(i)). Rules 10 and 21 of San Diego's portion of the California SIP constitute the District's minor (and major) NSR program. (See June 22, 1994 letter from Richard Smith, San Diego Air Pollution Control District, to Ron Friesen, California Air Resources Board.) Since Rules 10 and 21 are in San Diego's SIP, the requirement to obtain, and the specific conditions of, a minor NSR permit are federally enforceable.

EPA has discussed this interim approach with San Diego, and the District agrees that SIP-approved Rules 10 and 21 provide for a federally enforceable minor NSR program. However, EPA and San Diego disagree about whether Rule 21 extends federal enforceability to all terms and conditions of minor NSR permits. EPA believes that, until San Diego's SIP is revised to state otherwise, Rule 21 makes all terms and conditions of minor NSR permits federally enforceable. San Diego believes that minor NSR permit terms that do not originate from the SIP or other federal law or regulations are not made federally enforceable by Rule 21. As an interim solution until San Diego's SIP is revised or this disagreement is resolved, the District has agreed to designate in the part 70 permit certain minor NSR permit terms as ''District-only minor NSR'' and stipulate that those terms so listed will be reviewed and, as necessary, be deleted, revised, or incorporated as federally-enforceable terms of the part 70 permit on or before a specified deadline (not later than the renewal of the permit).

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (adjusted annually based on the Consumer Price Index (CPI), relative to 1989 CPI). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum'' (40 CFR 70.9(b)(2)(i)).

San Diego has opted to make a presumptive minimum fee demonstration. The District's fees are based on the actual direct and indirect costs of evaluating and issuing a title V permit. In addition to employing a cost recovery approach, the District will charge an initial title V permit application fee of $2,200 per permitted source (Rule 40, Section (s)). San Diego estimates an average implementation cost, and hence fees, of $320,000 per year for the first 5 years of the program. The presumptive minimum is calculated at $309,300 per year by multiplying an estimated 10,000 tons of pollutants emitted each year in San Diego by the CPI adjusted presumptive dollar amount of $30.93. San Diego will therefore be collecting fees in an amount that exceeds the presumptive minimum.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and Commitments for Section 112 Implementation

San Diego has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining federal ''applicable requirements'' and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. EPA has determined that this legal authority is sufficient to allow San Diego to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the TSD accompanying

this action and the April 13, 1993 guidance memorandum entitled, ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz.

b. Authority for Title IV Implementation

On March 7, 1995, San Diego incorporated by reference part 72, the federal acid rain permitting regulations. The incorporation by reference was codified in Rule 1412 of Regulation XIV and submitted to EPA on April 4, 1995.

B. Proposed Interim Approval and Implications

1. Title V Operating Permits Program

The EPA is promulgating direct final interim approval to the operating permits program submitted by the California Air Resources Board, on behalf of the San Diego Air Pollution Control District, on April 22, 1994 and amended on April 4, 1995 and October 10, 1995. Areas in which San Diego's program is deficient and requires corrective action prior to full approval are as follows:

(1) California State law currently exempts agricultural production sources from permit requirements. CARB has requested source category-limited interim approval for all California districts. In order for San Diego's program to receive full approval (and to avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

(2) Part 70 requires that any significant change in monitoring permit terms or conditions be processed as a significant permit modification. Rule 1401(c)(43), definition of ''Significant Permit Modification,'' must be revised accordingly. (*See* section 70.7(e)(4).)

(3) San Diego's treatment of affected state notification is unclear in the program submittal. Part 70 requires that air permitting authorities provide notice to all affected states of all proposed permits, minor and significant permit modifications, and renewals (section 70.8(b)(1)). The term ''affected state'' is defined in section 70.2 as a contiguous state whose air quality may be affected or a state within 50 miles of a permitted source. EPA is also undergoing a rulemaking action that will allow Native American lands to be treated as a state. (See 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).)

San Diego's program does not define ''affected state,'' and it does not specify any affected state notification procedures. It does provide, however, the requirement to notify affected states in the case of minor or significant permit modifications. In addition, San Diego has indicated that it currently has cooperative permitting agreements with Native American tribes.

EPA is not concerned about the notice deficiencies with respect to states that border California because of San Diego's coastal location. On the other hand, in order to receive full approval on this issue, San Diego's program must ensure that Native American tribes will be adequately notified and consulted once such tribes apply for treatment as affected states. If San Diego's existing cooperative permitting practices meet the affected state notification requirements set out in section 70.8(b), the District may submit them to EPA for incorporation into its title V program to satisfy the affected state notice requirements. As an alternative to up-front adoption of affected state notice provisions or incorporation of existing practices, EPA will accept a commitment from San Diego to: (1) Initiate rule revisions upon notification from EPA that an affected tribe has applied for state status; and (2) provide affected state notice to tribes upon a tribe's filing for state status, that is, prior to the District's adoption of affected state notice rules.

(4) Revise Rule 1410(h)(7), paragraph 2 to require permit reopening procedures for any inactive status permit that is modified to reflect new applicable requirements upon being converted to active status if there are 3 years or more remaining on the term of its 5-year permit. (See section 70.7(f)(1)(i).)

(5) Remove any activities from the District's list of insignificant activities that are subject to a unit-specific applicable requirement and adjust/add size cut-offs to ensure that the listed activities are truly insignificant. (See sections 70.4(b)(2) and 70.5(c).)

(6) Remove the reference to Rules 1401 (j) and (k) in Rule 1401(i). This reference to minor and significant permit modifications in the provisions for administrative permit amendments could be read to be inconsistent with the definition of ''significant permit modification'' (Rule 1401(c)(43)), which correctly defaults unspecified changes to the significant permit modification process. In addition, the phrase ''These shall include the following'' in the administrative permit amendment section (Rule 1410(i)) creates ambiguity about whether the list of administrative permit amendments is exhaustive or open ended. Because part 70, section 70.7(d)(vi) requires that administrative permit amendments be specifically approved as part of the title V program, the word ''include'' in the above phrase must also be removed.

(7) The District must revise either the definition of ''federally mandated new source review'' or the definition of ''federally enforceable requirement'' to clearly include minor new source review as an applicable requirement under title V.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, San Diego is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a federal permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of San Diego's part 70 program that EPA is acting on in this notice applies to all part 70 sources (as defined in the approved program) within San Diego's jurisdiction. The approved program does not apply to any part 70 sources over which an Indian tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

2. State Preconstruction Permit Program Implementing Section 112(g)

The EPA has published an interpretive notice in the Federal Register regarding section 112(g) of the Act (60 FR 8333; February 14, 1995) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice also explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), San Diego must be able to implement section 112(g) during the period between promulgation of the

federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is approving the use of San Diego's preconstruction review program as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by San Diego of rules specifically designed to implement section 112(g). However, since the sole purpose of this approval is to confirm that the District has a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR section 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that a state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR part 63.91 of San Diego's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. California Health and Safety Code section 39658 provides for automatic adoption by CARB of section 112 standards upon promulgation by EPA. Section 39666 of the Health and Safety Code requires that districts then implement and enforce these standards. Thus, when section 112 standards are automatically adopted pursuant to section 39658, San Diego will have the authority necessary to accept delegation of these standards without further regulatory action by the District. The details of this mechanism and the means for finalizing delegation of standards will be set forth in an implementation agreement between San Diego and EPA. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Docket

Copies of San Diego's submittal and other information relied upon for this direct final action is contained in docket number CA-SD–95–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this direct final rulemaking. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

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

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

D. Executive Order 12866

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

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 8, 1995.

Felicia Marcus,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (x) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

The following district program was submitted by the California Air Resources Board on behalf of:

(x) *San Diego Air Pollution Control District*: submitted on April 22, 1994 and amended on April 4, 1995 and October 10, 1995; approval effective on February 5, 1996, unless adverse or critical comments are received by January 8, 1996.

* * * * *

[FR Doc. 95–29836 Filed 12–06–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD–FRL–5341–9]

Clean Air Act Interim Approval of Operating Permits Program; Mariposa Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating direct final interim approval of the title V operating permits program submitted by the California Air Resources Board (CARB), on behalf of the Mariposa Air Pollution Control District (Mariposa or District), for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources. In addition, today's action promulgates direct final approval of Mariposa's mechanism for receiving delegation of section 112 standards as promulgated.

DATES: This direct final rule is effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the District's submittal and other supporting

information used in developing this direct final rule are available for public inspection (docket number CA–MA–95–1–OPS) during normal business hours at the following location: Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Sara Bartholomew (telephone 415/744–1170), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (Act)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70), require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing interim approval of the operating permit program submitted by Mariposa should adverse or critical comments be filed.

If EPA receives adverse or critical comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on February 5, 1996.

B. Federal Oversight and Sanctions

This interim approval, which may not be renewed, extends until February 9, 1998. During this interim approval period, Mariposa is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If Mariposa fails to submit a complete corrective program for full approval by August 7, 1997, EPA will start an 18-month clock for mandatory sanctions. If Mariposa then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Mariposa has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Mariposa has come into compliance. In any case, if, six months after application of the first sanction, the District still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Mariposa's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Mariposa has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Mariposa has come into compliance. In all cases, if, six months after EPA applies the first sanction, the District has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Mariposa has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the District's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for Mariposa upon interim approval expiration.

II. Direct Final Action and Implications

A. Analysis of State Submission

The analysis contained in this notice focuses on specific elements of Mariposa's title V operating permits program that must be corrected to meet the minimum requirements of part 70. The full program submittal; the Technical Support Document (TSD), which contains a detailed analysis of the submittal; and other relevant materials are available for inspection as part of the public docket (CA–MA–95–1–OPS). The docket may be viewed during regular business hours at the address listed above.

1. Support Materials

Mariposa's title V program was submitted by the California Air Resources Board (CARB) on March 8, 1995 and found to be complete on May 25, 1995. Enabling legislation for the State of California and the Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in Mariposa's submittal. The Mariposa submission does contain a Governor's letter requesting source category-limited interim approval, District implementing and supporting regulations, and all other program documentation required by section 70.4. EPA will wait to develop an implementation agreement between Mariposa and EPA until the District has title V sources.

2. Regulations and Program Implementation

Mariposa's title V implementing regulation, District Regulation X, was adopted on February 28, 1995. The District used the CARB model rule, and Regulation X is almost identical to the other smaller districts in California. EPA has granted interim approval to 23 of these smaller districts to date, and a detailed discussion of the issues in these programs can be found in 60 FR 21720, published on May 3, 1995.

Mariposa's title V implementing regulations substantially meet the

requirements of 40 CFR part 70, sections 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; section 70.7 for public participation and permit modifications; section 70.5 for criteria that define insignificant activities and complete application forms; and section 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are a few deficiencies in the program that are outlined under section II.B.1. below as interim approval issues and further described in the TSD.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (adjusted annually based on the Consumer Price Index (''CPI''), relative to 1989 CPI). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum'' (40 CFR 70.9(b)(2)(i)).

Mariposa does not currently have any title V sources. The District has adopted a fee rule that would charge the presumptive minimum to any title V source that locates in the District, or to any source to which title V becomes applicable.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and Commitments for Section 112 Implementation

Mariposa has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining federal ''applicable requirements'' and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. EPA has determined that this legal authority is sufficient to allow Mariposa to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the TSD accompanying this action and the April 13, 1993 guidance memorandum entitled, ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz and located in the docket.

b. Authority for Title IV Implementation

Mariposa has no title V sources at this time, and therefore has no Phase I or Phase II acid rain sources. The District has not submitted a complete acid rain program, due to its lack of sources. If, in the future, title V sources locate in the District, or if title V should become applicable to any existing sources, Mariposa will need to provide the same commitment that EPA is requiring of other Districts that do not have a complete acid rain program. This commitment will be to expeditiously adopt the appropriate regulatory authority, if and when it becomes necessary to issue a title IV permit to any new or existing source in the District that becomes subject to, or wants to opt into, the acid rain program.

B. Proposed Interim Approval and Implications

1. Title V Operating Permits Program

The EPA is promulgating direct final interim approval to the operating permits program submitted by the California Air Resources Board, on behalf of the Mariposa Air Pollution Control District, on March 8, 1995. Areas in which Mariposa's program is deficient and requires corrective action prior to full approval are as follows:

(1) Provide a demonstration that activities that are exempt from part 70 permitting are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, the District may restrict the exemptions to activities that are not likely to be subject to an applicable requirement and emit less than District-established emission levels. The District should establish separate emission levels for HAPs and for other regulated pollutants and demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements.

(2) Revise the exemption list in Rule 402 (Exemptions to Rule 401) to remove the general exemption for agricultural production sources or to restrict the exemptions to non-title V sources.

(3) Revise the application content requirements in Rule 1006 so that any compliance schedule required by the rule for a source not in compliance must resemble and be at least as stringent as that contained in any judicial consent decree, administrative order, or schedule approved by the hearing board to which the source is subject as required by § 70.5 (c)(4)(iii)(C) rather than simply a schedule of compliance approved by the District's hearing board.

(4) Revise the application content requirements in Rule 1006 to clarify that all reports and other documents submitted in the permit application must be certified by the responsible official as required by § 70.5 (d) and to provide the full text of the responsible official's certification in § 70.5 (d).

(5) Provide in Rule 1004 a permit application deadline for sources that become subject to the District's part 70 rule after the rule's effectiveness date for reasons other than commencing operation. This deadline cannot be any later than 12 months after the source becomes subject to the rule as required by § 70.5 (a)(1).

(6) Revise the permit issuance procedures in Rule 1005 to provide for notifying the EPA and affected States in writing of any refusal by the District to accept all recommendations for the proposed permit that the Affected State submitted during the public/Affected State review period as required by § 70.8 (b)(2).

(7) Incorporate in Rule 1005 provisions citing the right of the public to petition EPA under § 70.8 (d) after the expiration of the EPA's 45-day review period and prohibiting the District from issuing a permit, if it has not already done so, until the EPA's objections in response to the petition are resolved as required by § 70.8 (d).

(8) Revise Rule 1005 to provide for public notice of permitting actions by other means if necessary to assure adequate notice to the affected public as required by § 70.7 (h)(1).

(9) Revise the permit content requirements in Rule 1006 to clarify that all reports and other documents required by the permit must be certified by a responsible official as required by § 70.6 (c)(1) and to provide the full text of the responsible official's certification in § 70.5 (d).

(10) Revise the permit content requirements in Rule 1006 to require that any compliance schedule for a source not in compliance must resemble and be at least as stringent as that contained in any judicial consent decree, administrative order, or schedule approved by the hearing board to which the source is subject as required by §§ 70.6 (c)(3) and 70.5 (c)(8)(iii)(C).

(11) Revise the permit content requirements in Rule 1006 to require the submission of compliance certifications more frequently than annually if a more frequent period is specified in the applicable requirement or by the District as required by § 70.6 (c)(5)(i).

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, Mariposa is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of Mariposa's part 70 program that EPA is acting on in this notice applies to all part 70 sources (as defined in the approved program) within Mariposa's jurisdiction. The approved program does not apply to any part 70 sources over which an Indian tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

2. State Preconstruction Permit Program Implementing Section 112(g)

The EPA has published an interpretive notice in the Federal Register regarding section 112(g) of the Act (60 FR 8333; February 14, 1995) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice also explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Mariposa must be able to implement section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is approving the use of Mariposa's preconstruction review program as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by Mariposa of rules specifically designed to implement section 112(g). However, since the sole purpose of this approval is to confirm that the District has a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR section 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that a state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR part 63.91 of Mariposa's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. California Health and Safety Code section 39658 provides for automatic adoption by CARB of section 112 standards upon promulgation by EPA. Section 39666 of the Health and Safety Code requires that districts then implement and enforce these standards. Thus, when section 112 standards are automatically adopted pursuant to section 39658, Mariposa will have the authority necessary to accept delegation of these standards without further regulatory action by the District. The details of this mechanism and the means for finalizing delegation of standards will be set forth in an implementation agreement between Mariposa and EPA, which will be negotiated at the time when the District has title V sources. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Docket

Copies of Mariposa's submittal and other information relied upon for this direct final action is contained in docket number CA-MA–95–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this direct final rulemaking. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

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

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

D. Executive Order 12866

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

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: November 13, 1995.

Felicia Marcus,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding paragraph (n) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

The following district program was submitted by the California Air Resources Board on behalf of:

(n) *Mariposa Air Pollution Control District:* submitted on March 8, 1995; approval effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996.

* * * * *

[FR Doc. 95–29834 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No 1; Amdt. 1–274]

Organization and Delegation of Powers and Duties; Transfer of Delegations from the Director of Commercial Space Transportation to the Administrator of the Federal Aviation Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Office of Commercial Space Transportation (OCST) is being transferred from the Office of the Secretary to the Federal Aviation Administration. Accordingly, the Secretary's delegation of authority for the functions under the Department's commercial space transportation program is being transferred from the Director of Commercial Space Transportation to the Administrator of the Federal Aviation Administration. The rule is necessary to reflect the delegations in the Code of Federal Regulations.

EFFECTIVE DATE: This rule is effective November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366–9306, United States Department of Transportation, 400 7th Street SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Responsibility for the Department's commercial space transportation program is being transferred from the Office of the Secretary to the Federal Aviation Administration. This rule amends the delegations to reflect the transfer.

Since this rule relates to departmental management, organization, procedure, and practice, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Because the date of the transfer of responsibility for the commercial space transportation program is November 16, 1995, that is the effective date of this rule.

List of Subjects in 49 CFR Part 1

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

PART 1—[AMENDED]

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

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

2. Section 1.4 is amended by removing ''and'' at the end of paragraph (c)(6), by removing the period at the end of paragraph (c)(7) and adding ''; and'' in its place, and by adding a new paragraph (c)(8) to read as follows:

§ 1.4 General responsibilities.

* * * * *

(c) * * *

(8) Promulgating and enforcing regulations on all safety matters relating to commercial launch activities.

* * * * *

§ 1.22 [Amended]

3. Section 1.22(a) is amended by removing the words ''the Office of Commercial Space Transportation;''.

§ 1.23 [Amended]

4. Section 1.23(n) is removed and reserved.

5. Section 1.47 is amended by adding paragraphs (u), (v), and (w) to read as follows:

§ 1.47 Delegations to Federal Aviation Administrator.

* * * * *

(u) Carry out the functions assigned to the Secretary by Executive Order 12465 (February 24, 1984) (3 CFR, 1984 Comp., p. 163) relating to commercial expendable launch vehicle activities.

(v) Carry out the functions vested in the Secretary by 49 U.S.C. Subtitle IX.

(w) Carry out the functions vested in the Secretary by the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (Pub. L. 102–588, 106 Stat 5119, November 4, 1992).

§ 1.68 [Removed and reserved]

6. Section 1.68 is removed and reserved.

Issued at Washington, DC, this 23rd day of October, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–29867 Filed 12–6–95; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 950725190–5257–02; I.D. 120195A]

Coral and Coral Reefs of the Gulf of Mexico; Wild Live Rock Fishery

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

ACTION: Closure.

SUMMARY: NMFS closes the fishery for wild live rock in the exclusive economic zone (EEZ) of the Gulf of Mexico. This action is necessary to prevent exceeding the quota for 1995.

EFFECTIVE DATE: Effective 12:01 a.m., December 5, 1995 through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813-570-5305.

SUPPLEMENTARY INFORMATION: Live rock in the EEZ is managed under the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Section 638.26(d)(1) established a quota of 500,000 lb (226,796 kg) for the fishing year that began January 1, 1995. Section 638.26(d)(2) requires the Assistant Administrator for Fisheries, NOAA (AA), to close the wild live rock fishery in the Gulf EEZ when the quota is reached, or is projected to be reached.

The AA has determined that the quota will be reached on December 4, 1995. Accordingly, the wild live rock fishery in the Gulf EEZ is closed effective 12:01 a.m., local time, December 5, 1995, and

will not reopen until January 1, 1996. During the closure, wild live rock may not be harvested or possessed in the Gulf EEZ, and the purchase, barter, trade, or sale of wild live rock in or from the Gulf EEZ is prohibited. The latter prohibition does not apply to wild live rock that was harvested prior to December 5, 1995.

Classification

This action is required by 50 CFR 638.26(d) and is exempt from review under E.O. 12866.

Dated: December 1, 1995.

Richard W. Surdi,

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

[FR Doc. 95–29774 Filed 12–1–95; 4:55 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 235
Thursday, December 7, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0903]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The proposed update provides guidance mainly on issues relating to reverse mortgages and mortgages bearing rates above a certain percentage or fees above a certain amount. It also addresses issues of general interest, such as the treatment of debt cancellation contracts and a card issuer's responsibilities when a cardholder asserts a claim or defense relating to a merchant dispute.

DATES: Comments must be received on or before February 2, 1996.

ADDRESSES: Comments should refer to Docket No. R–0903, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: For Subparts A and B (open-end credit), Jane Jensen Gell or Obrea O. Poindexter, Staff Attorneys; for Subparts A, C and E (closed-end credit, reverse mortgages, and mortgages bearing rates or fees above a certain percentage or amount), Jane Ahrens, Senior Attorney, or Kyung Cho-Miller, Kurt Schumacher, or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412. For users of Telecommunications Device for the Deaf (TDD) only, please contact Dorthea Thompson, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose credit terms and the cost of credit as an annual percentage rate (APR). The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. It also imposes limitations on some credit transactions secured by a consumer's principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226). The Board also has an official staff commentary (12 CFR part 226 (Supp. I)) that interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. It is updated periodically to address significant questions that arise, and is a substitute for individual staff interpretations. The Board expects to adopt amendments in final form in March 1996 with compliance optional until October 1, 1996, the effective date for mandatory compliance.

On March 24, 1995, the Board published amendments to Regulation Z implementing the Home Ownership and Equity Protection Act of 1994, contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, which became effective on October 1, impose new disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. The amendments also impose new disclosure requirements for reverse mortgage transactions, which provide advances primarily to elderly homeowners and rely principally on the home's value for repayment. In large measure, the proposed commentary incorporates the supplementary information accompanying that rulemaking, and addresses other issues that have arisen since the publication of the final rule.

The Congress recently amended TILA provisions concerning finance charge disclosures for home mortgage loans. The Truth in Lending Act Amendments of 1995 (''1995 Act,'' Public Law 104–29, 109 Stat. 271) clarify the treatment of several fees typically associated with real estate-related lending, and revise tolerances for finance charge calculations for loans secured by real estate or dwellings. The statutory amendments, which were enacted in response to a number of lawsuits, also address consumer remedies for creditors' past and future disclosure violations. The 1995 Act became effective immediately for provisions relating to tolerances, past and future liability, and the exclusion of certain closing costs from the finance charge calculation. The statutory amendments that exclude certain real estate related closing costs from the finance charge generally codify interpretations previously issued by the Board, and no further revisions to the commentary are contemplated at this time.

Another statutory provision categorizes all brokers fees paid by the consumer to the broker (or to the creditor for delivery to the broker) as finance charges; this provision will become effective 60 days after the Board issues a final rule or no later than 12 months after enactment of the amendments to the act. It is anticipated that the Board will issue a proposed amendment to Regulation Z addressing brokers fees during the first quarter of 1996, and will make any changes to the commentary relating to the treatment of brokers fees as part of that rulemaking.

II. Proposed Commentary

Subpart A—General

Section 226.4—Finance Charge

4(a) Definition

Proposed comment 4(a)–8 addresses the treatment of fees charged in connection with debt cancellation agreements. In the case of motor vehicle loans, debt cancellation agreements (sometimes referred to as ''gap''

agreements) offer protection to consumers in the event the vehicle is stolen or destroyed and the motor vehicle insurance proceeds are insufficient to extinguish the debt. Under these agreements, in return for a fee paid, the consumer is not held liable for the remaining balance due on the loan. Other types of agreements may provide for debt cancellation if the borrower dies or becomes disabled. In some states, debt cancellation agreements may be regulated as or otherwise considered insurance contracts.

The Board has received questions from creditors about the proper treatment of fees for debt cancellation agreements. Section 226.4(d) allows a creditor to exclude optional credit life and certain property insurance premiums from the finance charge if the creditor meets certain conditions, including disclosure of the premium. Some creditors believe that debt cancellation fees should uniformly be treated as § 226.4(d) insurance premiums under the regulation. These creditors generally believe that the fees for optional debt cancellation contracts should be excluded from the finance charge. An alternative view is that the fees may be treated as insurance premiums only if the contract is considered insurance under state law.

Proposed comment 4(a)–8 follows the state law analysis. The proposed comment provides that if a debt cancellation agreement is regulated as or considered insurance under state law, the fee may be excludable from the finance charge in accordance with the rules in § 226.4(d). That is, under the proposed comment the fee may be excludable if the insurance is properly characterized as credit life, accident, health or loss-of-income insurance as specified in § 226.4(d)(1), or as insurance against loss of or damage to property, or against liability arising out of the ownership or use of property as specified in § 226.4(d)(2). Insurance protecting the creditor against credit loss is a finance charge. (See § 226.4(b)(5) and accompanying commentary.)

If state law does not regulate or consider the agreement to be insurance, then the general rules in § 226.4(a) apply. Under § 226.4(a), debt cancellation fees paid to a creditor are treated as finance charges because they are charged by the creditor as an incident to the extension of credit and, although optional, the fees are not of a type payable in a comparable cash transaction.

4(d) Insurance

Comment 4(d)–5 would be revised to clarify that insurance is deemed to be required—and the premiums treated and disclosed as finance charges—when a consumer has several alternatives to fulfill a condition to a credit extension, one of which is to purchase insurance from the creditor and the consumer elects that option. For example, where, as a condition to obtaining a credit card, a consumer must purchase a life insurance policy from the creditor, assign an existing policy, or pledge another form of security, such as a certificate of deposit, if the consumer purchases the insurance from the creditor, the premiums are finance charges.

Subpart B—Open-end Credit

Section 226.6—Initial Disclosure Statement

6(b) Other Charges

Comment 6(b)–1 would be revised to state that a membership fee to join an organization is an ''other charge'' if the primary benefit of membership is the opportunity to apply for a credit card and other benefits are incidental. For example, if an organization offers, in addition to the opportunity for a credit card account, only minor benefits such as a newsletter and a member information hotline, a fee to join the organization should be disclosed as an ''other charge.''

Section 226.12—Special Credit Card Rules

12(c) Right of Cardholder to Assert Claims or Defenses Against Card Issuer

12(c)(2) Adverse Credit Reports Prohibited

Proposed comment 12(c)(2)–2 provides guidance on when a card issuer may consider a dispute settled for purposes of reporting an amount in dispute as delinquent. Until the card issuer conducts a reasonable investigation, the disputed amount may not be collected or reported as delinquent.

Section 226.14—Determination of Annual Percentage Rate

14(c) Annual Percentage Rate for Periodic Statements

Comment 14(c)–10 would provide guidance on calculating the APR on periodic statements when a transaction occurs at the end of one cycle, but is posted to the account in a subsequent cycle, such as when a cardholder obtains a cash advance (for which there is a transaction fee) on the last day of a billing cycle and the transaction is posted to the cardholder's account on the second day of the following cycle. The transaction (and fee, if applicable) are included on the statement reflecting the cycle in which the transaction posted, and the proposed comment clarifies how creditors calculate the APR to reflect the delay in posting.

Subpart C—Closed-end Credit

Section 17—General Disclosure Requirements

17(c) Basis of Disclosure and Use of Estimates

Paragraph 17(c)(1)

Comment 17(c)(1)–10 would be revised to clarify that if a contract for a variable rate transaction provides for a delay in the implementation of changes to an index value, the creditor may use any index value in effect during the delay period. For example, if a contract specifies that rate changes are based on the index value in effect 45 days before the change date, the creditor may use any index value in effect within that 45-day delay period.

Proposed comment 17(c)(1)–18 addresses pawn transactions. There has been some confusion about the coverage and compliance of pawn transactions under the TILA. The comment clarifies how some of the items required to be disclosed under § 226.18 such as the amount financed, the finance charge, and the percentage should be disclosed. Disclosure of these transactions under the open-end credit provisions is not addressed based on the belief that typically pawn transactions are not open-end credit transactions.

Section 18—Content of Disclosures

18(c) Itemization of Amount Financed

Paragraph 18(c)(1)(iii)

Proposed comment 18(c)(1)(iii)–2 concerns the treatment of certain charges known as ''upcharges'' that creditors may sometimes add to a fee charged by a third party for services such as maintenance and service contracts on automobiles. The comment, which only applies in cases where a creditor charges the same amount of an upcharge in both cash and credit transactions, offers flexibility in how creditors can choose to itemize and disclose the amount charged for the service (including the amount of the upcharge). The treatment of these fees for purposes of disclosures under the TILA does not govern the imposition or amount of such upcharges.

Section 226.20—Subsequent Disclosure Requirements

20(a) Refinancings

The Board has been asked whether certain actions constitute adding a variable-rate feature for purposes of this section. Comment 20(a)–3 would be revised to clarify that changing the index on a variable-rate transaction is not adding a variable-rate feature, nor is substituting an index for one that no longer exists.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.31—General Rules

31(c) Timing of Disclosures

31(c)(1) Disclosures for Certain Closed-end Home Mortgages

Numerous creditors have suggested that the rule for furnishing disclosures should be deemed to be satisfied as long as the creditor places the disclosures in the mail three days prior to consummation. The word ''furnish'' for purposes of § 226.32 disclosures has the same meaning as ''deliver'' for the other disclosure requirements of Regulation Z. Accordingly, proposed comment 31(c)(1)–1 clarifies that disclosures are furnished, or delivered, when received by the consumer, not when mailed by the creditor.

Proposed comment 31(c)(1)–2 clarifies that creditors may rely on the definition of ''business days'' in comment 2(a)(6)–2 for purposes of complying with the timing requirements for furnishing disclosures under this section.

31(c)(1)(i) Change in Terms

Proposed comment 31(c)(1)(i)–1 clarifies that a creditor must provide new § 226.32(c) disclosures if a change in terms (whether in the formal written agreement or otherwise, such as an oral agreement affecting the amount of a fee required to be paid at closing) makes the previously provided disclosures inaccurate.

31(c)(1)(iii) Consumer's Waiver of Waiting Period Before Consummation

Proposed comment 31(c)(1)(iii)–1 provides guidance on circumstances in which the consumer may modify or waive the right to the three-day waiting period to meet bona fide personal financial emergencies. Generally, whether a bona fide personal financial emergency exists is a matter to be decided between the parties. The provisions in comments 23(e)–1 and 34(e)–2 apply to this section. For example, a consumer's waiver does not automatically insulate the creditor from liability for failing to provide the three-day waiting period.

31(c)(2) Disclosures for Reverse Mortgages

Proposed comment 31(c)(2)–1 clarifies the definition of ''business day'' for purposes of providing reverse mortgage disclosures to consumers.

31(d) Basis of Disclosures and Use of Estimates

Section 226.31(d) mirrors the provisions in § 226.5(c) and § 226.17(c), and allows the use of estimates when information necessary for an accurate disclosure is unknown to the creditor, provided that the disclosure is clearly identified as an estimate. Proposed comment 31(d)–1 clarifies that when a disclosure required by § 226.32 is marked as an estimate and becomes inaccurate due to a change in terms that occurs before consummation, new disclosures must be provided.

Section 226.32—Requirements for Certain Closed-end Home Mortgages

32(a) Coverage

Paragraph 32(a)(1)(i)

Proposed comment 32(a)(1)(i)–1 clarifies when an application is received, for purposes of determining which Treasury securities yield should be used to compare the APR. Proposed comment 32(a)(1)(i)–2 provides guidance on comparing loan maturities to yields on Treasury securities, for purposes of determining whether a mortgage loan is covered by § 226.32. Proposed comment 32(a)(1)(i)–3 clarifies rules for calculating the APR for variable-rate, discount, premium, or stepped-rate loans.

Proposed comment 32(a)(1)(i)–4 clarifies which Treasury security to use for the APR test, and where the yields on these securities can be found. Creditors may request the Board statistical release H–15 by calling (202) 452–3245. Treasury security yields are also available from the Federal Reserve Bank of New York by calling (212) 720–6619.

Paragraph 32(a)(1)(ii)

Creditors must follow the rules in § 226.32 if, in part, the total points and fees payable by the consumer at or before loan closing exceed the greater of $400 or 8 percent of the total loan amount. The Board is required to adjust the $400 amount, based on the annual percentage change in the Consumer Price Index as reported on June 1, effective January 1 of the following year. The Board anticipates that adjustments to the $400 dollar figure will be published each yearend and incorporated into the commentary the following spring.

Paragraph 32(b)(1)

Paragraph 32(b)(1)(i)

Comment 32(b)(1)(i)–1 clarifies the scope of items defined as finance charges under § 226.4 that are considered ''points and fees.''

Paragraph 32(b)(1)(ii)

Proposed comment 32(b)(1)(ii)–1 addresses the treatment of mortgage brokers fees. Section 226.32(b)(1) defines ''points and fees'' to include all finance charges (except interest or the time-price differential), as well as all compensation paid to mortgage brokers. Accordingly, compensation paid to a mortgage broker must be included as ''points and fees'' even if the amount is not disclosed as a finance charge.

Section 32(b)(1)(ii) at the time it was issued was interpreted to include all mortgage broker fees that are required to be disclosed under the Real Estate Settlement Procedures Act. Under that interpretation, amounts paid by creditors to mortgage brokers would be included, as are amounts paid by consumers. Upon further analysis, a narrower interpretation is being proposed. Proposed comment 32(b)(1)(ii)–1 states that for purposes of the ''points and fees'' test, only mortgage broker fees paid by the consumer are included in the calculation. The comment further clarifies that mortgage broker fees should not be double counted; that is, where such fees are included in the finance charge, they are already included as ''points and fees'' under § 226.32(b)(1)(i) and should not be counted again under § 226.32(b)(1)(ii).

32(c)(3) Regular payment

Proposed comment 32(c)(3)–1 clarifies that the regulation contemplates the disclosure of monthly or other regularly scheduled periodic payments, such as bimonthy or quarterly. The comment also clarifies that there must be at least two payments, and they must be in an amount and occur at such intervals that the payments fully amortize the loan. For the amount of the payment, proposed comment 32(c)(3)–2 clarifies that creditors may rely on § 226.18(g) for guidance.

32(c)(4) Variable-rate

Proposed comment 32(c)(4)–1 provides additional guidance on calculating ''worst-case'' payment examples when the transaction has more than one payment stream.

32(d) Limitations

32(d)(1)(i) Balloon Payment

The statute and regulation prohibit the use of balloon payments for mortgages covered by § 226.32 that have a term of less than five years. For such loans, the repayment schedule must fully amortize the outstanding principal balance through ''regular periodic payments.'' The proposed comment provides guidance on the definition of ''regular periodic payments.''

32(d)(2) Negative Amortization

Proposed comment 32(d)(2)–1 clarifies that the prohibition against including negative amortization in a mortgage covered by § 226.32 does not extend to increases in the principal balance unrelated to the payment schedule, such as an increase related to the purchase of force-placed insurance.

32(d)(4) Increased Interest Rate

Proposed comment 32(d)(4)–1 clarifies that a rate increase in a variable-rate transaction is not prohibited by the act or regulation, even if the rate increases after the consumer has defaulted on the obligation.

32(d)(5) Rebates

Section 226.32(d)(5) restricts how creditors may calculate refunds of interest when a mortgage loan subject to this section is accelerated due to a consumer's default. The proposed comment clarifies that this restriction applies to refunds of interest only, and not to refunds of other items such as origination fees or points. In addition, the proposed comment clarifies that the refund calculation includes odd-days interest, regardless of when it is paid.

32(d)(7) Prepayment Penalty Exception

Proposed comment 32(d)(7)–1 provides guidance on calculating a consumer's debt-to-income ratio. Proposed comment 32(d)(7)–2 clarifies that verification of employment satisfies the regulation's requirement that the creditor obtain ''payment records for employment income.''

32(e) Prohibited Acts and Practices

32(e)(1) Repayment Ability

For mortgage loans subject to § 226.32, the regulation prohibits creditors from engaging in a pattern or practice of extending such credit based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment. Proposed comment 32(e)(1)–1 provides guidance on determining the consumer's repayment ability. The comment clarifies that creditors may rely on the same information provided by the consumer in connection with § 226.32(d)(7), or other information, including information about unverified income.

Section 226.33—Requirements for Reverse Mortgages

The U.S. Department of Housing and Urban Development (HUD) has modified its software regarding reverse mortgages originated under the Home Equity Conversion Mortgage (HECM) program to conform with the requirements and the terminology used for reverse mortgages under Regulation Z and the appendices to the regulation. (The HECM program has been temporarily suspended, pending the reauthorization of funding by the Congress.) For example, HUD's software now allows creditors to use the initial interest rate, rather than the ''expected interest rate,'' in calculating the total annual loan cost rate for a variable-rate transaction. Although creditors may find HUD's software helpful in meeting the disclosure requirements under Regulation Z, they should first take steps to verify the accuracy of the software, including any instructions, before using it. Neither HUD nor the Board provides a ''safe harbor'' to creditors regarding use of this software.

33(a) Definition

Proposed comment 33(a)–1 addresses an implication relative to the definition of a reverse mortgage transaction under the regulation. If a transaction structured as a reverse mortgage loan is a recourse transaction (that is, one that imposes personal liability on the consumer for the difference between the loan balance at maturity and the value of the property), it is not a reverse mortgage under § 226.33. Thus, if the transaction is also closed-end, and the annual percentage rate or the points and fees assessed in the transaction exceed those specified in § 226.32(a)(1), the transaction is covered by § 226.32. Such transactions may not generally contain a balloon payment or negative amortization (both of which are found in reverse mortgages by definition). Open-end credit plans are exempt from the provisions of § 226.32(a).

33(c)(2) Payments to Consumer

Proposed comment 33(c)(2)–1 provides guidance where the legal obligation of a reverse mortgage transaction includes a benefit, such as a ''death benefit,'' in which a payment to the consumer's estate (or a credit to the outstanding loan balance) will be made upon the occurrence of an event (for example, the consumer's death within a certain period of time).

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0903, and, when possible, should use a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, along with an original document in paper form, commenters are encouraged to submit their comments on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with new Federal Register publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806, 15 U.S.C. 1604 and 1637(c)(5).

2. In supplement I to Part 226, under section 226.4—Finance Charge, the following amendments would be made:

1. Under *4(a) Definition.*, a new paragraph 8. would be added; and

2. Under *4(d) Insurance.*, paragraph 5. would be revised.

The additions and revisions read as follows:

Supplement I—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.4—Finance Charge

4(a) Definition.

* * * * *

fl 8. *Treatment of Debt Cancellation Agreements.* Some creditors may require debt cancellation agreements while others may offer them as an option. In the case of motor

vehicle loans, these agreements, sometimes referred to as ''gap'' agreements, offer protection to consumers if the vehicle is stolen or destroyed and the motor vehicle insurance proceeds are insufficient to extinguish the debt. In return for a fee, the consumer will not be held liable for the remaining balance due on the loan. Other types of agreements provide for debt cancellation if the borrower dies or becomes disabled. In some states these agreements are regulated as or otherwise considered insurance under state law.

i. *Insurance.* If the agreement is regulated as or considered insurance under state law, the fee paid by the consumer may be excludable from the finance charge if it meets the requirements in § 226.4(d). Insurance protecting the creditor against credit loss, however, is a finance charge under § 226.4(b)(5).

ii. *Other.* If the agreement is not considered insurance under state law, debt cancellation fees paid to the creditor, whether required or optional, are incident to the extension of credit and must be disclosed as a finance charge. An optional debt cancellation fee paid to a third-party is a finance charge only to the extent that the third-party shares the fee with the creditor. If a creditor cannot determine whether state law considers the agreement insurance, the fees must be treated as if the agreement is not insurance. fi

* * * * *

Paragraph 4(d).

* * * * *

5. *Required credit life insurance.* Credit life, accident, health, or loss-of-income insurance must be voluntary in order for the premium or charges to be excluded from the finance charge. Whether the insurance is in fact required or optional is a factual question. If the insurance is required, the premiums must be included in the finance charge, whether the insurance is purchased from the creditor or from a third party. If the fl consumer is required to elect one of several options—such as fi [only option the creditor gives the consumer is] to purchase credit life insurance from the creditor fl , fi [or to] assign an existing life insurance policy, fl or pledge security such as a certificate of deposit, fi and the consumer purchases the credit life insurance, the premium must be included in the finance charge. (If the consumer assigns a preexisting policy instead, no premium is included in the finance charge. fl The security interest would be disclosed under § 226.6(c) or § 226.18(m). fi See the commentary to § 226.(4)(b) (7) and (8).)

* * * * *

3. In supplement I to part 226, under *section 226.6—Initial Disclosure Statement, under 6(b) Other charges.*, paragraph 1.v. would be revised to read as follows:

* * * * *

Subpart B—Open-End Credit

* * * * *

Section 226.6—Initial Disclosure Statement

* * * * *

6(b) Other charges.

1. * * *

v. A membership or participation fee for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union is not an ''other charge,'' even if membership is required to apply for credit. fl For the fee to be excluded from disclosure as an ''other charge,'' however, the package of services must have some substantive purpose other than access to the credit feature. For example, if the primary benefit of membership in an organization is the opportunity to apply for a credit card, and the other benefits offered are incidental to the credit feature, the membership fee is an ''other charge.'' fi

* * * * *

4. In supplement I to part 226, under *Section 226.12—Special Credit Card Provisions,* under *12(c)(2) Adverse credit reports prohibited.*, new paragraph 2. would be added to read as follows:

* * * * *

Section 226.12—Special Credit Card Provisions

* * * * *

12(c)(2) Adverse credit reports prohibited.

* * * * *

fl 2. *Settlement of dispute.* A card issuer may not consider a dispute settled and report an amount disputed as delinquent or begin collection of the disputed amount until it has completed a reasonable investigation of the cardholder's claim. In conducting an investigation, the card issuer may reasonably request the cardholder's cooperation. The card issuer may not automatically consider a dispute settled due to the cardholder's failure or refusal to comply with a particular request. fi

* * * * *

5. In supplement I to Part 226, under *Section 226.14—Determination of Annual Percentage Rate,* under *14(c) Annual percentage rate for periodic statements.*, a new paragraph 10. would be added to read as follows:

* * * * *

Section 226.14—Determination of Annual Percentage Rate

* * * * *

14(c) Annual percentage rate for periodic statements.

* * * * *

fl 10. *Transactions at end of billing cycle.* The annual percentage rate reflects transactions and charges imposed during the billing cycle. However, a transaction that occurs at the end of a billing cycle may be impracticable to post until the following cycle, such as a cash advance that occurs on the last day of a billing cycle. The transaction is posted to the account in the following cycle. In this case, the annual percentage rate shall be calculate as follows for the billing cycle in which the transaction and charges are posted:

i. The denominator shall be calculated as if the transaction occurred on the first day of the billing cycle, and

ii. The numerator shall include the amount of the transaction charge plus all finance charges derived from the application of the periodic rate to the amount of the transaction (including all charges from a prior cycle). fi

* * * * *

6. In Supplement I to Part 226, under *Section 226.17—General Disclosure Requirements,* under *Paragraph 17(c)(1).*, paragraph 10. would be revised and a new paragraph 18. would be added to read as follows:

* * * * *

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

* * * * *

17(c) Basis of disclosures and use of estimates.

Paragraph 17(c)(1).

* * * * *

10. *Discounted and premium variable-rate transactions.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. In a discounted transaction, for example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the Treasury bill rate at consummation is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

fl i. fi When creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use fl any fi [the] index value in effect fl during the 45 day period fi [not more than 45 days] before consummation in calculating a composite annual percentage rate.

fl ii. fi The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule.

fl iii. fi If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

fl iv. fi Because these transactions involve irregular payment amounts, an annual

percentage rate tolerance of ¼ of 1 percent applies, in accordance with § 226.22(a)(3) of the regulation.

fl v. fi Examples of discounted variable-rate transactions include:

fl A. fi A 30-year loan for $100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule should show 12 payments of $804.62 and 348 payments of $1,025.31. The finance charge should be $266,463.32 and the total of payments $366,463.32.

fl B. fi Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule should show 12 payments of $804.62, 12 payments of $950.09, and 336 payments of $1,024.34. The finance charge should be $265,234.76 and the total of payments $365,234.76.

fl C. fi Same loan as above, except with a 7½ percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. Because of the payment cap, five levels of payments should be reflected. The payment schedule should show 12 payments of $804.62, 12 payments of $864.97, 12 payments of $929.84, 12 payments of $999.58, and 312 payments of $1,070.04. The finance charge should be $277,040.60, and the total of payments $377,040.60.

fl D. fi This paragraph does not apply to variable-rate loans in which the initial interest rate is set according to the index or formula used for later adjustments but is not set at the value of the index or formula at consummation. For example, if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor should base its disclosures on the initial rate.

* * * * *

fl 18. *Pawn Transactions.* For a transaction in which a consumer pledges or sells an item to a creditor in return for a sum of money, and retains the right to redeem the item for a greater sum (the redemption price) within a specified period of time:

i. The amount financed is the initial sum paid to the consumer.

ii. The finance charge is the difference between the initial sum paid to the consumer and the redemption price.

iii. The term of the transaction, for calculating the annual percentage rate, is the specified period of time agreed to by the creditor and the consumer. fi

* * * * *

7. In Supplement I to Part 226, under *Section 226.18—Content of Disclosures,* under *Paragraph 18(c)(1)(iii).,* a new paragraph 2. would be added to read as follows:

* * * * *

Section 226.18—Content of Disclosures

* * * * *

Paragraph 18(c)(1)(iii).

* * * * *

fl 2. *Creditor-imposed charges added to amounts paid to others.* A creditor that offers an item for sale in both cash and credit transactions sometimes adds an amount (often referred to as an ''upcharge'') to a fee charged to a consumer by a third party for a service (such as for a maintenance or service contract) that is payable in an equal amount in both types of transactions, and retains that amount. At its option, the creditor may list the total charge (including the portion retained by it) as an amount paid to others, or it may choose to reflect the amounts in the manner in which they were actually paid to or retained by the appropriate parties. fi

* * * * *

8. In Supplement I to Part 226, under *Section 226.20 Subsequent Disclosure Requirements,* under *Paragraph 20(a) Refinancings.,* paragraph 3. would be revised to read as follows:

* * * * *

Section 226.20—Subsequent Disclosure Requirements

Paragraph 20(a) Refinancings.

* * * * *

3. *Variable-rate.*

fl i. fi If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. fl For example, no new disclosures are required when the variable-rate feature is invoked on a renewable balloon-payment mortgage that was previously disclosed as a variable-rate transaction. fi [For example, a renewable balloon-payment mortgage that was disclosed as a variable-rate transaction is not subject to new disclosure requirements when the variable-rate feature is invoked. However, even]

fl ii. Even fi if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

fl A. fi Increases the rate based on a variable-rate feature that was not previously disclosed, or

fl B. fi Adds a variable-rate feature to the obligation. fl A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction or substituting a new index for one that no longer exists.

iii. fi If either of fl the above fi [these] two events occur in a transaction secured by a principal dwelling with a term longer than one year, the disclosures required under § 226.19(b) also must be given at that time.

* * * * *

9. In Supplement I to Part 226, a new *Subpart E—Special Rules for Certain Home Mortgage Transactions* would be added as follows:

* * * * *

fl Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.31—General Rules

31(c) Timing of disclosure.

Paragraph 31(c)(1) Disclosures for certain closed-end home mortgages.

1. *Furnishing disclosures.* Disclosures are considered furnished when received by the consumer.

2. *Pre-consummation waiting period.* A creditor must furnish the special disclosures at least three business days prior to consummation. For purposes of § 226.32, ''business day'' means every calendar day except Sundays and federal legal holidays. For example, if disclosures are provided on Friday, consummation could occur any time on Tuesday, the third business day following receipt of disclosures.

Paragraph 31(c)(1)(i) Change in terms.

1. *Redisclosure required.* Creditors must provide new disclosures if the regular payment or any other disclosure required by § 226.32(c) becomes inaccurate.

Paragraph 31(c)(1)(ii) Telephone disclosures.

1. *Telephone disclosures.* Disclosures by telephone must be furnished at least three calendar days prior to consummation.

Paragraph 31(c)(1)(iii) Consumer's waiver of waiting period before consummation.

1. *Modification or waiver.* A consumer may modify or waive the right to the three-day waiting period only after receiving the disclosures required by § 226.32 and only if the circumstances meet the criteria for establishing a bona fide personal financial emergency in § 226.23(e). Whether these criteria are met are determined by the facts surrounding individual situations. The impending sale of the consumer's home at foreclosure is one example of a bona fide personal financial emergency. Each consumer entitled to the three-day waiting period must sign a written statement for the waiver to be effective.

Paragraph 31(c)(2) Disclosures for reverse mortgages.

1. *Business days.* For purposes of providing reverse mortgage disclosures, ''business day'' means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions.

2. *Open-end plans.* Disclosures for open-end reverse mortgages must be provided three business days before the first transaction under the plan (see § 226.5(b)(1)).

31(d) Basis of disclosures and use of estimates.

1. *Redisclosure.* When a disclosure required by § 226.32 is based on and labeled as an estimate and becomes inaccurate due to a change in terms that occurs before consummation, new disclosures must be provided.

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

Paragraph 32(a)(1)(i).

1. *Application date.* An application is deemed received when it reaches the creditor in any of the ways applications are normally transmitted. (See § 226.19(a).) For example, if a borrower applies for a 10-year loan on September 30 and the creditor counteroffers with a 7-year loan on October 10, the creditor must measure the annual percentage rate against the appropriate Treasury security yield as of August 15. An application transmitted through an intermediary agent or broker is received when it reaches the creditor, rather than when it reaches the agent or broker.

2. *When fifteenth not a business day.* If the 15th day of the month immediately preceding the application date is not a business day, the creditor must use the yield as of the business day immediately preceding the 15th.

3. *Calculating annual percentage rates for variable-rate loans and discount loans.* Creditors must use the rules set out in the commentary to § 226.17(c)(1) in calculating the annual percentage rate for variable-rate loans (assume the rate in effect at the time of disclosure remains unchanged) and for discount, premium, and stepped-rate transactions (which must reflect composite annual percentage rates).

4. *Treasury securities.* To determine the yield on a Treasury security for the annual percentage rate test, creditors may use the Board's Selected Interest Rates (statistical release H–15) or the actual auction results. Treasury auctions are held at regular intervals for the different types of securities. These figures are published by major financial and metropolitan newspapers, and are also available from Federal Reserve Banks. Creditors must use the yield on the security that has the nearest maturity at issuance to the loan's maturity. For example, if a creditor must compare the annual percentage rate to Treasury securities with either seven-year or ten-year maturities, the annual percentage rate for an eight-year loan is compared with securities that have a seven-year maturity; the annual percentage rate for a nine-year loan is compared with securities that have a ten-year maturity. If the loan maturity is exactly halfway between, the annual percentage rate is compared with the Treasury security that has the lower yield. For example, if the loan has a maturity of 20 years and comparable securities have maturities of 10 years with a yield of 6.501 percent and 30 years with a yield of 6.906 percent, the annual percentage rate is compared with 10 percentage points over the yield of 6.501 percent, the lower of the two yields.

Paragraph 32(a)(1)(ii).

1. *Total loan amount.* For purposes of the ''points and fees'' test, the total loan amount is calculated by taking the amount financed, as determined according to § 226.18(b), and deducting any cost listed in § 226.32(b)(1)(iii) that is both included as points and fees under § 226.32(b)(1) and financed by the creditor. For example, if a consumer borrows $10,000, finances a $300 fee for a creditor-conducted appraisal, and pays $400 in points at closing, the amount financed according to § 226.18(b) is $9,900 ($10,000 plus the $300 appraisal fee that is financed by the creditor, less $400 in prepaid finance charges). The $300 appraisal fee paid to the creditor is added to other points and fees under § 226.32(b)(1)(iii). It is deducted from the amount financed under § 226.18(b) ($9,900) to derive a total loan amount of $9,600. If the $300 appraisal fee is paid in cash at closing, the $300 is included in the points and fees calculation. However, because it is not financed by the creditor, the $300 fee is not part of the amount financed under § 226.18(b) ($10,000, in this case). The total loan amount is $9,600 ($10,000, less $400 in prepaid finance charges).

32(b) Definitions.

Paragraph 32(b)(1)(i).

1. *General.* Items defined as finance charges under § 226.4(a) and 226.(4)(b) are included under this paragraph as a component of the total ''points and fees.'' Items excluded from the finance charge under other provisions of § 226.4 are not included in the calculation under this paragraph 32(b)(1)(i), although the fee may be included in ''points and fees'' under paragraphs 32(b)(1)(ii) and 32(b)(1)(iii).

Paragraph 32(b)(1)(ii).

1. *Mortgage broker fees.* In determining ''points and fees'' for purposes of this section, compensation paid by a consumer to a mortgage broker (directly or through the creditor for delivery to the broker) is included in the calculation whether or not the amount is disclosed as a finance charge. Mortgage broker fees that are not paid by the consumer are not included. Broker fees already included in the calculation as finance charges under § 226.32(b)(1)(i) need not be counted again under § 226.32(b)(1)(ii).

2. *Example.* Section 226.32(b)(1)(iii) defines ''points and fees'' to include all items listed in § 226.4(c)(7), other than amounts held for future payment of taxes. An item listed in § 226.4(c)(7) may be excluded from the ''points and fees'' calculation, however, if the charge is reasonable, the creditor receives no direct or indirect compensation from the charge, and the charge is not paid to an affiliate of the creditor. For example, a reasonable fee paid by the consumer to an independent, third-party appraiser may be excluded from the points and fees calculation (assuming no compensation is paid to the creditor). A fee paid by the consumer for an appraisal performed by the creditor must be included in the calculation, even though the fee may be excluded from the finance charge if it is bona fide and reasonable in amount.

32(c) Disclosures.

1. *Format.* The disclosures must be clear and conspicuous but need not be in any particular type size or typeface, nor presented in any particular manner. For example, the disclosures need not be a part of the mortgage.

Paragraph 32(c)(3) Regular payment.

1. *General.* The regular payment is the amount due from the borrower at regular intervals, such as monthly, bimonthly, quarterly, or annually. There must be at least two payments, and the payments must be in an amount and at such intervals that they fully amortize the amount owed. If the loan has two payment streams, the regular payment for each must be disclosed.

2. *Discount and premium rates.* In disclosing the regular payment, creditors may rely on the rules set forth in § 226.18(g). In discounted or premium variable rate transactions where the creditor sets the initial interest rate and later rate adjustments are determined by an index or formula, the creditor must disclose both the payment based on the discount or premium and the payment that will be in effect thereafter. Additional explanatory material which does not detract from the required disclosures may accompany the disclosed amounts. For example, if a monthly payment is $250 for the first six months and then increases based on an index and margin, the creditor could use language such as the following: ''Your regular monthly payment will be $250 for six months. After six months your regular monthly payment will be based on an index and margin, which currently would make your payment $350. Your actual payment at that time may be higher or lower.''

Paragraph 32(c)(4) Variable-rate.

1. *Calculating ''worst-case'' payment example.* Creditors may rely on instructions in § 226.19(b)(2)(x) for calculating the maximum possible increases in rates in the shortest possible timeframe, based on the face amount of the note (not the hypothetical loan amount of $10,000 required by § 226.19(b)(2)(x)). The creditor must provide a maximum payment for each payment stream, where a payment schedule provides for more than one payment stream and more than one maximum payment amount is possible.

32(d) Limitations.

Paragraph 32(d)(1)(i) Balloon payment.

1. *Regular periodic payments.* The repayment schedule for a § 226.32 mortgage loan with a term of less than five years must fully amortize the outstanding principal balance through ''regular periodic payments.'' A payment is a ''regular periodic payment'' if it is not more than twice the amount of other payments.

Paragraph 32(d)(2) Negative amortization.

1. *Negative amortization.* The prohibition against negative amortization in a mortgage covered by § 226.32 does not preclude increases in the principal balance that result from events unrelated to the payment schedule, such as when a consumer fails to obtain property insurance and the creditor purchases and adds the premium to the consumer's principal balance.

Paragraph 32(d)(4) Increased interest rate.

1. *Variable-rate transactions.* The limitation on interest rate increases does not apply to rate increases resulting from index changes in a variable-rate transaction, even if the increase occurs after default by the consumer.

Paragraph 32(d)(5) Rebates.

1. *Calculation of refunds.* The limitation applies only to refunds of interest and not to any other charges that are considered finance charges under § 226.4 (for example, points and fees paid at closing). The calculation of the refund of interest includes odd-days interest, whether paid at or after consummation.

Paragraph 32(d)(6) Prepayment penalties.

1. *State law.* If using the actuarial method defined by applicable state law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors must use the state law definition in determining if a refund is a prepayment penalty under § 226.32(d)(6).

32(d)(7) Prepayment penalty exception.

Paragraph 32(d)(7)(iii).

1. *Calculating debt-to-income ratio.* ''Debt'' does not include amounts paid by the borrower in cash at closing or amounts from the loan proceeds that directly repay an existing debt. Creditors may consider combined debt-to-income ratios for transactions involving joint applicants.

2. *Verification.* Verification of employment satisfies the requirement for payment records for employment income.

32(e) Prohibited acts and practices.

Paragraph 32(e)(1) Repayment ability.

1. *Determining repayment ability.* The information provided to the creditor in connection with § 226.32(d)(7) may be used to show that the creditor considered the consumer's income and obligations before extending the credit. Any expected income can be considered by the creditor, except equity income that the consumer would obtain through the foreclosure of a mortgage covered by § 226.32. For example, a creditor may use information about income other than regular salary or wages such as gifts, expected retirement payments, or income from housecleaning or childcare. The creditor also may use unverified income, so long as the creditor has a reasonable basis for believing that the income exists.

Paragraph 32(e)(2) Home-Improvement Contracts.

Paragraph 32(e)(2)(i).

1. *Joint payees.* If a creditor pays a contractor with an instrument jointly payable to the contractor and the consumer, the instrument must name as payee each consumer who is primarily obligated on the note.

Paragraph 32(e)(3) Notice to Assignee.

1. *Subsequent sellers or assignors.* Any person, whether or not the original creditor, that sells or assigns a mortgage subject to this section must furnish the notice of potential liability to the purchaser or assignee.

2. *Format.* While the notice of potential liability need not be in any particular format, the notice must be prominent. Placing it on the face of the note, such as with a stamp, is one means of satisfying the prominence requirement.

Section 226.33—Requirements for Reverse Mortgages

33(a) Definition.

1. *Nonrecourse transaction.* A nonrecourse reverse mortgage transaction limits the homeowner's liability to the proceeds of the sale of the home (or any lesser amount specified in the credit obligation). If a transaction structured as a closed-end reverse mortgage transaction allows recourse against the consumer, and the annual percentage rate or the points and fees exceed those specified under § 226.32(a)(1), the transaction is subject to all the requirements of § 226.32, including the limitations concerning balloon payments and negative amortization.

Paragraph 33(a)(2).

1. *Default.* Default is not defined by the regulation, but rather by the legal obligation between the parties and state or other law.

2. *Definite term or maturity date.* To meet the definition of a reverse mortgage transaction, a creditor cannot require any principal, interest, or shared appreciation or equity to be due and payable (other than in the case of default) until after the consumer's death, transfer of the dwelling, or the consumer ceases to occupy the dwelling as a principal dwelling. Some state laws require legal obligations secured by a mortgage to specify a definite maturity date or term of repayment in the instrument. Such a provision in an obligation does not violate the definition of a reverse mortgage transaction if the maturity date or term or repayment required by state law would in no case operate to cause maturity prior to the occurrence of any of the events recognized in the regulation. For example, a provision that allows a reverse mortgage loan to become due and payable only after the consumer's death, transfer, or cessation of occupancy, *or* after a specified term, but which automatically extends the term for consecutive periods as long as none of the other events has occurred would meet the definition of a reverse mortgage transaction.

33(c) Projected total cost of credit.

Paragraph 33(c)(1) Costs to consumer.

1. *Costs and charges to consumer—relation to finance charge.* All costs and charges to the consumer that are incurred in a reverse mortgage transaction are included in the projected total cost of credit, and thus in the total annual loan cost rates, whether or not the cost or charge is a finance charge under § 226.4 of the regulation.

2. *Annuity costs.* As part of the credit transaction, some creditors require or permit a consumer to purchase an annuity that immediately—or at some future time—supplements or replaces the creditor's payments. The amount paid by the consumer for the annuity is a cost to the consumer under this section, regardless of whether the annuity is purchased through the creditor or a third party, or whether the purchase is mandatory or voluntary.

3. *Disposition costs excluded.* Disposition costs incurred in connection with the sale or transfer of the property subject to the reverse mortgage are not included in the costs to the consumer under this paragraph. (However, see the definition of Val_n in appendix K to the regulation to determine the effect certain disposition costs may have on the total annual loan cost rates.)

Paragraph 33(c)(2) Payments to consumer.

1. *Payments upon a specified event.* The projected total cost of credit should not reflect contingent payments in which a credit to the outstanding loan balance or a payment to the consumer's estate is made upon the occurrence of an event (for example, a ''death benefit'' payable if the consumer's death occurs within a certain period of time). Thus, the table of total annual loan cost rates required under § 226.33(b)(2) would not reflect such payments. At its option, however, a creditor may put an asterisk, footnote, or similar type of notation in the table next to the applicable total annual loan cost rate, and state in the body of the note, apart from the table, the assumption upon which the total annual loan cost is made and any different rate that would apply if the contingent benefit were paid.

Paragraph 33(c)(3) Additional creditor compensation.

1. *Shared appreciation or equity.* Any shared appreciation or equity that the creditor is entitled to receive pursuant to the legal obligation must be included in the total cost of a reverse mortgage loan. For example, if a creditor agrees to a reduced interest rate on the transaction in exchange for a portion of the appreciation or equity that may be realized when the dwelling is sold, that portion is included in the projected total cost of credit.

Paragraph 33(c)(4) Limitations on consumer liability.

1. *In general.* Creditors must include any limitation on the consumer's liability (such as a nonrecourse limit or an equity conservation agreement) in the projected total cost of credit. These limits and agreements protect a portion of the equity in the dwelling for the consumer or the consumer's estate. For example, the following contractual provisions are limitations on the consumer's liability that must be included in the projected total cost of credit:

i. A limit on the consumer's liability to a certain percentage of the projected value of the home.

ii. A limit on the consumer's liability to the net proceeds from the sale of the property subject to the reverse mortgage.

2. *Uniform assumption for ''net proceeds'' recourse limitations.* If the legal obligation between the parties does not specify a percentage for the ''net proceeds'' liability of the consumer, for purposes of the disclosures required by § 226.33, a creditor must assume that the costs associated with selling the property will equal 7 percent of the projected sale price (see the definition of the Val_n symbol under appendix K(b)(6)). fi

* * * * *

10. In Supplement I to Part 226, a new *Appendix K—Total Annual Loan Cost Rate Computations for Reverse Mortgage Transactions* and a new *Appendix L—Assumed Loan Periods for Computations of Total Annual Loan Cost Rates* would be added to read as follows:

* * * * *

fl Appendix K—Total Annual Loan Cost Rate Computations for Reverse Mortgage Transactions

1. *General.* The calculation of total annual loan cost rates under appendix K is based on the principles set and the estimation or ''iteration'' procedure used to compute annual percentage rates under appendix J. Rather than restate this iteration process in full, the regulation cross-references the procedures found in appendix J. In other aspects the appendix reflects the special

nature of reverse mortgage transactions. Special definitions and instructions are included where appropriate.

(b) Instructions and equations for the total annual loan cost rate.

(b)(5) Number of unit-periods between two given dates.

1. *Assumption as to when transaction begins.* The computation of the total annual loan cost rate is based on the assumption that the reverse mortgage transaction begins on the first day of the month in which consummation is estimated to occur. Therefore, fractional unit-periods (as used under appendix J for calculating annual percentage rates) are not used.

(b)(9) Assumption for discretionary cash advances.

1. *Amount of credit.* Creditors should compute the total annual loan cost rates for transactions involving discretionary cash advances by assuming that 50 percent of the initial amount of the credit available under the transaction is advanced at closing or, in an open-end transaction, when the consumer becomes obligated under the plan. (For the purposes of this assumption, the initial amount of the credit is the principle loan amount less any costs to the consumer under section 226.33(c)(1).)

(b)(10) Assumption for variable-rate reverse mortgage transactions.

1. *Initial discount or premium rate.* Where a variable-rate reverse mortgage transaction includes an initial discount or premium rate, the creditor should apply the same rules for calculating the total annual loan cost rate as are applied when calculating the annual percentage rate for a loan with an initial discount or premium rate (see the commentary to § 226.17(c)).

(d) Reverse mortgage model form and sample form.

(d)(2) Sample form.

1. *General.* The ''clear and conspicuous'' standard for reverse mortgage disclosures does not require disclosures to be printed in any particular type size. Disclosures may be made on more than one page, and use both the front and the reverse sides, so long as the pages constitute an integrated document.

Appendix L—Assumed Loan Periods for Computations of Total Annual Loan Cost Rates

1. *General.* The life expectancy figures used in this appendix are those found in the U.S. Decennial Life Tables for women, as rounded to the nearest whole year and as published by the U. S. Department of Health and Human Services. The figures contained in this appendix must be used by creditors for all consumers (men and women). This appendix will be revised periodically by the Board to incorporate revisions to the figures made in the Decennial Tables. fi

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29711 Filed 12–6–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–03]

Airworthiness Directives; Sensenich Propeller Manufacturing Company Inc. Models M76EMM, M7EMMS, 76EM8, and 76EM8S() Metal Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to Sensenich Propeller Manufacturing Company Inc. Models M76EMM, M7EMMS, 76EM8, and 76EM8S() metal propellers, that currently restricts operators from continuously operating the propeller at engine speeds from 2,150 to 2,350 revolutions per minute (RPM). This action would remove propellers installed on certain additional Textron Lycoming O–360 series reciprocating engines with solid crankshafts from this requirement, and update the referenced Sensenich Propeller Company Inc. service bulletin to the latest revision. Reworking of all affected propeller models remains a requirement of the proposed AD, regardless of engine installation. This proposal is prompted by inquiries concerning tachometer red arc restrictions on certain Textron Lycoming O–360 series reciprocating engines with solid crankshafts. The actions specified by the proposed AD are intended to prevent propeller blade tip fatigue failure, which can result in loss of control of the aircraft.

DATES: Comments must be received by February 5, 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–03, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Sensenich Propeller Manufacturing Company Inc., 519 Airport Road, Lititz, PA 17543; telephone (717) 569–0435, fax (717) 560–3725. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Raymond J. O'Neill, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Valley Stream, NY 11581; telephone (516) 256–7505, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–03.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–03, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On May 6, 1969, the Federal Aviation Administration (FAA) issued Airworthiness Directive (AD) 69–09–03, Amendment 39–761 (34 FR 7371, May 7, 1969), applicable to Sensenich Propeller Manufacturing Company Inc. Models M76EMM, M7EMMS, 76EM8, and 76EM8S() metal propellers. Revision 1, Amendment 39–808 (34 FR 12563, August 1, 1969); and Revision 2, Amendment 39–1102 (35 FR 17030, November 5, 1970), were subsequently

issued. That AD restricts operators from continuously operating the propeller at engine speeds from 2,150 to 2,350 revolutions per minute (RPM) and requires reworking the propeller by reducing blade thickness and stiffness. That action was prompted by reports of propeller blade tip failures due to continuous operation in an RPM range of relatively high vibration stresses aggravated by impact-related mechanical damage such as cuts, nicks, and dents. That condition, if not corrected, could result in propeller blade tip fatigue failure, which can result in loss of control of the aircraft.

Since the issuance of that AD, the FAA has received numerous inquiries from the field concerning tachometer red arc restrictions on certain Textron Lycoming O–360 series reciprocating engines with solid crankshafts that are identified by suffixes having a digit ''4'' or higher in the second position, e.g. A4AD, A4M, etc. The FAA has determined that these additional engines, with solid crankshafts, have vibration characteristics that closely approximate engines to which the current AD does not apply, and can therefore also be removed from the AD's applicability and requirement for tachometer restriction. Contrary to the requirements of AD 69–09–03 R2, this AD would require reworking all affected propellers, regardless of engine installation.

When propeller blade reworking is accomplished, the resulting reduction in blade thickness and stiffness reduces blade second order-first mode peak resonance RPM to lower values. The reworked propeller (later adopted in production) is marked with the letter ''K.''

The FAA has reviewed and approved the technical contents of Sensenich Propeller Service Bulletin (SB) No. R–13, dated April 11, 1969, that describes avoiding continuous operation between 2150 and 2350 RPM; and Sensenich Propeller SB No. R–14A, dated November 15, 1994, that describes reworking the propeller by reducing blade thickness and stiffness in order to avoid propeller blade tip failures.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 69–09–03 R2 to remove from the AD's applicability propellers installed on certain Textron Lycoming O–360 series reciprocating engines with solid crankshafts that are identified by suffixes having a digit ''4'' or higher in the second position, e.g. A4A, A4G, etc., and from the tachometer restriction, and update the referenced Sensenich Propeller SB No. R–14 to R–14A, dated November 15, 1994.

There are approximately 100 propellers of the affected design that may not have been modified to the ''K'' standard in the worldwide fleet. The FAA estimates that 50 propellers installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2.5 work hours per propeller to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,500. However, since this proposed rule further restricts the applicability by exempting propellers installed on certain Textron Lycoming engine models from the tachometer restriction, there is a potential overall cost savings of $4,395,000, if all the affected Sensenich propellers are installed on the newly exempted engines.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–1102 (35 FR 17030, November 5, 1970), and by adding a new airworthiness directive, to read as follows:

Sensenich Propeller Manufacturing Company Inc.: Docket No. 95–ANE–03. Revises AD 69–09–03, Amendment 39–1102.

Applicability: Sensenich Propeller Manufacturing Company Inc. Models M76EMM, M7EMMS, 76EM8, and 76EM8S() metal propellers. Paragraphs (a) and (b) of this airworthiness directive (AD) do not apply to those propellers installed on the following solid crankshaft Textron Lycoming O–360 series reciprocating engines: O–360–A4A, –A4D, –A4G, –A4J, –A4K, –A4M, –A4N, –A4P, and –A5AD, or additional engines identified by suffixes having a digit ''4'' or higher in the second position. These propellers are installed on but not limited to the following aircraft: Piper PA–28–180, PA–28–181, American General Aircraft Holding Co. Inc. (formerly Gulfstream American) AA–5 series, Beech B23 and C23, Cessna 172Q, Avions Pierre Robin R–3000/160, and aircraft modified under various Supplemental Type Certificates (STC's).

Note: This AD applies to each propeller 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 propellers 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 (f) 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 propeller from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller blade tip fatigue failure, which can result in loss of control of the aircraft, accomplish the following:

(a) Commencing with the next flight after the effective date of this AD, do not operate the engine in continuous operation between 2,150 and 2,350 RPM.

(b) Within the next 25 hours time in service (TIS) after the effective date of this AD, mark engine tachometer with a red arc from 2150 RPM to 2350 RPM, in accordance with Sensenich Propeller Service Bulletin (SB) No. R–13, dated April 11, 1969.

(c) For propellers with 500 or more total hours TIS, or unknown TIS on the effective date of this AD, inspect, and rework or replace, as necessary, within the next 50 hours TIS after the effective date of this AD, in accordance with Sensenich Propeller SB No. R–14A, dated November 15, 1994.

(d) For propellers with less than 500 total hours TIS on the effective date of this AD, inspect, and rework or replace, as necessary, prior to accumulating 550 total hours TIS, in accordance with Sensenich Propeller SB No. R–14A, dated November 15, 1994.

(e) Mark with a suffix letter ''K'' propellers that have been inspected, reworked, or replaced in accordance with Sensenich Propeller SB No. R–14A, dated November 15, 1994, and found satisfactory. New production propellers include change ''K'' or subsequent changes.

(f) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

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

(g) 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.

Issued in Burlington, Massachusetts, on November 28, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–29843 Filed 12–6–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 90–CE–59–AD]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Models PA31, PA31–325, PA31–350, PA31P, PA31T1, and PA31T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 80–26–05, which currently requires the following on The New Piper Aircraft, Inc. (Piper) Models PA31, PA31–325, PA31–350, PA31P, PA31T1, and PA31T airplanes: repetitively inspecting the main landing gear (MLG) inboard door hinges and attachment angles for cracks, and replacing any cracked MLG inboard door hinge or attachment angle. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would retain the current repetitive inspections contained in AD 80–26–05, and would require incorporating a MLG inboard door hinge and attachment angle assembly of improved design (part number 47529–32) or approved hinges and angles made of steel as terminating action for the repetitive inspection requirement. The actions specified in the proposed AD are intended to prevent separation of the inboard MLG door from the airplane caused by a cracked inboard door hinge or attachment angle, which, if not detected and corrected, could result in the MLG jamming and loss of control of the airplane during landing operations.

DATES: Comments must be received on or before February 21, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–59–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that relates to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 90–CE–59–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–59–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to Piper Models PA31–350 and PA31T3 airplanes. Assisting the FAA in this review were (1) The New Piper Aircraft, Inc.; (2) the Regional Airlines Association (RAA); and (3) several operators of the affected airplanes.

From this review, the FAA has identified AD 80–26–05, Amendment 39–3994, as one that should be superseded with a new AD that would require a modification that would eliminate the need for short-interval and critical repetitive inspections. AD 80–26–05 currently requires the following on Piper Models PA31, PA31–325, PA31–350, PA31P, PA31T1, and PA31T airplanes:

—Repetitively inspecting the main landing gear (MLG) inboard door hinges and attachment angles for cracks, and replacing any cracked MLG inboard door hinge or attachment angle. Accomplishment of the inspections required by AD 80–26–05 is in accordance with Piper Service Bulletin (SB) No. 682, dated July 24, 1980; and

—Allowing for the provision of installing inboard door hinges and attachment angles made of steel as terminating action for the repetitive inspections.

Piper SB No. 682, dated July 24, 1980, references a new improved door hinge assembly, part number (P/N) 47529–32, which, when incorporated, provides terminating action for the repetitive inspections of the MLG inboard door hinge and attachment angles. Piper SB No. 682 contains procedures for incorporating this new improved door hinge assembly.

Based on its aging commuter-class aircraft policy and after reviewing all available information related to this subject including the referenced service information, the FAA has determined that AD action should be taken to eliminate the repetitive short- interval inspections required by AD 80–26–05, and to prevent separation of a MLG door from the airplane caused by a cracked inboard door hinge or attachment angle, which, if not detected and corrected, could result in the MLG jamming and loss of control of the airplane during landing operations.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA31, PA31–325, PA31–350, PA31P, PA31T1, and PA31T airplanes of the same type design, the proposed AD would supersede AD 80–26–05 with a new AD that would (1) retain the requirement of repetitively inspecting the MLG inboard door hinges and attachment angles for cracks, and replacing any cracked MLG inboard door hinge or attachment angle; and (2) require incorporating a MLG inboard door hinge and attachment angle assembly of improved design (part number 47529–32) or FAA-approved hinges and angles made of steel as terminating action for the repetitive inspection requirement. Accomplishment of the proposed inspections would be in accordance with Piper SB No. 682, dated July 24, 1980.

The FAA estimates that 2,448 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $1,664 per airplane ($416 per assembly ×4 assemblies per airplane). Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,367,232 or $1,784 per airplane. This figure is based on the assumption that no affected airplane owner/operator has accomplished the proposed replacement.

Piper has informed the FAA that hinge assemblies have been distributed to equip approximately 400 (1,600 separate assemblies) of the affected airplanes. Assuming that 400 of the affected airplanes have four of these hinge assemblies incorporated, the cost impact of the proposed AD upon U.S. owners operators of the affected airplanes would be reduced by $713,600 from $4,367,232 to $3,653,632.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. The FAA believes that a large number of the remaining 2,048 affected airplanes (2,448 affected airplanes—400 airplanes) that would be affected by the proposed AD are operated in various types of air transportation. This includes scheduled passenger service, air cargo, and air taxi.

The proposed AD would allow 800 hours time-in-service (TIS) after the effective date of the proposed AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in air transportation is between 25 to 40 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 5 to 8 months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 4 to 8 years before the proposed modification would be mandatory.

The FAA established the 800 hours TIS replacement compliance time based on its engineering evaluation of the problem. Among the issues examined in this engineering evaluation were analysis of service difficulty reports, the difficulty level of the inspection, and how critical the situation would be if cracks occurred in the subject area despite accomplishment of the repetitive inspections.

Usually, the FAA establishes the mandatory design modification compliance time on AD's affecting aging commuter-class airplanes upon the accumulation of a certain number of hours TIS on the airplane. For this action, the FAA is proposing to mandate the modification for all operators ''within the next 800 hours TIS after the effective date of this AD.'' The total TIS levels of the airplane fleet vary from under 1,000 hours TIS to over 5,000 hours TIS, and annual accumulation rates vary from 50 hours TIS to over 1,000 hours TIS. Establishing a long-term set compliance time of hours TIS accumulated on Piper Models PA31, PA31–325, PA31–350, PA31P, PA31T1, and PA31T airplanes (such as 5,000 hours TIS) would impose an undue burden on the manufacturer of having to maintain a supply of replacement parts for the entire fleet when many airplanes in the fleet may never reach this compliance time.

Instead, the FAA believes that Piper should maintain parts for several years; in this case about 8 years to allow low-usage airplanes time to accumulate the 800 hours after the effective date of the AD. The FAA has determined that the compliance time of the proposed rule provides the level of safety required for commuter air service while still minimizing the impact on the private airplane owners of Piper Models PA31, PA31–325, PA31–350, PA31P, PA31T1, and PA31T airplanes.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR. 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the

Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 80–26–05, Amendment 39- 3994, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Docket No. 90–CE–59–AD. Supersedes AD 80–26–05, Amendment 39–3994.

Applicability: The following model and serial number airplanes, certificated in any category, that are not equipped with Piper part number (P/N) 47529–32 door hinge assemblies or FAA-approved inboard door hinges and attachment angles made of steel at all four hinge assembly locations:

Models	Serial Nos.
PA31 and PA31–325	31–2 through 31–8012077.
PA31–350	31–5001 through 31–8052168.
PA31P	31P–3 through 31P–7730012.
PA–31T1	31T–7804001 through 31T–8004040.
PA–31T	31T–7400002 through 31T–8020076.

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 request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent separation of a main landing gear (MLG) door from the airplane caused by a cracked inboard door hinge or attachment angle, which, if not detected and corrected, could result in the MLG jamming and loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 80–26–05), and thereafter at intervals not to exceed 100 hours TIS until the modification required by paragraph (c) or (d) of this AD is incorporated, inspect (using dye penetrant methods) the MLG inboard door hinges and attachment angles for cracks. Accomplish the inspections in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 682, dated July 24, 1980.

(b) The initial dye penetrant inspection type must be utilized for all future repetitive inspections. Dye penetrant inspection types consist of Type I: fluorescent; Type II: non-fluorescent or visible dye; and Type III: dual sensitivity.

(c) If cracks are found during any of the inspections required in paragraph (a) of this AD, prior to further flight, incorporate a Piper P/N 47529–32 MLG inboard door hinge and attachment angle assembly or install FAA-approved hinges and angles made of steel.

(d) Within the next 800 hours TIS after the effective date of this AD, unless already accomplished as required by paragraph (c) of this AD, incorporate a Piper P/N 47529–32 MLG inboard door hinge and attachment angle assembly or install FAA-approved hinges and angles made of steel in all four hinge assembly locations.

(e) Incorporating a Piper P/N 47529–32 MLG inboard door hinge and attachment angle assembly or installing FAA-approved hinges and angles made of steel in all four assembly locations as required by paragraphs (c) and (d) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

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

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

Note 3: Alternative methods of compliance approved in accordance with AD 80–26–05 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) This amendment supersedes AD 80–26–05, Amendment 39–3994.

Issued in Kansas City, Missouri, on December 1, 1995.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29858 Filed 12–6–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 90–CE–62–AD]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA31, PA31P, and PA31T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 88–05–05, which currently requires the following on certain The New Piper Aircraft, Inc. (Piper) PA31, PA31P, and PA31T series airplanes: repetitively inspecting both the left and right main landing gear (MLG) forward sidebrace, and replacing any cracked MLG forward sidebrace. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would retain the current repetitive inspections contained in AD 88–05–05, and would require incorporating both a left and right MLG forward sidebrace of improved design as terminating action for the repetitive inspection requirement. The actions specified in the proposed AD are intended to prevent the MLG from retracting because of a cracked MLG forward side brace, which, if not detected and corrected, could result in gear collapse and loss of control of the airplane during landing operations.

DATES: Comments must be received on or before February 22, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–62–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that relates to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 90–CE–62–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–62–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to Piper Models PA31–350 and PA31T3 airplanes. Assisting the FAA in this review were (1) The New Piper Aircraft, Inc.; (2) the Regional Airlines Association (RAA); and (3) several operators of the affected airplanes.

From this review, the FAA has identified AD 88–05–05, Amendment 39–5861, as one that should be superseded with a new AD that would require a modification that would eliminate the need for short-interval and critical repetitive inspections. AD 88–05–05 currently requires the following on certain Piper PA31, PA31P, and PA31T series airplanes:

—Repetitively inspecting both the left and right main landing gear (MLG) forward sidebrace for cracks, and replacing any cracked MLG forward sidebrace stud. Accomplishment of the inspections required by AD 88–05–05 is in accordance with Piper Service Bulletin (SB) No. 845A, dated October 9, 1987; and

—Allowing for the provision of replacing both the left and right MLG forward sidebrace with a part of improved design, part number (P/N) 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right), as applicable. This installation is accomplished in accordance with the applicable maintenance manual.

Based on its aging commuter-class aircraft policy and after reviewing all available information related to this subject including the referenced service information, the FAA has determined that AD action should be taken to eliminate the repetitive short-interval inspections required by AD 88–05–05, and to prevent the MLG from retracting because of a cracked MLG forward side brace, which, if not detected and corrected, could result in gear collapse and loss of control of the airplane during landing operations.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA31, PA31P, and PA31T series airplanes of the same type design, the proposed AD would supersede AD 88–05–05 with a new AD that would (1) retain the requirement of repetitively inspecting both the left and right MLG forward sidebrace for cracks, and replacing any cracked MLG forward sidebrace; and (2) require replacing both the left and right MLG forward sidebrace with a part of improved design, part number (P/N) 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right), as applicable, as terminating action for the repetitive inspections. Accomplishment of the proposed inspections would be in accordance with Piper SB No. 845A, dated October 9, 1987. The improved MLG forward sidebrace installations would be accomplished in accordance

with the applicable maintenance manual.

The FAA estimates that 2,384 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours per airplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $1,000 per airplane (2 MLG forward sidebraces per airplane at approximately $500 per sidebrace). Based on these figures, the total cost impact of the proposed replacement on U.S. operators is estimated to be $3,528,320 or $1,480 per airplane. This figure is based on the assumption that no affected airplane owner/operator has accomplished the proposed replacement.

Piper has informed the FAA that parts have been distributed to owners/operators to equip 2,123 of the affected airplanes (4,246 MLG forward sidebraces of improved design). Assuming that each set of parts has been installed on an affected airplane, the cost impact of the proposed replacement upon U.S. owners operators of the affected airplanes would be reduced by $3,142,040 from $3,528,320 to $386,280.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. The FAA believes that a large number of the remaining 261 affected airplanes (2,384 affected airplanes—2,123 airplanes with a set of parts distributed) that would be affected by the proposed AD are operated in various types of air transportation. This includes scheduled passenger service, air cargo, and air taxi.

The proposed AD would allow 1,200 hours time-in-service (TIS) after the effective date of the proposed AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in air transportation is between 25 to 40 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 7 to 12 months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 6 to 12 years before the proposed replacement would be mandatory.

The FAA established the 1,200 hours TIS replacement compliance time based on its engineering evaluation of the problem. Among the issues examined during this engineering evaluation were analysis of service difficulty reports, the difficulty level of the inspection, and how critical the situation would be if cracks occurred in the subject area despite accomplishment of the repetitive inspections.

Usually, the FAA establishes the mandatory design modification compliance time on AD's affecting aging commuter-class airplanes upon the accumulation of a certain number of hours TIS on the airplane. For this action, the FAA is proposing to mandate the modification for all operators ''within the next 1,200 hours TIS after the effective date of this AD.'' The total TIS levels of the airplane fleet vary from under 1,000 hours TIS to over 5,000 hours TIS, and annual accumulation rates vary from 50 hours TIS to over 1,000 hours TIS. Establishing a long-term set compliance time of hours TIS accumulated on Piper PA31, PA31P, and PA31T series airplanes (such as 5,000 hours TIS) would impose an undue burden on the manufacturer of having to maintain a supply of replacement parts for the entire fleet when many airplanes in the fleet may never reach this compliance time.

Instead, the FAA believes that Piper should maintain parts for several years; in this case about 12 years to allow low-usage airplanes time to accumulate the 1,200 hours TIS after the effective date of the AD. The FAA has determined that the compliance time of the proposed rule provides the level of safety required for commuter air service while still minimizing the impact on the private airplane owners of Piper PA31, PA31P, and PA31T series airplanes.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 88–05–05, Amendment 39–5861, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Docket No. 90–CE–62–AD. Supersedes AD 88–05–05, Amendment 39–5861.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have left and right main landing gear (MLG) forward sidebraces of improved design installed, part number (P/N) 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right).

Models	Serial Nos.
PA31, PA31–300, and PA31–325	31–2 through 31–8312019.
PA31–350	31–5001 through 31–8553002.
PA31P	31P–2 through 31P–7730012.

Models	Serial Nos.
PA31P–350	31P–8414001 through 31P–8414050.
PA31T	31T–7400002 through 31T–8120104.
PA31T1	31T–7804001 through 31T–8304003 and 31T–1104004 through 31T–1104017.
PA31T2	31T–8166001 through 31T–8166076 and 31T–1166001 through 31T–1166008.

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 request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the MLG from retracting because of a cracked MLG forward side brace, which, if not detected and corrected, could result in gear collapse and loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 88–05–05), and thereafter at intervals not to exceed 100 hours TIS until the modification required by paragraph (c) or (d) of this AD is incorporated, inspect (using dye penetrant methods) both the left and right MLG sidebrace for cracks. Accomplish the inspections in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 845A, dated October 9, 1987.

(b) The initial dye penetrant inspection type must be utilized for all future repetitive inspections. Dye penetrant inspection types consist of Type I: fluorescent; Type II: non-fluorescent or visible dye; and Type III: dual sensitivity.

(c) If cracks are found during any of the inspections required in paragraph (a) of this AD, prior to further flight, replace the cracked MLG sidebrace with a part of improved design, P/N 85165–02 (left) or 85165–03 (right) or P/N 85166–02 (left) or 85166–03 (right), as applicable. Accomplish this replacement in accordance with the applicable maintenance manual.

(d) Within the next 1,200 hours TIS after the effective date of this AD, unless already accomplished as required by paragraph (c) of this AD, replace both the left and right MLG side brace with parts of improved design, P/N 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right), as applicable. Accomplish these replacements in accordance with the applicable maintenance manual.

(e) Installing both the left and right MLG side brace with parts of improved design, P/N 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right), as applicable, as required by paragraph (d) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

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

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

Note 3: Alternative methods of compliance approved in accordance with AD 88–05–05 (superseded by this AD) are not considered approved for this AD.

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) This amendment supersedes AD 88–05–05, Amendment 39–5861.

Issued in Kansas City, Missouri, on December 1, 1995.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29859 Filed 12–6–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 90–CE–63–AD]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Models PA31, PA31–300, PA31–325, and PA31–350 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 80–14–06, which currently requires the following on The New Piper Aircraft, Inc. (Piper) Models PA31, PA31–300, PA31–325, and PA31–350 airplanes: repetitively inspecting the outboard flap tracks, wing rib flanges, and the rear spar web at Wing Station (WS) 147.5 on each wing, and modifying the area at WS 147.5 on both wings if any cracks are found as terminating action for the repetitive inspection requirement. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would retain the current repetitive inspections contained in AD 80–14–06, and would require modifying the area at WS 147.5 on both wings as terminating action for the repetitive inspections. The actions specified in the proposed AD are intended to prevent structural failure under certain load conditions caused by cracked areas at WS 147.5, which, if not

detected and corrected, could result in loss of control of the airplane.

DATES: Comments must be received on or before February 23, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–63–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that relates to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 90–CE–63–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–63–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to Piper Models PA31–350 and PA31T3 airplanes. Assisting the FAA in this review were (1) The New Piper Aircraft, Inc.; (2) the Regional Airlines Association (RAA); and (3) several operators of the affected airplanes.

From this review, the FAA has identified AD 80–14–06, Amendment 39–3805, as one that should be superseded with a new AD that would require a modification that would eliminate the need for short-interval and critical repetitive inspections. AD 80–14–06 currently requires the following on Piper Models PA31, PA31–300, PA31–325, and PA31–350 airplanes:

—Repetitively inspecting the outboard flap tracks, wing rib flanges, and the rear spar web at Wing Station (WS) 147.5 on each wing and modifying the area at WS 147.5 on both wings if any cracks are found as terminating action for the repetitive inspection requirement; and

—Allowing for the provision of modifying the area at WS 147.5 on both wings as terminating action for the repetitive inspection requirement.

Piper Service Bulletin (SB) No. 647A, dated November 24, 1980, references Kit 763 986, which, when incorporated, provides a modification of the area at WS 147.5 on both wings that would eliminate the need for the repetitive inspection requirement of AD 80–14–06. Kit 763 986 also contains procedures for incorporating this modification.

Based on its aging commuter-class aircraft policy and after reviewing all available information related to this subject including the referenced service information, the FAA has determined that AD action should be taken to eliminate the repetitive short- interval inspections required by AD 80–14–06, and to prevent structural failure under certain load conditions caused by cracked areas at WS 147.5, which, if not detected and corrected, could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA31, PA31–300, PA31–325, and PA31–350 airplanes of the same type design, the proposed AD would supersede AD 80–14–06 with a new AD that would (1) retain the requirement of repetitively inspecting the outboard flap track, wing rib flanges, and the rear wing web at WS 147.5, and, if any cracks are found, modifying the area of WS 147.5 by incorporating Piper Kit 763 986 as terminating action for the repetitive inspection requirement; and (2) require incorporating Piper Kit 763 986 at a specified hours TIS time-period for airplanes where no cracks were found during the inspections as terminating action for the repetitive inspection requirement. Accomplishment of the proposed modification would be in accordance with the instructions included with Piper Kit 763 986, as referenced in Piper SB No. 647A, dated November 24, 1980.

The FAA estimates that 2,906 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 30 workhours per airplane to accomplish the proposed modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $468 per airplane. Based on these figures, the total cost impact of the proposed modification on U.S. operators is estimated to be $6,590,808 or $2,268 per airplane.

Piper has informed the FAA that parts have been distributed to enough owners/operators to equip 234 of the affected airplanes. Assuming that each set of parts has been installed on an affected airplane, the cost impact of the proposed AD upon U.S. owners operators of the affected airplanes would be reduced by $530,712 from $6,590,808 to $6,060,096.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class

airplanes that are in commercial service without adversely impacting private operators. The FAA believes that a large number of the remaining 2,672 affected airplanes (2,906 airplanes—234 sets of parts distributed) that would be affected by the proposed AD are operated in various types of air transportation. This includes scheduled passenger service, air cargo, and air taxi.

The proposed AD would allow 1,000 hours time-in- service (TIS) after the effective date of the proposed AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in air transportation is between 25 to 40 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 6 to 10 months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 5 to 10 years before the proposed modification would be mandatory.

The FAA established the 1,000 hours TIS modification compliance time based on its engineering evaluation of the problem. Among the issues examined during this engineering evaluation were analysis of service difficulty reports, the difficulty level of the inspection, and how critical the situation would be if cracks occurred in the subject area despite accomplishment of the repetitive inspections.

Usually, the FAA establishes the mandatory design modification compliance time on AD's affecting aging commuter-class airplanes upon the accumulation of a certain number of hours TIS on the airplane. For this action, the FAA is proposing to mandate the modification for all operators ''within the next 1,000 hours TIS after the effective date of this AD.'' The total TIS levels of the airplane fleet varies from under 1,000 hours TIS to over 5,000 hours TIS, and annual accumulation rates vary from 50 hours TIS to over 1,000 hours TIS. Establishing a long-term set compliance time of hours TIS accumulated on a Piper Model PA31, PA31–300, PA31–325, or PA31–350 airplane (such as 5,000 hours TIS) would impose an undue burden on the manufacturer of having to maintain a supply of replacement parts for the entire fleet when many airplanes in the fleet may never reach this compliance time.

Instead, the FAA believes that Piper should maintain parts for several years; in this case about 10 years to allow low-usage airplanes time to accumulate the ''1,000 hours after the effective date of the AD.'' The FAA has determined that the compliance time of the proposed rule provides the level of safety required for commuter air service while still minimizing the impact on the private airplane owners of Piper Models PA31, PA31–300, PA31–325, and PA31–350 airplanes.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 80–14–06, Amendment 39–3805, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Docket No. 90–CE–63–AD. Supersedes AD 80–14–06, Amendment 39–3805.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have Piper Kit 763 986 incorporated in the area of Wing Station (WS) 147.5:

Models	Serial Nos.
PA31 and PA31–300	31–2 through 31–8012010.
PA31–325	31–7512006 through 31–8012010.
PA31–350	31–5001 through 31–8052025.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent structural failure under certain load conditions caused by cracked areas at WS 147.5, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service

(TIS) after the effective date of this AD, unless already accomplished (compliance with AD 80–14–06), and thereafter at intervals not to exceed 100 hours TIS until the modification required by paragraph (b) or (c) of this AD is incorporated, inspect the

outboard flap tracks, wing rib flanges, and the rear spar web on both wings in the area of WS 147.5 by accomplishing the following:

(1) Lower the flaps to 40 degrees.

(2) Inspect the attachment of the flap track rib to the rear spar on the inboard and outboard sides of the flap track using 10-power magnification.

(3) Remove the rectangular access plate from the bottom wing skin. The rectangular access plate is located forward of the wing spar at WS 153.

(4) Inspect the WS 147.5 rib attachment angle using 10-power magnification.

Note 2: The 100-hour TIS repetitive inspection interval was established to coincide with regularly scheduled maintenance.

(b) If cracks are found during any of the inspections required in paragraph (a) of this AD, prior to further flight, incorporate Piper Kit 763 986 in accordance with the instructions included with this kit, as referenced in Piper Service Bulletin (SB) No. 647A, dated November 24, 1980.

(c) Within the next 1,000 hours TIS after the effective date of this AD, unless already accomplished as required by paragraph (b) of this AD, incorporate Piper Kit 763 986 in the area of WS 147.5. Accomplish this action in accordance with the instructions included with this kit, as referenced in Piper SB No. 647A, dated November 24, 1980.

(d) Incorporating Piper Kit 763 986 as required by paragraphs (b) and (c) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

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

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Note 4: Alternative methods of compliance approved in accordance with AD 80–14–06 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 80–14–06, Amendment 39–3805.

Issued in Kansas City, Missouri, on December 1, 1995.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29860 Filed 12–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AWP–42]

Proposed Amendment of Class E Airspace; Phoenix, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Phoenix, AZ to provide additional controlled airspace for aircraft arriving at Phoenix Sky Harbor International Airport. The intended effect of this proposal is to improve service to the users and reduce controller workload.

DATES: Comments must be received on or before January 8, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530 Docket No. 95–AWP–42, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace, Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposal rulemaking by submitting such written data, views, are arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AWP–42.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after their closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Phoenix, AZ. The intended effect of this proposal is to provide additional controlled airspace for aircraft arriving at Phoenix Sky Harbor International Airport, Phoenix, AZ. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will not affect air traffic procedures and air navigation, it is certified that this proposal rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Phoenix Sky Harbor International Airport, AZ [Revised]

Phoenix Sky Harbor International Airport, Phoenix, AZ
(Lat. 33°26′10″ N, long. 112°00′34″ W)
Williams Gateway Airport, AZ
(Lat. 33°18′28″ N, long. 111°39′19″ W)
Luke AFB, AZ
(Lat. 33°32′06″ N, long. 111°22′59″ W)

That airspace extending upward from 700 feet above the surface within a 17.4-mile radius of Luke AFB and within a 17.4-mile radius of Williams Gateway Airport and within 2 parallel tangent lines connecting the two 17.4-mile radius circles, and that airspace northwest of Phoenix Sky Harbor International Airport bounded by a line beginning at lat. 33°59′00″ N, long. 112°38′03″ W; to lat. 33°49′24″ N, long. 112°25′34″ W, thence counterclockwise via the 17.4-mile radius of Luke AFB to lat. 33°42′00″ N, long. 112°40′00″ W; to lat. 33°44′00″ N, long. 112°45′03″ W; to lat. 33°55′00″ N, long. 112°45′03″ W, to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 34°10′00″ N, long. 112°39′03″ W; to lat. 34°10′00″ N, long. 111°30′03″ W; to lat. 34°00′00″ N, long. 110°52′02″ W; to lat. 32°33′00″ N, long. 110°52′02″ W; to lat. 32°33′00″ N, long. 112°00′02″ W; to lat. 32°51′00″ N, long. 112°37′03″ W; to lat. 32°51′00″ N, long. 113°00′03″ W; to lat. 33°19′00″ N, long. 113°00′03″ W; to lat. 33°19′00″ N, long. 113°10′03″ W; to lat. 34°00′00″ N, long. 113°10′03″ W; to lat. 34°00′00″ N, long. 112°52′03″ W, thence to the point of beginning. That airspace extending upward from 5,500 feet MSL west of Phoenix Sky Harbor International Airport bounded on the north by the south edge of V–16, on the east by the west boundary of the 1,200 foot portion of the Class E airspace area; on the south by the north edge of V–66 and on the west by long. 114°00′03″ W, excluding that airspace within Restricted Areas R–2308A, R–2308B, R–2308C, and R–2307. That airspace extending upward from 7,000 MSL bounded on the north by lat. 34°00′00″ N, on the east by long. 113°10′03″ W; on the south by the north edge of V–16 and on the west by long. 114°00′03″ W. That airspace extending upward from 9,500 feet MSL bounded on the north by the south edge of V–12, on the east by the west edge of V–327, on the south and southeast by the north and northwest boundary of the 1,200 foot portion of the Class E airspace area, and on the southwest by a line extending from lat. 34°08′48″ N, long. 112°40′37″ W, to the point of intersection on long. 113°10′03″ W, and on the south edge of V–12. That airspace extending upward from 10,500 feet MSL bounded on the north by the south edge of V–12/264, on the southeast by the northwest edge of V–567 and on the west by the east edge of V–327. That airspace extending upward from 10,500 feet MSL bounded on the northwest by the southeast edge of V–567, on the southeast by the northwest edge of V–95 and on the south by the north boundary of the 1,200 foot portion of the Class E airspace area.

* * * * *

Issued in Los Angeles, California, on November 27, 1995.

Harvey R. Riebel,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–29871 Filed 12–6–95; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AE21

When You Are A Full-Time Elementary Or Secondary School Student

AGENCY: Social Security Administration.

ACTION: Proposed rule.

SUMMARY: We propose to revise our rule on full-time elementary or secondary school students to include students enrolled in home schooling or independent study programs authorized by State or local law, e.g., political subdivision, tribal government, or the District of Columbia. The current rule covers only students in traditional institutional educational settings; however, many States (or other jurisdictions) provide for home schooling and independent study programs considered equivalent to traditional schools. We also propose to clearly show that nonpayment provisions apply to certain prisoners and certain other inmates of publicly funded institutions who otherwise would meet student benefit requirements. In addition, we propose to remove outdated rules on student benefits relating to months before August 1982.

DATES: To be sure that your comments are considered, we must receive them no later than February 5, 1996.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to ''regulations@ssa.gov'', or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 A.M. and 4:30 P.M. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION

Background

The Social Security Amendments of 1965, Public Law 89–97, section 306, defined a full-time student as ''an individual who is in full-time attendance as a student at an educational institution.'' An ''educational institution'' was defined as ''(i) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof, or (ii) a school or college or university which has been approved by a State or accredited by a State-recognized or nationally-recognized accrediting agency or body, or (iii) a non-accredited school or college or university whose credits are accepted, on transfer, by not less than three institutions which are so accredited * * *.'' This definition of an educational institution was chosen by Congress, as explained in the Senate report, ''to establish that the institution the child attends is a bona fide school.'' (See S. Rep. No. 404, 89th Cong., 1st Sess., reprinted in 1965 U.S. Code Cong. & Admin. News 1943, 2036–37.)

The Senate report also stated: ''The committee believes that a child over age 18 who is attending school full-time is dependent just as a child under 18 or a disabled older child is dependent, and that it is not realistic to stop such a child's benefit at age 18.'' Ibid. We understand this to mean that the committee believed that full-time students attending class are less likely to be able to support themselves through employment than are part-time or correspondence students.

The Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, section 2210, replaced the term ''educational institution'' and its definition with the requirement that the student be in full-time attendance at an ''elementary or secondary school,'' which is defined as a ''school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located.'' (See section 202(d)(7)(C)(i) of the Social Security Act (the Act) as amended.) The purpose of this amendment was to eliminate child's insurance benefits in the case of children age 18 or older who attend postsecondary schools. Section 2210 also eliminated child's insurance benefits for children in elementary or secondary school after they attained age 19. (See S. Rep. No. 139, 97th Cong., 1st Sess. 427, reprinted in 1981 U.S. Code Cong. & Admin. News 396, 693.)

Present Policy

Child's insurance benefits under sections 202(d)(6) and (7) of the Act usually terminate when the child attains age 18. However, there is an exception that allows for continuation of entitlement to child's benefits for persons age 18 until attainment of age 19 who are full-time elementary or secondary school students.

Section 202(d)(7)(A) of the Act defines a full-time elementary or secondary school student as ''an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner (in accordance with regulations prescribed by him) in the light of the standards and practices of the schools involved * * *.''

Section 404.367 of our current regulations states, in pertinent part:

* * * You are a full-time elementary or secondary school student if you meet all the following conditions:

(a) You attend a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located;

(b) You are in full-time attendance in a day or evening noncorrespondence course of at least 13 weeks duration and are carrying a subject load which is considered full-time for day students under the institution's standards and practices. Additionally, your scheduled attendance must be at the rate of at least 20 hours per week unless we find that:

(1) The school attended does not schedule at least 20 hours per week and going to that particular school is your only reasonable alternative; or

(2) Your medical condition prevents you from having scheduled attendance of at least 20 hours per week. To prove that your medical condition prevents you from scheduling 20 hours per week, we may request that you provide appropriate medical evidence or a statement from the school.

Proposed Policy

Current regulations do not provide guidance on alternative education programs covered under the laws of the State (or other jurisdiction) in which a student resides. Before the development of such programs, our policy had been in keeping with the traditional definition of educational institutions. Such traditional institutional-type schools include public, private, and religious schools. Except for the two specific exceptions noted in the regulations, we also consistently have required that the student be scheduled to attend school for at least 20 hours per week to be considered a full-time student.

Because most States (or other jurisdictions) have begun providing for education based on alternative education methods, we evaluated cases involving home schooling or independent study programs on an individual basis. This evaluation has provided sufficient information to formulate these proposed regulations.

Many States or other jurisdictions have laws recognizing home schooling. Home schooling is an educational program in which the student is generally taught within the home by a parent/teacher. The State or other jurisdiction specifies the requirements that must be met and the procedures that must be followed in these situations. There must be a parent or other home school teacher participating in the home school instruction. This participation may be in the form of actual instruction, answering questions, administering tests, keeping attendance records, etc. The student must be carrying a course load that is considered full-time using the same standards and practices used for full-time day students in the traditional setting, as determined under the law of the State or other jurisdiction in which the student resides.

The child's home schooling teacher must submit evidence that legal requirements for home schooling are met. Depending on these requirements, this evidence might include a copy of the certificate of intent that is filed with the local school or school district, documentation that State-mandated tests were taken, a list of the courses being taught, and a copy of the attendance log or chart.

Also, some States or other jurisdictions authorize the governing board of a school district or a county office of education to offer independent study to meet the educational needs of pupils in accordance with certain requirements. An independent study course could (but need not) include instruction in the student's home or elsewhere outside the classroom. The study program is conducted in accordance with written policies and rules. It is coordinated, evaluated, and under the supervision of an employee of the school district or county office of education who has been certified to act as a home teacher. Independent study programs which involve instruction and supervision by a teacher employed by the school (or local school district) include written agreements for each independent study student specifying, among other things, the duration of the agreement and a statement of the number of course credits to be earned by the pupil upon completion. The effect of the written agreement is to extend the educational setting beyond the

traditional classroom. It is a situation similar to those students who are in school-approved work-study programs that extend the educational setting.

We therefore propose to revise § 404.367 to include students enrolled in home schooling or independent study programs authorized by State (or other jurisdiction) laws. The student must be carrying a course load considered to be full-time under the standards and practices used for day students who are in full-time attendance at traditional educational institutions. Students in these types of situations include a wide range of individuals. For example, home schooling students may be in that situation for religious reasons or because the parents do not agree with the local school curriculum.

Students in independent study programs may include those individuals who cannot take advantage of the traditional school setting, such as hard-to-keep-in-school students (unable to adjust or delinquents), single mothers, or expectant mothers. All students—those in traditional programs and those in alternative programs—who work are subject to the annual earnings test.

A home schooling program must meet the requirements set forth by the State (or other jurisdiction). An independent study program organized in accordance with the State (or other jurisdiction) requirements must be coordinated, evaluated and supervised by an employee of the school district or county office of education and must comply with the policies of the school district or county office of education. To be entitled to child's insurance benefits as a student, an individual enrolled in either type of program must meet both the Federal and the State (or other jurisdiction) full-time attendance (FTA) requirements.

When determining FTA, the home schooling teacher will be the certifying school official for FTA purposes. In independent study situations, the school teacher/official supervising the performance of the student under the written agreement between the school and the student will be the certifying official for FTA.

When determining the number of hours spent in school attendance for an approved independent study program, we will combine the number of agreed upon hours spent in independent study with the number of hours in actual school attendance. The course load must be equivalent to that of a student in the school's full-time day program.

We will continue to exclude from eligibility those individuals who are enrolled solely in correspondence courses. We do not believe that such courses satisfy the definition of an elementary or secondary school in the Act, and usually they would not meet State (or other jurisdiction) requirements.

We also propose to revise § 404.367 to clearly show that section 202(x) of the Act, regarding nonpayment of benefits to certain prisoners and certain other inmates of publicly funded institutions, applies to those individuals who otherwise meet student benefit requirements. Section 202(x) is applicable to those who otherwise would qualify for benefits under section 202(d)(7)(A) of the Act.

Further, we propose to remove § 404.369 since it applies only to child's benefits for full-time students for months before August 1982. This section has not been applicable for over 10 years and there is no longer a need to retain it. Sections that refer to § 404.369 (i.e., §§ 404.350–404.353) will be revised to remove such references.

Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 A.M. on the date of publication in the Federal Register. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this proposed rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities since it affects only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This proposed rule imposes no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security— Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: November 27, 1995.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart D of part 404 of chapter III of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

1. The authority citation for subpart D of part 404 is revised to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.350 is amended by revising paragraph (a)(5) to read as follows:

§ 404.350 Who is entitled to child's benefits.

(a) * * *

(5) You are under age 18; you are 18 years old or older and have a disability that began before you became 22 years old; or you are 18 years or older and qualify for benefits as a full-time student as described in § 404.367.

* * * * *

3. Section 404.351 is amended by revising paragraph (a) to read as follows:

§ 404.351 Who may be reentitled to child's benefits.

* * * * *

(a) The first month in which you qualify as a full-time student. (See § 404.367.)

* * * * *

4. Section 404.352 is amended by revising the fourth sentence of paragraph (b)(1) to read as follows:

§ 404.352 When child's benefits begin and end.

* * * * *

(b) * * *

(1) * * * If you become 18 years old and you qualify as a full-time student who is not disabled, your entitlement ends with the last month you are a full-time student or, if earlier, the month before the month you become age 19. * * *

* * * * *

5. Section 404.353 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 404.353 Child's benefit amounts.

(a) * * * The amount of your monthly benefit may change as explained in § 404.304.

* * * * *

6. Section 404.367 is amended by revising the first sentence of the introductory text; revising paragraphs (a) and (b); redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively; adding paragraph (c); and, revising paragraph (f) to read as follows:

§ 404.367 When you are a ''full-time elementary or secondary school student''.

You may be eligible for child's benefits if you are a full-time elementary or secondary school student. * * *

(a) You attend a school which provides elementary or secondary education as determined under the law of the State or other jurisdiction in which it is located. Participation in the following programs also meets the requirements of this paragraph:

(1) You are instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which you reside; or

(2) You are in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which you reside which is administered by the local school or school district/jurisdiction;

(b) You are in full-time attendance in a day or evening noncorrespondence course of at least 13 weeks duration and you are carrying a subject load which is considered full-time for day students under the institution's standards and practices. If you are in a home schooling program as described in paragraph (a)(1) of this section, you must be carrying a subject load which is considered full-time for day students under standards and practices set by the State or other jurisdiction in which you reside;

(c) To be considered in full-time attendance, your scheduled attendance must be at the rate of at least 20 hours per week unless one of the exceptions in paragraph (c)(1) or (c)(2) of this section applies. If you are in an independent study program as described in paragraph (a)(2) of this section, your number of hours spent in school attendance are determined by combining the number of hours of attendance at a school facility with the agreed upon number of hours spent in independent study. You may still be considered in full-time attendance if your scheduled rate of attendance is below 20 hours per week if we find that:

(1) The school attended does not schedule at least 20 hours per week and going to that particular school is your only reasonable alternative; or

(2) Your medical condition prevents you from having scheduled attendance of at least 20 hours per week. To prove that your medical condition prevents you from scheduling 20 hours per week, we may request that you provide appropriate medical evidence or a statement from the school;

* * * * *

(f) You are not subject to the provisions in § 404.468 for nonpayment of benefits to certain prisoners and certain other inmates of publicly funded institutions.

§ 404.3691 [Removed]

7. Section 404.369 is removed.

[FR Doc. 95–29534 Filed 12–6–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

[SPATS No. HO–003–FOR]

Hopi Tribe Abandoned Mine Land Reclamation (AMLR) Plan

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

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

SUMMARY: OSM is announcing receipt of a proposed amendment to the Hopi Tribe AMLR plan (hereinafter, the ''Hopi Tribe plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions of and additions to the Hopi Tribe plan pertaining to the purpose of the plan; eligible lands and water subsequent to certification; coordination with other programs; land acquisition, management, and disposal; reclamation on private land and rights of entry; public participation; organization of the Hopi Tribe; personnel staffing policies; purchasing policies, procurement procedures, and accounting systems; economic conditions on the Hopi Reservation; a description of flora and fauna at abandoned mine sites; the Hopi Tribe's authority to administer its plan, as amended in the absence of a specific statute; changing the name of the designated agency; and affirmation that the manual for purchasing policies and procedures manual is in accordance with the Office of Management and Budget's (OMB) Common Rule. Additionally, the Hopi Tribe is proposing numerous editorial and recodification changes. The amendment is intended to revise the Hopi Tribe plan to meet the requirements of and incorporate the additional flexibility afforded by the revised Federal regulations and SMCRA, as amended, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m. m.s.t., January 8, 1996. If requested, a public hearing on the proposed amendment will be held on January 2, 1996. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t., December 22, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Donna J. Griffin at the address listed below.

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

Donna J. Griffin, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Norman Honie, Abandoned Mine Land Program Director, Office of Mining and Minerals, Department of Natural Resources, The Hopi Tribe, P.O. Box 123, Kykotsmovi, AZ 86039

FOR FURTHER INFORMATION CONTACT: Donna J. Griffin, Telephone: (505) 248–5070.

SUPPLEMENTARY INFORMATION:

I. Background on the Hopi Tribe Plan

On June 28, 1988, the Secretary of the Interior approved the Hopi Tribe plan. General background information on the Hopi Tribe plan, including the Secretary's findings and the disposition of comments, can be found in the June 28, 1988, Federal Register (53 FR 24262). Subsequent actions concerning the Hopi Tribe's plan and plan amendments can be found at 30 CFR 756.14(a).

II. Proposed Amendment

By letter dated November 2, 1995, the Hopi Tribe submitted a proposed amendment to its plan (administrative record No. HO–148) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). The Hopi Tribe submitted the proposed amendment at its own initiative and in response to a September 26, 1994, letter (administrative record No. HO–145.1) that OSM sent to the Hopi Tribe in accordance with 30 CFR 884.15(b). The provisions of the Hopi Tribe plan that the Hopi Tribe proposes to revise and/or add are: the ''Table of Contents;'' a preface to the amended reclamation plan; a list of addenda and errata; the Chairman's letter of designation and Hopi Tribe resolution; the General Counsel's opinion on the authority of the Hopi Tribe to conduct an AMLR program; Part I, purpose of the Hopi Tribe plan; Part II, eligible lands and water subsequent to certification; Part III, coordination of the Hopi AMLR Program with other programs; Part IV, land acquisition, management, and disposal; Part V, reclamation on private land; Part VI, rights of entry; Part VII, Hopi Department of Natural Resources (DNR) policy on public participation; Part VIII, organization of the Hopi Tribe; Part IX, personnel staffing policies; Part X, purchasing policies and procurement procedures; Part XI, accounting systems and management accounting; Part XII, economic conditions on the Hopi Reservation; and Part XIII, a description of flora and fauna at abandoned mine sites.

Specifically, the Hopi Tribe proposes to:

(1) revise the ''Table of Contents'' to reflect the proposed recodification changes and include a list of appendices;

(2) add a new part called ''Preface to Amended Reclamation Plan'' that provides an explanation of the Hopi AMLR Program goals and objectives and describes eligible projects and their priorities;

(3) add a cover page for the ''List of Addenda and Errata'' and revise the ''List of Figures'' to retitle ''Figure 4'' and delete ''Figure 5;''

(4) add new cover pages for the ''Chairman's Letter of Designation and Hopi Tribe Resolution'' and ''Opinion of Legal Counsel'' and delete the cover pages titled ''Section 884.13(a)'' and ''Section 884.413(b);''

(5) redesignate Section 884.13(c)(1) as Part ''I'' and revise this part to include in the purpose of Hopi Tribe plan provisions that (a) allow for the protection and replacement of water supplies and protection, repair, replacement, construction, or enhancement of public facilities adversely affected by mining and processing practices, (b) provide that the ''Director'' shall be to the ''Director of the Hopi Office of Mining and Mineral Resources (OMMR)'' or his designee within the OMMR or in the Hopi AMLR Program and that the ''OMMR is an office within the DNR, and oversees operations of the Hopi Abandoned Mine Land Program,'' and (c) reclamation priorities similar to those allowed at section 403 of SMCRA, and provide for deletion of language concerning the allocation of funds collected annually for purposes of the Hopi AMLR Program;

(6) redesignate Section 884.13(c)(2) as Part ''II;'' retitle this part as ''Eligible Lands and Water Subsequent to Certification;'' add language (a) consistent with the requirements of the Federal regulations at 30 CFR 874.12 for eligible coal lands and water, 30 CFR 874.16 for contractor responsibility, 30 CFR Part 875 for noncoal reclamation, and 30 CFR 886.23 for reports and (b) to provide for the construction of public facilities in villages impacted by mining activities on Hopi Indian lands as provided in sections 411 (e) and (f) of SMCRA and include a description of needs and proposed construction and activities; and delete (a) ''Table 1, Comprehensive/Problem Evaluation Matrix'' and (b) language concerning filling voids and sealing tunnels and evaluating and ranking reclamation projects;

(7) redesignate Section 884.13(c)(3) as Part ''III'';

(8) redesignate Section 884.13(c)(4) as Part ''IV;'' revise the procedures concerning the acquisition of lands to (a) include lands adversely affected by ''coal and noncoal mining'' practices and (b) add new language to require that the Hopi AMLR Program shall obtain ''from a qualified appraiser a valuation'' of the fair market value of all land to be acquired and that the fair market value of the land ''shall consider the principle of the best and highest use'' of the land as adversely affected by past mining and that such ''valuation of fair market value shall be approved by the Hopi Tribal council;'' revise the language concerning purchases by (a) deleting the provision that allows affected lands to be acquired with monies from the abandoned mine land (AML) fund if approved by the OSM Field Office Director and the Hopi Tribal Council and such acquisition meets the requirements of OSM's regulations, (b) replacing it with new language requiring that ''the Tribe may acquire land and water under this section if approved in advance by OSM based on written findings made by OSM in accordance with the provisions of 30 CFR 879.11, and as approved by the Hopi Tribal Council,'' and (c) deleting the requirement that ''improvements to the land may be acquired if such interest is necessary to the reclamation work planned or the post reclamation use of the land;''

(9) redesignate § 884.13 (c)(5) as Part ''V'' and revise the language of this part to include a reference to ''the General Allotment Act of 1887''(25 U.S.C.A. 331 *et seq.*);

(10) redesignate § 884.13(c)(6) as Part ''VI'' and delete language concerning emergency entry and the requirement that ''if written notice cannot be obtained for the purposes of emergency reclamation and if notice cannot be given prior to entry, notice will be given to the landholders as soon after entry as practical;''

(11) redesignate § 884.13(c)(7) as Part ''VII'' and add language clarifying procedures concerning public participation in the development of the Hopi Tribe plan and listing the 1991 and 1992 public meetings held in connection with the Hopi Tribe's certification of completion of reclamation of all known coal-related problems and to review projects and needs relevant to sections 411(e) and (f) of SMCRA;

(12) redesignate § 884.13(d)(1) as Part ''VIII'' and add language to (a) provide that the Hopi Tribal Council on ''December 07, 1987, passed Resolution H–03–88,'' which designates DNR as the agency responsible for implementing the Hopi Tribe plan, (b) reference ''the Chairman's Letter of Designation and Hopi Tribe Resolution section of this plan,'' and (c) reference ''Figure 4,'' which presents ''the relationship of the DNR to others in the Tribal organization;''

(13) redesignate § 884.13(d)(2) as Part ''IX'' and add references to the Tribe's ''Personnel Policies and Procedures Manual,'' ''The Civil Rights Act of 1964,'' and ''The Rehabilitation Act of 1973;''

(14) redesignate § 884.13(d)(3) as Part ''X'' and add references to the ''Purchasing Policies and Procedures Manual,'' which was adopted by the Tribe by Executive Action dated April 15, 1978, and OMB's ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' dated March 11, 1988, which is also known as ''the Common Rule;''

(15) redesignate § 884.13(d)(4) as Part ''XI'' and add references to ''The Hopi Tribe Financial Policies and Procedures

Manual,'' which was adopted by Tribal Council Resolution H–102–82 on August 9, 1982, and the ''Standards for Audit of Governmental Organizations, Program Activities, and Functions,'' which provides standards for the performance of audits;

(16) delete the following sections in their entirety: (a) ''Section 884.13(e)(1), Eligible Lands and Water,'' and provide for its replacement at Part II, Eligible Lands and Waters Subsequent to Certification, (b) ''Section 884.13(e)(2), Problem Descriptions,'' and provide that current problems and needs are described in Part II, Section H of the Hopi Tribe plan, and (c) ''Section 884.13(e)(3), Problem Abatement Proposals,'' and provide that current proposals are described in Part II, Section H of the Hopi Tribe plan;

(17) redesignate Section 884.13(f)(1) as Part ''XII;'' add language to provide that (a) the ''[o]riginal text of this part, Economic Conditions on the Hopi Reservation, is replaced in its entirety by the FY 1993–1995 Annual OEDP [Overall Economic Development Plan] Report * * *,'' (b) the ''[c]urrent economic conditions on the Hopi Reservation are discussed in the following Annual OEDP Report,'' and (c) ''[t]he figures included in the OEDP Report also provide data on economic and socioeconomic conditions on the Hopi Reservation, and reveal the importance of coal mining and the minerals industry to the reservation economic base and the tribal government revenue system;'' and attach the referenced report to the Hopi Tribe plan;

(18) delete ''Section 884.13(f)(2), Description of Aesthetic, Cultural and Recreational Conditions of the Hopi Reservation,'' in its entirety;

(19) redesignate Section 884.13(f)(3) as part ''XIII'';

(20) provide as ''Appendix 1'' the ''Constitution and By-Laws of the Hopi Tribe,'' which was approved December 19, 1936, and amended on August 1, 1969, February 14, 1980, and December 7, 1993;

(21) provide cover pages for Appendices 2 through 12 and change the title of Appendix 7 from ''Hopi Tribe Resolution H–93–80'' to ''Hopi Tribe Resolution H–93–80 and Subsequent Correspondence to the Bureau of Census;'' and

(24) numerous minor editorial and grammatical revisions and recodification changes.

The Hopi Tribe also proposes adding the following items to its plan: (1) a memorandum dated May 18, 1995, from the Hopi Tribe's Assistant General Counsel affirming the authority of the Tribe's AMLR Program to administer the Hopi Tribe plan as amended in the absence of any AMLR statute; (2) Hopi Tribal Resolution H–134–89 that provides documentation of the Tribe's action changing the name of the Office of Natural Resources to the Department of Natural Resources; and (3) a memorandum dated August 31, 1995, from the Tribe's Office of Financial Management that affirms that the Hopi Tribe ''Purchasing Policies and Procedures Manual'' is in accordance with OMB's Common Rule.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Hopi Tribe plan.

1. Written Comments

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

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., December 22, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

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

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

3. Public Meeting

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

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribe or State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 756

Abandoned mine reclamation programs, Indian lands, Surface mining, Underground mining.

Dated: November 29, 1995.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–29877 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 906

[SPATS No. CO–029–FOR]

Colorado Regulatory Program

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

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

SUMMARY: OSM is announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the ''Colorado program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and additions of rules pertaining to Colorado's responsibility as regulatory authority for regulating surface coal mining and reclamation operations and coal exploration; definitions; commercial use or sale of coal extracted during coal exploration; public availability of information; right of entry and operation information; public notice and comment on permit applications; procedures for review of permit applications; criteria for permit approval or denial; permit conditions; permit revisions; allowance of self-bonds; terms and conditions for self-bonds; criteria and schedule for release of performance bonds; termination of jurisdiction; performance standards for signs and markers, haul and access roads, effluent standards for discharges of water from areas disturbed by surface coal mining and reclamation operations, blasting, and coal mine waste returned to underground mine workings; inspection frequency at abandoned sites; inspections based upon citizen requests; enforcement actions at abandoned sites; show cause orders and patterns of violations involving violations of water quality effluent standards; and award of costs and expenses including attorney's fees. The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

DATES: Written comments must be received by 4 p.m., m.s.t. January 8, 1996. If requested, a public hearing on the proposed amendment will be held on January 2, 1996. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t., on December 22, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

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

James F. Fulton, Chief, Denver Field Division, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3300, Denver, CO 80202

Colorado Division of Minerals and Geology, Department of Natural Resources, 215 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567.

FOR FURTHER INFORMATION CONTACT:

James F. Fulton, telephone: (303) 672–5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, Federal Register (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.11, 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated November 20, 1995, Colorado submitted a proposed amendment to its program (administrative record No. CO–676) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*).

Colorado submitted the proposed amendment at its own initiative; in partial response to May 7, 1986, and March 22, 1990, letters (administrative record No. CO–282 and CO–496) that OSM sent to Colorado in accordance with 30 CFR 732.17(c); and in response to (1) the condition of Colorado's program approval at 30 CFR 906.11(mm) and (2) the requirement that Colorado amend its program at 30 CFR 906.16(a).

Colorado proposes for the following provisions of 2 CCR 407–2, Rules and Regulations of the Colorado Mined Land Reclamation Board for Coal Mining:

Revisions at Rule 1.03.1(1)(a) to clarify that Colorado's responsibility for the regulation of surface coal mining and reclamation operations and coal exploration includes, among other things, approval or disapproval of revisions and renewals of existing permits;

Recodification of existing Rule 1.04(1) as Rule 1.04(1a), and addition at Rule 1.04(1) of a definition for ''Abandoned site'' to identify (1) those sites which could have a decreased frequency of inspection under proposed Rule 5.0202(8) and (2) the enforcement provisions applicable to sites which meet the conditions of the definition;

Addition at Rule 1.04(31a) of a definition for ''Current assets'' to mean ''cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business;''

Addition at Rule 1.04(31b) of a definition for ''Current liabilities'' to mean ''obligations which are reasonably expected to be paid or liquidated within

one year or within the normal operating cycle of the business;''

Addition at Rule 1.04(47a) of a definition for ''Fixed assets'' to mean ''plants and equipment, but does not include land or coal in place;''

Revision at Rule 1.04(71a) of the definition for ''Net worth'' to mean ''total assets minus total liabilities and is equivalent to owners' equity;''

Addition at Rule 1.04(83b) of a definition for ''Parent corporation'' to mean ''a corporation which owns or controls the applicant;''

Revision at Rule 1.04(89) of the definition for ''Permit area'' to require that the area ''be identified through a complete and detailed legal description'' as required by Rule 2.03.6;

Revision at Rule 1.04(92) of the definition for ''Person'' to clarify that it applies to listed entities conduction ''surface coal mining and reclamation operations outside Indian lands;''

Addition at Rule 1.04(116) of a definition for ''Self-bond'' to mean ''an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the regulatory authority, with or without separate surety;''

Addition at Rule 1.04(135a) of a definition for ''Tangible net worth'' to mean ''net worth minus intangibles such as goodwill and rights to patents or royalties;''

Recodification of existing Rule 2.02.7, concerning public availability of information, as Rule 2.02.8 and (1) addition of Rule 2.02.7(1), which requires that persons who intend to commercially use or sell coal extracted during coal exploration operations to first obtain a permit to conduct a surface coal mining operation, and (2) addition of Rule 2.02.7(2) which provides that no such permit need be obtained if the applicant demonstrates as set forth in the rule that such sale or commercial use of the extracted coal would be for testing purposes only;

Revision of Rule 2.03.3(8) to require that an applicant file three, rather than five, reproducible copies of the complete permit application with original signatures;

Revision of Rule 2.03.4(10), concerning information required by Rules 2.03.4 and 2.03.5, to delete the requirement that the information be submitted ''on a form approved by the Board;''

Revision of Rule 2.03.6(1) to require that each permit application contain a ''complete and detailed legal description of all lands within the proposed permit boundary,'' and clarification that it also contain a ''statement as to'' whether the right upon which the applicant bases his or her legal right to enter and begin surface coal mining operations in the permit area is the subject of pending litigation;

Revision of Rule 2.07.3(2), concerning public notice of a proposed surface coal mining operation, to clarify that the rule applies not only to applications for a new permit but also to applications for a permit revision, a technical revision, or a renewal of an existing permit;

Revision of Rules 2.07.3(2) (e) and (f), concerning proposed permits in which, respectively, either the affected area would be within 100 feet of the outside right-of-way of a public road or the applicant seeks relocation or closure of a public road, to add the requirement that the public notice for the permit application include a ''statement indicating that a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected may be requested by contacting the Division in writing within 30 days after the last publication of the notice;''

Revision of Rules 2.07.3(3)(a) and (3)(a)(iii) to clarify that Colorado will, upon receipt of a complete application for a ''technical revision,'' issue written notification of where a copy of the application may be ''inspected'' rather than ''submitted;''

Revision of Rule 2.07.3(4)(a) , concerning the requirement that the applicant make a copy of his or her complete application, excluding confidential information, available for the public to inspect or copy, to clarify that the rule applies to an application for a technical revision;

Revision of Rule 2.07.4(2), concerning the procedures applicable to Colorado's proposed decision, to clarify that the rule applies to decisions on applications for a permit, permit revision, or permit renewal;

Revision of Rule 2.07.4(3)(b) to state that if Colorado approves the granting of a permit, the permit will be issued ''upon filing and approval of the performance bond pursuant to 2.07.4(2)(e);''

Revision of Rule 2.07.4(3)(c), concerning Colorado's issue and implementation of a proposed decision on an application package as final, to require that no permit shall be issued until the applicant has filed a performance bond that has been approved;

Addition at Rule 2.07.5(2)(c) , concerning public availability of information in permit applications and information required by Rules 2.07.5(1) (b) and (c) to be kept confidential, of the requirement that information requested to be held as confidential shall not be made publicly available until after the notice and opportunity to be heard is afforded both persons seeking disclosure and those persons opposing disclosure of information and such information is determined by Colorado not to be confidential, proprietary information;

Revision of Rule 2.07.6(2), concerning criteria for permit approval, to clarify that the rule applies to an application for a permit revision;

Revision of Rules 2.07.6(2)(d) and 2(d)(iii)(E), concerning the findings that must be made by Colorado prior to approval of an application for a permit or a permit revision, to clarify that the rules apply to the area affected by the proposed surface coal mining operations rather than to the proposed operation or proposed permit area;

Revision of Rules 2.07.6(2)(d)(iv) (A) through (C), concerning proposals to either relocate or close public roads, or to allow the affected area to be within 100 feet of a public road, to require that Colorado, or the appropriate public road authority designated as the responsible agency by Colorado, (1) provide opportunity for a public hearing and public notice if a hearing is requested and (2) if a hearing is held, make a written finding within 30 days of the close of the hearing as to whether the interests of the public and the affected landowners will be protected;

Revision of Rule 2.07.6(2)(d)(iv)(D), to require, whether a public hearing is held or not, that no affected area shall be allowed within 100 feet of the outside right-of-way line of a public road, nor may a public road be relocated or closed, unless the applicant has obtained all necessary approval of the authority with jurisdiction over the public road, and that Colorado or the public road authority has made a written finding that the interests of the public and the affected landowners will be protected;

Revision of Rule 2.07.7, concerning conditions of each permit issued by Colorado, to add at Rules 2.07.7 (6), (7), (8), and (9), conditions requiring that a permittee shall, respectively, (1) conduct operations only on lands specifically designated as the permit area and contain areas disturbed and affected within the boundaries authorized on permit application maps for the term of the permit and on areas subject to a performance bond; (2) conduct all operations only as described in the approved application, except as otherwise directed by Colorado in the permit; (3) comply with the terms and

conditions of the permit, all applicable performance standards of the Act, and the requirements of Colorado's rules; and (4) maintain continuous, uninterrupted bond coverage in adequate amount;

Revision of Rule 2.08.4 to clarify by reorganization of Rules 2.08.4 (1) through (3) the types of permitting modifications pertinent to, respectively, permit revisions, technical revisions, and minor revisions, and to state at Rule 2.08.4(4) that the operator may not implement any permit revision, technical revision, or minor revision prior to obtaining final approval;

Deletion of Rule 2.08.4(1)(c), which provided allowance for a permit revision in order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, or performance bond, upon which the original permit was issued;

Recodification of existing Rules 2.08.4 (4) and (5) as Rules 2.08.4 (5) and (6), and revision of Rule 2.08.4(6)(b)(i) to specify that availability of the informal conference process need not be included in the newspaper advertisement for a technical revision;

Addition to Rule 2.08.4(6)(b)(ii) to provide a 10-day public comment period on technical revision applications;

Recodification of existing Rule 2.08.4(6)(b)(ii) as Rule 2.08.4(6)(b)(iii) and revision of it to delete the statement that the ''requirements of the State Administrative Procedure Act shall not apply to the conduct of the public hearing'' provided for by the rule;

Revision of Rule 2.08.6(4)(a), concerning findings made upon permit transfer, sale, or assignment of rights, to correctly cite the reference to Rule 2.07.6(2)(h);

Revision of Rule 3.02.4(1)(c) to provide for a self-bond as an acceptable form of performance bond;

Revision of Rule 3.02.4(2)(e) to identify at (1) Rule 3.02.4(2)(e)(i) the conditions for a self-bond that must be met by the applicant or its corporate guarantor; (2) Rule 3.02.4(2)(e)(ii) the terms of a corporate guarantee for an applicant's self-bond based on a parent corporate guarantor; (3) Rule 3.02.4(2)(e)(iii) the terms of a nonparent corporate guarantee for an applicant's self-bond based on any corporate guarantor; (4) Rule 3.02.4(2)(e)(iv) the percent net worth of the applicant, parent corporate guarantor, or nonparent corporate guarantor necessary to support the total amount of the outstanding and proposed self-bonds; (5) Rule 3.02.4(2)(e)(v) the terms of an indemnity agreement if Colorado accepts an applicant's self-bond; (6) Rule 3.02.4(2)(e)(vi) the right of Colorado to require updated information within 90 days after the close of each fiscal year following the issuance of a self-bond or corporate guarantee; and (7) Rule 3.02.4(2)(e)(vii) the requirement that if at any time during the period when a self-bond is posted, the certain financial conditions of the applicant, parent or nonparent corporate guarantors change, the permittee shall notify Colorado immediately and shall within 90 days post an alternate form of bond in the same amount of the self-bond and that the provisions of Rule 3.02.4(2)(b)(v) shall apply should the permittee fail to do so;

Addition of Rule 3.03.1(5) to specify terms for release of bond liability on areas associated with temporary drainage and sediment control facilities and clarify that the bond liability period does not restart when sediment control facilities are removed and reclaimed;

Addition of Rule 3.03.3 to provide for termination of jurisdiction over a reclaimed site of a completed surface coal mining and reclamation operation;

Recodification of Rules 4.02.2(2)(a) and (b) to add paragraph (c) which requires that the name, address, and telephone number of the Colorado Division of Minerals and Geology be included on mine identification signs which are posted at the entrance to mine sites;

Revision of Rules 4.03.1(d) and 4.03.2(1)(f) to require a showing that a road meets the performance standards of Rules 4.03.1 and 4.03.2, respectively, rather than an engineer's construction or reconstruction certification for haul and access roads not within the disturbed area for which the construction or reconstruction was complete prior to August 1, 1995;

Revision of Rule 4.05.2(7), concerning discharges of water from areas disturbed by surface coal mining and reclamation operations, to reference the Environmental Protection Agency effluent limitations at 40 CFR Part 434;

Revision of Rule 4.08.3(2)(b)(i) to remove the provision forbidding a blasting area in excess of 300 acres;

Revision of Rule 4.11.3, concerning coal mine waste returned to underground mine workings, to reference Rule 2.05.3(9);

Revision of Rule 5.02.2(4)(b) to clarify that an inactive site is one for which at least 85, rather than 100, percent of the performance bond has been released;

Addition of Rule 5.02.2(8) to allow for a decreased inspection frequency on abandoned sites which would be subject to public notice and opportunity for comment and based on assessment of earthen structures, erosion and sediment control, proximity to occupied dwellings, schools and other public or commercial buildings, the degree of stability of reclaimed and/or unreclaimed areas, and the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate;

Revision of Rule 5.02.5(1) to allow any person believing that a violation of ''the Act, the rules, or the permit, or if imminent danger or harm exists'' to request an inspection, and revision of Rule 5.02.5(1)(a) to set forth specific time frames in which the inspection is to be conducted;

Addition of Rules 5.03.2(1)(e) and 5.03.2(2)(h), concerning cessation orders and notices of violation, to allow Colorado to refrain from issuing a cessation order or a notice of violation for a violation at an abandoned site, if abatement of the violation is required under any previously issued order or notice;

Revision of Rule 5.03.2(3) to allow Colorado to refrain from issuing a failure-to-abate cessation order for failure to abate a violation or failure to accomplish an interim step, if the operation is an abandoned site;

Revision of Rules 5.03.3.1 (1)(a), (2)(a)(i) and (ii), and (2)(b), concerning show cause orders and patterns of violations, to incorporate notices of violation issued by the Colorado Department of Health, Water Quality Control Division (which cite a one day exceedance of EPA's effluent standards referenced in Rule 4.05.2) into Colorado's pattern of violation and show cause process;

Revision of Rule 5.03.6, concerning costs, expenses, and attorney's fees, to include wording in the introductory paragraph specifying that any sum awarded for costs and expenses may include those costs and expenses incurred in seeking the award; and

Addition of Rule 5.03.6(4)(e) to provide that appropriate costs and expenses including attorney's fees may be awarded from Colorado to ''any person, other than a permittee or his representative, who initiates or participates in any administrative proceeding under the Act, and who prevails in whole or in part, achieving at least some degree of success on the merits, upon a finding that such person made a substantial contribution to a full and fair determination of the issues.''

Colorado also proposes minor editorial revisions at Rule 2.07.7(1), concerning permit conditions; Rule 2.08.6(2)(b)(iii), concerning transfer, assignment, or sale of permit rights; and Rule 4.08.4(10), concerning the table

showing the maximum peak particle velocity in blasting operations.

III. Public Comment Procedures

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

1. Written Comments

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

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., on December 22, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

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

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

3. Public Meeting

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

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12778

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

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 30, 1995.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–29875 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Region II Docket No. 146, SIPTRAX NJ23–1–7243(b); FRL–5322–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of New Jersey; Revised Policy Regarding Applicability of Oxygenated Fuels Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request made by the New Jersey Department of Environmental Protection (NJDEP) to redesignate Camden County and nine not-classified areas, which includes the City of Atlantic City, the City of Burlington, the Borough of Freehold, the City of Morristown, the Borough of Penns Grove (part), the City of Perth Amboy, the Borough of Somerville, the City of Toms River, and the City of Trenton, from nonattainment to attainment for carbon monoxide (CO). EPA's determination to approve New Jersey's request is based on the fact that New Jersey demonstrates compliance with the requirements of section 107(d)(3)(E) of the Clean Air Act (CAA) for redesignation. EPA is also proposing to approve the Camden County and the nine not-classified CO maintenance plans submitted by NJDEP because EPA

finds that New Jersey's submittal meets the requirements of section 175(A) of the CAA. In addition, EPA is proposing approval of New Jersey's 1990 base year CO emissions inventory for Camden County and the nine not-classified areas. In the Final Rules Section of this Federal Register, EPA is approving New Jersey's redesignation request, maintenance plan, and emission inventory as identified therein, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before January 8, 1996.

ADDRESSES: All comments should be addressed to: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 20th Floor, New York, New York, 10007–1866.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library 16th Floor, 290 Broadway, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: October 24, 1995.

William J. Muszynski,

Deputy Regional Administrator.

[FR Doc. 95–29819 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[FL63–1–7143b;FRL–5340–8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Florida for the purpose of redesignating the Tampa Florida ozone O_3 nonattainment area to attainment. In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by January 8, 1996.

ADDRESSEES: Written comments should be addressed to: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

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

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

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

Air Resources Management Division, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

Hillsborough County Environmental Protection Commission, 1410 North 21st Street, Tampa, Florida 33605.

Pinellas County Department of Environmental Management, Division of Air Quality, 300 S. Garden Avenue, Clearwater, Florida 34616.

FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, ext. 4215. Reference file FL63–1–7143b.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: October 19, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–29824 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5341–8]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Mariposa Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the title V operating permits program submitted by the Mariposa Air Pollution Control District (Mariposa or District) for the purpose of complying with federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. Today's action also proposes approval of Mariposa's mechanism for receiving delegation of section 112 standards as promulgated.

In the final rules section of this Federal Register, EPA is promulgating interim approval of Mariposa's title V program as a direct final rule without prior proposal because EPA views this submittal as noncontroversial and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rulemaking. If EPA receives adverse comments, the direct final rule will be withdrawn and all

public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 8, 1996.

ADDRESSES: Written comments on this action should be addressed to: Sara Bartholomew, Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal, EPA's Technical Support Document, and other supporting information used in developing the proposed approval are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Sara Bartholomew (telephone 415/744–1170), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 13, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–29835 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD–FRL–5341–6]

Clean Air Act Proposed Interim Approval of Operating Permits Program; San Diego Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the title V operating permits program submitted by the San Diego Air Pollution Control District (San Diego or District) for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources. Today's action also proposes approval of San Diego's mechanism for receiving delegation of section 112 standards as promulgated.

In the final rules section of this Federal Register, EPA is promulgating interim approval of San Diego's title V program as a direct final rule without prior proposal because EPA views this submittal as noncontroversial and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rulemaking. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 8, 1996.

ADDRESSES: Written comments on this action should be addressed to: Celia Bloomfield, Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal, EPA's Technical Support Document, and other supporting information used in developing the proposed approval are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 8, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–29837 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 261

[SW-FRL–5342–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Bethlehem Steel Corporation (''BSC''), Lackawanna, New York, to exclude (or ''delist''), on a one-time basis, certain solid wastes contained in a landfill from being listed hazardous wastes. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency has concluded that BSC's petitioned waste will not adversely affect human health and the environment. This action responds to BSC's petition to delist these wastes on a ''generator-specific'' basis from the hazardous waste lists. If the proposed decision is finalized, the petitioned waste will not be subject to regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

The Agency is also proposing the use of a fate and transport model (the ''EPACML'' model) to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. Specifically, EPA proposes to use this model to predict the concentration of hazardous constituents that may be released from the petitioned waste into groundwater if the petitioned waste is delisted and then disposed of in a Subtitle D landfill.

DATES: EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until January 22, 1996. Comments postmarked after the close of the comment period will be stamped ''late''.

Any person may request a hearing on this proposed decision by filing a request with the Director, Hazardous Waste Identification Division, Office of Solid Waste, whose address appears below, by December 22, 1995. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (Mail Code 5305), U.S. Environmental Protection Agency, 401

M Street SW., Washington, DC 20460. A third copy should be sent to James Kent, Waste Identification Branch, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: ''F–95–B5EP–FFFFF''.

Requests for a hearing should be addressed to the Director, Hazardous Waste Identification Division, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (703) 603–9230 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Chichang Chen, Waste Identification Branch, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in § 261.31 and § 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.,* ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, § 260.20 and § 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.,* ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. § 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (*i.e.,* excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See §§ 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived from'' rules and remanded them to the Agency on procedural grounds. *Shell Oil Co.* v. *EPA,* 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 *FR* 7628). The Agency plans to address issues related to waste mixtures and residues in a future rulemaking.

B. Approach Used To Evaluate This Petition

This petition requests a delisting for a hazardous waste listed as K060. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11 (a)(2) and (a)(3). Based on this review, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. See §§ 260.22 (a) and (d). The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, the Agency used such information to identify plausible exposure routes (*i.e.,* groundwater, surface water, air) for hazardous constituents present in the petitioned waste. The Agency determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for BSC's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated groundwater. Therefore, the Agency is proposing to use a particular fate and transport model (the ''EPACML'' model) to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of BSC's petitioned waste on human health and the environment.

Specifically, the Agency used the maximum estimated waste volume and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the groundwater at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of

RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, the generator may well choose to either send the delisted waste off site immediately, or eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because BSC is seeking a delisting for waste managed on-site, ground-water monitoring data collected from the area where the petitioned waste is contained are necessary to determine whether hazardous constituents have migrated to the underlying groundwater. Ground-water monitoring data collected from BSC's monitoring wells will help characterize the potential impact (if any) of the disposal of BSC's waste on human health and the environment.

The Agency provides notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed. Late comments will be considered to the extent possible.

II. Disposition of Delisting Petition Bethlehem Steel Corporation, Lackawanna, New York

A. Petition for Exclusion

Bethlehem Steel Corporation (BSC), located in Lackawanna, New York, was engaged in primary metal-making and coke-making operations prior to 1983. BSC petitioned the Agency to exclude, on a one-time basis, the waste contained in an on-site landfill, presently listed as EPA Hazardous Waste No. K060—''Ammonia still lime sludge from coking operations''. The listed constituents of concern for EPA Hazardous Waste No. K060 are cyanide, naphthalene, phenolic compounds, and arsenic. BSC refers to this landfill as Hazardous Waste Management Unit No. 2 (HWM–2). Although only a portion of the waste in the landfill is the ammonia still lime sludge, the entire volume of waste is considered to be a listed waste in accordance with § 261.3(a)(2)(iv) (*i.e.*, the mixture rule). The mixture of listed ammonia still lime sludge and solid waste contained in HWM–2 is the subject of this petition.

BSC petitioned the Agency to exclude its waste because it does not believe that the waste meets the criteria of the listing. BSC claims that the mixture of ammonia still lime sludge and solid waste is not hazardous because the constituents of concern, although present in the waste, are present in either insignificant concentrations or, if present at significant levels, are essentially in immobile forms. BSC also believes that this waste is not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 USC 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of BSC's petition.

B. Background

On July 18, 1984, BSC petitioned the Agency to exclude the waste contained in its on-site landfill identified as HWM–2, and subsequently provided additional information. After evaluating the petition, the Agency proposed to deny BSC's petition to exclude the waste contained in HWM–2 on April 7, 1989 (see 54 FR 14101). The Agency's evaluation of the petition, which used the ''VHS'' fate and transport model and the analytical data provided by BSC, indicated that the petitioned waste exhibited significant concentrations of leachable lead and benzo(a)pyrene. Furthermore, the Agency considered the sampling and analysis program conducted in support of the petition to be incomplete. Moreover, groundwater monitoring data collected from wells monitoring this on-site landfill indicated that the landfill may have been adversely impacting groundwater quality at the site. The Agency received public comments on the April 7, 1989 proposed decision between April and June 1989. On January 29, 1990, the Agency re-opened the comment period to enable public review of information supporting the proposed delisting health-based level for benzo(a)pyrene (see 55 *FR* 2847). The Agency published a final denial, including responses to public comments, in the Federal Register on August 26, 1991 (see 56 *FR* 41944). On October 30, 1991, BSC petitioned the U.S. Court of Appeals for the District of Columbia Circuit to overturn EPA's denial decision. Subsequently, BSC agreed to stay this litigation for a re-evaluation by EPA using a new fate and transport model (EPACML) and updated health-based levels, and on November 17, 1992 submitted extensive supplemental waste characterization and groundwater monitoring data. After reviewing the new data in conjunction with the existing petition information, the Agency now believes that the petitioned waste is eligible for an exclusion based on the current evaluation criteria. Therefore, the Agency hereby proposes to withdraw its final denial decision and to grant BSC's petition. The Agency's decision to re-evaluate BSC's petition was based on additional waste characterization and groundwater data that was collected subsequent to the publication of the final denial decision. The Agency's re-evaluation of BSC's petitioned waste contained in the HWM–2 landfill is the subject of today's proposal.

In support of its petition, BSC submitted: (1) detailed descriptions and schematics of its manufacturing process; (2) a list of all raw materials and Material Safety Data Sheets (MSDS) for all trade name materials that might be expected to have contributed to the waste; (3) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24, antimony, nickel, thallium, and cyanide; (4) results from the Toxicity Characteristic Leaching Procedure (TCLP; SW–846, Method 1311) for the eight TC metals, antimony, nickel, and thallium; (5) results from the EP leachate procedure for the eight TC

metals, nickel, and cyanide; (6) results from total constituent analyses for sulfide and reactive sulfide; (7) results from total oil and grease analyses; (8) results from characteristics testing for ignitability, corrosivity, and reactivity; (9) results from total constituent analyses for 70 volatile organic and semivolatile organic constituents, including the TC organic constituents (excluding pesticides and herbicides); (10) results from the TCLP analyses for 63 volatile organic and semivolatile organic constituents, including the TC organic constituents (excluding pesticides and herbicides); and (11) groundwater monitoring data collected from wells monitoring the on-site landfill.

BSC conducted primary metal-making and coke-making operations during the period the ammonia still lime sludge was generated. In October 1983, BSC discontinued its primary metal-making operations and modified its coking processes so that the ammonia still lime sludge was no longer generated. (BSC now uses sodium hydroxide as the strong base at the ammonia still rather than lime slurry, and therefore ammonia still lime sludge is no longer generated.)

BSC's steel-making process involved refining molten iron with oxygen, flux (*i.e.*, dolomite or lime), and alloying materials in a basic oxygen furnace to produce carbon steels. BSC's iron-making process involved smelting of iron-bearing materials (*i.e.*, iron ore, sinter, and scrap) with coke, flux (*i.e.*, dolomite and lime), and preheated air in blast furnaces. The blast furnace slurry disposed of in BSC's landfill originated from the water scrubbing of blast furnace gas. According to BSC, blast furnace sludge has not been produced since the final removal of sludge from the thickener in November 1983.

Coke-making involves the destructive distillation of bituminous coal in coke ovens. Volatile matter evolves during the coking process (including the moisture content of the coal) and leaves the ovens through coke oven gas off-takes. This hot coke oven gas is cooled by spraying it with recycled flushing liquor consisting of a weak ammonia liquor (WAL) solution. As the coke oven gas is cooled, water and tar are condensed. The tar fraction is separated from the aqueous WAL in a decanter. The majority of the WAL is recycled back to the coke oven gas cooling process as flushing liquor. Any excess WAL is processed by solvent extraction to recover phenol or sodium phenolate. The excess WAL then is processed by steam stripping to release aqueous ammonia into the gas phase in an ammonia still. In the upper portion of the still, free ammonia is stripped by steam (at temperatures of about 100 °C) and ammonia vapor rising from the lower portion. In the lower portion of the still, fixed ammonia compounds are dissociated by adjusting the pH with lime slurry and then injecting steam. The spent ammonia still lime slurry is drawn off the bottom and discharged to one of two settling basins. The sludge that settles out in these basins (*i.e.*, ammonia still lime sludge) is subsequently placed in the on-site landfill.

As stated previously, BSC disposed of its ammonia still lime sludge in its on-site HWM–2 landfill with other solid wastes between 1969 and November of 1983. BSC is not currently disposing of wastes in this landfill. Based on available records, BSC estimates that approximately two percent of the waste placed in the landfill is ammonia still lime sludge. The most significant wastes that were disposed of in the landfill include: blast furnace thickener sludge, basic oxygen furnace thickener sludge, sinter plant sludge, sludges generated from the treatment of wastewaters from a cold rolling mill, a steel pickling operation, and a hot-dip galvanizing line, and dredging spoils (from Smokes Creek). Only the ammonia still lime sludge is a listed hazardous waste.

BSC's preliminary sampling demonstration included data on ten samples collected from the landfill in January 1984. A detailed description of procedures used to collect three of these samples was not provided and is not available. For the remaining seven samples, BSC divided the landfill into four sections and randomly selected a partial core sample (*i.e.*, two-foot core samples were taken as opposed to full-depth core samples) from each of the four sections, two partial core samples from the central portion of the landfill, and an additional partial core sample from the southeast section. A grab sample was then taken from each of these seven core samples, resulting in seven grab samples. The three samples for which sampling procedure descriptions were not provided were analyzed for total constituent (*i.e.*, mass of a particular constituent per mass of waste) and extraction procedure (EP) leachable (*i.e.*, mass of a particular constituent per unit volume of extract) concentrations of arsenic, cyanide, naphthalene, and phenolic compounds. The extraction procedure used in these analyses, however, was not equivalent with the procedure described in SW–846 Method 1310 and therefore these data were not considered in the evaluation of BSC's petition. (For a more detailed description of the extraction procedure used by BSC, see the RCRA public docket for today's notice.) The remaining seven grab samples were analyzed (using the EP) for leachable concentrations of the eight TC metals, nickel, cyanide, and sulfide; and the characteristics of corrosivity and reactivity.

BSC collected a second set of samples during April 1984. To collect these samples, BSC divided the landfill into six sections of approximately equal size. Within each section, six discrete samples were taken at random depths from evenly spaced boring locations. The samples then were composited, by section, to form six representative samples, one composite per section. These six composite samples were analyzed for total constituent concentrations of the eight TC metals, nickel, cyanide, benzene, benzo(a)pyrene, naphthalene, phenolic compounds, and tetrachloroethylene. In addition, these six composite samples were analyzed (using the EP) for leachable concentrations of the eight TC metals, nickel, and cyanide; total oil and grease content; and the characteristic of ignitability.

At EPA's request, BSC conducted additional sampling and testing of the central portion of the landfill in February of 1985. Specifically, BSC collected approximately ten two-foot long core samples from six locations within the central portion of the landfill. For each location, grab samples were taken from each of the core samples (approximately ten) and composited. These six composite samples were analyzed for total constituent and leachable concentrations (using the EP) of the eight TC metals (excluding mercury, selenium, and silver), nickel, and cyanide. In addition, these six composite samples were analyzed for total constituent concentrations of sulfide, benzene, benzo(k)fluoranthene, benzo(a)pyrene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, and phenolic compounds; and total oil and grease content.

In its comments to the Agency's April 7, 1989 proposed denial of its petition, BSC submitted the analytical results of an additional sampling event. In September 1988, four full-depth core samples were obtained from the landfill and were composited to form one composite sample. This sample was analyzed using the TCLP to quantify leachable concentrations of the TC contaminants listed in § 261.24 (excluding the pesticides/herbicides) and thirteen other organic constituents.

In June 1992, following the publication of the final denial notice for

BSC's petition in the Federal Register (see 56 FR 41944; August 26, 1991), BSC conducted additional sampling and testing of its petitioned waste. BSC established a uniform grid over the landfill dividing the landfill into seventeen sections, each 100 feet by 100 feet. Within each grid section a second uniform grid of 10-foot intervals was established for the selection of the individual boring locations. Alternating 10,000 square foot grid sections were selected for sampling. BSC used a random number table to select five boring locations within each 10,000 square foot grid section. This resulted in the selection of eight grid sections to yield eight composite samples of the material in the landfill, with each composite representative of five full-core sample aliquots from each grid section. These eight composite samples were analyzed for total constituent concentrations of 83 toxicants of potential concern [1] (including the eight TC metals). These eight composite samples were also analyzed for TCLP leachate concentrations of the toxicants of potential concern (excluding cyanide and polychlorinated biphenyls (PCBs)); and total oil and grease.

BSC claims that the analytical data obtained from the four sampling events that occurred from April 1984 through June 1992 are representative of any variation in the constituent concentrations in the petitioned waste. BSC believes that the data from the preliminary grab samples obtained in January 1984 are not representative of the entire waste volume contained in the landfill. BSC also believes that it has addressed the Agency's concern regarding the number of samples collected and the target analyses, as originally noted by the Agency in the April 7, 1989 proposal to deny BSC's petition. Specifically, in that proposal the Agency noted that, based on the dimensions of the landfill containing the petitioned waste, BSC should have collected at least one sample for every 10,000 square foot section of the landfill. BSC's original estimate of the areal extent of the landfill was 5.3 acres; however, as discussed later in today's notice, BSC has demonstrated through detailed calculations (discussed later in today's notice) that a better estimate of the landfill area is 3.5 acres. Therefore, based on this revised estimate, BSC should have collected at least 15 composite samples. Since the April 1989 proposal, BSC has conducted additional sampling of the waste, bringing the total number of composite samples to 21, including 8 composite samples collected in June 1992 that have been analyzed for total constituent concentrations of 70 volatile organic and semivolatile organic constituents. The Agency believes, based on its re-evaluation of BSC's petition, that the combined results of BSC's sampling events are sufficient to characterize any variation in the constituent concentrations in the petitioned waste.

BSC also submitted ground-water monitoring information collected from wells monitoring the landfill to demonstrate that the petitioned waste was not adversely impacting ground-water quality. The ground-water monitoring information submitted by BSC, and more recent data received from State and EPA Regional authorities, included: (1) Well location information; (2) boring logs and well construction information for each well; (3) water levels and water level contour maps; and (4) results of the analysis of ground-water samples.

C. Agency Analysis

BSC used SW–846 Methods 7060 through 7760 (January 1984, April 1984, and February 1985 samples) to quantify the total constituent concentrations of the eight TC metals and nickel. BSC used SW–846 Method 6010 (June 1992 samples) to quantify the total constituent concentrations of the eight TC metals (with the exception of mercury and selenium, for which BSC used SW–846 Methods 7471 and 7740, respectively), nickel, antimony, and thallium. ''Methods for Chemical Analysis of Water and Wastes'' Method 335.2 (April 1984 samples), SW–846 Method 9010 (February 1985 samples) and SW–846 Method 9012 (June 1992 samples) were used to quantify total cyanide concentrations in the petitioned waste. SW–846 Method 9030 (February 1985 samples) was used to quantify total sulfide levels in the petitioned waste. SW–846 Method 7.3.4.1 (June 1992 samples) was used to quantify reactive sulfide levels in the petitioned waste. SW–846 Method 1310 (samples prior to 1988) was used to determine the leachable concentrations of the eight TC metals, nickel, and cyanide. BSC prepared a toxicity characteristic leachate (according to the procedure in 51 FR 21685, June 13, 1986) to determine the leachable concentrations of the eight TC metals in the September 1988 sample. SW–846 Method 1311 was used to determine the leachable concentrations of the eight TC metals, nickel, antimony, and thallium in the June 1992 samples. Table 1 presents the maximum reported, and 95% Upper Confidence Limit (UCL) total constituent concentrations of the eight TC metals listed in § 261.24, nickel, antimony, thallium, cyanide, and sulfide. Table 1 also identifies the number of samples in which each constituent was detected. Table 2 presents the maximum reported, and 95% UCL EP leachate and TCLP leachate concentrations of the eight TC metals listed in § 261.24, nickel, antimony, thallium, and cyanide. (Analysis for leachable concentrations of sulfide or reactive sulfide is not necessary because the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.)

TABLE 1.—TOTAL CONSTITUENT CONCENTRATIONS (MG/KG) INORGANIC CONSTITUENTS

Constituents	Total Concentrations (mg/kg)		Number of Samples in which detected/total number of samples
	Maximum [1]	95% UCL [2]	
Antimony	<12	<12	0/8
Arsenic	16.2	10.3	12/23
Barium	1,660	791	13/20
Cadmium	3.3	2.1	12/20
Chromium	172	100	20/20
Lead	7,520	2,810	20/20

[1] BSC chose to analyze waste samples for these constituents because they were: (1) identified by EPA during previous actions concerning this petition as constituents of regulatory concern, or (2) identified as constituents that reasonably may be expected to be potentially present in the petitioned waste, based on the processes from which the waste components were derived.

TABLE 1.—TOTAL CONSTITUENT CONCENTRATIONS (MG/KG) INORGANIC CONSTITUENTS—Continued

Constituents	Total Concentrations (mg/kg)		Number of Samples in which detected/total number of samples
	Maximum [1]	95% UCL [2]	
Mercury	0.268	0.16	6/14
Nickel	64.6	30.6	12/20
Selenium	2.6	2.2	6/14
Silver	3.0	2.1	8/14
Thallium	43	32.6	5/8
Cyanide (total)	43.1	36.0	20/23
Reactive Sulfide	140	130.0	7/8

< Denotes that the constituent was not detected at the detection limit specified in the table.

[1] These levels represent the highest detected concentrations of each inorganic constituent found in any sample of the petitioned waste, and, if not detected, the highest detection limit. These levels do not necessarily represent the specific levels found in one sample.

[2] 95% Upper Confidence Limit (UCL) is the estimated upper 95 percent confidence interval for the average of sample concentrations based on the Student-t distribution applied to random samples. The average was calculated by considering nondetectable measurements to be measurements at the detection limits, except for arsenic, for which high detection limits (<100 mg/kg) for eight samples were not included.

TABLE 2.—EP/TCLP LEACHATE CONCENTRATIONS (MG/L) INORGANIC CONSTITUENTS

Constituents	EP/TCLP Leachate Concentrations (mg/l)			
	Maximum [1]		95% UCL [2]	
	EP	TCLP	EP	TCLP
Antimony	NA	<0.06	NA	<0.06
Arsenic	0.034	<0.3	0.016	0.16
Barium	1.48	0.7	0.85	0.54
Cadmium	0.015	<0.005	0.005	<0.005
Chromium	0.144	0.023	0.034	0.024
Lead	1.61	0.11	0.37	0.059
Mercury	0.0007	<0.005	0.0004	<0.002
Nickel	0.59	0.21	0.28	0.15
Selenium	0.008	<0.3	0.003	<0.15
Silver	<0.001	<0.01	<0.001	<0.01
Thallium	NA	[3] <0.3	NA	<0.17
Cyanide (total)	0.06	[4] 2.1	0.03	NA

<Denotes that the constituent was not detected at the detection limit specified in the table.

NA: Not analyzed.

[1] These levels represent the highest detected concentrations of the inorganic constituents found in any extract of samples of the petitioned waste, and, if not detected, the highest detection limit. These levels do not necessarily represent the specific levels found in one sample.

[2] 95% Upper Confidence Limit (UCL) is the estimated upper 95 percent confidence interval for the average of sample concentrations based on the Student-t distribution applied to random samples. The average was calculated by considering non-detectable measurements to be measurements at the detection limits.

[3] Three samples (including a duplicate) analyzed for thallium had a detection limit of 0.3 mg/l. Seven additional samples (including a duplicate) analyzed for thallium had a detection limit of 0.01 mg/l.

[4] Calculated from the maximum detected total cyanide concentration of 43.1 mg/kg by assuming a dilution factor of twenty (based on 100 grams of sample and dilution with 2 liters of water) and a theoretical worst-case leaching of 100 percent.

BSC also performed the Synthetic Precipitation Leaching Procedure (SPLP; SW–846 Method 1312) on samples from June 1992 to further examine leachable lead levels. The SPLP is similar to the TCLP, except that the extraction fluid is a solution of dilute mineral acid (pH 4.2), rather than the concentrated solution of acetic acid used in the TCLP. EPA has used the SPLP to simulate the effect of acidic rainfall on the mobility of waste constituents (*e.g.*, see 54 *FR* 15316; April 17, 1989). BSC claims that the SPLP is more representative of realistic leaching conditions at the current site of the waste in the on-site landfill. Lead was not detected (<0.003 mg/l) in any of the ten composite samples (8 samples and 2 replicates) from the June 1992 sampling event using the SPLP procedure.

The detection limits in Tables 1 and 2 (and Tables 3 and 4 that follow) represent the lowest concentrations quantifiable by BSC when using the appropriate analytical methods to analyze the petitioned waste.

Using ''Standard Methods for the Examination of Water and Wastewater (14th edition)'' Method 502.D (April 1984 samples) and SW–846 Method 9071 (February 1985 and June 1992 samples), BSC determined that the maximum oil and grease content of the petitioned waste was 0.93 percent; therefore, the EP and the TCLP analyses did not have to be modified in accordance with the Oily Waste Extraction Procedure (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of constituents of concern in the oil phase, which may not be assessed using the standard EP or TCLP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW–846 Method 1330 for the Oily Waste Extraction Procedure. On the basis of test results provided by BSC, pursuant to § 260.22, none of the samples analyzed exhibited the characteristics of

ignitability, corrosivity, or reactivity. See § 261.21, § 261.22, and § 261.23, respectively.

BSC used unreferenced gas chromatographic/mass spectrometric (GC/MS) methods (April 1984 samples) to quantify total constituent concentrations of benzene, benzo(a)pyrene, and tetrachloroethylene. ''Methods for Chemical Analysis of Water and Waste,'' Method 420.1 (April 1984 samples) was used to quantify phenol levels. SW–846 Method 8.86 (April 1984 samples) was used to quantify naphthalene concentrations. BSC used unreferenced SW–846 Methods (February 1985 samples) to quantify the total constituent concentrations of benzene, benzo(a)pyrene, benzo(k)fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)-pyrene, naphthalene, and phenols. BSC used SW–846 Methods 8240 and 8270 (June 1992 samples) to quantify total constituent concentrations of volatile organic and semivolatile organic compounds, respectively. BSC prepared a toxicity characteristic leachate (according to the procedure in 51 FR 21685, June 13, 1986) to determine the leachable concentrations of volatile organic and semivolatile organic compounds in the September 1988 sample. BSC used SW–846 Method 1311 in conjunction with Methods 8240 and 8270 to determine the leachable concentrations of volatile organic and semivolatile organic compounds in the June 1992 samples.

Table 3 presents the maximum reported (or estimated) total constituent concentrations for hazardous organic constituents detected in the petitioned waste. Table 4 presents the maximum reported and estimated TCLP leachate concentrations for hazardous organic constituents detected in extracts of samples of the petitioned waste. Average values (and 95% UCLs) were not calculated because the number of samples for most organic constituents were limited, and most yielded nondetectable constituent levels at varying detection limits. Furthermore, most constituents that were detected were found at levels below quantitation limits and are reported as ''estimated'' values. Tables 3 and 4 also identify the number of samples in which each constituent was detected. The total constituent concentrations of benzo(a)pyrene, naphthalene, and phenol in the six composite samples collected in April 1984 were presented in the petition on a dry weight basis. Because, for delisting purposes, the Agency evaluates wastes in their as-disposed condition, the concentrations of these three constituents were recalculated in Table 3 on a wet weight basis using percent solids data to account for the water that is normally present in the waste. (For further detail, see the RCRA public docket for today's notice.)

TABLE 3.—TOTAL CONSTITUENT CONCENTRATIONS (MG/KG) DETECTED ORGANIC CONSTITUENTS

Constituents	Total Concentrations (mg/kg)	
	Maximum [1]	Number of samples in which detected/total number of samples
Benzo(a)-anthracene	[2] 0.44	2/8
Benzo(a)pyrene [3]	0.69	6/20
Chrysene	[2] 0.6	2/8
1,1–Dichloroethane	[2] 0.0075	1/8
Ethyl benzene	1.3	2/8
Fluoranthene	[2] 1.3	3/8
Indeno(1,2,3-cd)-pyrene	[2] 0.53	1/14
Methyl ethyl ketone	[2] 0.085	3/8
Naphthalene [3]	[2] 0.87	15/23
Phenanthrene	[2] 2.0	5/8
Phenol [3]	0.26	12/20
Pyrene	[2] 1.5	5/8
Toluene	[2] 0.0065	2/8
Xylenes	5	5/8

[1] These levels represent the highest concentration of each organic constituent found in any sample of the petitioned waste. These levels do not necessarily represent the specific levels found in one sample.
[2] These constituents were detected, but below quantitation limits; estimated values are given.
[3] BSC's petition reported benzo(a)pyrene, naphthalene, and phenol concentrations for samples collected in April 1984 on a dry weight basis. Tabulated values are on a wet weight basis.

TABLE 4.—TCLP Leachate Concentrations (mg/l) Detected Organic Constituents

Constituents	TCLP Leachate Concentrations (mg/l) Maximum [1]
Ethyl benzene	0.036
Methylene chloride [2]	.085
Naphthalene	[3] .013
Phenol	[3] .028
Toluene	.011
1,1,1–Trichloroethane	.006

TABLE 4.—TCLP Leachate Concentrations (mg/l) Detected Organic Constituents—Continued

Constituents	TCLP Leachate Concentrations (mg/l) Maximum [1]
Xylenes	[3] .085

[1] These levels represent the highest concentration of each organic constituent found in any extract of samples of the petitioned waste. These levels do not necessarily represent the specific levels found in one sample.
[2] Found in blanks for some samples.
[3] Concentrations estimated at less than the detection limit were reported and are included as maximum concentrations.

In its original petition, BSC submitted a signed certification stating that the landfill contained approximately 170,000 cubic yards of waste that had been accumulated for 14 years (1969 through November 1983). In the November 1992 supplemental information submittal, BSC claimed that this previous estimate of the volume of the landfill was not accurate. BSC stated that the initial estimate was based upon

an area of 5.3 acres and an average depth of 20 feet. BSC's recalculation of the volume of the landfill is based upon an area of 153,240 square feet (approximately 3.5 acres) and an average depth of 21.7 feet. In addition, BSC's recalculation takes into account the side slope of the landfill, assuming a conservative side slope of 1:1 (vertical to horizontal). BSC submitted a surveyor's report of the area to support its revised estimate of waste volume. BSC stated that the original surface area estimate was based on the outside edge of the roads surrounding the landfill (approximately 5 acres) rather than on the edge of the waste surface outline (approximately 3.5 acres). BSC stated that the best estimate of the volume of waste contained in the landfill is approximately 110,000 cubic yards. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts BSC's modified estimate of 110,000 cubic yards.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

D. Agency Evaluation

The Agency considered the appropriateness of alternative waste management scenarios for BSC's mixture of ammonia still lime sludge and solid wastes and decided, based on the information provided in the petition, that disposal in a Subtitle D landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated groundwater. The Agency, therefore, evaluated BSC's petitioned waste using the EPA's Composite Model for Landfills (EPACML), as modified for delisting evaluations, which predicts the potential for groundwater contamination from wastes that are landfilled. The EPACML model is more sophisticated than the VHS model used previously by the Agency for evaluating BSC's petitioned waste. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, the modifications made for delisting, and the benefits of replacing the VHS model with the EPACML model for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in groundwater at a compliance point (i.e., a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor resulting from subsurface processes such as three-dimensional dispersion and dilution from groundwater recharge for a specific volume of waste.

The Agency requests public comments on its use of the EPACML model as applied to the evaluation of BSC's waste. EPA will consider all comments on the validity of the EPACML model and its appropriateness for use here to evaluate the potential for groundwater contamination if BSC's petitioned wastes are disposed of in any Subtitle D landfill.

For the evaluation of BSC's petitioned waste, the Agency used the EPACML to evaluate the mobility of hazardous inorganic constituents detected in the extract of samples of BSC's petitioned waste. The Agency's evaluation, using BSC's estimated waste volume of 110,000 cubic yards and the maximum and 95% UCL leachate concentrations (see Table 2), generated the compliance-point concentrations for the constituents of concern as shown in Table 5. (See docket for this rule for details in the use of the EPACML in evaluating BSC's waste).

The Agency did not evaluate the mobility of antimony, silver and thallium from BSC's petitioned waste because they were not detected in the leachate extracts using the appropriate SW–846 analytical test methods and adequate detection limits (see Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts for RCRA delistings if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the Agency believes it is reasonable to assume that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 5.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (MG/L) LANDFILL WASTE

Constituents	Compliance-Point Concen.		Levels of regulatory concern [3]
	Maximum [1]	95% UCL [2]	
Arsenic	0.00071	0.0033	0.05
Barium	.031	.018	2.0
Cadmium	.00031	.00010	.005
Chromium	.0030	.00071	.1
Lead	.034	.0077	.015
Mercury	.000015	.0000083	.002
Nickel	.012	.0058	.1
Selenium	.00017	.000063	.05
Cyanide	.044	.00063	.2

[1] Using the maximum EP or TCLP leachate level from Table 2, whichever is greater, and based on a DAF of 48 calculated using the EPACML for one time volume of 110,000 cubic yards

[2] Using the 95% UCL level from EP or TCLP data, from Table 2, whichever is greater, and based on a DAF of 48 calculated using the EPACML for one-time volume of 110,000 cubic yards.

[3] See ''Docket Report on Health-based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR § 260.20 and § 260.22'', December 1994, located in the RCRA public docket.

The petitioned waste exhibited maximum and 95% UCL arsenic, barium, cadmium, chromium, mercury, nickel, selenium, and cyanide levels at the compliance point below the health-based levels used in delisting decision-

making. The Agency's evaluation of the extract data indicated that two grab samples of the petitioned waste contained leachable concentrations of lead at the compliance point above the health-based level of 0.015 mg/l used in delisting decision-making. These two grab samples were collected in January 1984 during a preliminary sampling effort. However, since this sampling event, BSC has provided analytical results quantifying leachable lead concentrations in 21 additional composite samples, including nine samples that were analyzed using the TCLP. Table 6 presents a summary of all the leachable lead data for BSC's petitioned waste.

TABLE 6.—SUMMARY OF LEACHABLE LEAD CONCENTRATIONS (MG/L) LANDFILL WASTE

Sampling date	Leachable lead concentration	Extraction method
January 1984 (grab samples)	0.426	EP
	0.08	EP
	0.97	EP
	0.474	EP
	0.052	EP
	0.045	EP
	1.61	EP
April 1984 (composite samples)	<0.01	EP
	<0.01	EP
	<0.01	EP
	<0.01	EP
	<0.01	EP
	0.04	EP
February 1985 (composite samples)	<0.01	EP
	0.013	EP
	<0.01	EP
	<0.01	EP
	<0.01	EP
	0.041	EP
September 1988 (composite samples)	0.05	TCLP
June 1992 (composite samples)	0.004	TCLP
	0.048	TCLP
	[1] 0.074	TCLP
	<0.003	TCLP
	0.003	TCLP
	0.004	TCLP
	[1] 0.021	TCLP
	0.110	TCLP

< Denotes that the constituent was not detected at the detection limit specified in the table.
[1] Concentration is average of duplicate samples.

For a number of reasons, the Agency believes that BSC's June 1992 sampling and analysis program provides a compelling demonstration that the higher leachable lead concentrations observed in the January 1984 sampling event do not truly represent the leachable lead concentrations in the petitioned waste. First, BSC used a different protocol to sample the petitioned waste in January 1984. Samples collected during January 1984 were simply partial core samples taken from sections of the landfill; whereas, samples collected during the later sampling events, particularly the June 1992 event, were collected and composited according to guidance typically given to petitioners. In the early stages of its review of BSC's petition, EPA raised questions concerning the differences between leachable lead data from samples collected in January 1984 and samples collected in April 1984. BSC conducted its February 1985 sampling program in response to the Agency's request to collect additional, full-core composite samples of the central portion of the landfill in order to provide more information about leachable lead concentrations in the petitioned waste. Leachable lead data from BSC's February 1985 composite sampling program, and subsequent composite sampling programs in September 1988 and June 1992, expanded the data set to a total of 28 data values, 21 of which correspond to composite samples. As shown in Table 6, the maximum leachable lead concentration for the subset of preliminary grab samples (1.61 mg/l) is significantly greater than the maximum leachable lead concentration for the subset of composite samples (0.11 mg/l). The Agency notes that even the *average* leachable lead concentration of the subset of preliminary grab samples (calculated to be 0.52 mg/l) is significantly greater than the maximum leachable lead concentration of the subset of composite samples (*i.e.*, 0.11 mg/l). Therefore, the Agency believes the preliminary grab samples may not be truly representative of the leachable lead concentrations in the petitioned waste.

Second, samples of BSC's petitioned waste collected in the two later sampling events (September 1988 and June 1992) were subjected to the TCLP, rather than the EP. As of September 25, 1990 the Agency adopted the TCLP as a replacement for and improvement upon the EP in its hazardous waste regulatory program. Thus, the Agency now requires that petitioners provide TCLP data rather than EP data in support of their petitions. The Agency believes that the maximum leachable lead concentration for the subset of samples analyzed using the TCLP (reported to be 0.11 mg/l) will be more representative of the potential mobility of lead from BSC's petitioned waste than the earlier EP results. When the maximum TCLP level for lead (0.11 mg/l) is input to the EPACML, this yields a compliance point concentration (0.0022 mg/l) well below the level of concern (0.015 mg/l). Therefore, the TCLP data clearly indicates that

leachable lead levels are not a concern in BSC's waste.

Finally, the Agency calculated the average of the leachable lead data in Table 6 for the EP and TCLP data sets, disregarding whether the samples were collected using grab or compositing methods. The 95% UCL values (as shown in Table 2) are 0.37 mg/l for the EP data, and 0.059 mg/l for the TCLP data. When input into the EPACML, these values would yield compliance point concentrations of 0.0077 mg/l and 0.0012 mg/l, respectively, for the EP and TCLP data. Averaging all the EP and TCLP data yields a 95% UCL of 0.26 mg.l, which would lead to a compliance point concentration of 0.0054 mg/l. Thus, no matter how the data are averaged, the 95% UCL well compliance point would still be below the level of concern (0.015 mg/l). Therefore, for these reasons, the Agency believes that leachable lead concentrations in the petitioned waste would not cause this waste to be considered a hazardous waste for Subtitle C purposes and are not of concern.

As reported in Table 1, the maximum concentration of total cyanide in the petitioned waste is 43.1 mg/kg. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the maximum level of reactive cyanide will not exceed 43.1 mg/kg. Thus, the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 mg/kg. See ''Interim Agency Thresholds for Toxic Gas Generation'', July 12, 1985, internal Agency Memorandum in the RCRA public docket. Furthermore, the maximum reported level of reactive sulfide in BSC's waste is 140 mg/kg. This concentration is below the Agency's interim standard of 500 mg/kg. See the ''Interim Agency Thresholds for Toxic Gas Generation'' document cited above. Therefore, reactive cyanide and sulfide levels in BSC's petitioned waste would not cause this waste to be considered a hazardous waste for Subtitle C purposes and are not of concern.

The Agency also evaluated the mobility of the hazardous organic constituents detected in the extract of samples of BSC's petitioned waste using the EPACML. The Agency used the maximum reported leachate concentrations (see Table 4) and BSC's estimate of 110,000 cubic yards of accumulated waste as inputs in the EPACML in order to assess the potential impacts of these constituents upon the groundwater. The calculated compliance-point concentrations for the seven organic constituents detected in sample extracts are presented in Table 7.

TABLE 7.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (MG/L) LANDFILL WASTE

Constituents	Maximum compliance-point constituents [1]	Levels of regulatory concern [2]
Ethyl benzene	0.00075	0.7
Methylene chloride	0.0018	0.005
Naphthalene	0.00027	1.0
Phenol	0.00058	20.0
Toluene	0.00023	1
1,1,1–Trichloroethane	0.00013	0.2
Xylene	0.0018	10

[1] Based on an estimated waste volume of 110,000 cubic yards in the landfill, the EPACML model calculated a dilution/attenuation factor of 48.

[2] See ''Docket Report on Health-based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR § 260.20 and § 260.22'', December 1994, located in the RCRA public docket.

The Agency believes that two of the seven constituents may not truly be present in the TCLP extract of BSC's waste. Methylene chloride is a common laboratory contaminant that also was observed in blanks for some of the samples. Furthermore, methylene chloride was not detected in any of the samples analyzed for total constituent levels. Similarly, 1,1,1 trichloroethane was not found in the total constituent analysis, and was detected only once out of eight samples in the TCLP analysis at a level (0.006 mg/l) close to the detection limit (0.005 mg/l). However, the Agency evaluated the reported maximum concentration for these two constituents to examine their potential risk. For all organics detected, the compliance point concentration (using maximum TCLP data in Table 7) are below the Agency's health-based level of concern.

The Agency did not evaluate the mobility of the remaining hazardous organic constituents from BSC's petitioned waste because they were not detected in the TCLP extracts using the appropriate SW–846 analytical test methods (see Table 4). As stated previously, for RCRA delistings, the Agency does not evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method.

The Agency concluded after reviewing BSC's processes that no other hazardous constituents, other than those tested for, are likely to be present in BSC's petitioned waste. The Agency notes that, in its April 1989 proposal to deny BSC's petition, it concluded that BSC had failed to provide sufficient justification that the waste does not contain additional hazardous constituents. In particular, BSC had attempted to demonstrate, using an approach that relied on analyzing waste samples for a limited set of ''indicator'' parameters, that hazardous constituents were not present in the waste at levels of concern. The Agency believed that this original demonstration was inadequate for a number of reasons (see 54 FR 14101, April 7, 1989). As described previously in today's notice, BSC conducted additional sampling of the waste in June 1992, specifically analyzing samples for total constituent concentrations of 70 volatile organic and semivolatile organic constituents. Based on a re-evaluation of BSC's petition, including the new analytical results from the June 1992 sampling event, the Agency believes that no other hazardous constituents are likely to be present in BSC's petitioned waste. In addition, on the basis of test results and information provided by BSC, pursuant to § 260.22, the Agency concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See § 261.21, § 261.22, and § 261.23, respectively.

The Agency also re-evaluated groundwater monitoring data available for BSC's landfill, including data for groundwater samples collected from March 1985 through July 1992. The concentrations of all constituents monitored in the groundwater were detected in downgradient wells at concentrations below delisting health-based levels, except for lead, benzene, bis(2-ethylhexyl)phthalate, 1,1-dichloroethane, and 2,4,6-trichlorophenol. During this monitoring period, these constituents were detected at concentrations above delisting health-based levels in at least one upgradient well.

In its re-evaluation of the groundwater monitoring data, the Agency conducted statistical analyses for lead, bis(2-ethylhexyl)phthalate, 2,4,6-trichlorophenol, and 1,1-dichloroethane to determine if downgradient well concentrations statistically exceeded background well concentrations (see the docket for today's proposed rule). Based on the results of these analyses, the Agency concluded for the delisting evaluation that the downgradient concentrations of lead, bis(2-ethylhexyl)phthalate, 1,1-dichloroethane, and 2,4,6-trichlorophenol are not significantly greater than background well concentrations. For this reason, the

Agency believes that the petitioned waste is unlikely to be the source of the detected groundwater contamination.

The Agency also considered the significance of hexachlorobenzene, which was detected in the groundwater at one downgradient well during one round of sampling. This hexachlorobenzene concentration was reported as an estimated value (rather than an actual detected value) of 0.012 mg/l, based on a detection limit of 0.050 mg/l. However, hexachlorobenzene has not been reported as detected in any wells monitoring the HWM–2 landfill during any other round of analysis throughout the monitoring history of the area. Furthermore, this constituent was not detected in the petitioned waste, based on total constituent analyses of eight samples and TCLP leachate analyses of nine samples. The Agency, therefore, believes that hexachlorobenzene is not present at levels of concern for delisting.

The Agency evaluated BSC's demonstration that benzene detected in the downgradient wells actually originated from a source other than the petitioned waste. BSC's demonstration included an evaluation of each waste type placed in the HWM–2 landfill. BSC presented information to show that, based on the nature of the processes from which the components of the petitioned waste were generated (*i.e.*, ammonia still lime sludge, blast furnace thickener sludge, basic oxygen furnace thickener sludge, sinter plant sludge, cold rolling mill wastewater treatment sludge, and dredging spoils from Smokes Creek), benzene is not expected to be present in the petitioned waste at levels of concern. Specifically, BSC provided information concerning benzene concentrations in each of the individual waste components placed in the landfill. This information included: (1) Descriptions of the processes generating the blast furnace sludge, basic oxygen furnace sludge, and ammonia still lime sludge, (2) results from the analysis of extracts of samples of each of the individual waste components, and (3) results from the analysis of raw wastewaters from which these waste components originated. (A summary of the analytical results quantifying the concentrations of benzene in the individual waste components of the landfill is contained in the docket).

The information provided by BSC supports its claim that benzene is not expected to be present in the petitioned waste at levels of concern. In addition, the Agency notes that benzene has not been detected in total constituent analyses of 20 samples of the petitioned waste, nor in leaching analyses of nine samples of the petitioned waste. Finally, three solid waste management units (designated as acid tar pits), which have received a large quantity of waste materials known to contain high concentrations of benzene (up to 29,000 mg/kg), are located approximately 1,600 feet upgradient of the downgradient wells monitoring the landfill containing the petitioned waste. In addition to a detailed characterization study of these tar pits, BSC provided calculations of the average groundwater velocity to demonstrate that contaminants released from these tar pits could have reached monitoring wells in the HWM–2 landfill area. For these reasons, the Agency believes that BSC's assertion regarding a potential upgradient source of benzene, other than the petitioned waste, is valid.

As mentioned earlier in this notice, the Agency also received more recent groundwater monitoring data from State and EPA Regional authorities. Such additional data were received in late 1993 and 1994, after the Agency had performed its statistical analyses of the data collected from March 1985 through July 1992 (as submitted by BSC in its petition and supplemental information). The Agency concluded that it is not necessary to perform further statistical analyses to incorporate the more recent data. The earlier data (March 1985 to July 1992) were sufficient for the Agency to conduct statistical analyses, and to conclude that the contaminants of concern were not released from the landfill containing the petitioned waste (*i.e.*, the existing groundwater contamination at the site is not attributable to the petitioned waste). In addition, based on the Agency's preliminary review of the more recent data, it appears that those data would not lead to any significant change in estimated constituent concentrations that would affect the earlier evaluation. The Agency, therefore, believes there is no need to devote additional Agency time and resources, which are scarce, to conducting further statistical analyses to include the additional groundwater monitoring data. The Agency has placed the groundwater monitoring data received from State and EPA Regional authorities in the RCRA public docket for today's notice for public comment.

During its evaluation of BSC's petition, the Agency also considered the potential impact of the petitioned waste via nongroundwater routes. With regard to airborne dispersal of waste, the Agency evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned waste using an air dispersion model for releases from a landfill. The results of this evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from BSC's petitioned waste. (A description of the Agency's assessment of the potential impact of airborne dispersal of BSC's waste is presented in the RCRA public docket for today's final rule.)

The Agency also considered the potential impact of the petitioned waste via a surface water route. The Agency believes that contaminant structures at municipal solid waste landfills can effectively control surface water runoff, as the recently promulgated Subtitle D regulations (see 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, if the waste were to remain on-site, the HWM–2 landfill containing the petitioned waste is currently surrounded by a continuous berm that precludes runoff from the unit. Therefore, any significant future releases of contaminants from the petitioned waste at its current location via a surface water route are highly unlikely. If such surface water releases should occur, any releases and the HWM–2 unit are subject to the corrective action provisions of RCRA. In fact, if BSC's waste in the HWM–2 unit were delisted, the unit would remain a solid waste management unit under RCRA, and would be closed in accordance with an approved New York State plan.

While some contamination of surface water is possible through runoff from a waste disposal area (*i.e.*, storm water), the Agency believes that the dissolved concentrations of any hazardous constituents in the runoff will tend to be lower than the extraction procedure test results reported in today's notice because of the aggressive acidic medium used for extraction in the TCLP. The Agency also believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur.

In addition, any transported contaminants would be further diluted in the receiving water body. Significant releases to surface water due to erosion of undissolved particulates in runoff are also unlikely, due to the controls noted above. Nevertheless, the Agency evaluated the potential hazards resulting from releases from a landfill to a nearby stream, as well as possible releases from the current landfill located on-site and adjacent to Lake Erie. The results of these evaluations indicate that BSC's waste would not present a threat to human health or the environment.

(See the docket to today's rule for a description of this analysis).

E. Conclusion

The Agency believes that BSC has demonstrated that the waste contained in its on-site landfill is not hazardous for Subtitle C purposes. The Agency believes that the sampling procedures used by BSC were adequate, and that the samples collected from the landfill are representative of the waste contained in the landfill.

The Agency, therefore, is proposing to withdraw its original denial of BSC's petition, and is proposing that BSC's petitioned waste be delisted as non-hazardous and thus not subject to regulation under RCRA Subtitle C. The Agency proposes to grant an exclusion to Bethlehem Steel Corporation's Lackawanna, New York, facility for its mixture of ammonia still lime sludge and solid waste described in its petition as EPA Hazardous Waste No. K060 and contained in its on-site HWM–2 landfill. The Agency's decision to exclude this waste is based on process descriptions, results from the analysis of samples of the petitioned waste, and results from the analysis of groundwater monitoring data available for BSC's landfill. If the proposed rule becomes effective, the waste contained in the HWM–2 landfill would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270. Although management of the wastes covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal and State solid waste management regulations.

III. Limited Effect of Federal Exclusion

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (*i.e.,* both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, *i.e.,* to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, BSC must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 USC 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. The effect of this proposed rule would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. Therefore, this proposed rule would not be a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has also exempted this proposed rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub.L. 96–511, 44 U.S.C 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them

on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and Recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 6, 1995.

Michael H. Shapiro,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of Appendix IX, Part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Bethlehem Steel Corporation	Lackawanna, New York	Ammonia still lime sludge (EPA Hazardous Waste No. K060) and other solid waste generated from primary metal-making and coking operations. This is a one-time exclusion for approximately 110,000 cubic yards of waste contained in the on-site landfill referred to as HWM–2. This exclusion was published on [insert date of final rule].
*	*	*

[FR Doc. 95–29897 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAR Case 95–007 Correction]

Federal Acquisition Regulation; Corrections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Correction.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing a correction to FAR case 95–007, Responsibility Determinations, published at 60 FR 55960, November 3, 1995. The correction reflects the changes implemented by Federal Acquisition Circular 90–32, FAR case 94–790, Acquisition of Commercial Items, Item III.

FOR FURTHER INFORMATION CONTACT: FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite correction to FAR case 95–007.

Correction

PART 9—CONTRACTOR QUALIFICATIONS

In proposed rule document 95–27294 on page 55960 in the issue of Friday, November 3, 1995, in the third column, under amendatory instruction 3, the revised text should read as follows:

9.106–1 Conditions of preaward surveys.

(a) A preaward survey is normally required only when the information on hand or readily available to the contracting officer, including information from commercial sources, is not sufficient to make a determination regarding responsibility. However, if the contemplated contract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items (see part 12), the contracting officer should not request a preaward survey unless circumstances justify its cost.

* * * * *

Dated: December 1, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

[FR Doc. 95–29773 Filed 12–6–95; 8:45 am]

BILLING CODE 6820–EP–M

Notices

Federal Register
Vol. 60, No. 235
Thursday, December 7, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Research, Education, and Economics, announces the following advisory committee meeting:

Name: Agricultural Biotechnology Research Advisory Committee.

Date: January 19, 1996.

Time: 9:00 a.m. to approximately 5:00 p.m.

Place: Club Room, Westpark Hotel, 1900 North Fort Myer Drive, Arlington (Rosslyn), Virginia 22209.

Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit. Members of the public wishing to speak at the meeting may be given such an opportunity at the discretion of the Chair.

Comments: The public may file written comments before or after the meeting with the contact person specified below.

Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Under Secretary for Research, Education, and Economics with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research. The items to be considered at this meeting include the implementation of performance standards for research with genetically modified aquatic organisms and the scope of biological risk assessment research programs.

Contact Persons: Dr. Alvin L. Young, Director, or Dr. Daniel D. Jones, Deputy Director, Office of Agricultural Biotechnology, Cooperative State Research, Education, and Extension Service, Department of Agriculture, Room 3868, South Building, 14th and Independence Avenue S.W., Washington, D.C. 20250–0904, phone (202) 720–5853.

Done at Washington, D.C., this 27th day of November, 1995.

Karl N. Stauber,

Under Secretary, Research, Education, and Economics.

[FR Doc. 95–29868 Filed 12–06–95; 8:45 am]

BILLING CODE 3410–22–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations on Records Release: Correction

AGENCY: Assassination Records Review Board.

ACTION: Notice of Formal Determinations: Correction.

SUMMARY: The Assassination Records Review Board (Review Board) met on November 13, and November 14, 1995, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). The Review Board published a notice document in the Monday, December 4, 1995, Federal Register, reflecting those determinations. In that notice document 95–29389 beginning on page 62066, make the following corrections:

On page 62066, in the third column of the FBI documents table, make the following corrections:

Record identification No.	Previously published information	Corrected information
124–10058–10403	0, 1, Postponed in Full, 2017	0, 1, Postponed in Part, 2017.
124–10243–10078	0, 1, Postponed in Full, 2017	0, 1 Postponed in Part, 2017.

Dated: December 4, 1995.

T. Jeremy Gunn,

General Counsel.

[FR Doc. 95–29825 Filed 12–06–95; 8:45 am]

BILLING CODE 6820–TD–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 951127279–5279–01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined that the Census Bureau needs to collect data covering annual sales, year-end inventories, purchases, and accounts receivables to provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, purchases, and accounts receivable balances for 1995, and year-end inventories for 1994 and 1995. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Ronald Piencykoski or Dorothy Engleking on (301) 457–2713.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 1995 Annual Retail Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide,

with measurable reliability, statistics on the subjects specified above.

This survey was cleared by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was cleared under OMB Control No. 0607–0013. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 21, 1995.

Bryant Benton,

Acting Deputy Director, Bureau of the Census.

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International Trade Administration

[A–427–030]

Large Power Transformers from France; Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of the antidumping duty administrative review; large power transformers from France.

SUMMARY: On May 2, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding on large power transformers (LPTs) from France. The review covers one manufacturer/exporter and the period June 1, 1993 through May 31, 1994.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Donald Little, Elisabeth Urfer, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Treasury Department published in the Federal Register an antidumping finding on LPTs from France on June 14, 1972 (37 FR 11772). On June 7, 1994, we published in the Federal Register (59 FR 29411) a notice of opportunity to request an administrative review of the antidumping finding on LPTs from France covering the period June 1, 1993 through May 31, 1994.

In accordance with 19 CFR 353.22(a), Jeumont Schneider Transformateurs (JST) requested that we conduct an administrative review of its sales. We published a notice of initiation of this antidumping duty administrative review on July 15, 1994 (59 FR 36160).

On May 2, 1995, the Department published the preliminary results in the Federal Register (60 FR 21499). The Department has now conducted the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of LPTs; that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term ''transformers'' includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter of transformers, JST, and the period June 1, 1993, through May 31, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from JST and petitioner, ABB Power T&D Co. Inc. We received rebuttal briefs from JST and petitioner.

Comment 1: Petitioner argues that the dumping margin should be calculated in U.S. dollars, and that the Department's regulations require conversion of foreign currency into U.S. dollars based on the exchange rate prevailing on the date of sale. Petitioner cites 19 CFR 353.60(a) (1994), which states that the Department is to convert ''a foreign currency into the equivalent amount of United States currency at the rates in effect on the dates described in * * * 353.50.'' Petitioner also cites 19 CFR 353.50, arguing that this section indicates the time for calculating constructed value, and thus determining the currency conversion rate, is the date of sale.

Petitioner argues that the Department, in calculating constructed value and making adjustments to U.S. price and foreign market value, improperly converted several costs JST incurred in U.S. dollars into French francs. Petitioner argues that the instructions in the Department's questionnaire clearly state that JST was to report its expenses in the currency in which those expenses were incurred. Petitioner further argues that the U.S. Department of Commerce, International Trade Administration, Antidumping Manual instructs the Department to convert any expenses not incurred in U.S. dollars into their dollar-denominated equivalent. Petitioner states that the Department's regulations prescribe the rate to be used to accomplish this conversion under 19 CFR 353.60(a).

JST argues that neither the antidumping statute nor the Department's regulations require that dumping analysis be dollar-denominated. JST argues that section 772 of the Tariff Act defines U.S. price, but does not state that U.S. price is to be a dollar-denominated price, and thus no statutory provision compels, or addresses, the question of whether the Department must convert prices or costs stated in foreign currency into U.S. dollars. JST further argues that 19 CFR 353.60(a) similarly prescribes a method for converting foreign currency into dollars, but does not require dollar-denominated calculations.

JST argues that a calculation of U.S. price in a foreign currency is unusual, but not unlawful, and that, given the facts of this case, a French franc-denominated analysis is the best way of determining the degree to which either of JST's U.S. sales was sold at less than foreign market value. JST argues that the methodology is consistent with the basic rule that governs the Department's antidumping analysis, *i.e.*, that a foreign

producer's U.S. price and foreign market value are to be determined using data in the books and records of that producer, kept in the normal course of trade, as long as such data do not distort the producer's actual prices or costs.

Department's Position: We disagree with both parties, in part. There is no requirement, in either the statute or the regulations, that the dumping margin be calculated in U.S. dollars. Nevertheless, when certain elements of the dumping calculation were paid in U.S. dollars, and other elements in a foreign currency or currencies, it is the Department's longstanding practice to convert foreign currency amounts into U.S. dollars before calculating dumping margins, in accordance with the rates established in 19 CFR 353.60(a). In this case, prices were set, and paid, in U.S. dollars. Therefore, for these final results, we have used the U.S. dollar price paid by the U.S. customer as the basis of U.S. price, and converted expenses incurred in French francs to U.S. dollars on the date of the U.S. sale. We have used the date of sale, *i.e.*, the date on which the terms of the sale were set, as the date on which we have converted all foreign currency transactions.

Comment 2: Petitioner claims that the use of JST's exchange rate guarantees in calculating a dumping margin is not in accordance with law. Petitioner argues that the Court of International Trade has held that gains from exchange contracts cannot be used to increase U.S. price, and at best a respondent may treat those gains or expenses solely as indirect selling expenses on its U.S. sales. Petitioner cites *Thyssen Stahl AG* v. *United States*, Slip Op. 95–78 (Ct. Int'l Trade April 27, 1995) (*Thyssen*), where the court reversed the Department's determination to treat gains from an exchange rate contract as a circumstance-of-sale adjustment. Petitioner states that the court noted that the antidumping statute did not provide for such an adjustment and the Department's implementing regulations ''did not contemplate currency hedging,'' and that the court rejected the respondent's theory that the antidumping law is designed to compare a respondent's overall return or profit between its U.S. and foreign market sales. Petitioner notes that, instead, the court in *Thyssen* held that exchange rate gains and losses could be considered indirect selling expenses.

Petitioner notes that the *Thyssen* court relied heavily on *Torrington Co.* v. *United States*, 832 F.Supp. 379, 391–92 (Ct. Int'l Trade 1993) (*Torrington*), in which the court reversed the Department's adjustment to U.S. price to take into account a currency guarantee.

JST states that the petitioner has misread the *Torrington* and *Thyssen* decisions. JST argues that the court's finding in *Torrington* was clearly limited to the conclusion that the respondent's currency hedging expenses were not directly related to the specific sales under review. JST argues that the court similarly found that Thyssen had failed to demonstrate the requisite direct relationship to the U.S. sales under consideration. JST concludes that neither the *Torrington* nor the *Thyssen* decision limits the Department's ability to treat any difference between JST's transaction-specific exchange rate guarantees and the exchange rate on the date of sale as a direct selling credit for which an adjustment to foreign market value must be made.

JST argues that the production and sale of LPTs varies from most other merchandise that is subject to antidumping orders. JST explains that producers bid to supply transformers more than a year before the transformers will be delivered. Because the bid is a firm commitment to supply a high-cost transformer at a specific price, JST states that it always arranges for a project-specific exchange rate guarantee before it bids on a contract to supply an LPT to a U.S. customer. JST states that the transaction-specific exchange rate guarantees that it secured on its review-period sales to the United States are different from general currency hedges. JST argues that the exchange rate guarantees at issue transform JST's review-period sales to the United States into French franc-denominated sales against which the company could control the French franc costs that it incurred during the design, production, test and delivery cycle. JST states that the Department verified that JST maintains detailed transaction-specific French franc-denominated accounts for both the revenues and costs associated with each of its LPT sales. JST argues that a standard dumping calculation based on dollar-denominated U.S. sales would grossly distort the Department's antidumping analysis if the currency conversion were at a rate that differed significantly from the guaranteed rate of exchange that JST secured for each of its U.S. sales, because it would understate the amount actually expected and received by JST. JST cites to the Uruguay Round Agreements Act, Statement of Administrative Action at 172, to argue that it is current Department practice, where a company demonstrates that a sale of foreign currency on forward markets is directly linked to a particular export sale, to use the rate of exchange in the forward currency sale agreement.

JST argues that, if the Department decides to treat its exports as dollar-denominated sales and decides to convert the French franc-denominated constructed value to dollars at the Federal Reserve exchange rate in effect on the date of sale, the Department must make an adjustment to foreign market value for direct selling credit. JST argues that the result of the credit adjustment is the same as treating the transaction as a foreign currency sale at the guaranteed exchange rate.

Department's Position: We disagree with both parties, in part. The court's decisions in *Thyssen* and *Torrington* do not disallow the use of a circumstance-of-sale adjustment in this case. The court in both *Thyssen* and *Torrington* stated that the respondents could not link the sales in question to specific exchange rate guarantee contracts. The facts of this case differ because there is a specific guarantee for each sale to the United States. JST has placed on the record evidence that there was an exchange rate guarantee directly associated with each of its sales to the United States. (See JST's questionnaire response at tabs A–2 and B–2.) At verification, we examined the price in the contract in U.S. dollars, the price the customer paid in U.S. dollars, and the amount JST received from its bank in French francs. (See verification exhibit Sales-4.) While the price to be paid in U.S. dollars by the customer remained constant, JST used an exchange rate guarantee to secure a certain exchange rate for each of its sales. Because the price paid by the customer was set and paid in U.S. dollars, for these final results we have used the price paid in U.S. dollars for purposes of calculating U.S. price. Because of the gain JST earned on these U.S. sales due to exchange rate guarantees, which were directly linked to specific sales of LPTs, we have made a circumstance-of-sale adjustment to foreign market value to account for that gain.

Comment 3: Petitioner argues that the Department understated JST's profit on its home market sales. Petitioner argues that JST improperly excluded data from a certain type of transformer from its home market sales and the Department based its home market profit calculation on the data that excluded transformers of this type. Petitioner states that the transformers in question are within the scope of the finding and JST has provided no scope-related information to explain why this type of transformer should be excluded.

JST stated that the home market and the U.S. sales of LPTs, other than the

type in question, were sold and manufactured, and the revenue associated with them was booked, on a comparable time frame, normally a year or more after the ''sale'' was made. JST states the sales of the transformer type in question were not only sold, but were manufactured and delivered five years before the review period. JST argues that the profit realized on these sales has nothing to do with market conditions at any time during the period in which the LPTs under review were sold, manufactured or delivered.

Department's Position: We agree with JST. The profit the Department calculates for constructed value should be based on the profit the respondent experiences on comparable sales reasonably contemporaneous to the sales of subject merchandise under review. The transformers excluded from the profit calculation were sold significantly before the sales to the United States. Although the profit was realized during the period of review, the market conditions and expected return on those sales are not relevant to the market conditions during the time the LPT sales under review were made, because so much time had elapsed since the sale of the home market LPTs in question. Therefore, we are continuing to exclude the data on the transformers in question in our profit calculation.

Comment 4: Petitioner argues that JST understated the actual amount of its pre-bid expenses for purposes of calculating cost of manufacture. Petitioner points out that JST calculated its pre-bid expenses by taking its total annual pre-bid expenses and allocating those expenses on a per-unit basis across all its sales for that year. Petitioner questions whether the denominator is accurate, given that at verification the Department found that JST had misreported the number of LPTs sold during the period of review. Petitioner also questions whether the pre-bid expenses for each of the units are identical across markets and asserts that, because JST's sales in its home market are far more regular than its export sales, it is possible that JST could have no pre-bid expenses for its home market sales. Petitioner contends that the best method for allocating these pre-bid expenses is on the basis of design hours. Petitioner argues that, because the export units are custom-designed, they would require more design hours, and thus likely more costs, to develop a bid.

JST contends that it properly reported, and the Department properly calculated, pre-bid expense. JST contends that at verification the Department reviewed the quantity of transformers that it produced during each year involved in the review period (*i.e.,* 1992, 1993, and 1994), and that these data were provided in JST's ''final test'' log for each calendar year, which reconciled with JST's annual financial statements. JST further contends that even though there were problems with the sales volume and value data, there is no reason to question the validity of the final test data which were verified and used to allocate pre-bid expenses.

JST asserts that petitioner misunderstands the pre-bid expenses that it incurs. JST states that it incurs in the aggregate more pre-bid expenses on business that it loses than on business that it wins, and that each transformer that is sold must absorb an allocated portion of total pre-bid expenses, including those on failed bids. Regarding petitioner's assertion that pre-bid expenses should be allocated based on design costs incurred after the bid has been won, JST argues that petitioner ignores the ''bid-but-not-won'' problem, and assumes a correlation between design costs or transformer size and pre-bid expenses where none exists.

Department's Position: We disagree in part with both petitioner and JST. As petitioner noted, at verification we encountered considerable difficulties in verifying JST's sales volume and value. However, as stated in the verification report, JST allocated its pre-bid expenses based on the number of units tested during the year, a figure we did verify, finding no discrepancies. The sales volume and value data differ from the testing report data. The sales volume and value data cover only subject merchandise sold during the period of review, while the testing reports cover all transformers which were completed during the years during which the subject merchandise was produced.

We agree with petitioner that pre-bid expenses might not be identical across markets. However, there is insufficient data on the record to determine whether more pre-bid expenses are incurred on home market or export sales. We disagree with petitioner that allocating by design hours would most accurately capture pre-bid expense, because there is not a clear correlation between design hours and pre-bid expense. As we found at verification, pre-bid expenses include other expenses associated with bids (*see* Verification Report at p. 15), and, therefore, are not necessarily incurred relative to design hours. Furthermore, as JST pointed out, a substantial portion of its pre-bid expenses are incurred for failed bids, and must be allocated to other LPTS. Because there is no correlation between pre-bid expenses and sales, we have determined that the most reasonable way to allocate pre-bid expenses is on the cost of sales, since it avoids distortions which could be created by allocating pre-bid expenses on number of units or design hours.

Comment 5: JST argues that, in calculating the profit ratio on home market sales, the Department understated the cost of manufacture incurred by JST on its home market sales because it did not include pre-bid expenses associated with these sales. As a result, JST claims, the Department overstated the profit ratio on its home market sales, which in turn led to an overstatement of profit for constructed value. JST states that, in its normal accounting, it treats pre-bid expenses as an indirect selling expense. However, in submitting costs for the LPTs sold in the United States, JST treated pre-bid expenses as a cost of manufacture in accordance with Department practice. JST argues there must be a consistency between the way cost of manufacture is calculated for U.S. sales and for home market sales, and that pre-bid expenses should therefore be included in the home market cost of manufacture. JST argues that the Department should allocate pre-bid expenses on a per unit basis.

Petitioner states that JST has failed to submit sufficient information to make the adjustment to cost of manufacture for home market pre-bid expenses for purposes of the profit calculation. Petitioner argues that the suggested adjustment to pre-bid expenses implies that pre-bid expenses for home market and export sales are the same. Petitioner states that pre-bid expenses also include ''exchange rate guaranty premiums,'' which would be incurred only on export sales. Petitioner claims that, because JST did not provide export-related pre-bid expenses separately from home market-related pre-bid expenses, an accurate calculation of home market pre-bid expenses cannot be made.

Department's Position: JST's comment indicates a misunderstanding of the Department's calculation of profit. The Department calculates profit for constructed value by multiplying the cost of production (cost of manufacture plus selling, general, and administrative expenses (SG&A)) of the U.S. sale by a ratio of home market profit to the cost of production of home market sales. The home market SG&A includes indirect selling expenses, which is where JST normally includes pre-bid expenses. However, for the preliminary results we inadvertently did not include an amount for pre-bid expense in either cost of manufacture or SG&A expenses for purposes of our profit calculation. We do agree that, in order not to

overstate profit, we must include an amount for pre-bid expense in home market cost of production. As noted in our response to Comment 4, above, JST did not provide sufficient information to differentiate between home market-related and export-related pre-bid expenses. Therefore, we have allocated pre-bid expense to home market cost of manufacture based on cost of sales.

Comment 6: Petitioner contends that the Department made an error in calculating JST's credit expense. Petitioner states that the Department based JST's credit expense on the time between the invoice date and payment date and that this is inconsistent with Department practice of using the time period between shipment date and payment date.

Department's Position: We agree with the petitioner, and have recalculated the credit expense for the LPT sales to the United States to reflect the time period between shipment and payment.

Comment 7: Petitioner asserts that the use of JST's economic report to derive the cost of materials for Sale 1 understates cost of materials for this unit since this report may not reconcile exactly to the cost accounting system. Petitioner argues the Department should derive a cost of materials figure using the total cost of materials from the cost accounting system.

JST argues that it keeps economic reports for each transformer, while the cost accounting system is specific to individual orders, which may include costs for more than one transformer. JST argues that, when the accounting records for an order do not provide the detailed costs for each transformer covered by the order, the detail is available from the economic reports. JST argues that the economic report does in fact reconcile to the cost accounting system ''to within very few French francs.'' JST argues the information it supplied to the Department yields a fully reconciled materials cost. JST states that the differences in materials cost between the economic report and the cost accounting system were explained during verification.

Department's Position: We agree with JST. During the verification, we examined the economic report and its relationship to the cost accounting system. We determined that using the economic report was the most reasonable method of deriving the cost of materials for this sale because the economic report is transformer-specific, and the differences between costs reflected in the economic report and the actual material costs for the specific transformer were minimal. (For further details, *see* proprietary memorandum to the file dated June 30, 1995.)

Comment 8: JST argues that the Department did not correct an error regarding JST's calculation of home market cost of sales, which was discovered at verification. As a result, JST asserts that the actual manufacturing cost incurred on home market sales is understated, thereby causing the calculation of profit to be overstated. JST argues that the verification report mistakenly notes that the error did not affect JST's cost of home market sales.

Petitioner contends that JST's claim for an adjustment to home market cost of sales for this additional expense should be rejected. Petitioner argues that there is no information about this expense on the record. Petitioner argues that, without such information, the Department cannot legally determine that the expense relates to home market sales. Petitioner also argues that this information was untimely submitted.

Department's Position: We agree with JST. At verification we asked JST to show us how it had arrived at the figures used in its profit calculation. In response to our request, JST prepared a worksheet showing how the figures in its questionnaire responses traced to the cost system. JST stated that, after it made adjustments for depreciation and labor, and excluded a certain type of transformer, it arrived at a figure different from what it had reported in the questionnaire response. It showed the amount of this difference on the profit worksheet, labeling it as an ''Other Adjustment.'' Therefore, while we noted in the verification report that the ''Other Adjustment'' amount ''should have been an expense,'' it is more accurate to characterize the amount as a correction of an error in the response. Correction of such errors can be the result of verification and is not untimely information as the petitioner asserts.

As explained in the verification report, we verified the total home market costs and adjustments to those costs, as presented on the home market profit worksheet at verification. (*See* verification exhibit cost-18.) We were satisfied as to the accuracy of the corrected cost of sales calculation, as shown on the home market profit worksheet. Therefore, we have accepted respondent's correction of its original calculation of cost of sales.

Comment 9: Petitioner argues that JST has not demonstrated that its related-party purchases have been made at arm's length, and as a result the Department should rely on best information otherwise available (BIA) to derive the cost of materials for JST's related-party materials purchases. Petitioner notes that at verification the Department reviewed JST's related-party purchases of two parts for one of its sales. Petitioner argues that, for the first of these parts, the Department compared related-party prices with price quotations from other companies, but JST did not demonstrate that the parts shown on these quotations met specifications similar to those of the part purchased from the related party. Petitioner also points out that the second part had been purchased from a party also related to JST. Petitioner states that the Department should use, as BIA, the ratio of all of JST's purchases from related parties to total purchases, multiplied by the total cost of materials, with an added amount for profit. For profit, petitioner suggests the Department use the percentage petitioner calculated for JST's home market profit.

JST contends that its purchases of components from related parties were made at arm's length. With regard to the first part, JST argues that petitioner has produced no information to cast any doubt that this part was not purchased at arm's length, and that petitioner's claim that this part may be different from those purchased from unrelated suppliers is only speculation. With regard to the second part, JST contends that the purchase is insignificant. JST argues that the evidence that is available supports an ''arm's-length'' conclusion, and there is no reason to believe that the price paid was not an arm's-length price.

Department's Position: We agree with JST. At verification we examined two parts purchased by JST from related parties. With regard to the first part we examined detailed price quotations from JST's suppliers, which clearly showed that the part had been purchased at arm's length. We agree with petitioner that the comparison parts were not identical; however, we found that the parts from related and unrelated suppliers were comparable for purposes of the arm's length test. With regard to the second part, because custom work was done on the part in question, thereby making a benchmark unavailable, we could not determine whether the part was sold at arm's length. However, we found this part to be of insignificant value. Therefore, because JST demonstrated that either the sale of the part was made at arm's length, or the value was insignificant, we find that the purchase prices for both of these parts are suitable for use in our calculation of the foreign market value. (See Antifiction Bearings (Other Than

Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10925, February 28, 1995.)

Comment 10: Petitioner states that the Department should reject JST's home market direct warranty expense claim and treat warranty as an indirect selling expense. Petitioner cites the verification report, which states that JST calculated its reported home market warranty expense claim based on its warranty experience for both subject and non-subject merchandise. Petitioner argues that, because warranty expenses can vary significantly by product, JST's warranty expense allocation methodology may result in the overstatement of the company's actual home market LPT warranty expense.

JST argues that, at verification, the Department was given detailed warranty expense information by year and by transformer type. JST states that it did report actual warranty expenses incurred on the subject merchandise and distinguished warranty expenses incurred on LPTs sold in the home market from warranty expenses sold on exports.

Department's Position: JST reported warranty expense on home market sales which included both subject and non-subject merchandise. At verification, we were able to separate warranty expense into three categories: subject merchandise, non-subject merchandise, and export sales. We agree with petitioner that we should calculate warranties based only on subject merchandise. We disagree with petitioner that warranty expense should be considered an indirect selling expense because, as we found at verification, warranty expenses are associated with specific sales. We have thus recalculated warranty expense on home market subject merchandise and have continued to treat it as a direct selling expense adjustment to foreign market value.

Comment 11: Petitioner argues that JST improperly allocated shared production expenses for 1993 by allocating a portion of these expenses to off-site production labor hours.

JST stated that, because its off-site production was LPT-related, it properly allocated shared production expenses.

Department's Position: We agree with JST. Shared production expenses for 1993 were properly allocated to all its production because (1) the off-site production performed by JST was LPT-related, and (2) of the nature of the shared production expenses. (See proprietary memorandum to the file dated June 30, 1995.)

Comment 12: Petitioner argues that the Department improperly included insurance in SG&A, rather than treating it as a movement charge on JST's U.S. sales.

JST states that the insurance associated with freight was included in JST's movement charges, and that the general insurance covering plant and inventory was included in the SG&A charge that JST reported in its questionnaire response. JST asserts that the Department properly included both sets of insurance costs in its preliminary dumping calculation.

Department's Position: We agree with JST. At verification, in our examination of JST's internal cost sheets, which listed all of JST's expenses, we found that insurance had not been specifically listed. In our examination of freight documents, we found that the freight companies that JST used for shipping transformers to the United States included, in their charges, amounts for insurance. Therefore, JST properly reported freight insurance as a movement expense. In our examination of insurance reported as SG&A, we found that JST had been charged an amount for all its sales in the year we used to calculate SG&A. Based on the above information, we conclude that JST has properly reported insurance as a movement expense or an SG&A expense, depending on the nature of the insurance.

Comment 13: Petitioner states that the Department correctly determined that only two entries were covered by this administrative review. Petitioner notes that during the period of review two JST units entered into the United States; however, JST requested the Department review a third unit which JST sold during the period of review. Petitioner argues that, while the Department has based certain administrative reviews on sales rather than entries, it has not mixed entry- and sale-based analyses in the same review, nor has it varied its methodology from review to review. Petitioner also notes that, at verification, the Department found that several important components of the margin calculation for this third sale could not be quantified because they had not yet been incurred. Petitioner contends that for its final results the Department should reaffirm its decision to exclude this unit from this review.

Department's Position: We agree that this sale should not be included in this administrative review. At verification we examined this sale in detail; however, we could not verify receipt of payment for the transformer, or payment of movement expenses and commissions. In addition, we found that material cost could change due to adjustments that had not yet been made to materials removed from stock. Further, our general practice, in purchase price situations, is to review sales corresponding to shipments or entries made during the period of review. We have, therefore, not included this sale in our analysis.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Jeumont Schneider Transformateurs	06/01/93–05/31/94	1.50

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of LPTs from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review or the original less-than-fair-value investigation, but

the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 24 percent, the rate established in the first notice of final results of administrative review published by the Department (47 FR 10268, March 10, 1982). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 30, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–29887 Filed 12–6–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy. The classes or kinds of merchandise covered by these orders are ball bearings and cylindrical roller bearings. The reviews cover 3 manufacturers/exporters. The period of review (the POR) is May 1, 1993, through April 30, 1994.

We have preliminarily determined that sales have been made below foreign market value (FMV). If these preliminary results are adopted in our final results of the administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

Davina Hashmi (Meter), Michael Rausher (FAG), Thomas Schauer (SKF), Michael Rill, or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On May 15, 1989, the Department published in the Federal Register (54 FR 20909) the antidumping duty orders on ball bearings (BBs) and cylindrical roller bearings (CRBs) and parts thereof from Italy. On June 22, 1994, and July 15, 1994, in accordance with 19 CFR 353.22(c) (1994), we initiated administrative reviews of those orders for the period May 1, 1993, through April 30, 1994 (59 FR 32180 and 59 FR 36160). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), and constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a further discussion of the scope of the orders being reviewed, including recent scope determinations, see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Italy; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 60 FR 10959 (February 28, 1995). The HTS item numbers are provided for

convenience and Customs purposes. The written descriptions remain dispositive.

These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
FAG Italia S.p.A	BBs, CRBs.
Meter, S.p.A	BBs.
SKF Industrie S.p.A	BBs, CRBs.

United States Price

In calculating United States price (USP), the Department used purchase price or exporter's sales price (ESP), as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2,000 ESP sales transactions to the United States for a particular class or kind of merchandise, we reviewed ESP sales which occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included June 27–July 3, 1993, July 4–10, 1993, October 10–16, 1993, November 7–13, 1993, February 13–19, 1994, and April 24–30, 1994. We reviewed all purchase price sales transactions during the POR because there were few purchase price sales.

USP was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from purchase price and ESP for movement expenses, discounts and rebates.

We made additional deductions from ESP for direct selling expenses, indirect selling expenses, and repacking in the United States.

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States,* CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States,* 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States,* 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude the Department from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.,* assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct the Department to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to U.S. price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

With respect to subject merchandise to which value was added in the United States prior to sale to unrelated U.S. customers, *e.g.,* parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters, we deducted any increased value in accordance with section 772(e)(3) of the Tariff Act.

Those bearings which are otherwise subject to the order that are imported into the United States and incorporated into nonbearing products by or for the exporter, and which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States are not subject to the assessment of antidumping duties (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31694 (July 11, 1991). In Roller Chain, Other Than Bicycle, from Japan 48 FR 51801 (November 14, 1983), roller chain, which was subject to an antidumping duty finding, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first products sold by the exporter to unrelated purchasers in the United States. Because the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain. The Department, therefore, did not assess antidumping duties on these transactions. We have applied this same principle to these reviews.

Foreign Market Value

The home markets were viable for all companies and all classes or kinds of merchandise pursuant to 19 C.F.R. 353.48. The Department used home market prices or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV).

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. When a firm had more than 2,000 home market sales transactions for a particular class or kind of merchandise, we used sales

from sample months that corresponded to the sample weeks selected for U.S. sales sampling plus one contemporaneous month prior to the POR and one following the POR. The sample months included April, June, July, October, and November of 1993, and February, April, and May of 1994.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV in administrative reviews. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of each respondent's home market sales on an annual basis. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test.

We first compared each monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (i.e., was within plus or minus 10 percent) from the monthly weighted-average prices. We did this for each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for the home market sales. Where the absolute value of the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, i.e., that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kinds that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

Home market prices were based on the packed, ex-factory or delivered prices to related or unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in cost attributable to differences in physical characteristics of the merchandise pursuant to 773(a)(4)(C) of the Tariff Act, and differences in packing. We also made adjustments for differences in circumstances of sale in accordance with 19 C.F.R. 353.56. For comparisons to purchase price sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in purchase price and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses. For comparisons to both ESP and purchase price sales, we adjusted FMV for taxes consistent with our change in practice as stated above.

We used sales to related customers only where we determined such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

Where we found home market sales below the cost of production in the 1991–1992 administrative reviews, we concluded that reasonable grounds exist to believe or suspect that home market sales during the POR were made at prices below the cost of production, and we initiated cost investigations.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales were made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of a particular model were at prices below the cost of production, we found that there were not substantial quantities of that model sold below cost and did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent, of the home market sales of a particular model were determined to be below cost, we determined that substantial quantities of that model were sold below cost and excluded the below-cost home market sales from our calculation of FMV, provided that these below-cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model from our calculation of FMV and used CV (see Polyethylene Terephthalate Film, Sheet, and Strip from Korea, 56 FR 16306 (1991)).

To determine if sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost had occurred for a particular model to the number of months in which the model was sold. If the model was sold in three or fewer months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost of that model in each month. If a model was sold in more than three months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost in at least three of the months in which the model was sold (see Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 58 FR 64729 (December 9, 1993)).

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted ''recovery of all costs within a reasonable period of time in the normal course of trade'' within the meaning of section 773(b)(2) of the Tariff Act, we were unable to conclude that the costs of production of such sales were recovered within a reasonable period of time. As a result, we disregarded below-cost sales when the conditions described above were met.

In accordance with sections 773(a)(1) and 773(b)(2) of the Tariff Act, we used CV as the basis for FMV when there were no usable sales of such or similar merchandise for comparison.

We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit, and packing. To calculate CV we used: (1) Actual general expenses or the statutory

minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV in accordance with 19 C.F.R. 353.56 for differences in circumstances of sale. For comparisons to purchase price sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in purchase price and ESP calculations. For comparisons involving ESP transactions, we made further deductions for CV for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 C.F.R. 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins (in percent) for the period May 1, 1993, through April 30, 1994 to be:

Company	BBs	CRBs
FAG	2.23	0.00
Meter	3.75	(1)
SKF	3.26	(2)

1 No review requested.
2 Order partially revoked with respect to this company.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held in accordance with the following schedule and at the indicated locations in the main Commerce building:

	Date	Time	Room No.
General issues.	Jan. 22, 1996.	10 a.m .	1412
Italy	Jan. 22, 1996.	2 p.m	1412

Issues raised in hearings will be limited to those raised in the respective briefs or written comments, and rebuttal briefs or rebuttals to written comments. Briefs or written comments from interested parties, and rebuttal briefs or rebuttals to written comments, limited to the issues raised in the respective case briefs and comments, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or hearings.

Case	Briefs/comments due	Rebuttals due
General issues.	Jan. 8, 1996	Jan. 16, 1996
Italy	Jan. 8, 1996	Jan. 16, 1996

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents calculation of duties on an entry-by-entry basis, we will calculate an importer-specific *ad valorem* duty assessment rate for each class or kind of merchandise based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the POR.)

In some cases such as purchase price situations, the respondent does not know the entered value of the merchandise. Then, we will either calculate an approximate entered value or we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the POR. See AFBs I at 31694. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews (except that no deposit will be required for firms with zero or *de minimis* margins; *i.e.*, margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate made effective by the final results of the 1991–92 administrative reviews of these orders (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993)). As noted in those previous final results, these rates are the ''all others'' rates from the relevant LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22(c)(5).

Dated: November 30, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–29888 Filed 12–6–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–427–801, A–428–801, A–588–804, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Notice of Intent to Revoke Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews, partial termination of administrative reviews, and notice of intent to revoke order.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings, cylindrical roller bearings, and spherical plain bearings. The reviews cover 64 manufacturers/exporters. The period of review (the POR) is May 1, 1993, through April 30, 1994. Although we initiated reviews for four other manufacturers/exporters, we are terminating the reviews because the requests for these reviews were withdrawn in a timely manner. We intend to terminate the reviews for five other exporters because the Department has preliminarily determined that these exporters are not an appropriate subject of review, as discussed below. We also intend to revoke the order with respect to ball bearings from Thailand based on our preliminary determination that the only known producer of ball bearings, NMB/Pelmec, has had a three-year period of no sales at less than foreign market value (FMV).

Finally, we have preliminarily determined that sales have been made below FMV by various companies subject to these reviews. If these preliminary results are adopted in our final results of the administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Andrea Chu (AVIAC, SNFA, SNR), Davina Hashmi (INA), Hermes Pinilla (Technofan), Matthew Rosenbaum (Franke & Heydrich, Hoesch Rothe Erde, Rollix Defontaine, SKF), or Michael Rill.

Germany

Kris Campbell (Cross-Trade, Delta, EXTA Aussenhandel), Chip Hayes (NTN Kugellagerfabrik), Andrea Chu (SNR), Davina Hashmi (INA), Hermes Pinilla (Hepa Walzlager, Schaumloffel), Matthew Rosenbaum (Fichtel & Sachs, Franke & Heydrich, Hoesch Rothe Erde, Rollix Defontaine, SKF), Thomas Schauer (FAG), Michael Rill, or Richard Rimlinger.

Japan

J. David Dirstine (Koyo, NSK, ITOCHU, Godo Kogyo, Santest Co.), Joseph Fargo (Naniwa Kogyo, Nankai Seiko, TOK Bearing Co.), Chip Hayes (Mitsubishi, Nachi, NTN), Lyn Johnson (Takeshita, Marubeni, I&OC, Kongo Colmet, Sanken Trading, Taikoyo Sangyo), Michael Panfeld (IKS, Nissho-Iwai, NPBS, Origin Electric), Michael Rausher (Mihasi, Inc., Sanko Co., Tomen), Mark Ross (Asahi Seiko, Minamiguchi, Nichimen, Nichinan Sangyo, Nihon K.J., Shima Trading, Sumitomo, Toei Buhin), Thomas Schauer (Matsuo Bearing Co., Nippon Thompson Co., Phoenix International, THK Co., Tsubakimoto PP), or Richard Rimlinger.

Singapore

Michael Rausher (NMB/Pelmec) or Richard Rimlinger.

Sweden

Matthew Rosenbaum (SKF) or Michael Rill.

Thailand

Michael Rausher (NMB/Pelmec) or Richard Rimlinger.

United Kingdom

Hermes Pinilla (Barden/FAG, Normalair-Garrett, NSK/RHP), or Michael Rill.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On May 15, 1989, the Department published in the Federal Register (54 FR 20909) the antidumping duty orders on ball bearings (BBs), cylindrical roller bearings (CRBs), and spherical plain bearings (SPBs) and parts thereof from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom. Specifically, these orders cover BBs, CRBs, and SPBs from France, Germany, and Japan; BBs and CRBs from Sweden and the U.K.; and BBs from Singapore and Thailand. On June 22, 1994, and July 15, 1994, in accordance with 19 C.F.R. 353.22(c), we initiated administrative reviews of those orders for the period May 1, 1993, through April 30, 1994 (59 FR 32180 and 59 FR 36160). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), and constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these

products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

3. *Spherical Plain Bearings and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a further discussion of the scope of the orders being reviewed, including recent scope determinations, see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (February 28, 1995). The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
FRANCE	
AVIAC	All.
Franke & Heydrich KG	BBs.
Hoesch Rothe Erde AG	BBs.
INA Roulements S.A	All.
Rollix Defontaine, S.A	BBs.
SKF (including all relevant affiliates).	All.
SNFA	BBs, CRBs.
Societe Nouvelle Roulements (SNR).	BBs, CRBs.
TECNOFAN	All.
GERMANY	
Cross-Trade GmbH	All.
Delta Export GmbH	All.
EXTA Aussenhandel GmbH	All.
FAG Kugelfischer Georg Schaefer KGaA (FAG).	All.
Fichtel & Sachs AG	BBs.
Franke & Heydrich KG	BBs.
Hepa Walzlager GmbH	All.
Hoesch Rothe Erde AG	BBs.
INA Walzlager Schaeffler KG (INA).	All.
NTN Kugellagerfabrik (Deutschland) GmbH (NTN).	BBs.
Rollix & Defontaine, S.A	BBs.
Schaumloffel Technia GmbH	All.
SKF GmbH	All.
SNR Roulements	BBs, CRBs.
JAPAN	
Asahi Seiko	All.
Godo Kogyo Co. Ltd	All.
I & OC of Japan Co. Ltd	All.
ITOCHU	All.
Izumoto Seiko Co., Ltd	All.
Kongo Colmet Mfg. Co., Ltd	All.
Koyo Seiko Co., Ltd	All.
Marubeni	All.
Matsuo Bearing Co., Ltd	All.
Mihasi, Inc	All.
Minamiguchi Bearing Mfg. Co	All.
Nachi-Fujikoshi Corp.	BBs, CRBs.
Naniwa Kogyo Co., Ltd	All.
Nankai Seiko Co., Ltd	All.
Nichinan Sangyo Co., Ltd	All.
Nichimen	All.
Nihon K.J	All.
Nippon Pillow Block Sales Company, Ltd (NPBS).	BBs.
NSK Ltd (formerly Nippon Seiko K.K.).	All.
Nippon Thompson Co., Ltd	All.
Nissho-Iwai	All.
NTN Corp.	All.
Origin Electric Co., Ltd	All.
Sanken Trading Co., Ltd	All.
Sanko Co., Ltd	All.
Santest Co., Ltd	All.
Taikoyo Sangyo Co., Ltd	All.
Takeshita Seiko Co., Ltd	BBs.
THK Co., Ltd	All.
Toei Buhin Co., Ltd	All.
TOK Bearing Co., Ltd	All.
Tomen	All.
Tsubakimoto Precision Products Co., Ltd. (Tsubakimoto).	BBs.
SINGAPORE	
NMB Singapore Ltd./Pelmec Ind. (Pte.) Ltd. (NMB/Pelmec).	BBs.
SWEEDEN	
SKF Sverige BBs,	CRBs.
THAILAND	
NMB Thai Ltd./Pelmec Thai Ltd. (NMB/Pelmec).	BBs.
UNITED KINGDOM	
Barden Corp	BBs, CRBs.
FAG (U.K.) Ltd	BBs, CRBs.
NSK Bearings Europe, Ltd./RHP Bearings.	BBs, CRBs.

Subsequent to the publication of our initiation notice, we received timely withdrawals of all review requests for ABG–SEMCA (France), BMW (Germany), Fujino Iron Works (Japan) and Normalair-Garrett (U.K.), and for Tsubakimoto Precision Products Co., Ltd. (Japan) with respect to CRBs and SPBs only. Because there were no other requests for review of these companies from any other interested parties, we are terminating the reviews with respect to these companies in accordance with 19 CFR 353.22(a)(5).

In addition, we initiated reviews for Mitsubishi, Mitsui, Phoenix International, Shima Trading and Sumitomo with respect to subject merchandise from Japan. Subsequent to initiation, however, all five firms informed us that although they are resellers of Japanese-made bearings, all of their suppliers had knowledge at the time of sale that the merchandise was destined for the United States. Consequently, these firms are not resellers as defined in 19 CFR 353.2(s) because their sales cannot be used to calculate the U.S. price. Therefore, we are preliminarily terminating the reviews with respect to Mitsubishi, Mitsui, Phoenix International, Shima Trading and Sumitomo.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of the best information available (BIA) is appropriate for certain firms. Section 353.37(b) of our regulations provides that we may take into account whether a party refuses to provide information in determining what is the best information available. For purposes of these reviews and in accordance with our practice, we have used the most adverse BIA—generally the highest rate for any company for the class or kind of merchandise from the same country from this or any prior segment of the proceeding, including the less-than-fair-value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. When a

company substantially cooperated with our requests for information, but failed to provide all information requested in a timely manner or in the form requested, we used as BIA the higher of (1) the highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the class or kind of merchandise from the same country (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39728 (July 26, 1993), and *Empresa Nacional Siderurgica* v. *United States,* Slip Op. 95–33 (CIT March 6, 1995)).

Cross-Trade GmbH, INA France, Naniwa Kogyo, Nichimen, Nissho Iwai, Origin Electric, Sanken Trading, SNFA, Taikoyo Sangyo, THK Co., TOK Bearing Co., and Tomen failed to respond to the Department's questionnaire. Therefore, we have applied first-tier BIA, which is the highest rate ever found for each relevant class or kind of merchandise and country of origin.

Furthermore, Asahi Seiko provided only invoices with respect to SPBs and Nippon Thompson failed to provide information on its sales of CRBs. Therefore, both firms received the highest rate ever found for these classes or kinds of merchandise from Japan.

Minamiguchi provided a response to Section A of the Department's questionnaire. However, the company was notified through a deficiency letter that the questionnaire response was improperly filed. In response, Minamiguchi requested Japanese translations of all documents that the Department served it. That request was rejected and the company did not make any further attempts to respond to the Department's deficiency letter, nor did the company respond to any other sections of the Department's questionnaire. Therefore, we determined them to be uncooperative and have applied first-tier BIA, which is the highest rate ever found for each relevant class or kind of merchandise from Japan (for more information on the use of BIA for Japanese companies, see the November 29, 1995, Decision memo).

Finally, NPBS and INA Germany cooperated fully with our requests for information and agreed to undergo verification. However, at verification, we discovered that both firms had failed to report relevant sales and expense data or could not adequately substantiate important information.

With respect to NPBS, the Department was not satisfied with the completeness of the home market database. Specifically, NPBS failed to report certain sales in its home market sales database, including sales to its largest customer for a 12-month period. Also, NPBS failed to properly report quantity adjustments for selected sales. Moreover, the Department was not satisfied with the completeness of the U.S. database. Specifically, NPBS failed to explain why it did not include certain sales in its U.S. sales database. There were additional discrepancies regarding adjustments to sales price. Specifically, NPBS failed to include all loans in its calculation of short-term interest rate in the home market. Finally, NPBS failed to report several categories of freight expenses related to sales in the United States (Verification reports on NPBS, March 22, 1995, and March 24, 1995).

With respect to INA, the Department was not satisfied that INA had reported completely and accurately all of its U.S. sales. At verification, INA was not able to reconcile its financial statements to the response, nor was INA able to support the accuracy of sales of subject merchandise reported during the POR (Verification Report on INA Bearing Company, June 15, 1995). Furthermore, INA could not explain why a sale of subject merchandise was not reported in its response. While the Department was not able to verify that INA reported all of its sales of subject merchandise, INA did cooperate with the Department's requests for information and agreed to undergo verification. As a result, the Department is assigning a second-tier BIA rate to INA (Use of Best Information Available memo, May 22, 1995).

Since both firms attempted to cooperate, we have applied second-tier BIA, which is their highest previous rates, in this case the ''all others'' rate from the LTFV investigation for NPBS (BBs) and INA Germany (CRBs). For BBs for INA Germany, the highest rate ever calculated was for the second review (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992)).

Intent To Revoke

NMB/Pelmec submitted a request, in accordance with 19 C.F.R. 353.25(b), to revoke the order covering ball bearings from Thailand with respect to NMB/Pelmec's sales of this merchandise.

In accordance with 19 C.F.R. 353.25(a)(2)(iii), this request was accompanied by certifications from the firm that it had not sold the relevant class or kind of merchandise at less than FMV for a three-year period including this review period, and would not do so in the future. NMB/Pelmec also agreed to its immediate reinstatement in the relevant antidumping order, as long as any firm is subject to this order, if the Department concludes under 19 C.F.R. 353.22(f) that, subsequent to revocation, it sold the subject merchandise at less than FMV.

In the two prior reviews of this order, we determined that NMB/Pelmec did not sell BBs from Thailand at less than FMV. The Department conducted a verification of NMB/Pelmec's response for this period of review. In this review, we preliminarily determine that NMB/Pelmec has not sold BBs at less than FMV, which will satisfy the three-year period of no sales at less than FMV. Therefore, we intend to revoke the order with respect BBs from Thailand, based on our preliminary determination that NMB/Pelmec is the only known producer of BBs, if these preliminary findings are affirmed in our final results.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2,000 ESP sales transactions to the United States for a particular class or kind of merchandise, we reviewed ESP sales which occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included June 27–July 3, 1993, July 4–10, 1993, October 10–16, 1993, November 7–13, 1993, February 13–19, 1994, and April 24–30, 1994. We reviewed all PP sales transactions during the POR because there were few PP sales.

USP was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for movement expenses, discounts, and rebates.

We made additional deductions from ESP for direct selling expenses, indirect selling expenses, and repacking in the United States.

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States,* CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States,* 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States,* 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude the Department from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.,* assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct the Department to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to U.S. price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

With respect to subject merchandise to which value was added in the United States prior to sale to unrelated U.S. customers, *e.g.,* parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters, we deducted any increased value in accordance with section 772(e)(3) of the Tariff Act.

Those bearings which are otherwise subject to the order that are imported into the United States and incorporated into nonbearing products by or for the exporter, and which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States are not subject to the assessment of antidumping duties (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31694 (July 11, 1991) (AFBs I)). In Roller Chain, Other Than Bicycle, from Japan 48 FR 51801 (November 14, 1983), roller chain, which was subject to an antidumping duty finding, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first products sold by the exporter to unrelated purchasers in the United States. Because the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain. The Department, therefore, did not assess antidumping duties on these transactions. We have applied this same principle to these reviews.

Foreign Market Value

The home markets were viable for all companies and all classes or kinds of merchandise pursuant to 19 C.F.R. 353.48. The Department used home market prices or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV).

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. When a firm had more than 2,000 home market sales transactions for a particular class or kind of merchandise, we used sales from sample months that corresponded to the sample weeks selected for U.S. sales sampling plus one contemporaneous month prior to the POR and one following the POR. The sample months included April, June, July, October, and November of 1993, and February, April, and May of 1994.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV in administrative reviews. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of each respondent's home market sales on an annual basis. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test.

We first compared each monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (*i.e.,* was within plus or minus 10 percent) from the monthly weighted-average prices. We did this for each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time

for the home market sales. Where the absolute value of the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, *i.e.,* that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kinds that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

Home market prices were based on the packed, ex-factory or delivered prices to related or unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in cost attributable to differences in physical characteristics of the merchandise pursuant to 773(a)(4)(C) of the Tariff Act, and differences in packing. We also made adjustments for differences in circumstances of sale in accordance with 19 CFR 353.56. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses. For comparisons to both ESP and PP sales, we adjusted FMV for taxes consistent with our change in practice as stated above.

We used sales to related customers only where we determined such sales were made at arm's-length prices, *i.e.,* at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

Where we found home market sales below the cost of production in prior administrative reviews, we concluded that reasonable grounds exist to believe or suspect that home market sales during the POR were made at prices below the cost of production, and we initiated cost investigations.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales were made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of a particular model were at prices below the cost of production, we found that there were not substantial quantities of that model sold below cost and did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent, of the home market sales of a particular model were determined to be below cost, we determined that substantial quantities of that model were sold below cost and excluded the below-cost home market sales from our calculation of FMV, provided that these below-cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model from our calculation of FMV and used CV (see Polyethylene Terephthalate Film, Sheet, and Strip from Korea, 56 FR 16306 (1991)).

To determine if sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost had occurred for a particular model to the number of months in which the model was sold. If the model was sold in three or fewer months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost of that model in each month. If a model was sold in more than three months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost in at least three of the months in which the model was sold (see Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 58 FR 64729 (December 9, 1993)).

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted ''recovery of all costs within a reasonable period of time in the normal course of trade'' within the meaning of section 773(b)(2) of the Tariff Act, we were unable to conclude that the costs of production of such sales were recovered within a reasonable period of time. As a result, we disregarded below-cost sales when the conditions described above were met.

In accordance with sections 773(a)(1) and 773(b)(2) of the Tariff Act, we used CV as the basis for FMV when there were no usable sales of such or similar merchandise for comparison.

We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit, and packing. To calculate CV we used: (1) Actual general expenses or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV in accordance with 19 C.F.R. 353.56 for differences in circumstances of sale. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations. For comparisons involving ESP transactions, we made further deductions from CV for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 C.F.R. 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins (in percent) for the period May 1, 1993, through April 30, 1994 to be:

Company	BBs	CRBs	SPBs
FRANCE			
AVIAC	5.18	(2)	(2)
Franke & Heydrich	[1] 66.42	(3)	(3)
Hoesch Rothe Erde	(2)	(3)	(3)
INA	66.42	18.37	42.79
Rollix Defontaine	(2)	(3)	(3)
SKF	3.77	(2)	19.33
SNFA	66.42	18.37	(3)
SNR	0.73	2.08	(3)
TECNOFAN	14.59	(2)	(2)
GERMANY			
Cross-Trade GmbH	132.25	76.27	118.98
Delta Export GmbH	(2)	(2)	(2)

Company	BBs	CRBs	SPBs
EXTA Aussenhandel GmbH	68.89	55.65	114.52
FAG	12.47	10.79	2.09
Fichtel & Sachs	19.60	(3)	(3)
Franke & Heydrich	[1] 132.25	(3)	(3)
Hepa Walzlager GmbH	(2)	(2)	(2)
Hoesch Rothe Erde	(2)	(3)	(3)
INA	31.29	52.43	(2)
NTN	12.57	(3)	(3)
Rollix & Defontaine	(2)	(3)	(3)
Schaumloffel Technik GmbH	(2)	(2)	(2)
SKF	38.18	16.61	16.03
SNR	4.44	6.05	(3)
JAPAN			
Asahi Seiko	1.60	(2)	92.00
Godo Kogyo	(2)	(2)	(2)
I & OC	(2)	(2)	(2)
ITOCHU	(2)	(2)	(2)
Izumoto Seiko	2.28	(2)	(2)
Kongo Colmet	(2)	(2)	(2)
Koyo Seiko	14.89	6.53	[1] 0.00
Marubeni	(2)	(2)	(2)
Matsuo Bearing	(2)	(2)	(2)
Mihasi	(2)	(2)	(2)
Minamiguchi Bearing	106.61	51.82	92.00
Nachi-Fujikoshi	13.79	9.72	(3)
Naniwa Kogyo	106.61	51.82	92.00
Nankai Seiko	18.46	(2)	(2)
Nichinan Sangyo	(2)	(2)	(2)
Nichimen	106.61	51.82	92.00
Nihon K.J.	(2)	(2)	(2)
NPBS	45.83	(3)	(3)
NSK Ltd.	20.39	16.27	(2)
Nippon Thompson	10.16	51.82	59.63
Nissho-Iwai	106.61	51.82	92.00
NTN	13.69	12.78	35.43
Origin Electric	106.61	51.82	92.00
Sanken Trading	106.61	51.82	92.00
Sanko	(2)	(2)	(2)
Santest	(2)	(2)	(2)
Taikoyo Sangyo	106.61	51.82	92.00
Takeshita Seiko	0.89	(3)	(3)
THK	106.61	51.82	92.00
Toei Buhin	(2)	(2)	(2)
TOK Bearing	106.61	51.82	92.00
Tomen	106.61	51.82	92.00
Tsubakimoto	7.77	(3)	(3)
SINGAPORE			
NMB/Pelmec	4.32	(3)	(3)
SWEDEN			
SKF	33.74	24.51	(3)
THAILAND			
NMB/Pelmec	0.18	(3)	(3)
UNITED KINGDOM			
Barden/FAG	1.49	[1] 8.22	(3)
NSK/RHP	17.26	19.36	(3)

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.

[3] No review requested.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held in accordance with the following schedule and at the indicated locations in the main Commerce building:

	Date	Time	Room No.
General issues.	Jan. 22, 1996.	10 a.m.	1412
Thailand	Jan. 23, 1996.	10 a.m .	1412
Singapore	Jan. 23, 1996.	10 a.m .	1412
Germany	Jan. 23, 1996.	1 p.m	1412
Japan	Jan. 24, 1996.	10 a.m .	1412
United Kingdom.	Jan. 24, 1996.	1 p.m	1412
France	Jan. 25 1996.	10 a.m .	1412
Sweden	Jan. 25, 1996.	1 p.m	1412

Issues raised in hearings will be limited to those raised in the respective briefs or written comments, and rebuttal briefs or rebuttals to written comments. Briefs or written comments from interested parties, and rebuttal briefs or rebuttals to written comments, limited to the issues raised in the respective case briefs and comments, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or hearings.

Case	Briefs/comments due	Rebuttals due
General Issues.	Jan. 8, 1996	Jan. 15, 1996.
Thailand	Jan. 9, 1996	Jan. 17, 1996.
Singapore	Jan. 9, 1996	Jan. 17, 1996.
Germany	Jan. 9, 1996	Jan. 17, 1996.
Japan	Jan. 10, 1996.	Jan. 18, 1996.
U.K.	Jan. 10, 1996.	Jan. 18, 1996.
France	Jan. 11, 1996.	Jan. 19, 1996.
Sweden	Jan. 11, 1996.	Jan. 19, 1996.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents calculation of duties on an entry-by-entry basis, we will calculate an importer-specific *ad valorem* duty assessment rate for each class or kind of merchandise based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the POR.)

In some cases, such as PP situations, the respondent does not know the entered value of the merchandise. Then, we will either calculate an approximate entered value or we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the POR. See *AFBs I* at 31694. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews (except that no deposit will be required for firms with zero or *de minimis* margins, i.*e.*, margins less than 0.5 percent); (2) for previously

reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate made effective by the final results of the LTFV. As noted in those previous final results, these rates are the ''all others'' rates from the relevant LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22(c)(5).

Dated: November 29, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–29889 Filed 12–6–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–008]

Color Television Receivers from the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On July 1, 1988, the Department of Commerce (the Department) published the final results of the third administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (Korea) (53 FR 24975). The review covered the period April 1, 1985, through March 31, 1986. On September 19, 1994, the Court of International Trade (CIT) issued an order (Slip Op. 94–146) remanding to the Department the final results of the third administrative review of Samsung Electronics Co., Ltd. (Samsung). On March 13, 1995, the CIT affirmed the Department's redetermination (Slip Op. 95–38). Since the CIT's ruling was not appealed, and the CIT's decision affirming our redetermination has therefore become final and conclusive, we are amending our final results of the third administrative review of the antidumping duty order on CTVs from Korea with respect to Samsung.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Scope of the Review

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheading is provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 1, 1985 through March 31, 1986.

Amended Final Results of Review

The CIT ordered the Department to: (1) Recalculate the value-added tax (VAT) adjustment according to its new methodology, (2) re-classify SYPM credit rebates as direct selling expenses, (3) reconsider our classification of warranty-related fees to outside service agents as indirect selling expenses, (4) reconsider the use of best information available (BIA) to determine freight allowance discounts, and (5) reconsider the adjustment for free merchandise and parts. As a result of our recalculations, we have determined that the following percentage weighted-average margin exists for the period April 1, 1985 through March 31, 1986:

Manufacturer/exporter	Percent margin
Samsung	0.27

Because the CIT's decision affirming our redetermination has become final and conclusive, the Department will order the immediate lifting of the suspension of liquidation and instruct the U.S. Customs Service to assess antidumping duties on entries subject to this review, as appropriate. Individual differences between foreign market value and U.S. price may vary from the percentage stated above. The Department will issue appraisement instructions concerning these entries directly to the U.S. Customs Service.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)(1994)) and 19 CFR 353.28(c).

Dated: November 21, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–29890 Filed 12–6–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–008]

Color Television Receivers From the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On November 14, 1986, the Department of Commerce (the Department) published the final results of the second administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (Korea) (51 FR 41365). The review covered the period April 25, 1984, through March 31, 1985. On September 16, 1994, the Court of International Trade (CIT) issued an

order (Slip Op. 94–144) remanding to the Department the final results of the second administrative review of Samsung Electronics Co., Ltd. (Samsung). On March 15, 1995, the CIT affirmed the Department's redetermination (Slip Op. 95–45). Since the CIT's ruling was not appealed, and the CIT's decision affirming our redetermination has therefore become final and conclusive, we are amending our final results of the second administrative review of the antidumping duty order on CTVs from Korea with respect to Samsung.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Scope of the Review

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheading is provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 25, 1984 through March 31, 1985.

Amended Final Results of Review

The CIT ordered the Department to: (1) Recalculate the value-added tax (VAT) adjustment according to its new methodology, (2) determine whether certain sales qualify as purchase price or exporter's sale price (ESP) transactions, and (3) adjust ESP for commissions and indirect selling expenses. As to Samsung's claimed circumstance-of-sale (COS) adjustments to foreign market value (FMV), the Department was directed to: (1) re-classify SYPM credit rebates and volume rebates as direct selling expenses, and (2) reconsider the classification of replacement parts and forwarding charges. The CIT also instructed the Department to correct clerical errors in its computer program. As a result of our recalculations, we have determined that the following percentage weighted-average margin exists for the period April 25, 1984 through March 31, 1985:

Manufacturer/exporter	Percent margin
Samsung	1.18

Because the CIT's decision affirming our redetermination has become final and conclusive, the Department will order the immediate lifting of the suspension of liquidation and instruct the U.S. Customs Service to assess antidumping duties on entries subject to this review, as appropriate. Individual differences between foreign market value and U.S. price may vary from the percentage stated above. The Department will issue appraisement instructions concerning these entries directly to the U.S. Customs Service.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)(1994)) and 19 CFR 353.28(c).

Dated: November 21, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–29891 Filed 12–6–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–008]

Color Television Receivers from the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On June 27, 1990, the Department of Commerce (the Department) published the final results of the fourth administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (Korea) (55 FR 26225). The review covered the period April 1, 1986, through March 31, 1987. On September 21, 1994, the Court of International Trade (CIT) remanded to the Department for redetermination the final results of the fourth administrative review of Samsung Electronics Co., Ltd. (Samsung) (Slip Op. 94–148). On January 30, 1995, the Department submitted to the CIT the final results of redetermination. On March 15, 1995, the CIT issued a second order (Slip Op. 95–46) remanding to the Department the January 30, 1995, final results of redetermination. On April 14, 1995, the Department submitted a second final results of redetermination to the CIT. On May 31, 1995, the CIT affirmed the Department's second redetermination (Slip Op. 95–100). Since the CIT's ruling was not appealed, and the CIT's decision affirming our redetermination has therefore become final and conclusive, we are amending our final results of the fourth administrative review of the antidumping duty order on CTVs from Korea with respect to Samsung.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Scope of the Review

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheading is provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 1, 1986 through March 31, 1987.

Amended Final Results of Review

On September 21, 1994, the CIT ordered the Department to: (1) Recalculate the value-added tax (VAT) adjustment according to its new methodology, (2) treat bad debt expenses as direct selling expenses if the data warrant an adjustment, (3) reconsider its treatment of home market warranty expenses, (4) consider home market inventory carrying cost information, and (5) reconsider the imputation of expenses in determining the amount of value added for exporter's sales price (ESP) adjustment purposes.

On January 30, 1995, the Department submitted to the CIT the final results of redetermination of the fourth administrative review.

On March 15, 1995, the CIT issued a second order remanding to the Department the January 30, 1995, final results of redetermination. In its opinion, the CIT ordered the Department to treat home market warranty expenses as direct selling expenses for the purposes of the circumstance-of-sale adjustment. As a result of our recalculations, we have determined that the following percentage weighted-average margin exists for the period April 1, 1986 through March 31, 1987:

Manufacturer/exporter	Percent margin
Samsung	0.29

Because the CIT's decision affirming our redetermination has become final and conclusive, the Department will order the immediate lifting of the suspension of liquidation and instruct the U.S. Customs Service to assess antidumping duties on entries subject to this review, as appropriate. Individual differences between foreign market value and U.S. price may vary from the percentage stated above. The Department will issue appraisement instructions concerning these entries directly to the U.S. Customs Service.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)(1994)) and 19 CFR 353.28(c).

Dated: November 21, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–29892 Filed 12–6–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–008]

Color Television Receivers From the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On March 27, 1991, the Department of Commerce (the Department) published the final results of the fifth administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (Korea) (56 FR 12701). The review covered the period April 1, 1987, through March 31, 1988. On September 21, 1994, the Court of International Trade (CIT) remanded to the Department for redetermination the final results of the fifth administrative review of Samsung Electronics Co., Ltd. (Samsung)(Slip Op. 94–149). On January 30, 1995, the Department submitted to the CIT the final results of redetermination. On March 16, 1995, the CIT issued a second order (Slip Op. 95–48) remanding to the Department the January 30, 1995, final results of redetermination. On April 14, 1995, the Department submitted a second final results of redetermination to the CIT. On May 31, 1995, the CIT affirmed the Department's second redetermination (Slip Op. 95–101). Since the CIT's ruling was not appealed, and the CIT's decision affirming our redetermination has therefore become final and conclusive, we are amending our final results of the fifth administrative review of the antidumping duty order on CTVs from Korea with respect to Samsung.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Scope of the Review

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheading is provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 1, 1987 through March 31, 1988.

Amended Final Results of Review

On September 21, 1994, the CIT ordered the Department to: (1) Recalculate the value added tax (VAT) adjustment according to its new methodology, (2) treat bad debt as a direct selling expense if sufficient data exists, (3) reconsider its treatment of home market warranty expenses, and (4) reconsider the classification of forwarding expenses. On January 30, 1995, the Department submitted to the CIT the final results of redetermination of the fifth administrative review.

On March 16, 1995, the CIT issued a second order remanding to the Department the January 30, 1995, final results of redetermination. In its opinion, the CIT ordered the Department to treat home market warranty expenses as direct selling expenses for the purposes of the circumstance-of-sale adjustment. As a result of our recalculations, we have determined that the following percentage weighted-average margin exists for the period April 1, 1987 through March 31, 1988:

Manufacturer/exporter	Percent margin
Samsung	0.10

Because the CIT's decision affirming our redetermination has become final and conclusive, the Department will order the immediate lifting of the suspension of liquidation and instruct the U.S. Customs Service to assess antidumping duties on entries subject to this review, as appropriate. Individual differences between foreign market value and U.S. price may vary from the percentage stated above. The Department will issue appraisement instructions concerning these entries directly to the U.S. Customs Service.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)(1994)) and 19 CFR 353.28(c).

Dated: November 21, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–29893 Filed 12–6–95; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Solicitation of Business Development Center Applications for Oklahoma City and San Diego

AGENCY: Minority Business Development Agency, Commerce.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate the Minority Business Development Center (MBDC) listed in this document.

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Proper Identification Is Required for Entrance Into Any Federal Building

DATES: The closing date for applications for each MBDC is listed below:

ADDRESSES: Completed application packages should be submitted on or before the closing date to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The following are MBDCs for which applications are solicited:

1. *MBDC Application:* Oklahoma City.

Metropolitan Area Serviced: Oklahoma City, Oklahoma.

Award Number: 06–10–96001–01.

Closing Date for Applications: January 8, 1996.

For Further Information and an Application Package, Contact: Demetrice Jenkins, (214) 767–8001.

Pre-APPLICATION Conference: December 22, 1995, at 10:00 a.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

Cost of Performance Information: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from April 1, 1996 to April 30, 1997, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

2. *MBDC Application:* San Diego.

Metropolitan Area Serviced: San Diego, California.

Award Number: 09–10–96003–01.

Closing Date for Applications: January 8, 1996.

For Further Information and An Application Package, Contact: Steven Saho, (415) 744–3001.

Pre-Application Conference: December 28, 1995—call the San Francisco Regional Office for time and location:(415) 744–3001.

Cost of Performance Information: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from April 1, 1996 to April 30, 1997, is estimated at $333,125. The total Federal amount is $283,156 and is composed of $276,250 plus the Audit Fee amount of $6,906. The application must include a minimum cost share of 15%, $49,969 in non-federal (cost-sharing) contributions for a total project cost of $333,125. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

Standard Paragraphs—The following information and requirements are applicable to the above-listed MBDCs.

The funding instrument for this project will be a cooperative agreement. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management

and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 26.105) are subject to 15 CFR Part 26,

''Nonprocurement Debarment and Suspension—and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, § 26.605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF-LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center (Catalog of Federal Domestic Assistance)

Dated: December 1, 1995.

Donald L. Powers

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–29885 Filed 12–06–95; 8:45 am]

BILLING CODE 3510–21–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

December 1, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 4, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryforward, carryover and special swing.

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 17332, 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

December 1, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on December 4, 1995, you are directed to amend the March 30, 1995 directive to adjust the limits for the following categories, as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
336/636	429,346 dozen.
338/339	1,083,807 dozen.
340/640	1,254,819 dozen.
341/641	1,243,498 dozen of which not more than 521,158 dozen shall be in Category 341.
347/348	471,623 dozen.
350/650	104,018 dozen.
351/651	254,028 dozen.
445/446	33,945 dozen.
638/639	429,759 dozen.
645/646	214,277 dozen.
647/648	1,384,138 dozen of which not more than 1,011,957 dozen shall be in Category 647–K [2] and not more than 1,011,957 dozen shall be in Category 648–K [3].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20,.1060 and 6113.00.9044.

[3] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

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. 95–29886 Filed 12–06–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Assumption of Lead Responsibility for an Environmental Impact Statement Evaluating Container Systems for the Management of Spent Nuclear Fuel

SUMMARY: The Department of the Navy (Navy) announces its plan to assume lead responsibility for preparation of an Environmental Impact Statement (EIS) evaluating container systems for the management of naval spent nuclear fuel. This EIS (previously titled Environmental Impact Statement for a Multi-Purpose Canister System for Management of Civilian and Naval Spent Nuclear Fuel) was being prepared by the Department of Energy (DOE), with the Navy participating as a cooperating agency, pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, in accordance with the Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508). DOE is halting its proposal to fabricate and deploy a multi-purpose canister based system and the Office of Civilian Radioactive Waste Management will cease preparation of the multi-purpose canister EIS which was to include both civilian and naval spent nuclear fuel. DOE will be a cooperating agency in the preparation of the EIS for naval spent nuclear fuel.

SUPPLEMENTARY INFORMATION: On October 24, 1994, the DOE published in the Federal Register (59 FR 53442) a Notice of Intent to prepare an EIS for a multi-purpose canister system for the management of civilian spent nuclear fuel. Under the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101 *et seq.*), DOE is responsible for disposal of civilian spent nuclear fuel and high-level radioactive waste in a geologic repository. DOE is also responsible for any monitored retrievable storage prior to disposal, and transportation of civilian spent nuclear fuel in connection with disposal or storage. As part of carrying out these responsibilities, DOE was in the process of evaluating in an EIS the environmental impacts of fabricating and deploying a standardized container system to enable storage, transportation, and possible disposal of spent nuclear fuel.

During the scoping process for the multi-purpose canister EIS, the scope of the EIS was broadened, based on a comment by the Navy, to include naval spent nuclear fuel. In addition to its responsibility for civilian spent nuclear fuel, the DOE is also responsible for the management of spent nuclear fuel derived from atomic energy defense activities, including that from the Naval Nuclear Propulsion Program (42 U.S.C. 2121(a)(3)). Since naval spent nuclear fuel is rugged, well characterized, and compatible with standardized container system technology, DOE determined that naval spent fuel should be included in the EIS. This determination was announced in the Implementation Plan issued by DOE in August 1995 under DOE's NEPA regulations. The availability of the Implementation Plan was announced in the Federal Register on August 30, 1995 (60 FR 45147).

DOE has advised the Navy that because of insufficient funding in Congress' recent fiscal year 1996 appropriation to the DOE Office of Civilian Radioactive Waste Management, DOE at the present time is halting its proposal to fabricate and deploy a multi-purpose canister based system. As a result, DOE will cease preparation of the Environmental Impact Statement for a Multi-Purpose Canister System for Management of Civilian and Naval Spent Nuclear Fuel.

The Navy has decided that it will proceed with that part of the multi-purpose canister EIS covering naval spent nuclear fuel. This will be done by the Navy becoming the lead agency for the EIS. DOE will participate as a cooperating agency since naval spent nuclear fuel is managed at DOE facilities. Unlike civilian spent nuclear fuel which is stored in plants throughout the country, all naval spent nuclear fuel, after removal from the reactor, is shipped to one place, the Idaho National Engineering Laboratory (INEL), for examination and temporary storage as set forth in the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement and in the associated Record of Decision issued June 1, 1995. Therefore, the container system EIS evaluations for the storage and transportation of naval spent nuclear fuel at INEL will make use of information specific to that location.

The range of alternatives being considered in the EIS will not change. Thus, the EIS does not need to go through another scoping process as a result of only covering naval spent nuclear fuel. The six container system alternatives being considered are:

(1) No-Action Alternative—Use of existing technology to handle, store, and subsequently transport naval spent nuclear fuel to a geologic repository using the M–140 transportation cask. Prior to shipment to a repository, naval spent nuclear fuel would be stored at INEL in water pools or dry containers, then loaded into M–140 transportation casks. At the repository, the naval spent fuel would be unloaded from the M–140 transportation casks and placed in a geologic repository's surface facilities for loading into disposal containers. Following unloading, the M–140 transportation casks would be returned to INEL for reuse.

(2) Multi-Purpose Canister Alternative—Use of 125-ton multi-purpose canisters currently being designed under a DOE contract for storage, transportation, and disposal of naval spent nuclear fuel, without repackaging or further handling of bare spent nuclear fuel. In addition to the sealed metal canisters, specialized casks or overpacks would be required for different stages of the process, such as intra-site transfer, dry storage, inter-site transportation, and disposal.

(3) Current Technology/ Supplemented by High Capacity Rail Alternative—Use of existing M–140 transportation casks, but with redesigned internal structures to accommodate a larger amount of naval spent nuclear fuel per cask, thus reducing the total number of shipments required.

(4) Transportable Storage Cask Alternative—Use of existing, commercially available casks for storage at INEL and shipment of naval spent nuclear fuel to a geologic repository. At the repository, the naval spent fuel would be unloaded from the casks and placed in a geologic repository's surface facilities for loading into disposal containers. The unloaded transportable storage casks could be returned to INEL for further storage and transport.

(5) Dual-Purpose Canister Alternative—Use of an existing, commercially available canister and overpack system for storage at INEL and shipment of naval spent nuclear fuel to a geologic repository. At the repository, the naval spent fuel would be unloaded from the canisters and placed in a geologic repository's surface facilities for loading into disposal containers.

(6) Small Multi-Purpose Canister Alternative—Use of smaller, 75-ton, multi-purpose canisters currently being designed under a DOE contract rather than the 125-ton multi-purpose canisters.

The Draft EIS will not contain a preferred alternative. Instead, the Navy will use public comments on the Draft EIS to help identify a preferred alternative for the Final EIS. Consistent with this approach, the subject EIS is being renamed as ''The Department of the Navy Environmental Impact Statement for a Container System for the Management of Naval Spent Nuclear Fuel.''

DATES: The Navy plans to issue the Draft EIS by about April 30, 1996. Issuance of the Draft EIS will be announced in the Federal Register. A 45 day comment period will be provided following issuance of the Draft EIS. Public hearings will be held during the 45 day comment period. The locations and dates of these public hearings will be announced in the Federal Register when the Draft EIS is issued. The Navy plans to issue the final EIS by November 30, 1996, and plans to issue a Record of Decision by December 31, 1996.

ADDRESSES: To receive a copy of the Draft EIS, please provide your address to: Argonne National Laboratory, EAD, Building 900, Mail Stop 1, 9700 South Cass Avenue, Argonne, IL 60439, ATTN: Naval Spent Fuel Container System EIS.

FOR FURTHER INFORMATION CONTACT: For further information on this EIS please contact: Mr. William Knoll of the Naval Nuclear Propulsion Program at Department of the Navy, Code NAVSEA 08U, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160, Telephone: 703–602–8229.

Dated: December 1, 1995.

B. DeMars,

Admiral, USN, Director, Naval Nuclear Propulsion Program.

[FR Doc. 95–29862 Filed 12–6–95; 8:45 am]

BILLING CODE 3810–FF–P

Notice of Availability of Inventions for Licensing; Government Owned Inventions

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. Requests for copies of the patent applications cited should be directed to the Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217- 5660 and must include the application serial number or Navy case Number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR, OOCC, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696- 4001.

Patent Application Serial No. 08/342,451: MOBILE SAFETY STRUCTURE FOR CONTAINMENT AND HANDLING OF HAZARDOUS MATERIALS; filed November 14, 1994;

Patent Application Serial No. 08/514/888: AMMUNITION CARTRIDGE WITH REDUCED PROPELLANT CHARGE; filed August 14, 1995;

Patent Application Serial No. 08/514/570: COMBINATION PIN FOR ATTACHING TRIGGER ASSEMBLY AND SAFING SMALL ARM: filed August 14, 1995;

Patent Application Serial No. 08/514,576: SINGLE SPRING BOLT LOCK AND CARTRIDGE EJECTOR; filed August 14, 1995;

Patent Application Serial No. 08/514,573: SPOTTING ROUND BORE ALIGNMENT MECHANISM FOR ROCKET LAUNCHER; filed August 14, 1995;

Patent Application Serial No. 08/514,883: SINGLE TRIGGER DUAL FIRING MECHANISM; filed August 14, 1995;

Patent Application Serial No. 08/514,884: BREECH BOLT AND LOCK ASSEMBLY; filed August 14, 1995;

Patent Application Serial No. 08/514,885: COMBINATION OPTICAL AND IRON SIGHT SYSTEM FOR ROCKET LAUNCHER; filed August 14, 1995;

Design Patent Application Serial No. 29/042,682: IMPROVED SHOULDER-FIRED WEAPON; filed August 14, 1995;

Patent Application Serial No. 08/514,575: SHOULDER-LAUNCHED MULTIPLE-PURPOSE ASSAULT WEAPON; filed August 14, 1995;

Patent Application Serial No. 08/375,997: LIQUID CRYSTAL COMPOSITION AND ALIGNMENT LAYER; filed January 20, 1995; and

Patent Application entitled: QUANTITATIVE MOBILITY SPECTRUM ANALYSIS OF MAGNETIC FIELD-DEPENDENT HALL AND RESISTIVITY DATA; filed October 4, 1995, Navy Case No. 77,263.

Dated: November 27, 1995.

M. A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–29863 Filed 12–6–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Education publishes this notice of an altered system of records (18–11–0026) for Debarment and Suspension Proceedings under Executive Order 12549 and the Drug-Free Workplace Act and the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4. The purpose of this notice is to notify the public of an expansion in scope of the system of records managed by the Grants and Contracts Service (GCS) to include procurement, as well as nonprocurement and Drug-Free Workplace Act actions. Currently, the Grants and Contracts Service maintains records regarding debarment and suspension proceedings against individuals who are involved in nonprocurement transactions related to programs administered by the Department. This notice also makes technical changes regarding the addition of a third system manager and system location, and also regarding the change of a system manager.

DATES: Comments on the routine uses in this system of records, as applied to individuals debarred and suspended under the Federal Acquisition Regulation, 48 CFR part 9, subpart 9.4, must be submitted by January 8, 1996. The Department filed a report on the altered system of records with the Chairman of the House Committee on Government Reform and Oversight, the Chairman of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 4, 1995. This change will become effective after the 30 day period for OMB review which expires on January 3, 1996, unless OMB gives specific notice within the 30 days that the system is not approved for implementation or requests an additional 10 days for OMB review. The Department will publish any changes to the routine uses that result from the comments.

FOR FURTHER INFORMATION CONTACT: Cathy Girouard, Grants and Contracts Service, Office of the Chief Financial Officer, U.S. Department of Education, 600 Independence Avenue, SW (Room 3636, GSA Regional Office Building 3, 7th & D Streets, SW) Washington, DC 20202–5341. Telephone: (202) 708–8529. Individuals who use a telecommunication 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: On November 28, 1988, the Department of Education published in the Federal Register (53 FR 47855) a notice of a new system of records for Debarment and Suspension Proceedings Under Executive Order (E.O.) 12549. That notice was amended on January 22, 1990, to add an additional system manager (55 FR 2131); and amended again on March 7, 1990, to expand its scope to cover debarment and suspension proceedings under the Drug-Free Workplace Act (55 FR 8168).

The Privacy Act of 1974 requires the Department to publish in the Federal Register a notice of an altered system of records (See 5 U.S.C. 552a(e)(4)). This notice of an altered system of records notifies the public that the Department is expanding the scope of the system of records to include procurement, as well as nonprocurement and Drug-Free Workplace Act actions.

This notice also adds a third official authorized to maintain records regarding debarment and suspension proceedings against individuals and makes other technical changes.

The Office of Inspector General (OIG) is now responsible for proposing debarments and issuing suspensions if the action is against a certified public accountant (CPA) or CPA firm that audits, or is likely to audit, an educational institution receiving funds under a program administered by the Department of Education. As a result, the official in the Office of Inspector General who is responsible for issuing these notices is now responsible for maintaining records regarding these actions.

The Office of Postsecondary Education (OPE) continues to be responsible for initiating all debarment and suspension actions against institutions of higher education, lenders, and guarantee agencies and their principals. The OPE official responsible for maintaining records regarding OPE initiated actions (the system manager) is changed from the Assistant Secretary for Postsecondary Education to the Director, Compliance and Enforcement Division, Student Financial Assistance Programs, Office of Postsecondary Education.

The Grants and Contracts Service continues to be responsible under E.O. 12549 for initiating debarment/suspension actions against individuals who are involved in nonprocurement transactions related to programs administered by the Department and individuals who violate the Drug-Free Workplace Act. Grants and Contracts Service will also be responsible for maintaining records regarding actions under the Federal Acquisition Regulation (FAR), 48 CFR subpart 9.4—Debarment, Suspension, and Ineligibility.

Direct access to this system of records is restricted to authorized agency staff in the performance of their official duties.

The Chief Financial Officer has updated the routine uses for this system of records and seeks comments on the revised routine uses. However, to ensure clarity of purpose and as a service to the reader, this notice is being published in its entirety.

Dated: December 4, 1995.

Donald R. Wurtz,

Chief Financial Officer.

The Chief Financial Officer revises the system of records notice to read as follows:

18–11–0026

SYSTEM NAME:

Debarment and Suspension Proceedings under Executive Order (E.O.) 12549, the Drug-Free Workplace Act, and the Federal Acquisition Regulation

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

For records regarding actions under E.O. 12549 against individuals who are involved in nonprocurement transactions related to Department of Education programs, actions under the Drug-Free Workplace Act, and actions under the FAR 9.4: Grants and Contracts Service, Office of the Chief Financial Officer, U.S. Department of Education, 600 Independence Avenue, SW, (Room 3636, GSA Regional Office Building 3, 7th & D Streets, SW) Washington, DC 20202–4700.

For records regarding actions under E.O. 12549 against an individual certified public accountant or principals of a CPA firm: Planning, Analysis, and Management Services, Office of Inspector General, U.S. Department of Education, 600 Independence Avenue, SW, (Room 4022, Switzer Building, 330 C Street, SW) Washington, DC 20202–1510.

For records regarding actions under E.O. 12549 against principals of institutions of higher education,

principals of lenders, or principals of guarantee agencies: Compliance and Enforcement Division, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW, (Room 3916, GSA Regional Office Building 3, 7th & D Streets, SW) Washington, DC 20202–5341.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principals undergoing debarment or suspension proceedings and principals that have been debarred or suspended. Principals are officers, directors, owners, partners, key employees, or other persons who have a critical influence on or substantive control over a covered transaction, whether or not employed by a participant. A participant is any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. A covered transaction is described in the Department's regulations at 34 CFR 85.110(a)(1).

Individuals receiving grants subject to requirements under the Drug-Free Workplace Act.

Individual contractors undergoing debarment or suspension proceedings and contractors that have been debarred or suspended. Contractors covered by this system of records are individuals that directly or indirectly submit offers for or are awarded, or may reasonably be expected to submit offers for or be awarded, a government contract, or who conduct business, or may reasonably be expected to conduct business with the Department as an agent or representative of another contractor.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains documents including written referrals, communications between the Department and the respondent, intra-agency and inter-agency communications regarding proposed or completed debarments or suspensions, and a record of any findings from debarment or suspension proceedings against individuals under E.O. 12549, the Drug-Free Workplace Act, and the FAR 9.4.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12549, Debarment and Suspension; Sections 5151–5160 of the Drug-Free Workplace Act; and the Federal Acquisition Regulation, 48 CFR part 9, subpart 9.4, Debarment, Suspension, and Ineligibility; Public Law 103–355, sec. 2455.

PURPOSE(S):

Information contained in this system of records is used to protect the Federal Government from the actions prohibited under the Department of Education (ED) debarment and suspension regulations, Drug-Free Workplace regulations, and the FAR; make decisions regarding debarments and suspensions; and ensure that other Federal agencies give effect to debarment or suspension decisions rendered by ED.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department may disclose a record for the following purposes:

(a) *Litigation Disclosure.*

(1) In the event that one of the parties listed below is involved in litigation, or has an interest in litigation, ED may disclose certain records to the parties described in paragraphs (2), (3), and (4) of this routine use under the conditions specified in those paragraphs:

(i) ED, or any component of the Department; or

(ii) Any ED employee in his or her official capacity; or

(iii) Any employee of ED in his or her individual capacity where the Department of Justice has agreed to provide or arrange for representation for the employee; or

(iv) Any employee of ED in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where ED determines that the litigation is likely to affect the Department or any of its components.

(2) *Disclosure to the Department of Justice.* If ED determines that disclosure of certain records to the Department of Justice or attorneys engaged by the Department of Justice is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, ED may disclose those records as a routine use to the Department of Justice.

(3) *Administrative Disclosures.* If ED determines that disclosure of certain records to an adjudicative body before which ED is authorized to appear, individual or entity designated by ED or otherwise empowered to resolve disputes is relevant and necessary to the administrative litigation and is compatible with the purposes for which the records were collected, ED may disclose those records as a routine use to the adjudicative body, individual or entity.

(4) *Opposing counsels, representatives and witnesses.* If ED determines that disclosure of certain records to an opposing counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation and is compatible with the purpose for which the records were collected, ED may disclose those records as a routine use to the counsel, representative or witness.

(b) *Disclosure to the General Services Administration.* The Department makes information contained in this system of records available to the General Services Administration for inclusion in the *Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.*

(c) *Disclosure to the Public.* The Department provides information to persons inquiring about individuals who have been debarred or suspended by ED as necessary to enforce debarment and suspension actions.

(d) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, tribal, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or executive order or rule, regulation, or order issued pursuant thereto.

(e) *FOIA Advice Disclosure.* In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

(f) *Contract Disclosure.* If ED contracts with an entity for the purpose of performing any function that requires disclosure of records in this system to employees of the contractor, ED may disclose the records as a routine use to those employees. Before entering such a contract, ED shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(g) *Research Disclosure.* Where the appropriate official of ED determines that an individual or organization is qualified to carry out specific research, that official may disclose information from this system of records to that researcher solely for the purpose of carrying out that research. The researcher shall be required to maintain Privacy Act safeguards with respect to such records.

(h) *Congressional Member Disclosure.* ED may disclose information from this system of records to a congressional office from the record of an individual

in response to an inquiry from the Congressional office made at the written request of that individual; the Member's right to the information is no greater than the right of the individual who requested it.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders in locked file cabinets.

RETRIEVABILITY:

The records are indexed by the names of the individuals.

SAFEGUARDS:

All physical access to the site where this system of records is maintained is controlled and monitored by security personnel who check each individual entering the building for his or her employee badge. Files are kept in locked file cabinets. Immediate access to these records is restricted to authorized staff.

RETENTION AND DISPOSAL:

Pending disposal, Debarment and Suspension records are retained at the system location. The Department will retain and dispose of the records in accordance with General Records Schedule 22, item 2, which states that the cut-off date for Debarment and Suspension records is the end of the fiscal year in which the case is closed. The records are destroyed eight years after the cut-off date.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, SW, (Room 3600, GSA Regional Office Building 3, SW), Washington, DC 20202–0498.

Assistant Inspector General for Planning, Analysis, and Management Services, Office of Inspector General, U.S. Department of Education, 600 Independence Avenue, SW, (Room 4022, Switzer Building, 330 C Street, SW), Washington, DC 20202–1510.

Director, Compliance and Enforcement Division, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW (Room 3919, GSA Regional Office Building 3, SW), Washington, DC 20202–0498.

NOTIFICATION PROCEDURE:

If an individual wishes to determine whether a record exists regarding him or her in this system of records, the individual must provide the system manager his or her name, date of birth and social security number. Requests for notification about an individual record must meet the requirements of the Department of Education's Privacy Act regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

If an individual wishes to gain access to a record in this system, he or she must contact the system manager and provide information as described in the notification procedure. Requests for access to an individual's record must meet the requirements of the Department of Education's Privacy Act regulations at 34 CFR 5b.5. Consistent with 5 U.S.C. 552a(e)(5), ED retains the discretion not to disclose records to an individual during the course of a debarment or suspension proceeding against the individual.

CONTESTING RECORD PROCEDURES:

If an individual wishes to change the content of a record in the system of records, he or she must contact the system manager with the information described in the notification procedure, identify the specific item(s) to be changed, and provide a written justification for the change, including any supporting documentation. Requests to amend a record must meet the requirements of the Department of Education Privacy Act regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Department employees involved in the management of grants and contracts, and other organizations or persons that may have relevant information regarding participants and their principals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 95–29856 Filed 12–7 –95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. F–079]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Carrier Corporation

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–079) granting a Waiver to Carrier Corporation (Carrier) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Carrier's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9138.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Carrier has been granted a Waiver for its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These

test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Carrier filed a ''Petition for Waiver,'' dated June 28, 1995, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the Federal Register on August 23, 1995, Carrier's petition and solicited comments, data and information respecting the petition. 60 FR 43785, August 23, 1995. Carrier also filed an ''Application for Interim Waiver'' under section 430.27(g) which DOE granted on August 14, 1995. 60 FR 43785, August 23, 1995.

No comments were received concerning either the ''Petition for Waiver'' or the ''Interim Waiver.'' The Department consulted with The Federal Trade Commission (FTC) concerning the Carrier Petition. The FTC did not have any objections to the issuance of the waiver to Carrier.

Assertions and Determinations

Carrier's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Carrier requests the allowance to test using a 45-second blower time delay when testing its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces. Carrier states that since the 45-second delay is indicative of how these models actually operate and since such a delay results in an overall furnace AFUE improvement of approximately 0.6 percent point, the Petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Carrier indicates that it is unable to take advantage of any of these exceptions for its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces.

Since the blower controls incorporated on the Carrier furnaces are designed to impose a 45-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 45-second blower time delay when testing the Carrier 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces. Accordingly, with regard to testing the 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces, today's Decision and Order exempts Carrier from the existing provisions regarding blower controls and allows testing with the 45-second delay.

It is, therefore, ordered that:

(1) The ''Petition for Waiver'' filed by Carrier Corporation. (Case No. F–079) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Carrier Corporation, shall be permitted to test its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Carrier Corporation shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces manufactured by Carrier Corporation.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials

submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective November 29, 1995, this Waiver supersedes the Interim Waiver granted the

Carrier Corporation on August 14, 1995. 60 FR 43785, August 23, 1995 (Case No. F–079).

Issued In Washington, DC, on November 29, 1995.

Christine A. Ervin

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–29715 Filed 12–06–95; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–078]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to York International

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–078) granting a Waiver to York International (York) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting York's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its P2UR and PBLU lines of condensing furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, York has been granted a Waiver for its P2UR and PBLU lines of condensing furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order; Department of Energy, Office of Energy Efficiency and Renewable Energy

In the Matter of: York International.

[Case No. F–078]

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

York filed a ''Petition for Waiver,'' dated June 26, 1995, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the Federal Register on August 28,1995, York's petition and solicited comments, data and information respecting the petition. 60 FR 44481, August 28, 1995. York also filed an ''Application for Interim Waiver'' under section 430.27(g) which DOE granted on August 20, 1995. 60 FR 44481, August 28, 1995.

No comments were received concerning either the ''Petition for Waiver'' or the ''Interim Waiver.'' The Department consulted with The Federal Trade Commission (FTC) concerning the York Petition. The FTC did not have any objections to the issuance of the waiver to York.

Assertions and Determinations

York's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. York requests the allowance to test using a 30-second blower time delay when testing its P2UR, and PBLU lines of condensing furnaces. York states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an overall furnace AFUE improvement of approximately 1.5 percent points, the Petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. York indicates that it is unable to take advantage of any of these exceptions for its P2UR and PBLU lines of condensing furnaces.

Since the blower controls incorporated on the York furnaces are designed to impose a 30-second blower

delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the York P2UR and PBLU lines of condensing furnaces. Accordingly, with regard to testing the P2UR and PBLU lines of condensing furnaces, today's Decision and Order exempts York from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered That:

(1) The ''Petition for Waiver'' filed by York International. (Case No. F–078) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, York International, shall be permitted to test its P2UR and PBLU lines of condensing furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, York International shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the P2UR and PBLU lines of condensing furnaces manufactured by York International.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective November 29, 1995, this Waiver supersedes the Interim Waiver granted the York International on August 20, 1995. 60 FR 44481, August 28, 1995 (Case No. F–078).

Issued In Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–29716 Filed 12–6–95; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–080]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Trane Company

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–080) granting a Waiver to Trane Company (Trane) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Trane's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Trane has been granted a Waiver for its Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order; Department of Energy, Office of Energy Efficiency and Renewable Energy

In the Matter of: Trane Company.

[Case No. F–080]

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10

CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Trane filed a ''Petition for Waiver,'' dated August 11, 1995, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the Federal Register on October 13,1995, Trane's Petition and solicited comments, data and information respecting the Petition. 60 FR 53354, October 13, 1995. Trane also filed an ''Application for Interim Waiver'' under section 430.27(g), which DOE granted on September 28, 1995. 60 FR 53354, October 13, 1995.

No comments were received concerning either the ''Petition for Waiver'' or the ''Application for Interim Waiver.'' The Department consulted with The Federal Trade Commission (FTC) concerning the Trane Petition. The FTC did not have any objections to the issuance of the waiver to Trane.

Assertions and Determinations

Trane's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Trane requests the allowance to test using a 45-second blower time delay when testing its Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces. Trane states that since the 45-second delay is indicative of how these models actually operate and since such a delay results in an overall furnace AFUE improvement of approximately 1.0 percentage point, the Petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Trane indicates that it is unable to take advantage of any of these exceptions for its Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces.

Since the blower controls incorporated on the Trane furnaces are designed to impose a 45-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 45-second blower time delay when testing the Trane Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces. Accordingly, with regard to testing the Trane Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces, today's Decision and Order exempts Trane from the existing provisions regarding blower controls and allows testing with the 45-second delay.

It is, therefore, ordered That:

(1) The ''Petition for Waiver'' filed by Trane Company. (Case No. F–080) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Trane Company, shall be permitted to test its Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Trane Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V

central furnaces manufactured by Trane Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition is incorrect.

(5) Effective November 29, 1995, this Waiver supersedes the Interim Waiver granted the Trane Company on September 28, 1995. 60 FR 53354, October 13, 1995 (Case No. F–080).

Issued In Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–29717 Filed 12–6–95; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–081]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to York International

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–081) granting a Waiver to York International (York) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting York's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, York has been granted a Waiver for its D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order; Department of Energy, Office of Energy Efficiency and Renewable Energy

In the Matter of: York International.

[Case No. F–081]

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

York filed a ''Petition for Waiver,'' dated August 8, 1995, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the Federal Register on October 13, 1995, York's Petition and solicited comments, data and information respecting the Petition. 60 FR 53358, October 13, 1995. York also filed an ''Application for Interim Waiver'' under section 430.27(g) which DOE granted on September 28, 1995. 60 FR 53358, October 13, 1995.

No comments were received concerning either the ''Petition for Waiver'' or the ''Application for Interim Waiver.'' The Department consulted with The Federal Trade Commission (FTC) concerning the York Petition. The FTC did not have any objections to the issuance of the waiver to York.

Assertions and Determinations

York's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. York requests the allowance to test using a 30-second blower time delay when testing its D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units. York states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an overall furnace AFUE improvement of approximately 0.4 percent, the Petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. York indicates that it is unable to take advantage of any of these

exceptions for its D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units.

Since the blower controls incorporated on the York furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current test procedure provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the York D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units. Accordingly, with regard to testing the D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units, today's Decision and Order exempts York from the existing test procedure provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered That:

(1) The ''Petition for Waiver'' filed by York International. (Case No. F–081) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, York International, shall be permitted to test its D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, York International shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units manufactured by York International.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition is incorrect.

(5) Effective November 29, 1995, this Waiver supersedes the Interim Waiver granted York International on September 28, 1995. 60 FR 53358, October 13, 1995 (Case No. F–081).

Issued In Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–29718 Filed 12–6–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. GT96–33–000]

Tennessee Gas Pipeline Company; Notice of Refund Report

December 1, 1995.

Take notice that on November 2, 1995, Tennessee Gas Pipeline Company (Tennessee) tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report pursuant to the Commission's February 22, 1995, order issued in Docket No. RP95–124–000.

Tennessee states that it has refunded to its customers the Gas Research Institute's (GRI) refunds to Tennessee of the GRI's 1994 overcollections from Tennessee. Tennessee states that it is allocating the $71,448.00 refund from GRI on a pro rata basis to firm transportation customers that received nondiscounted service during 1994, based on each such customer's share of GRI rate adjustment payments to Tennessee during 1994.

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, 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 385.214). All such motions or protests should be filed on or before December 8, 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. 95–29794 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–87–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

December 1, 1995.

Take notice that on November 28, 1995, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–87–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point meter station for the City of Tallahassee (Tallahassee) under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a delivery point meter station in Leon County, Florida, near mile post 431.0 on FGT's 24-inch mainline, to

accommodate FGT's transportation and delivery of natural gas to Tallahassee on a self-implementing basis under FGT's blanket transportation certificate. The proposed delivery capacity at this meter station would be 60 MMBtu per hour and 1,000 MMBtu per day at a pressure of 60 psig. FGT states that Tallahassee would reimburse FGT for the total cost of the proposed construction which is estimated to be $114,000.

FGT states that the operation of the proposed new meter station would not increase FGT's contractual gas deliveries to Tallahassee under the existing firm and interruptible gas transportation service agreements and would have no impact on FGT's peak day or annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29795 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–51–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 1, 1995.

Take notice that on November 28, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective January 1, 1996.

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.202 of the Commission's Regulations, is to implement Rate Schedule GPS for Gas Parking Service on Panhandle's system pursuant to Panhandle's blanket authority under Part 284 of the Commission's Regulations to supplement existing services provided under Panhandle's Rate Schedules FT, EFT, SCT, IT, EIT, IOS, IIOS, WS, PS, IWS, FS, GDS and TBS.

Panhandle states that it is proposing to make this service available to satisfy the requirements of shippers whose circumstances warrant the deferral for a brief time of the delivery of gas received and who desire to avoid imbalance penalties. At the present time Panhandle does not offer a Parking service.

Panhandle states that it has gained experience operating its system under Order No. 636 and believes there is a need in the marketplace for this Parking service. The proposed service under Rate Schedule GPS will facilitate the temporary needs of shippers serving markets on Panhandle's system and will assist in managing supply for producers, aggregators and pooling shippers.

Panhandle states that copies of this filing are being served on all customers subject to the tariff sheets and all interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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. 95–29796 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–70–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

December 1, 1995.

Take notice that on November 15, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP96–70–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a delivery point to Sun Company, Inc. (Sun) in Philadelphia County, Pennsylvania, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and operate a delivery point to Sun in order to provide up to 50,000 dth/d of interruptible transportation service to Sun at a cost of $835,390 to be reimbursed by Sun.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29797 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–170–014]

Texas Eastern Transmission Corporation; Notice of Filing of Refund Proposal and Request To Terminate Proceedings

December 1, 1995.

Take notice that on November 21, 1995, Texas Eastern Transmission Corporation (Texas Eastern) filed a report of an agreement and refund proposal with Columbia Gas Transmission Corporation (Columbia) to resolve the issues and disputes in RP85–170 and the related appeals pending before the United States Court of Appeals for the District of Columbia Circuit (*Panhandle Eastern* v *FERC* No. 94–1727). Under the agreement Texas Eastern will refund to Columbia a principal amount of $11,948,555.73, $1,440,000 in interest for the period prior to 10/1/94, and additional interest

on the principal amount for the period 10/1/94 to the date of the refund.

Texas Eastern states Columbia and Texas Eastern have filed with the United States Court of Appeals to withdraw their pending appeals cited above. It is the intent of Texas Eastern (as agreed to by Columbia) to refund to Columbia the settlement amount within 10 days of the later of (a) the date of this report and (b) the date the order of the United States Court of Appeals for the District of Columbia Circuit granting Columbia's and Texas Eastern's request to withdraw their appeals is final.

Texas Eastern and Columbia request that the Commission issue an order accepting the refund proposal and terminating the proceedings in Docket No. RP85–170, conditioned, as necessary, upon an order of the United States Court of Appeals for the District of Columbia granting the motions to withdraw the appeals of the orders issued in Docket No. RP85–170.

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 § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 8, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29798 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–50–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Tariff

December 1, 1995.

Take notice that on November 28, 1995, Mississippi River Transmission Corporation (MRT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of December 1, 1995:

Title Sheet
First Revised Sheet No. 2
First Revised Sheet No. 8
First Revised Sheet No. 252
Original Sheet No. 256
Original Sheet No. 257
Original Sheet No. 258
Original Sheet No. 259
Original Sheet No. 260

MRT states that the purpose of this filing is to comply with the Commission's new regulations issued in Order No. 582 which requires a pipeline to provide an Index of Customers in their FERC Gas Tariff if it is not in compliance with the electronic reporting requirements of Sections 284.106 and 284.223. MRT states that it is also submitting a revised Title Page reflecting the addition of a telephone and fax number, and Fifth Revised Sheet No. 8 correcting an erroneous footnote reference.

MRT states that copies of its filing have been mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protect the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. Pursuant to § 154.210 of the Commission's Regulations, all such motions and protests should be filed not later than 12 days after the date of the filing noted above. 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 available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29799 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–35–000]

Williston Basin Interstate Pipeline Company; Notice of Filing

December 1, 1995.

Take notice that on November 22, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective November 22, 1995:

Ninth Revised Sheet No. 827
Eighth Revised Sheet No. 828
Tenth Revised Sheet No. 829
Eleventh Revised Sheet No. 830
Tenth Revised Sheet No. 831
Twelfth Revised Sheet No. 832
Thirteenth Revised Sheet No. 833

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Delivery Point List.

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, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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. 95–29801 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–88–000]

CNG Transmission Corporation; Notice of Application

December 1, 1995.

Take notice that on November 28, 1995, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP96–88–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to partially abandon excess capacity established through operations at the Johnsonburg M&R Station, in excess of 3.2 Mmcf/Day, and permission to install flow control devices necessary to ensure the desired level of operation of the facility, all as more fully set forth in the application on file with the Commission and open to public inspection.

CNGT states that the Johnsonburg M&R Station, located in Elk County, Pennsylvania, was initially constructed to serve as a delivery point to Hanley and Bird, Inc. (Hanley), CNGT's former requirement sales service customer. CNGT states that at this time, a single industrial customer, Willamette Industries, Inc. is served by the deliveries through Hanley's facility at this point.

CNGT states that since it restructured services to Hanley through its Order No. 636 proceeding in Docket No. RS92–14, deliveries through the Johnsonburg

facility have, from time to time, exceeded 10.0 Mmcf/Day. CNGT states that, although it is unable to identify a certificated level of operation for the M&R Station, it has determined that the M&R Station cannot sustain operations at this level consistent with sound engineering principles. CNGT states that it has determined that reasonable flow rates through a facility of this size should accommodate daily deliveries up to 3.2 Mmcf. Therefore, by this application, CNGT seeks authorization to abandon the incremental capacity that may have been established by recent operation at the Johnsonburg M&R Station at levels in excess of 3.2 Mmcf/Day.

In addition, CNGT states that upon abandonment of the excess capacity, as requested herein, CNGT will install flow control devices to restrict throughput at this station to no more than 3.2 Mmcf/Day. CNGT states that it does not believe that case-specific authorization is required for installation of the flow control devices; however, should the Commission deem such authorization appropriate, CNGT also hereby requests permission to install the flow control devices as required to ensure the desired level of operation of the facility.

CNGT states that no long-term firm service obligations will be affected by the proposed abandonment of operations in excess of 3.2 Mmcf/Day through the Johnsonburg M&R Station. CNGT states that as of November 1, 1995, CNGT's firm service obligation to Hanley at the Johnsonburg M&R Station has been reduced to a Maximum Daily Delivery Obligation of 2.0 Mmcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 22, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNGT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29802 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

Notice of Intent To Prepare an Environmental Assessment, Conduct Site Visit, Solicit Interventions, Protests, and Written Scoping Comments

December 1, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Minor license (less than 5MW)
b. Project No. 11060–001
c. Date filed: December 9, 1993
d. Applicant: J.M. Miller Enterprises, Inc.
e. Name of Project: Sahko Hydroelectric Project
f. Location: In the Kastelu drainage area about 0.5 miles from the confluence with the Snake River in Twin Falls County, Idaho, near the town of Filer.
g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r)
h. Applicant Contact:
Donald W. Block, P.E., J–U–B Engineers, Inc., 800 Falls Ave., Twin Falls, ID 833301, (208) 733–2414
Tracy Ahrens, J–U–B Engineers, Inc., 800 Falls Ave., Twin Falls, ID 833301, (208) 733–2414.
i. FERC Contact: Ms. Deborah Frazier-Stutely (202) 219–2842
j. Deadline for filing protests, motions to intervene and written scoping comments: February 12, 1996
k. Status of Environmental Analysis: The application is not ready of environmental analysis at this time—see attached paragraph D8
l. Intent to Prepare and Environmental Assessment and Invitation for Written Scoping Comments: The Commission staff intends to prepare an Environmental Assessment (EA) on this hydroelectric project in accordance with the National Environmental Policy Act. In the EA, we will consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial, and engineering analyses.

A draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration by the Commission in reaching its final licensing decision.

Scoping Meetings: Staff will hold two scoping meetings. A scoping meeting oriented towards the public will be held on Wednesday, January 10, 1996, at 7:00 pm, at Filer High School, Highway 30, Filer, Idaho. A scoping meeting oriented towards the agencies will be held on Thursday, January 11, 1996 at 9:00 am, at the Filer City Hall, Council Chambers, 300 Main Street, Filer, ID 83328.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the Commission mailing list. Copies of the scoping document will also be available at the scoping meetings.

Site Visit: A site visit to the proposed Sahko Hydroelectric Project is planned for January 10, 1996. Those who wish to attend should plan to meet at 8:00 am at the J–U–B Engineers, Inc. Twin Falls Office, 800 Falls Ave., Twin Falls, ID. If you plan to attend, contact Mr. Tracy Ahrens by January 9, 1996, at (208) 733–2414 for directions or additional details.

Objectives: At the scoping meetings the staff will: (1) identify preliminary issues related to the proposed project; (2) identify issues that are not important do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be

analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures: The scoping meetings will be recorded by a court reporter and all statements (oral and written) will become a part of the formal record of the Commission's proceedings on the Sahko Hydroelectric Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, until February 12, 1996.

All written correspondence should clearly show the following caption on the first page: Sahko Hydroelectric Project, FERC No. 11060–000.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. All entities commenting on this scoping document must file an original and eight copies of the comments with the Secretary of the Commission.

Any questions regarding this notice may be directed to Ms. Deborah Frazier-Stutely, Environmental Coordinator, FERC, at (202) 219–2842.

m. Description of Project: The proposed project would consist of: (1) a 12-foot-high, 12-foot-wide, 80-foot-long earthfill sediment collection embankment with a crest at elevation 3,397 feet mean sea level (msl), containing a broadcrest weir, a 4-foot-high, 14-foot-wide overflow spillway, and a bypass pipe; (2) a 500-foot-long bypass ditch to be used during maintenance; (3) a 12-foot-high, 12-foot-wide, 110-foot-long earthfill intake embankment with a crest at elevation 3,394.5 feet msl, containing a concrete overflow spillway, an 8-foot-wide box shaped intake structure, and bypass pipe; (4) two unnamed springs; (5) a 24-inch-diameter, 1,950-foot-long partially buried steel penstock with a butterfly valve; (6) a 25-foot-wide, 50-foot-long masonry block powerhouse containing one pelton turbine and generating unit with an installed capacity of 500 Kw; (7) a 6-foot-wide, 3-foot-high, 30-foot-long rock rip-rap tailrace, discharging project flows into the Snake River; (8) a switchyard; (9) a 2,000-foot-long, 34.5-Kv transmission line tying into an Idaho Power Company line; and (10) related facilities.

The proposed project would operate run-of-ditch, where the project will use whatever flows enter the sediment impoundment as either irrigation waste flows or as emanating from the two unnamed springs on the applicant's property, and would generate about 1,178,000 kilowatthours of energy annually.

n. Purpose of Project: Project power will be sold to a local utility.

o. This notice also consists of the following standard paragraphs: A2, A9, B1, D8

p. Available Locations of Applications: 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 2A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

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.

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.

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.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (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. 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, DC 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29800 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5341–4]

Agency Information Collection Activities under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument. Pursuant to new requirements under the Paperwork Reduction Act, a notice was published in the Federal Register on August 29, 1995 announcing the renewal of this ICR and requesting comment on the renewal.

DATES: Comments must be submitted on or before January 8, 1996.

FOR FURTHER INFORMATION OR A COPY CALL:

Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1617.02.

SUPPLEMENTARY INFORMATION:

Title: Surviving of Motor Vehicle Air Conditioners.

OMB Control No: 2060–0247.

EPA ICER No: 1617.02.

This is a request for an extension of a currently approved collection. Within the next few months, EPA intends to propose and finalize an amendment to the regulations implementing section 609. This amendment will, pursuant to a statutory mandate, establish standards for the recycling of any refrigerant in a motor vehicle air conditioner that substitutes for a class I or class II(ie., CFC or HCFC) refrigerant. This amendment will not affect the current recordkeeping or reporting requirements under section 609.

Abstract: In 1992, EPA developed regulations under Section 609 of the Clean Air Act Amendment of 1990 (Act) for the recycling of CFC's in motor vehicle air conditioners. These regulations were published in 57 FR 31240, and are codified at 40 CFR Subpart B (§ 82.30 *et seq.*). The reasons the information is being collected, the way the information is to be used, and whether the requirements are mandatory, voluntary, or required to obtain a benefit, are described below. The ICR renewal will not include any burden for third-party or public disclosures not previously reviewed and approved by OMB.

Technician training and certification. According to Section 609(b)(4) of the Act, automotive technicians are required to be certified in the proper use of recycling equipment for servicing motor vehicle air conditioners. Certification programs must meet EPA standards. The Stratospheric Protection Division requires that certification programs send their training and testing materials to EPA for approval. The information requested is used by the Stratospheric Protection Division to guarantee a degree of uniformity in the testing programs for motor vehicle service technicians in addition to proper and valid certification.

Approved independent standards testing organizations. In addition, Section 609(b) (2)(A) of the Act requires independent laboratory testing of recycling equipment to be certified by EPA. The Stratospheric Protection Division requires independent laboratories to submit an application that proves their general capacity to certify equipment to meet the Society of Automotive Engineers (SAE) J standards for recycled refrigerant. The information requested is used by the Stratospheric Protection division to approve independent laboratories that can assure and industry accepted standard of quality in recycling and recovery equipment.

Substantially identical equipment. Section 609(b)(2)(B) of the Act allows equipment that was purchased before the proposal of the regulations to be approved by EPA if it is substantially identical to equipment that has been certified by an EPA approved independent laboratory. This measure is designed to incorporate or ''grandfather'' older equipment that has not been submitted to an independent laboratory for testing. The equipment manufacturer or owners may submit the following to the Stratospheric Protection Division: an application and supporting documents that includes process flow sheets, a list of equipment components and any other information that would indicate that the equipment is capable of recovering and/or cleaning the refrigerant to standards set forth in the appropriate appendix to the regulations. The information provided allows EPA to determine if the equipment is substantially identical to certified equipment.

Certification, reporting and recordkeeping. To facilitate enforcement under Section 609, EPA has developed several recordkeeping requirements. The information is used by the Stratospheric Protection Division to verify compliance with Section 609 of the Act. First, an establishment that owns recover-only equipment must maintain records of the name and address of the facility that is reclaiming its refrigerant. Second, any person who owns approved refrigerant recovery or recycling equipment must retain records demonstrating that all persons authorized to operate the equipment are currently certified technicians. Last, any person who sells or distributes refrigerant that is in a container of less than 20 pounds must verify that the purchaser is a certified technician, unless the purchase of small containers is for resale only. In that case, the seller must obtain a written statement from the purchaser that the containers are for resale only and must indicate the purchaser's name and business address.

In addition, section 609(d)(3)–(4) of the Act requires that by January 1, 1992, all entities that service motor vehicle air containers for consideration must have acquired approved refrigerant recycling equipment. The establishment must have submitted to the Administrator on a one-time basis a certificate that provides the following information: the name of the equipment owner, the address of the service establishment where the equipment will be used, and the make, model, year, and serial number of the equipment. Note that this reporting requirement is contained in the statute itself and was not developed by EPA.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. The Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on August 29, 1995.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average .13 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

Affected entities: Entities affected by this action are new and used motor vehicle dealers, gasoline service stations, truck rental and leasing facilities without drivers, passenger car rental facilities, top, body, upholstery repair and paint shops, general automotive repair shops, and automotive repair shops not elsewhere classified. Clean Air Act Section 609 automotive air-conditioning technician certification programs, and approved independent standards testing organizations, will also be affected.

Estimated No. of Respondents: 16,039.

Estimated Total Annual Burden on Respondents: 8,923 hours.

Frequency of Collection: Most requirements require collection on a one-time only basis.

This renewal shows a significant reduction in burden from the original information collection request. This reduction is due primarily to revisions in the estimates of the number of service facilities that must complete certifications for the equipment they have purchased. EPA estimates that over 250,000 pieces of equipment have been purchased in the United States. As a result, the Agency estimates that no more than 10,000 existing facilities, plus 4,000 new facilities, will need to complete the certification forms in any year. In addition, the reduction in burden hours from the original ICR is due in part to a revision in the estimate of the time it takes for a service facility manager to fill out the certification form. EPA believes that the original estimate of one half-hour was inaccurate. This time was halved, from one half-hour to one quarter-hour. Certain other changes to the ICR have been made in order to reflect the current size of the sectors affected by the ICR. For example, there are now approximately 25 organizations that certify automotive service technicians to work with recover/recycle equipment. This revised number of organizations is reflected in the cost and burden hour totals.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses. Please refer to EPA ICR No. 1617.02 and OMB Control No. 2060–0247 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW., Washington DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: November 28, 1995.

Joseph Retzer,

Director, Information Division.

[FR Doc. 95–29840 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5341–2]

Request for Comments: Preaward Compliance Review Report for all Applicants Requesting Federal Financial Assistance, Agency Information Collection Activities up for Renewal (OMB Control Number 2090–0014)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before February 5, 1996.

ADDRESSES: Office of Civil Rights, USEPA Waterside Mall (WSM), 401 M Street, SW., Washington, DC 20460.

Interested parties may receive a copy without charge by writing to this address or by calling Mary St. Peter at (202)260–4967.

FOR FURTHER INFORMATION CONTACT: Mary St. Peter: phone (202) 260–4967: fax (202) 260–4580.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are grant and loan applicants, generally state and local governments, universities, etc., who must complete a simple form with the requested data.

Title: Preaward Compliance Review Report, EPA form 4700–4, OMB Control Number 2090–0014, expiration date 1/31/96.

Abstract: The information request and gathering is part of the requirement of 40 CFR Part 7, ''Nondiscrimination in Program Receiving Federal Assistance from the Environmental Protection Agency'', at 40 CFR § 7.80. The regulation implements statutes which prohibit discrimination on the bases of race, color, national origin, sex and handicap. This information is also required, in part, by the Department of Justice regulations, 28 CFR 42.406 and 28 CFR 42.407. The information is collected on a short form from grant and loan applicants as part of the application. The EPA Director of Civil Rights manages the data collection through a regional component or delegated state, both of whom also carry out the data analysis and make the recommendation on the respondent's ability to meet the requirements of the regulation, as well as the respondent's current compliance with the regulation. The information and analysis is of sufficient value for the Director to determine whether the applicant is in compliance with the regulation. Analysis of the data allows EPA to determine:

(1) Whether there appears to be discrimination in the provision of program or activity services between the minority and non-minority population. This allows EPA to determine whether any action is necessary by it before the award of the grant or loan.

(2) Whether the respondent is designing grant or loan financed facilities to be accessible to handicapped individuals or whether a regulatory exemption is applicable. This allows EPA to determine whether design changes are necessary prior to the award of the grant or loan, which can save the respondent a significant amount of money, e.g., ensuring a facility is accessible to the handicapped is much less costly if this requirement is included in the design rather than after construction has begun.

(3) Whether the respondent receives or has applied for financial assistance from other Federal agencies. This information allows EPA to canvass these other agencies to avoid conducting duplicate compliance audits, reviews, or complaint investigations and is a reduction of burden on respondents. Responses to the collection of information are required to obtain a grant or loan and are kept on file by the state distributing the funds.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 40 CFR Chapter 15.

The EPA would like to solicit comments to:

(I) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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, e.g., permitting electronic submission of responses.

Burden Statement: The form is part of the grant or loan application package. The information currently exists in the respondent operation. The data collected on this form is compiled and reported from the applicant's existing information. The information as gathered and reported on the form specifically applies to the grant or loan application. The only burden experienced by the respondent is that of completing the form. Our past experience has shown that it requires one half-hour to complete the form. The form is usually completed by the applicant's packager or a clerk assistant. The average salary range of the combined or single individual is $30,000.00 per year. Our information comes from direct experience in carrying out the task. Therefore the capital cost would be $0 and the labor for ½ hour would be $14.41 per year. At approximately 4,000 recipients per year, the total cost would be $28,820.00. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose, or provide information to or for a Federal agency. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 13, 1995.

Dan Rondeau,

Director, Office of Civil Rights.

[FR Doc. 95–29841 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5342–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 8, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1633.09.

SUPPLEMENTARY INFORMATION:

Title: Acid Rain Program (OMB Control No. 2060–0258; EPA ICR No. 1633.09). This is a request for extension of a currently approved collection.

Abstract: The Acid Rain Program was established under Title IV of the 1990 Clean Air Act Amendments. The program calls for major reductions of the pollutants that cause acid rain while establishing a new approach to environmental management. This information collection is necessary to implement the Acid Rain program. It includes burden hours associated with developing and modifying permits, transferring allowances, obtaining allowances from the conservation and renewable energy reserve and small diesel refinery program, monitoring emissions, participating in the annual auctions, completing annual compliance certifications, participating in the Opt-in program, and complying with No_X permitting requirements. Most of this information collection is mandatory under 40 CFR Parts 72–78. Some parts of it are voluntary or to obtain a benefit, such as participation in the annual auctions under 40 CFR Part 73, Subpart E. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 7/13/95 (FRL–5258–2).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 273 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing way to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 849.

Estimated Number of Respondents: 849.

Frequency of Response: Varies by task.

Estimated Total Annual Hour Burden: 2,839,120 hours.

Estimated Total Annualized Cost Burden: $44,660,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1633.09 and OMB Control No. 2060–0258 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

Dated: November 22,1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–29894 Filed 12–6–95; 8;45 am]

BILLING CODE 6560–50–M

[FRL–5342–4]

Acid Rain Program: Status of State Acid Rain Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Title IV of the Clean Air Act requires EPA to establish the Acid Rain Program to reduce the adverse environmental and public health effects of acidic deposition. Under titles IV and V of the Act, state and local permitting authorities develop and administer acid rain programs as part of their title V operating permits programs. The purpose of this notice is to (1) provide a status report on the progress of specific state and local permitting authorities in establishing regulatory authority to issue acid rain permits, (2) describe in general terms the degree to which state and local permitting authorities can currently take part in acid rain permit issuance given the current status of their title V programs and (3) to identify which permitting authorities should receive Phase II acid rain permit applications (due January 1, 1996) from designated representatives of affected sources. This notice is for informational purposes only and does not supplant any other Federal Register notices under title V.

FOR FURTHER INFORMATION CONTACT: Robert Miller, U.S. EPA, Acid Rain Division (6204J), 401 M St., SW, Washington, DC 20460, (202) 233–9077.

SUPPLEMENTARY INFORMATION: On August 29, 1995, the Acid Rain Division issued guidance describing the extent to which permitting authorities could participate in the acid rain permit issuance process given the status of their title V programs, including the acid rain portion. The guidance outlined criteria by which acid rain permitting authorities are grouped into one of three categories, 'A,' 'B,' or 'C.'

Category A permitting authorities have EPA-approved title V programs with acid rain regulations that are sufficient for issuing Phase II acid rain permits covering sulfur dioxide. Such permits must be issued no later than December 31, 1997.

Category B permitting authorities have not yet received final EPA approval of their title V programs and acid rain regulations, and so cannot yet issue acid rain permits. However, they have sufficient regulatory authority to perform completeness reviews and process Phase II acid rain permits up to issuance of draft permits. Most category B permitting authorities are expected to receive final EPA approval of their title V programs and their acid rain regulations sometime in 1996. If, as anticipated, their title V programs and acid rain regulations are approved by January 1, 1997, they will be the permitting authorities for issuing acid rain permits to sources within their respective jurisdictions.

Category C permitting authorities have also not yet received EPA approval of their title V programs, but have not yet established a sufficient degree of regulatory authority, e.g., because they lack final title V and acid rain regulations or because their title V programs have been rejected. Category C permitting authorities will issue the Phase II acid rain permits if their title V programs and acid rain regulations are approved by January 1, 1997. If not, then EPA intends to begin to take steps to issue the initial Phase II acid rain permits.

The designated representatives of affected sources within the jurisdiction of permitting authorities in categories A or B should submit the original Phase II acid rain permit application and all required copies to the appropriate state or local permitting authority. The application should not be submitted to EPA. The designated representatives of affected sources with state or local permitting authorities in category C must submit the original Phase II acid rain permit application and 1 copy to the appropriate EPA Regional office and two copies to their respective state or local permitting authority.

The status of state and local acid rain programs is noted on a document updated weekly on EPA's Technology Transfer Network (TTN) and is available for downloading under the ''Clean Air Act,'' ''Title IV,'' ''Policy and Guidance,'' subdirectories, entitled ''ARDGUID.WPF.''

As of November 15, 1995, the status of state and local permitting authorities with regard to acid rain is as follows:

Region 1

Category A: None
Category B: Massachusetts, New Hampshire, Rhode Island, Vermont
Category C: Connecticut, Maine

Region 2

Category A: None
Category B: New Jersey
Category C: New York

Region 3

Category A: West Virginia
Category B: Delaware, Maryland, Pennsylvania, Washington D.C.
Category C: Virginia

Region 4

Category A: Florida, South Carolina
Category B: Alabama (including the city of Huntsville and Jefferson Co.), Georgia, Kentucky (including Jefferson and Memphis-Shelby Cos.), Mississippi, North Carolina (including Western North Carolina), Tennessee (including Chattanooga-Hamilton, Knox, and Nashville-Davidson Cos.)
Category C: None

Region 5

Category A: Illinois, Indiana, Minnesota, Wisconsin
Category B: Michigan, Ohio
Category C: None

Region 6

Category A: Arkansas, Louisiana, New Mexico (including the city of Albuquerque)
Category B: Oklahoma, Texas
Category C: None

Region 7

Category A: Iowa, Nebraska (including Lincoln-Lancaster and Omaha-Douglas Cos.)
Category B: Kansas, Missouri
Category C: None

Region 8

Category A: North Dakota, South Dakota, Utah
Category B: Colorado, Montana, Wyoming
Category C: None

Region 9

Category A: Bay Area, Imperial Co., Monterey Bay, North Coast (all in California), Clark Co. (in Nevada)
Category B: Arizona (including Maricopa, Pima, and Pinal Cos.) Mojave Desert, San Diego Co., San Luis Obispo Co., South Coast, Ventura Co. (all in California), Nevada
Category C: None

Region 10

Category A: Oregon, Washington (including Northwest, Olympic, Puget Sound, Southwest, Spokane, Benton-Franklin, and Yakima)
Category B: Idaho
Category C: None

Dated: November 21, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–29895 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–00149A; FRL–4989–5]

Guidance on Acquisition of Environmentally Preferable Products and Services; Solicitation of Comments; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: In the Federal Register of September 29, 1995, EPA announced a proposed general guidance designed to assist Executive agencies with indentification and acquisition of environmentally preferable products. The document also solicited comments from all interested parties on the proposed guidance. EPA has received requests from several organizations to extend the comment period. Notice is hereby given that the comment period originally scheduled to close on November 28, 1995, is extended until December 28, 1995.

DATES: All written comments must be received on or before December 28, 1995.

ADDRESSES: Written comments must be submitted in triplicate and identified with docket number OPPTS–00149 to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–00149. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed guidance may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit V. of this document.

FOR FURTHER INFORMATION CONTACT: Danielle Fuligni, Environmental Protection Agency, Office of Pollution Prevention and Toxics (7409), 401 M St., SW., Washington, DC 20460. Telephone number: 202–260–4172, e-mail: fuligni.danielle@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: A record has been established for this document under docket number ''OPPTS–00149'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

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

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

List of Subjects

Environmental protection.

Dated: November 20, 1995.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–29833 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–00180; FRL–4989–7]

Notice of Availability of Pollution Prevention Grants and Announcement of Financial Assistance Programs Eligible for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Pollution Prevention Grants.

SUMMARY: EPA is announcing the availability of approximately $5 million in fiscal year 1996 grant/cooperative agreement funds under the Pollution Prevention Incentives for States (PPIS) grant program. The purpose of this program is to support State, Tribal, and regional programs that address the reduction or elimination of pollution across all environmental media: air, land, and water. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990.

FOR FURTHER INFORMATION CONTACT: Your EPA Regional Pollution Prevention Coordinator. Contact names for each Regional Office are listed under Unit IV. of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Approximately $40 million have been awarded to over 100 State, Tribal, and regional organizations under EPA's multimedia pollution prevention grant program, since its inception in 1989.

In November 1990, the Pollution Prevention Act of 1990, (the Act) (Pub. L. 101–508) was enacted, establishing as national policy that pollution should be prevented or reduced at the source whenever feasible. Section 6603 of the Act defines source reduction (pollution prevention) as any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal.

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

In addition to pollution prevention being source reduction, EPA further defines pollution prevention as the use of other practices, that reduce or eliminate the creation of pollutants through: increased efficiency in the use of raw materials, energy, water or other resources, or protection of natural resources, or protection of natural resources by conservation.

Section 6605 of the Act authorizes EPA to make matching grants to States to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed State program will:

(1) Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide on-site technical advice and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques.

In addition to this grant making authority, the Act authorized EPA to establish a national source reduction clearinghouse, expands EPA's authorities to collect data to better track

source reduction activities, and requires EPA to report periodically to Congress on progress in implementing the Act.

II. Availability of FY 96 Funds

With this publication, EPA is announcing the availability of approximately $5 million in grant/cooperative agreement funds for FY 1996. The Agency has delegated grant making authority to the EPA Regional offices which formally transfers the decisionmaking and awarding process for the PPIS grants to the Regions. Regional offices have responsibility for the solicitation of interest, screening of proposals, and the actual selection of awards. This eighth round of awards reflects a more direct and active Regional role in determining FY 96 awards. PPIS grant guidance will be developed separately by each Regional program and will be provided to all applicants along with any supplemental information the Regions may wish to provide. However, in addition to Regional Guidelines, all applicants must address the national requirements listed under Unit III.3. of this document. Interested applicants should contact their Regional Pollution Prevention Coordinator for more information.

III. Eligibility

In accordance with the Act, eligible applicants for purposes of funding under this grant program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities and all Federally recognized Indian tribes. For convenience, the term ''State'' in this notice refers to all eligible applicants. Local governments, private universities, private non-profit entities, private businesses, and individuals are not eligible. These organizations excluded from applying directly are encouraged to work with eligible applicants in developing proposals that include them as participants in the projects. EPA strongly encourages this type of cooperative arrangement.

1. *The Catalogue of Federal Domestic Assistance*. The number assigned to the PPIS program is 66.708 (formerly 66.900). Organizations receiving pollution prevention grant funds are required to match dollar for dollar all Federal funds.

For example, the Federal government will provide half of the total allowable cost of the project, the State half of the total allowable cost of the project. A grant request for $100,000 would support a total allowable project cost of $200,000, with the State also providing $100,000. State contributions may include dollars, in-kind goods and services and/or third party contributions.

2. *Eligible activities*. In general, the purpose of the PPIS grant program is to support the establishment and expansion of State, Regional, Tribal, or local multimedia pollution prevention programs. EPA specifically seeks to build State pollution prevention capabilities or to test, at the State level, innovative pollution prevention approaches and methodologies. Funds awarded under the PPIS grant program must be used to support pollution prevention programs that address the transfer of potentially harmful pollutants across all environmental media: air, water, and land. Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts State-or-Region-wide and where appropriate, seek to address State environmental priority areas. States might focus on, for example:

a. Developing measures to determine progress in pollution prevention.

b. Developing multimedia pollution prevention activities, including but not limited to: Providing direct technical assistance to businesses; collecting and analyzing data to target outreach and technical assistance opportunities; conducting outreach activities; and identifying regulatory and non-regulatory barriers and incentives to pollution prevention and developing plans to implement solutions, where possible.

c. Institutionalizing multimedia pollution prevention as an environmental management priority, establishing prevention goals, developing strategies to meet those goals, and integrating the pollution prevention ethic within both governmental and non-governmental institutions of the State or region.

d. Initiating demonstration projects that test and support innovative pollution prevention approaches and methodologies.

3. *Measuring pollution prevention progress*. Fiscal year 1996 marks the 8th year of funding for the PPIS grant program. This cycle of awards also emphasizes EPA's efforts to assist States in developing and implementing measurement systems to track the progress of the PPIS funds in promoting pollution prevention. EPA believes that, like a business, State pollution prevention programs need to strive for continuous improvement. Although the effectiveness of certain pollution prevention activities are inherently easier to measure than others, the measurement focus of this year's cycle does not target any specific pollution prevention activity as a priority. Rather, EPA believes that the State pollution prevention programs are in the best position to determine which approaches to pollution prevention are most critical to the State. EPA believes that in order to highlight the effectiveness of the PPIS grant program, a measurement component is essential to document continuous improvement. Applicants must address measurement by including at least one of the two mandatory components listed below. Proposals that do not address one of these national criteria in the narrative of the grant application will not be considered eligible for funding. The proposal must:

A. Include a comprehensive plan that describes both the types of pollution prevention activities that the State program will pursue and a method for quantifying pollution reductions achieved by these activities. In addition, the plan should include a component that: (1) Measures the effectiveness of the identified activities in reducing pollution. (2) Evaluates the measurement methodology, identifying areas of success and problems encountered.

B. Include a pollution prevention measurement methodology that develops tools to be adopted by pollution prevention assistance provider(s) in evaluating their program(s). The proposal must identify which organization(s)/program(s) the measurement tools are being developed for. The measurement methodology should include, but need not be limited to: a method for identification of measurement needs; an evaluation of measurement methodologies and approaches; a system for matching identified needs with measurement methodologies and approaches; and the application of a selected methodology or approach. Proposals accepted for review under this program must qualify as pollution prevention as defined by EPA.

4. *Program management*. Awards for FY 96 funds will be managed through the EPA Regional Offices.

5. *Contact*. Interested applicants are requested to contact the appropriate EPA Regional Pollution Prevention Coordinator listed under Unit IV. of this document to obtain specific instructions and guidance for submitting proposals.

IV. Regional Pollution Prevention Contacts

Abby Swaine/Mark Mahoney (PAS), US EPA Region 1, JFK Federal Bldg, Rm. 2203, Boston, MA 02203, (617) 565-4523/1155 (CT, MA, ME, NH, RI, VT)

Janet Sapadin (2-OPM-PPI), US EPA Region 2, 290 Broadway, 26th floor, New York, NY 10007-1866, (212) 637-3584 (NJ, NY, PR, VI)
Jeff Burke (3ES43), US EPA Region 3, 841 Chestnut Bldg., Philadelphia PA 19107, (215) 597-8327 (DC, DE, MD, PA, VA, WV)
Carol Monell, US EPA Region 4, 345 Courtland St., NE, Atlanta, GA 30365, (404) 347-3555, x6894 (AL, FL, GA, KY, MS, NC, SC, TN)
Phil Kaplan (HRP-8J), US EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604-3590, (312) 353-4669 (IL, IN, MI, MN, OH, WI)
Linda Thompson (6EN-XP), US EPA Region 6, 1445 Ross Ave., Suite 1200, Dallas, TX 75202, (214) 665-6568 (AR, LA, NM, OK, TX)
Steve Wurtz, US EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101, (913) 551-7315 (IA, KS, MO, NE)
Linda Walters (8PM-SIPO), US EPA Region 8, 999 18th St., Suite 500, Denver, CO 80202-2405, (303) 312-6392 (CO, MT, ND, SD, UT, WY)
Eileen Sheehan/Bill Wilson (H-I-B), US EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744-2190/2192 (AZ, CA, GU, HI, CNMI, RP, AS)
Carolyn Gangmark, US EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101, (206) 553-4072 (AK, ID, OR, WA)

Dated: November 27, 1995.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–29832 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5340–6]

Superfund Program; Revised Model De Minimis Contributor Consent Decree and Administrative Order on Consent

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Agency is publishing today the revised ''Model CERCLA Section 122(g)(4) *De Minimis* Contributor Consent Decree'' and the revised ''Model CERCLA Section 122(g)(4) *De Minimis* Contributor Administrative Order on Consent.'' These models, developed by the Agency and the U.S. Department of Justice, supersede the ''Interim Model CERCLA Section 122(g)(4) *De Minimis* Waste Contributor Consent Decree and Administrative Order on Consent'' issued on October 19, 1987, and published at 52 FR 43,393 (November 12, 1987). They are designed as guidance for Agency and Department staff when negotiating CERCLA Section 122(g)(1)(A) *de minimis* contributor settlements. The Agency is publishing the models in their entirety, along with the September 29, 1995 joint memorandum of the EPA and the U.S. Department of Justice announcing their issuance, to inform affected members of the public of their existence and content.

FOR FURTHER INFORMATION CONTACT: Janice C. Linett, Mail Code 2272, Office of Enforcement and Compliance Assurance, Regional Enforcement Division, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7116.

Dated: October 26, 1995.

Susan Brown,

Acting Director, Office of Site Remediation Enforcement.

September 29, 1995.

MEMORANDUM

SUBJECT: Issuance of Revised ''Model CERCLA Section 122(g)(4) *De Minimis* Contributor Consent Decree and Administrative Order on Consent''
FROM: Jerry Clifford, Director, Office of Site Remediation Enforcement, U.S. Environmental Protection Agency, Bruce S. Gelber, Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice
TO: Regional Counsel, Regions I–X, Regional Waste Management Division Directors, Regions I–X, Financial Management Officers, Regions I–X, Assistant Chiefs, Environmental Enforcement Section

We are pleased to issue the revised ''Model CERCLA Section 122(g)(4) *De Minimis* Contributor Consent Decree'' and the revised ''Model CERCLA Section 122(g)(4) *De Minimis* Contributor Administrative Order on Consent.'' These models supersede the ''Interim Model CERCLA Section 122(g)(4) *De Minimis* Waste Contributor Consent Decree and Administrative Order on Consent'' issued on October 19, 1987, and published at 52 Fed. Reg. 43,393 (1987). They represent the latest thinking on CERCLA Section 122(g)(1)(A) *de minimis* contributor settlements and are the product of years of experience gained in administering the *de minimis* settlement provisions of CERCLA. These revised models are needed to implement the early *de minimis* expedited settlement pilots that are part of the Superfund Administrative Reforms initiative and will provide valuable tools in fostering *de minimis* settlements in general.

These models are to be used as guidance by EPA and DOJ staff when negotiating *de minimis* contributor settlements. We encourage our staffs to adhere to them as closely as possible so as to conform with current settlement practices and procedures. We believe use of the models will help expedite negotiation of *de minimis* settlements, increase fairness and national consistency, and streamline review and approval of *de minimis* consent decrees and consent orders. When seeking approval of any settlement based upon one of these models, staff should identify any significant deviation from the relevant model and the basis for the departure. For DOJ staff, these models are available electronically on the Section's work product directory, EESINDEX, as N: \ NET\ SS52\ UDD\ EESINDEX\ CERMODEL\ 122G4.CD or 122G4.AOC.

We would like to thank all EPA and DOJ staff who assisted in the development of these models. If you have any questions about the models, please contact Janice Linett of the Regional Support Division (RSD) at (703) 978–3057 or Tom Mariani of the Environmental Enforcement Section (EES) at (202) 514–4620. The EPA Regions may address questions about case-specific matters to the RSD attorney assigned to the case. DOJ staff should direct questions about case-specific matters to their senior attorneys or Assistant Chief or to Tom Mariani, Joe Hurley, or Mike Goodstein, EES' *de minimis* settlement coordinators.

Attachments
cc: Lawrence E. Starfield, Acting Associate General Counsel, Solid Waste and Emergency Response Division
Stephen D. Luftig, Director, Office of Emergency and Remedial Response
Jack L. Shipley, Director, Financial Management Division
Letitia Grishaw, Chief, Environmental Defense Section

United States Environmental Protection Agency and United States Department of Justice Model Cercla Section 122(g)(4) De Minimis Contributor Consent Decree and Administrative Order on Consent

These models and any internal procedures adopted for their implementation and use are intended as guidance for employees of the U.S. Department of Justice and U.S. Environmental Protection Agency. They do not constitute rulemaking by the Department or Agency and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The

Department or Agency may take action at variance with these models or their internal implementing procedures.

Model Cercla Section 122(g)(4) De MinimisContributor Consent Decree

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Model Cercla Section 122(G)(4) De Minimis Contributor Consent Decree

In the United States District Court for the District of [_____] [_____] Division [1]

United States of America, Plaintiff, v. [Defendants] Defendants.

[Civil Action No. _____]

Judge _____

Consent Decree

[Note: If the complaint includes causes of action which are not resolved by this consent decree or names defendants who are not signatories to this consent decree, the title should be ''Partial Consent Decree.'']

I. Background

A. The United States of America (''United States''), on behalf of the Administrator of the United States Environmental Protection Agency (''EPA''), filed a complaint in this matter pursuant to [[insert causes of action and relief sought, e.g., ''Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. §§ 9606 and 9607, seeking injunctive relief regarding the cleanup of the [insert site name] in [insert City, County, State] (''Site''), and recovery of costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with the Site'']].

B. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. 9604, and will undertake response actions in the future. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

[Note: Insert brief description of response actions undertaken at the site to date by EPA or private parties, noting whether a removal, RI/FS or ROD(s) have been completed. Describe briefly any previous settlements for performance of work or recovery of costs. Note whether further response action is planned.]

C. The Regional Administrator of EPA, Region _____, or his/her delegatee, has determined the following:

1. prompt settlement with each Settling Defendant is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1);

2. the payment to be made by each Settling Defendant under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1), based upon EPA's estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is [insert either ''$_____'' or ''between $_____ and $_____'']; and

3. the amount of hazardous substances contributed to the Site by each Settling Defendant and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Settling Defendant are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A). This is because [[insert volume and toxicity criteria used to qualify as a *de minimis* party under this consent decree, *e.g.*: ''the amount of hazardous substances contributed to the Site by each Settling Defendant does not exceed [insert either ''_____% of the hazardous substances at the Site,'' or ''_____ pounds/gallons of materials containing hazardous substances,''] and the hazardous substances contributed by each Settling Defendant to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.'']]

[Note: Where practicable, an attachment listing the volume and general nature of the hazardous substances contributed to the site by each settling defendant, to the extent available, may be included as an appendix. The total estimated volume of hazardous substances at the site should be noted on the attachment, if one is used.]

D. The Settling Defendants do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

E. The United States and Settling Defendants agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Settling Defendants.

Therefore, with the consent of the Parties to this Consent Decree, it is ordered, adjudged, and decreed:

II. Jurisdiction

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. 1331 and 1345 and 42 U.S.C. 9613(b), and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. Parties Bound

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their [heirs,] successors and assigns. Any change in ownership or corporate or other legal status of a Settling Defendant, including but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

IV. Statement of Purpose

[Note: As drafted, this Statement of Purpose assumes that all settling defendants are making a cash payment, which includes a premium amount, in exchange for a full and final settlement with the United States for all civil liability under CERCLA Sections 106 and 107 with respect to the site as a whole. This Statement of Purpose will need to be amended if the settlement is of narrower scope with respect to some or all settling defendants because, *e.g.*, it relates to only one operable unit, or it includes a reservation of rights for cost overruns. When using this or any other Statement of Purpose, be sure that it is consistent with the Covenant Not to Sue, the Reservations of Rights, and the definition of ''matters addressed'' in the Contribution Protection provision.]

3. By entering into this Consent Decree, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), that allows Settling Defendants to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606

[1] Follow local rules for caption format.

and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a [substantial] number of potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Settling Defendants for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by private parties, to provide for full and complete contribution protection for Settling Defendants with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5).

V. Definitions

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. ''CERCLA'' shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

b. ''Consent Decree'' or ''Decree'' shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. ''Day'' shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. ''EPA'' shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

e. ''EPA Hazardous Substance Superfund'' shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. 9507.

f. ''Interest'' shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. 9607(a).[2]

g. ''Paragraph'' shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

h. ''Parties'' shall mean the United States and the Settling Defendants.

i. ''Response costs'' shall mean all costs of ''response'' as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. 9601(25).

j. ''Section'' shall mean a portion of this Consent Decree identified by a roman numeral.

k. ''Settling Defendants'' shall mean those persons, corporations or other entities listed in Appendix A.

l. ''Site'' shall mean the _____ Superfund Site, encompassing approximately _____ acres, located at [insert address or description of location] in [insert City, County, State] and [insert either ''depicted more clearly on the map attached as Appendix B'' or ''designated by the following property description: _____.'']

m. ''United States'' shall mean the United States of America, including its departments, agencies and instrumentalities.

VI. Payment

5. Within 30 days of entry of this Consent Decree, each Settling Defendant shall pay to the EPA Hazardous Substance Superfund [insert either ''the amount set forth below'' or ''the amount set forth in Appendix C to this Consent Decree'']. 6. Each Settling Defendant's payment includes an amount for: (a) Past response costs incurred at or in connection with the Site; (b) projected future response costs to be incurred at or in connection with the Site; and [insert, if a premium is included in the settlement, ''(c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Settling Defendants' payments are based.''] 7. Each payment shall be made by certified or cashier's check made payable to ''EPA Hazardous Substance Superfund.'' Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number _____ [insert 4-digit number, first 2 numbers represent the Region (01–10), second 2 numbers represent the Region's Site/Spill Identification number], and DOJ Case Number _____ and shall be sent to: EPA Superfund.

[Insert Regional Superfund lockbox number and address]

8. At the time of payment, each Settling Defendant shall send notice that such payment has been made to: Chief, Environmental Enforcement Section, United States Department of Justice, DJ No. _____, P.O. Box 7611, Washington, D.C. 20044–7611.

[Insert name and address of Regional Financial Management Officer and any other receiving officials at EPA or DOJ]

[Note on Requiring one Collective Payment: If the settlement involves a large number of settling defendants, it may be appropriate to include alternative instructions under which the settling defendants are to establish a short-term trust or escrow account to receive their individual payments and to make one collective payment to the Superfund at the address noted in Paragraph 7. In such event, the cost of the trust or escrow account may be funded from interest earned by the account or through other appropriate means.]

[Note on use of Special Account payments: Payments made under Paragraph 7 may be placed in the Hazardous Substance Superfund to offset the United States' past response costs at the site, or may be placed in a site-specific special account within the Hazardous Substance Superfund (more accurately referred to as a ''reimbursable account'') to be retained and used for future response action at the site. If the negotiating team believes that a site-specific special account is appropriate, the consent decree should include clear instructions indicating which portion of the payment is to be placed in the Hazardous Substance Superfund to defray the United States' past costs and which portion of the payment is to be retained in a special account for future response action at the site. The instructions must include that any funds remaining in the special account after completion of the response action will be transferred to the Hazardous Substance Superfund. Sample instructions to be included at the end of Paragraph 7 are as follows (the address for payment stated in Paragraph 7 is correct for both Trust Fund and special account payments and should not be amended):

''Of the total amount to be paid pursuant to this Consent Decree, ['$_____' or '_____%'] shall be deposited in the EPA Hazardous Substance Superfund as

[Note: If some settling defendants are paying a premium and some are not, Paragraph 6 will need to be redrafted to indicate that there are both premium and non-premium settling defendants.]

[2] The Superfund currently is invested in 52-week MK bills. The interest rate for these MK bills changes on October 1 of each year. To obtain the current rate, contact Vince Velez, Office of Administration and Resource Management, Financial Management Division, Superfund Accounting Branch, at (202) 260–6465.

reimbursement for response costs incurred at or in connection with the Site as of [insert date] by the EPA Hazardous Substance Superfund, and ['$_____' or '_____%' or 'the remainder'] shall be deposited in the [Insert Site Name] Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance the response action at or in connection with the Site. Any balance remaining in the [Insert Site Name] Special Account shall be transferred by EPA to the EPA Hazardous Substance Superfund.'']]

VII. Failure To Make Payment

9. If any Settling Defendant fails to make full payment within the time required by Paragraph 5, that Settling Defendant shall pay Interest on the unpaid balance. In addition, if any Settling Defendant fails to make full payment as required by Paragraph 5, the United States may, in addition to any other available remedies or sanctions, bring an action against that Settling Defendant seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. 9622(l), for failure to make timely payment.

VIII. Certification of Settling Defendant

10. By signing this Consent Decree, each Settling Defendant certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e) [insert, if applicable, ''and Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. 6927'']].

IX. Covenant Not To Sue by United States

11. In consideration of the payments that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Section X (Reservations of Rights by United States), the United States [3] covenants not to sue or take administrative action against any of the Settling Defendants pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607, [and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973,] [4] relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Settling Defendant upon receipt of that Settling Defendant's payment as required by Section VI of this Consent Decree. With respect to each Settling Defendant, individually, this covenant not to sue is conditioned upon: (a) The satisfactory performance by Settling Defendant of all obligations under this Consent Decree; and (b) the veracity of the information provided to EPA by Settling Defendant relating to Settling Defendant's involvement with the Site. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

X. Reservations of Rights by United States

12. The covenant not to sue by the United States set forth in Paragraph 11 does not pertain to any matters other than those expressly specified in Paragraph 11. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters including, but not limited to, the following:

a. Liability for failure to meet a requirement of this Consent Decree;

b. Criminal liability;

c. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; [5] or

d. liability arising from the future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the date of lodging of this Consent Decree.

13. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual Settling Defendant in this action or in a new action or to issue an administrative order to any individual Settling Defendant seeking to compel that Settling Defendant to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if:

a. information is discovered which indicates that such Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Settling Defendant no longer qualifies as a *de minimis* party at the Site because [insert volume and toxicity criteria from Section I, Paragraph C(3), *e.g.*, ''Settling Defendant contributed greater than _____% of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site'']; or

[Note: The cost overrun reopener in Paragraph 13(b) below should only be included with respect to any settling defendant who is not paying a premium in lieu of this reopener.]

[[b. total response costs at or in connection with the Site exceed $_____ [insert dollar amount of cost ceiling]].

[[Note: If some settling defendants are paying a premium in lieu of the cost overrun reopener and some are not, insert: ''This Paragraph 13(b) shall not apply to those Settling Defendants identified [insert ''in Paragraph _____'' or ''in Appendix _____''] who have elected to pay a premium amount pursuant to Paragraphs 5 and 6.]]

XI. Covenant not to Sue by Settling Defendants

14. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Decree including, but not limited to:

a. Any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of

[3] If any agency other than EPA or DOJ, such as Coast Guard or Federal Emergency Management Agency, has or may incur response costs at the site, such costs must either be addressed in the settlement or must be excluded from the scope of the covenant not to sue.

[4] Note that when a RCRA Section 7003 covenant is included, Section 7003(d) of RCRA requires EPA to provide an opportunity for a public meeting in the affected area.

[5] The natural resource damages reservation in Paragraph 12(c) must be included unless the Federal Natural Resource Trustee[s] has/have agreed to a covenant not to sue pursuant to Section 122(j)(2) of CERCLA. In accordance with Section 122(j)(1) of CERCLA, where the release or threatened release of any hazardous substance at the site may have resulted in damages to natural resources under the trusteeship of the United States, the Region should notify the Federal Natural Resource Trustee[s] of the negotiations and encourage the Trustee[s] to participate in the negotiations.

CERCLA, 42 U.S.C. 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. Any claim arising out of response activities at the Site;[6] and

c. Any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. 9607 and 9613, relating to the Site.[7]

15. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 CFR 300.700(d).

16. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against each other with regard to the Site[8] pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. 9607 and 9613.

XII. Effect of Settlement/Contribution Protection

17. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The United States and Settling Defendants each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

18. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata,* collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 11.

19. The Parties agree, and by entering this Consent Decree this Court finds, that each Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5), for ''matters addressed'' in this Consent Decree. The ''matters addressed'' in this Consent Decree are [all response actions taken and to be taken by the United States and by private parties, and all response costs incurred and to be incurred by the United States and by private parties, at or in connection with the Site.][9]

XIII. Retention of Jurisdiction

20. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. Integration/Appendices

21. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached and incorporated into this Consent Decree:

''Appendix A'' is [the list of Settling Defendants].

''Appendix B'' is [the map of the Site].

''Appendix C'' is [the payment schedule].

[Note: List any additional appendices.]

XV. Public Comment

22. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States shall file with the Court any written comments received and the United States' response thereto. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. Settling Defendants consent to entry of this Consent Decree without further notice, and the United States reserves the right to oppose an attempt by any person to intervene in this civil action.

XVI. Effective Date

23. The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Paragraph 22.

XVII. Signatories/Service

24. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, or [his/her] delegatee, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such party to this document.

25. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

26. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service including, but not limited to, service of a summons, in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

27. Contemporaneous with the filing of the complaint in this action, the United States shall file a stipulation or motion for an extension of time to answer the complaint in favor of each Settling Defendant, which extension shall run until 30 days after the United States withdraws or withholds its consent pursuant to Section XV (Public Comment) or the Court declines to enter this Consent Decree.

So order this _____ day of _____, 19_____.

_____

United States District Judge

[6] If the consent decree does not resolve settling defendants' liability for the site as a whole, the scope of Paragraph 14(b) and (c) may be narrowed to conform to the scope of the United States' covenant not to sue. For example, if the consent decree resolves settling defendants' liability for defined ''Past Response Costs'' and for a defined ''Operable Unit I,'' Paragraph 14(b) and (c) could be limited to ''any claim arising out of response actions at the Site for which the Past Response Costs were incurred and any claim arising out of Operable Unit I.''

[7] The settlement should, wherever possible, release or resolve any claims by settling defendants against the United States related to the site. Where a claim is asserted by a potentially responsible party, or the Region has any information suggesting federal agency liability, all information relating to potential federal liability should be provided to the affected agency and DOJ as soon as possible in order to resolve any such issues in the settlement. Settlement of any federal liability will require additional revisions to this document, and model language will be provided separately. Only in exceptional circumstances where federal liability cannot be resolved in a timely manner in the settlement should this provision be deleted and private parties be allowed to reserve their rights.

[8] If the consent decree does not resolve settling defendants' liability for the site as a whole, the scope of settling defendants' covenant not to sue each other may be narrowed so as to conform to the scope of the United States' covenant.

[9] This definition of ''matters addressed'' assumes that this consent decree is designed to resolve fully settling defendants' liability at the site. If the intended resolution of liability is narrower in scope, then the definition of ''matters addressed'' will need to be narrowed.

The Undersigned Parties enter into this Consent Decree in the matter of [insert case name and civil action number], relating to the [insert site name and location]:

For the United States of America

Date: _____

_____

[Name]

Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530

_____

[Name]

United States Attorney, [Address]

_____

[Name]

Attorney, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611

_____

[Name]

Regional Administrator, Region [ ], U.S. Environmental Protection Agency.

[Address]

_____

[Name]

Assistant Regional Counsel, U.S. Environmental Protection Agency.

[Address]

The Undersigned Party enters into this Consent Decree in the matter of [insert case name and civil action number], relating to the _____ Superfund Site.

FOR DEFENDANT [ ]

Date: _____

_____

[Names and address of Defendant's signatories]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

Model CERCLA Section 122(g)(4) De Minimis Contributor, Administrative Order on Consent

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Model CERCLA Section 122(g)(4) De Minimis Contributor, Administrative Order on Consent

[U.S. EPA Docket No. _____]

In the Matter of: [Insert Site Name and Location], Proceeding under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9622(g)(4).

I. Jurisdiction

1. This Administrative Order on Consent (''Consent Order'' or ''Order'') is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (''EPA'') by Executive Order 12580, 52 FR 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14–14–E [insert reference to Regional redelegation, if any].

2. This Administrative Order on Consent is issued to the persons, corporations, or other entities identified in Appendix A (''Respondents''). Each Respondent agrees to undertake all actions required by this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

3. EPA and Respondents agree that the actions undertaken by Respondents in accordance with this Consent Order do not constitute an admission of any liability by any Respondent. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts or Determinations contained in Sections IV and V, respectively, of this Consent Order.

II. Statement of Purpose

[Note: As drafted, this Statement of Purpose assumes that all respondents are making a cash payment, which includes a premium amount, in exchange for a full and final settlement with EPA for all civil liability under CERCLA Sections 106 and 107 with respect to the site as a whole. This Statement of Purpose will need to be amended if the settlement is of narrower scope with respect to some or all respondents because, e.g., it relates to only one operable unit, or it includes a reservation of rights for cost overruns. When using this or any other Statement of Purpose, be sure that the provision is consistent with the Covenant Not to Sue, the Reservations of Rights, and the definition of ''matters addressed'' in the Contribution Protection provision.]

4. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. 6922(g), that allows Respondents to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a [substantial] number of potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Respondents for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by private parties, to provide for full and complete contribution protection for Respondents with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5).

III. Definitions

5. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

a. ''CERCLA'' shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

b. ''Consent Order'' or ''Order'' shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

c. ''Day'' shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day

would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. ''EPA'' shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

e. ''EPA Hazardous Substance Superfund'' shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. 9507.

f. ''Interest'' shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).[1]

g. ''Paragraph'' shall mean a portion of this Consent Order identified by an arabic numeral.

h. ''Parties'' shall mean EPA and the Respondents.

i. ''Respondents'' shall mean those persons, corporations, or other entities listed in Appendix A.

j. ''Response costs'' shall mean all costs of ''response'' as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. 9601(25).

k. ''Section'' shall mean a portion of this Consent Order identified by a roman numeral.

l. ''Site'' shall mean the _____ Superfund Site, encompassing approximately _____ acres, located [insert address or description of location] in [insert City, County, State] and [insert either ''depicted more clearly on the map attached as Appendix B'' or ''designated by the following property description: _____.'']

m. ''United States'' shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. Statement of Facts

6. [In one or more paragraphs, insert site name, location, description, NPL status and brief statement of historical hazardous substance activity at the site.]

7. Hazardous substances have been or are threatened to be released at or from the Site.

[Note: Additional information about specific hazardous substances present on- or off-site may be included.]

8. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. 9604, and will undertake response actions in the future.

[Note: Insert brief description of response actions undertaken at the site to date by EPA or private parties, noting whether a removal, RI/FS or ROD(s) have been completed. Describe briefly any prior settlements for performance of work at the site. Note whether further response action is planned.]

9. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

[Note: The dollar amount of costs incurred as of a specific date should be included. Describe briefly any previous cost recovery settlements under which any of these costs have been reimbursed to EPA by site PRPs.]

10. [Identify each respondent and its relationship to the site. If respondents are numerous, state generally that ''Each Respondent listed on Appendix A arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such Respondent, by any other person or entity, at the Site, or accepted a hazardous substance for transport to the Site which was selected by such Respondent.'']

11. [[In one or more paragraphs, present in summary fashion the factual basis for EPA's determination in Section V below that the amount of hazardous substances contributed to the site by each respondent and the toxic or other hazardous effects of the substances contributed to the site by each respondent are minimal in comparison to other hazardous substances at the site. The language will vary depending upon the criteria established for the particular settlement. An example follows:

''The amount of hazardous substances contributed to the Site by each Respondent does not exceed [insert either ''_____% of the hazardous substances at the Site,'' or ''_____ pounds/gallons of materials containing hazardous substances,''] and the hazardous substances contributed by each Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.'']]

[Note: Where practicable, an attachment listing the volume and general nature of the hazardous substances contributed to the site by each respondent, to the extent available, may be included as an appendix. The total estimated volume of hazardous substances at the site should be noted on the attachment, if one is used.]

12. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is [insert either ''$_____'' or ''between $_____ and $_____''']. The payment required to be made by each Respondent pursuant to this Consent Order is a minor portion of this total amount.

[Note: The dollar figure inserted should include the total response costs incurred to date as well as the Agency's projection of the total response costs to be incurred during completion of the remedial action at the site. The response cost estimate should include United States and private party costs.]

V. Determinations

13. Based upon the Statement of Facts set forth above and on the administrative record for this Site, EPA has determined that:

a. The [insert site name] site is a ''facility'' as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

b. Each Respondent is a ''person'' as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

c. Each Respondent is a ''potentially responsible party'' within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

d. There has been an actual or threatened ''release'' of a ''hazardous substance'' from the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. 9601(22) and (14).

e. The actual or threatened ''release'' caused the incurrence of response costs.

f. Prompt settlement with each Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

g. As to each Respondent, this Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

h. The amount of hazardous substances contributed to the Site by each Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A).

[Note: If Attorney General approval is not required for this settlement because total past and projected response costs of the United States at the site are not expected to exceed $500,000, insert the following Paragraph 13(i).]

[1] The Superfund currently is invested in 52-week MK bills. The interest rate for these MK bills changes on October 1 of each year. To obtain the current rate, contact Vince Velez, Office of Administration and Resource Management, Financial Management Division, Superfund Accounting Branch, at (202) 260–6465.

[i. The total past and projected response costs of the United States at or in connection with the Site will not exceed $500,000, excluding interest.]

VI. Order

14. Based upon the administrative record for the Site and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby agreed to and ordered:

VII. Payment

15. Within 30 days of the effective date of this Consent Order, each Respondent shall pay to the EPA Hazardous Substance Superfund [insert either: ''the amount set forth below'' or ''the amount set forth in Appendix C to this Consent Order'']. 16. Each Respondent's payment includes an amount for: (a) past response costs incurred at or in connection with the Site; (b) projected future response costs to be incurred at or in connection with the Site; and [insert, if a premium is included in the settlement, ''(c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Respondents' payments are based.'']

[Note: If some respondents are paying a premium and some are not, Paragraph 16 will need to be redrafted to indicate that there are both premium and non-premium settling respondents.]

17. Each payment shall be made by certified or cashier's check made payable to ''EPA Hazardous Substance Superfund.'' Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number _____ [insert 4-digit number, first 2 numbers represent the Region (01–10), second 2 numbers represent the Region's Site/Spill Identification number], and the EPA docket number for this action, and shall be sent to:

EPA Superfund
[Insert Regional Superfund lockbox number and address]

18. At the time of payment, each Respondent shall send notice that such payment has been made to:

[Insert name and address of Regional Attorney and/or Remedial Project Manager]

[Note on Requiring One Collective Payment: If the settlement involves a large number of respondents, it may be appropriate to include alternative instructions under which the respondents are to establish a short-term trust or escrow account to receive their individual payments and to make one collective payment to the Superfund at the address noted in Paragraph 17. In such event, the cost or the trust or escrow account may be funded from interest earned by the account or through other appropriate means.]

[Note on Use of Special Account Payments: Payments made under Paragraph 17 may be placed in the Hazardous Substance Superfund to offset the United States' past response costs at the site, or may be placed in a site-specific special account within the Hazardous Substance Superfund (more accurately referred to as a ''reimbursable account'') to be retained and used for future response action at the site. If the negotiating team believes that a site-specific special account is appropriate, the consent order should include clear instructions indicating which portion of the payment is to be placed in the Hazardous Substance Superfund to defray the United States' past costs and which portion of the payment is to be retained in a special account for future response action at the site. The instructions must include that any funds remaining in the special account after completion of the response action will be transferred to the Hazardous Substance Superfund. Sample instructions to be included at the end of Paragraph 17 are as follows (the address for payment stated in Paragraph 17 is correct for both Hazardous Substance Superfund and special account payments and should not be amended):

''Of the total amount to be paid pursuant to this Consent Order, ['$_____' or '_____%'] shall be deposited in the EPA Hazardous Substance Superfund as reimbursement for response costs incurred at or in connection with the Site as of [insert date] by the EPA Hazardous Substance Superfund, and ['$_____' or '_____%' or 'the remainder'] shall be deposited in the [Insert Site Name] Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance the response action at or in connection with the Site. Any balance remaining in the [Insert Site Name] Special Account shall be transferred by EPA to the EPA Hazardous Substance Superfund.''

VIII. Failure to Make Payment

19. If any Respondent fails to make full payment within the time required by Paragraph 15, that Respondent shall pay Interest on the unpaid balance. In addition, if any Respondent fails to make full payment as required by Paragraph 15, the United States may, in addition to any other available remedies or sanctions, bring an action against that Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. 9622(l), for failure to make timely payment.

IX. Certification of Respondent

20. By signing this Consent Order, each Respondent certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e) [insert, if applicable '', and Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. 6927''].

X. Covenant Not to Sue by United States

21. In consideration of the payments that will be made by Respondents under the terms of this Consent Order, and except as specifically provided in Section XI (Reservations of Rights by United States), the United States [2] covenants not to sue or take administrative action against any of the Respondents pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607, [and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973,] [3] relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Respondent upon receipt of that Respondent's payment as required by Section VII. With respect to each Respondent, individually, this covenant not to sue is conditioned upon: (a) the satisfactory performance by Respondent of all obligations under this Consent

[2] If any agency other than EPA or DOJ, such as Coast Guard or Federal Emergency Management Agency, has or may incur response costs at the site, such costs must either be addressed in the settlement or must be excluded from the scope of the covenant not to sue.

[3] Note that when a RCRA Section 7003 covenant is included, Section 7003(d) of RCRA requires EPA to provide an opportunity for a public meeting in the affected area.

Order; and (b) the veracity of the information provided to EPA by Respondent relating to Respondent's involvement with the Site. This covenant not to sue extends only to Respondents and does not extend to any other person.

XI. Reservations of Rights by United States

22. The covenant not to sue by the United States set forth in Paragraph 21 does not pertain to any matters other than those expressly specified in Paragraph 21. The United States reserves, and this Consent Order is without prejudice to, all rights against Respondents with respect to all other matters including, but not limited to:

a. liability for failure to meet a requirement of this Consent Order;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;[4] or

d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the effective date of this Consent Order.

23. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual Respondent seeking to compel that Respondent to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if:

a. information is discovered which indicates that such Respondent contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Respondent no longer qualifies as a *de minimis* party at the Site because [insert volume and toxicity criteria from Paragraph 11 of the Statement of Facts, *e.g.*, ''such Respondent contributed greater than _____% of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site'']; or

[Note: The cost overrun reopener in Paragraph 23(b) below should only be included with respect to any respondent who is not paying a premium in lieu of this reopener.]

[b. total response costs at or in connection with the Site exceed $_____ [insert dollar amount of cost ceiling].

[Note: If some respondents are paying a premium in lieu of the cost overrun reopener and some are not, insert: ''This Paragraph 23(b) shall not apply to those Respondents identified [insert ''in Paragraph _____'' or ''in Appendix _____''] who have elected to pay a premium pursuant to Paragraphs 15 and 16.'']

XII. Covenant not to Sue by Respondents

24. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Order including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response activities at the Site;[5] and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. 9607 and 9613, relating to the Site.[6]

25. Nothing in this Consent Order shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 CFR 300.700(d).

26. Respondents covenant not to sue and agree not to assert any claims or causes of action against each other with regard to the Site[7] pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. 9607 and 9613.

XIII. Effect of Settlement/Contribution Protection

27. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. The United States and Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 21.

29. The Parties agree that each Respondent is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5), for ''matters addressed'' in this Consent Order. The ''matters addressed'' in this Consent Order are [all response actions taken by the United States and by private parties, and all response costs incurred and to be incurred by the United States and by private parties, at or in connection with the Site.][8]

XIV. Parties Bound

30. This Consent Order shall apply to and be binding upon EPA and upon Respondents and their [heirs,]

[4] This natural resource damage reservation must be included unless the Federal Natural Resource Trustee[s] has/have agreed to a covenant not to sue pursuant to Section 122(j)(2) of CERCLA. In accordance with Section 122(j)(1) of CERCLA, where the release or threatened release of any hazardous substances at the site may have resulted in damages to natural resources under the trusteeship of the United States, the Region should notify the Federal Natural Resource Trustee[s] of the negotiations and encourage the Trustee[s] to participate in the negotiations.

[5] If the consent order does not resolve respondents' liability for the site as a whole, the scope of Paragraph 24 (b) and (c) may be narrowed to conform to the scope of EPA's covenant not to sue. For example, if the consent order resolves respondents' liability for defined ''Past Response Costs'' and for a defined ''Operable Unit I,'' Paragraph 24 (b) and (c) could be limited to ''any claim arising out of response actions at the Site for which the Past Response Costs were incurred and any claim arising out of Operable Unit I.''

[6] The settlement should, wherever possible, release or resolve any claims by respondents against the United States related to the site. Where a claim is asserted by a potentially responsible party, or the Region has any information suggesting federal agency liability, all information relating to potential federal liability should be provided to the affected agency and DOJ as soon as possible in order to resolve any such issues in the settlement. Settlement of any federal liability will require additional revisions to this document, and model language will be provided separately. Only in exceptional circumstances where federal liability cannot be resolved in a timely manner in the settlement should this provision be deleted and private parties be allowed to reserve their rights.

[7] If the consent order does not resolve respondents' liability for the site as a whole, the scope of respondents' covenant not to sue each other may be narrowed so as to conform to the scope of the United States' covenant.

[8] This definition of ''matters addressed'' assumes that this consent order is designed to resolve fully respondents' liability at the site. If the intended resolution of liability is narrower in scope, then the definition of ''matters addressed'' will need to be narrowed.

successors and assigns. Any change in ownership or corporate or other legal status of a Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

XV. Integration/Appendices

31. This Consent Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Order. The following appendices are attached to and incorporated into this Consent Order:

''Appendix A'' is [the list of Respondents].
''Appendix B'' is [the map of the Site].
''Appendix C'' is [the payment schedule].

[Note: List any additional appendices.]

XVI. Public Comment

32. This Consent Order shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. 9622(i)(3), EPA may withdraw or withhold its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XVII. Attorney General Approval

[Note: This Section should be used if Attorney General approval is required for this settlement because total past and projected response costs at the site will exceed $500,000, excluding interest. The Region should consult with DOJ during the negotiations process and should obtain written DOJ approval of the settlement before publishing notice of the proposed consent order in the Federal Register pursuant to Section 122(i) of CERCLA. The Region should discuss with DOJ any significant comments received during the public comment period. If the Region believes that the consent order should be modified based upon public comment, the Region should discuss with the DOJ attorney assigned to the case whether the proposed change will require formal re-approval by DOJ.]

33. The Attorney General or [his/her] designee has approved the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4).

XVIII. Effective Date

34. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 32 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

It is so agreed and ordered:

U.S. Environmental Protection Agency

By: _____

[Name] _____

[Date] _____

Regional Administrator, Region _____ —

[Note: If the Regional Administrator has redelegated authority to enter into *de minimis* settlements, insert name and title of delegated official.]

THE UNDERSIGNED RESPONDENT enters into this Consent Order in the matter of [insert U.S. EPA docket number], relating to the [insert site name and location]:

For Respondent:

[Name] _____

[Address] _____

By: _____

[Name] _____

[Date] _____

[FR Doc. 95–29746 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

The Mitsubishi Bank, Limited; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company also has given notice under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal to acquire the non-banking subsidiaries can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 1996.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. The Mitsubishi Bank, Limited, Tokyo, Japan; to merge with The Bank of Tokyo, Ltd., Tokyo, Japan, and thereby indirectly acquire The Bank of Tokyo Trust Company, New York, New York, The Chicago-Tokyo Bank, Chicago, Illinois, and Union Bank, San Francisco, California.

In connection with this application, Applicant also has applied to acquire BOT Securities, Inc., New York, New York, and thereby engage in making, acquiring or servicing loans, pursuant to § 225.25(b)(1), providing investment or financial advice, pursuant to § 225.25(b)(4),providing brokerage services separately and in combination with investment advisory services, pursuant to § 225.25(b)(15), underwriting and dealing in bank-eligible securities, pursuant to § 225.25(b)(16), providing general information and statistical forecasting with respect to foreign exchange markets, pursuant to § 225.25(b)(17), acting as a futures commission merchant, pursuant to § 225.25(b)(18), and trading for its own account in

certain foreign exchange spot, forward, futures, and options transactions, *The Bank of Tokyo, Ltd.*, 76 Fed. Res. Bull. 654 (1990), and BOT Financial Corp., Boston, Massachusetts, and thereby engage in making, acquiring or servicing loans, pursuant to § 225.25(b)(1), acting as investment or financial advisor, pursuant to § 225.25(b)(4), leasing services, pursuant to § 225.25(b)(5), and providing data processing and data transmission services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

In connection with this application, Union Bank, San Francisco, California, will become a bank holding company by acquiring 100 percent of the voting shares of BanCal Tri-State Corporation, San Francisco, California, and thereby indirectly acquire The Bank of California, N.A., San Francisco, California. The Bank of California will acquire the banking assets and assume the liabilities of Union Bank and Union Bank will cease to be an insured institution.

In connection with this proposal, The Mitsubishi Bank Ltd. and Union Bank have applied to acquire UB Investment Services, Inc., Los Angeles, California, and thereby engage in investment advisory services, pursuant to § 225.25(b)(4) of the Board's Regulation Y; securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y; and acting as riskless principal, pursuant to *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989); Bankers Commercial Corporation, San Diego, California, UB Leasing, Inc., Los Angeles, California, and Unionbanc Leasing Corp., Los Angeles, California, and thereby engage in making, acquiring or servicing loans, pursuant to § 225.25(b)(1); acting as investment or financial advisor, pursuant to § 225.25(b)(4); and leasing services, pursuant to § 225.25(b)(5), and providing data processing and data transmission services, pursuant to § 225.25(b)(7) of the Board's Regulation Y; Stanco Properties, Inc., San Francisco, California, and thereby engage in escrow and custodial services, pursuant to § 225.25(b)(3) of the Board's Regulation Y; and UB Mortgage Corp., San Francisco, California, and thereby engage in acting as trustee under deeds of trust, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29820 Filed 12–6–95; 8:45 am]

BILLING CODE 6210–01–F

Southern National Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 21, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Southern National Corporation, Winston-Salem, North Carolina; to engage *de novo* in making, acquiring, or servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Central and Southern Holding Company, Milledgeville, Georgia; to engage *de novo* in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Applicant will charter an interim thrift, Central and Southern of North Georgia, Greensboro, Georgia, which will be merged with Applicant's existing subsidiary, Central and Southern Bank of Greensboro.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Colorado Business Bankshares, Inc., Denver, Colorado; to engage *de novo* through its subsidiary, Colorado Business Leasing, Inc., Denver, Colorado, in leasing personal property, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29821 Filed 12–6–95; 8:45 am]

BILLING CODE 6210–01–F

Wells Fargo & Company; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-28984) published on page 58627 of the issue for Tuesday, November 28, 1995.

Under the Federal Reserve Bank of San Francisco heading, the entry for Wells Fargo & Company, is revised to read as follows:

1. Wells Fargo & Company San Francisco, California; to acquire at least 50.1 percent of the voting shares of First Interstate Bancorp, Los Angeles, California, and thereby indirectly acquire First Interstate Bank of Alaska, N.A., Anchorage, Alaska; First Interstate Bank of Arizona, N.A., Phoenix, Arizona; First Interstate Bank of California, Los Angeles, California; First Interstate Bank of Denver, N.A., Denver, Colorado; First Interstate Bank of Englewood, N.A., Englewood, Colorado; First Interstate Bank of Idaho, N.A., Boise, Idaho; First Interstate Bank of Montana, N.A., Kalispell, Montana; First Interstate Bank of Nevada, N.A., Las Vegas, Nevada; First Interstate Bank of New Mexico, N.A., Santa Fe, New Mexico; First Interstate Bank of Oregon, N.A., Portland, Oregon; First Interstate Bank of Texas, N.A., Houston, Texas; First Interstate Bank of Utah, N.A., Salt Lake City, Utah; First Interstate Bank of Washington, N.A., Seattle, Washington; First Interstate Bank of Wyoming, N.A.,

Casper, Wyoming; First Interstate Bank, Ltd., Los Angeles, California; and First Interstate Central Bank, Calabasas, California.

Wells Fargo & Company San Francisco, California; to acquire First Interstate Resource Finance Associates, Newport Beach, California, and thereby engage in making, servicing, and acquiring loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y, Liberty Brokerage, Inc., New York, New York, and thereby engage in securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y, and Star System, Inc., California, and thereby engage in data transmission services through an electronic fund transfer network, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Comments on this application must be received by December 22, 1995.

Board of Governors of the Federal Reserve System, December 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29822 Filed 12–6–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: November 1995

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for welfare reform and combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of November, 1995. It includes both those proposals being considered under the standard waiver process and those being considered under the 30 day process. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since November 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

Comments: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove new proposals under the standard application process for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Aerospace Building, 7th Floor West, Washington DC 20447. FAX: (202) 205–3598 PHONE: (202) 401–9220.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the Federal Register (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

On August 16, 1995, the Secretary published a notice in the Federal Register (60 FR 42574) exercising her discretion to request proposals testing welfare reform strategies in five areas. Since such projects can only incorporate provisions included in that announcement, they are not subject to the Federal notice procedures. The Secretary proposed a 30 day approval process for those provisions. As previously noted, this notice lists all new or pending welfare reform demonstration proposals under section 1115. Where possible, we have identified the proposals being considered under the 30 day process. However, the Secretary reserves the right to exercise her discretion to consider any proposal under the 30 day process if it meets the criteria in the five specified areas and the State requests it or concurs.

II. Listing of New and Pending Proposals for the Month of November, 1995

As part of our procedures, we are publishing a monthly notice in the Federal Register of all new and pending proposals. This notice contains proposals for the month of November, 1995.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend Work Pays Demonstration Project by adding provisions to: reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC.

Date Received: 3/14/94.

TYPE: AFDC.

Current Status: Pending.

Contact Person: Glen Brooks, (916) 657–3291.

Project Title: California—Assistance Payments Demonstration Project (Amendment).

Description: Would amend the Assistance Payments Demonstration Project by: exempting certain categories of AFDC families from the State's benefit cuts; paying the exempt cases based on grant levels in effect in California on November 1, 1992; and renewing the waiver of the Medicaid maintenance of effort provision at section 1902(c)(1) of the Social Security Act, which was vacated by the Ninth Circuit Court of Appeals in its decision in *Beno* v. *Shalala.*

Date Received: 8/26/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC.

Date Received: 11/9/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: California—School Attendance Demonstration Project.

Description: In San Diego County, require AFDC recipients ages 16–18 to attend school or participate in JOBS.
Date Received: 12/5/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: Connecticut—A Fair Chance—Modification.
Description: Proposed modifications would: establish time limits; disregard earnings for time-limited recipients up to poverty level; reduce benefit increase for additional children by one-half; require minor parents to live with adult; change redetermination, verification, and reporting requirements; provide employer tax credits for hiring AFDC recipients; require biometric identification as condition of eligibility for unit; establish two-tier payment system for new residents; simplify and conform AFDC and Food Stamp rules on resources; allow 24 weeks of job search without child care guarantee; change good cause criteria regarding participation; change JOBS sanctions; apply uniform sanction policy for JOBS, child support, and voluntary quits; extend transitional Medicaid to two years; provide transitional child care while income below 75% of state median; limit the application period for transitional child care to 6 months after leaving AFDC; establish fee for child care for AFDC recipients; serve non-custodial parents under JOBS.
Date Received: 8/10/95.
Type: Combined AFDC/Medicaid.
Current Status: Pending.
Contact Person: Nancy Wiggett, (203) 424–5329.

Project Title: Georgia—Jobs First Project.
Description: In ten pilot counties, would replace AFDC payment with paid employment; extend transitional Medicaid to 24 months; eliminate 100 hour employment rule for eligibility determination in AFDC-UP cases.
Date Received: 7/5/94.
Type: AFDC.
Current Status: Pending (not previously published).
Contact Person: Nancy Meszaros, (404) 657–3608.

Project Title: Hawaii—Families Are Better Together.
Description: Statewide, would eliminate 100-hour, attachment to the work force, 30 day unemployment and principal wage earner criteria for AFDC-UP families.
Date Received: 5/22/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Patricia Murakami, (808) 586–5230.

Project Title: Illinois—Six Month Paternity Establishment Demonstration.
Description: In 20 counties, would require the establishment of paternity, unless good cause exists, within 6 months of application or redetermination as a condition of AFDC and Medicaid eligibility for both mother and child; would deny Medicaid to children age 7 and under, exclude children from filing rules, and exempt Department from making protective payments to eligible children, when custodial parent has not cooperated in establishing paternity; delegate the establishment of paternity in uncontested cases to caseworkers who perform assistance payment or social service functions under title IV–A or XX.
Date Received: 7/18/95.
Title: AFDC/Medicaid.
Current Status: Pending.
Contact Person: Karan D. Maxson, (217) 785–3300.

Project Title: Kansas—Actively Creating Tomorrow for Families Demonstration.
Description: Would, after 30 months of participation in JOBS, make adults ineligible for AFDC for 3 years; replace $30 and 1/3 income disregard with continuous 40% disregard; disregard lump sum income and income and resources of children in school; count income and resources of family members who receive SSI; exempt one vehicle without regard for equity value if used to produce income; allow only half AFDC benefit increase for births of a second child to families where the parent is not working and eliminate increase for the birth of any child if families already have at least two children; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; extend Medicaid transitional benefits to 24 months; eliminate various JOBS requirements, including those related to target groups, participation rate of UP cases and the 20-hour work requirement limit for parents with children under 6; require school attendance; require minors in AFDC and NPA Food Stamps cases to live with a guardian; make work requirements and penalties in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities.
Date Received: 7/26/94.
Type: Combined AFDC/Medicaid.
Current Status: Pending.
Contact Person: Faith Spencer, (913) 296–0775.

Project Title: Louisiana—Individual Responsibility Project.
Description: Statewide, would limit AFDC benefits to 24 months out of a 60 month period for able-bodied recipients with extensions where the individual has been actively seeking employment, where job availability is unfavorable, where the individual loses a job for factors unrelated to his job performance, or where the individual requires up to one year to complete employment related education or training; require each child to attend school and be immunized or the child will be removed from the budget group; and applies a full family sanction where the parent has declined or refused an opportunity for full-time employment, without good cause.
Date Received: 9/22/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Sammy Guillory, (504) 342–4089.

Project Title: Maine—Welfare to Work Program.
Description: Statewide, would require caretaker relatives to sign a family contract; require participation in parenting classes and health care services; provide one-time vendor payments in lieu of AFDC for the purpose of obtaining/retaining employment; provide voucher payments to both married and unmarried minor parents; limit JOBS exemptions; expand eligibility for Transitional Medicaid and Child Care and replace sliding-scale fees with flat-rate fees; reduce Transitional Medicaid reporting requirements; disregard entire value of one vehicle; and apply any federal savings to the JOBS program services. In selected sites, implement ASPIRE-Plus, a subsidized employment program, would cash out food stamps, divert AFDC benefits and pass through all child support collected to families who participate in ASPIRE-Plus.
Date Received: 9/20/95.
Type: AFDC/Medicaid.
Current Status: Pending.
Contact Person: Susan Dustin, (207) 287–3104.

Project Title: Mississippi—A New Direction Demonstration Program—Amendment.
Description: Requests amendments to the Work First Component (operating in Adams, Harrison, Hinds, Jones, Lee and Washington counties) of the Mississippi New Direction Demonstration Project which would: provide transitional Medicaid and child care to AFDC families even if they have not received AFDC for at least three months; and permit JOBS sanctions to be imposed for exempt clients that volunteer for JOBS and then drop out without good cause.

Date Received: 11/20/95.
Type: Combined AFDC/Medicaid.
Current Status: New.
Contact Person: Larry Temple, (601) 359–4476.

Project Title: New Hampshire—Earned Income Disregard Demonstration Project.
Description: AFDC applicants and recipients would have the first $200 plus ½ the remaining earned income disregarded.
Date Received: 9/20/93.
Type: AFDC.
Current Status: Pending.
Contact Person: Avis L. Crane, (603) 271–4255.

Project Title: New Hampshire—New Hampshire Employment Program and Family Assistance Program.
Description: Statewide, would replace AFDC with Employment Program administered by both Employment Security Agency and Family Assistance Program; require job search and other employment-related activities for first 26 weeks of receipt followed by work-related activities for 26 weeks; eliminate JOBS target group funding requirement and change JOBS reporting requirements; require recipients attending post-secondary or part-time vocational training to participate in work-related activities; eliminate JOBS services priority for volunteers; establish limits for provision of transportation and other JOBS services based on activity and local conditions; eliminate remoteness as exemption from JOBS; require non-custodial parents to participate in JOBS; increase earned income disregard to 50%; eliminate AFDC–UP eligibility requirements; allow transitional case management for up to one year; raise resource limit to $2,000 and exclude one vehicle and life insurance policies; pass through child support directly to family; take SSI income into account in determining eligibility/payment; eliminate conciliation and apply JOBS sanction of 50% of AFDC benefits for three months followed by no payment for three months, allowing option to increase initial sanction up to 100%; exempt pregnant women from JOBS only during third trimester; for minor parents cases, include in assistance unit any parent or sibling living in the home; eliminate gross income test; disregard educational grants; allow emergency assistance for families with employment-related barriers; allow State to eliminate the certificate option for child care and development block grant funds and use of these funds for capital improvement; eliminate ceiling on At Risk Child Care funds; provide that FFP for AFDC not be reduced during life of demonstration; fund computer system modifications at 80% FFP; require pregnant recipients to cooperate with child support; require that AFDC apply for Medicaid as a unit and not individually; eliminate requirement of receipt of AFDC for 3 of last 6 months in order to receive transitional Medicaid; and allow State to require that some individuals be assigned to a managed care program; substitute outcome measures for JOBS participation rates; change participation requirements for parents with children under 6, UP recipients and minors; establish a medical deduction; increase the sanction for non-cooperation with child support; exempt individuals with significant employment barriers from JOBS; treat lump sum income and all real property, except a home, as a resource; and use 20% of gross earned income as a Medicaid disregard. Also contains various Food Stamp waivers.
Date Received: 9/18/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Marianne Broshek, (603) 271–4442.

Project Title: New Hampshire—New Hampshire Employment Program.
Description: In three pilot sites, would require work after 6 months of AFDC receipt; eliminate the exemption from JOBS for women in the second trimester of pregnancy; eliminate the JOBS exemption for caretaker of a child under 3 but not less than 1 year of age; replace the earned income disregard of $90 and $30 and ⅓ with a 50% disregard which is not time-limited; raise the resource limit for recipients to $2,000; disregard full value of one vehicle per adult for applicants and recipients; apply a full family sanction voluntarily quitting a job or refusing to accept a job; apply a sanction of reducing the payment standard by 30% for one month for failure to comply with JOBS in the first instance, by 60% in the second instance for one month, and in the third instance apply a full-family sanction for three months or until compliance; and require non-custodial parents to participate in JOBS.
Date Received: 10/6/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Marianne Broshek, (603) 271–4442.

Project Title: North Carolina—Work First Program.
Description: Statewide would eliminate increase in AFDC benefits resulting from a birth of a child, limit JOBS exemptions, require a self-sufficiency contract, and limit AFDC receipt to 24 cumulative months. Families who reach the time limit could not reapply for 3 years. The contract would require: Cooperation with child support; child immunizations and medical check-ups; school attendance; and that teen parents live with a parent/adult and graduate from high school. Failure to sign the contract would result in denial of the AFDC application. Failure to comply would result in the loss of the adult's AFDC benefits and (starting with the second sanction) Medicaid coverage for a minimum of: 3 months for the first sanction, 3 months for the second, 6 months for the third, and 3 years for the fourth. The State would offer new applicants a one-time payment in lieu of AFDC; expand AFDC–UP eligibility; raise the resource limit to $3,000 and the vehicle asset limit to $5,000 for AFDC and Food Stamps; and provide for automatic food stamps eligibility for AFDC-eligible families.
Date Received: 9/20/95.
Type: AFDC/Medicaid.
Current Status: Pending.
Contact Person: Kevin Fitzgerald, (919) 733–3055.

Project Title: North Carolina—Cabarrus County Work Over Welfare Demonstration Project.Description: In Cabarrus County, would require AFDC and Food Stamps applicants and recipients, with exemptions, to sign an agreement to participate in employment and training for up to 40 hours per week; would divert AFDC and Food Stamps benefits to private employers to supplement wages; and would disregard those wages for AFDC, Food Stamps, and Medicaid eligibility (for NPA participants). Also, would extend the $30 and ⅓ disregard to 2 years for unsubsidized earnings. Individuals who not comply would be denied AFDC, Food Stamps, and Medicaid (unless pregnant) according to the following schedule: first, until compliance; second: for a minimum of 4 months; and third and subsequently: for a minimum of 8 months. Adults who do not sign an agreement would be denied AFDC, Food Stamps, and Medicaid (unless pregnant) until they sign.
Date Received: 10/5/95.
Type: AFDC/Medicaid.
Current Status: Pending.
Contact Person: Kevin Fitzgerald, (919) 733–3055.

Project Title: Ohio—Ohio First.
Description: Statewide, would replace current earned income disregards with $250 and ½ for twelve months for recipients; eliminate the work history requirement for married parents in AFDC-UP cases; eliminate 100-hour rule for AFDC-UP; disregard of stepparent

income for four months; increase the vehicle asset limit; use established vacancies for subsidized employment slots; require applicant job search as a condition of family eligibility; maintain food stamp benefit levels when the AFDC benefit is reduced as a result of sanction; impose progressive sanctions for noncompliance with JOBS leading to whole family sanctions; establish that failure to comply with JOBS equates to failure to comply with work program requirements under the Food Stamp Program; limit AFDC eligibility to 36 months out of any 60 month period, unless exempt; allow the IV-D agency to determine good cause for noncooperation with Child Support Enforcement; change penalty for failure to cooperate with Child Support provisions to include a whole family sanction if the failure continues for two years; change penalty for fraud to include ineligibility for all assistance unit members until payments received fraudulently have been repaid; require development and signing of a self-sufficiency contract as a condition of eligibility for the assistance unit; require pregnant women receiving Medicaid to participate in substance abuse screening as part of prenatal care; implement sanctions for failure to cooperate with substance abuse screening leading to whole family sanctions.

Date Received: 10/27/95.

Type: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Joel Rabb, (614) 466–3196.

Project Title: Oklahoma—Untitled.

Description: In four pilots conducted in five counties each, would (1) extend transitional child care to up to 24 months; (2) require that all children through age 18 be immunized and require that responsible adults with preschool age children participate in parent education or enroll the children in Head Start or other preschool program; (3) not increase AFDC benefits after birth of additional children, but provide voucher payment for the increment of cash benefits that would have been received until the child is two years old; and (4) pay lesser of AFDC benefit or previous state of residence or Oklahoma's for 12 months for new residents.

Date Received: 10/27/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Raymond Haddock, (405) 521–3076.

Project Title: Oregon—Oregon Option.

Description: As a statewide project, would incorporate waivers already approved in 1992 for JOBS Welfare Program and in 1994 for the JOBS Plus Demonstration with previously pending waiver requests to increase vehicle asset limit and extend transitional child care. Requests guaranteed level of federal funding, with funds not used for benefits to be used for other community support or prevention programs. Also would, with some exceptions, limit receipt of AFDC benefits to no more than 24 out of 84 months for families with employable parents; allow case manager to determine JOBS exemptions on an individual basis; eliminate the time restrictions on job search; impose progressive sanctions, leading to full-family ineligibility, for non-compliance with JOBS; require ineligible alien parents of AFDC children to participate in JOBS; require counseling for recipients with substance abuse problems; require teen parents to live in an adult-supervised setting; discontinue the AFDC-UP program from June through September each year and eliminate the 100-hour rule and work history requirements; increase asset limit to $2,500 for non-JOBS participants and $10,000 for JOBS participants, and treat lump-sum payments as an asset; require annual AFDC eligibility redeterminations; modify the rules for potential liability under EBT.

Date Received: 7/10/95.

Type: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Neely, (503) 945–5607.

Project Title: Oregon—Expansion of the Transitional Child Care Program.

Description: Provide transitional child care benefits without regard to months of prior receipt of AFDC and provide benefits for 24 months.

Date Received: 8/8/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Jim Neely, (503) 945–5607.

Project Title: Oregon—Increased AFDC Motor Vehicle Limit.

Description: Would increase automobile asset limit to $9000.

Date Received: 11/12/93.

Type: AFDC.

Current Status: Pending.

Contact Person: Jim Neely, (503) 945–5607.

Project Title: Pennsylvania—School Attendance Improvement Program

Description: In 7 sites, would require school attendance as condition of eligibility.

Date Received: 9/12/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: Pennsylvania—Savings for Education Program.

Description: Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts.

Date Received: 12/29/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: South Carolina—Family Independence Program.

Description: Statewide, would, with exceptions, time limit AFDC benefits to families with able bodied adults to 24 months out of 120 months, not to exceed 60 months in a lifetime; eliminate increase in AFDC benefit resulting from birth of children 10 or more months after the family begins AFDC receipt, but provide benefits to such children in the form of vouchers for goods and services permitting child's mother to participate in education, training, and employment-related activities; eliminate deprivation requirements, principal earner provisions, work history requirements, and 100-hour rule for AFDC–UP; increase AFDC resource limit to $2,500 and disregard as resources one vehicle with a market value up to $10,000, the balance in an Individual Development Account (IDA) up to $10,000, and the cash value of life insurance; disregard from income up to $10,000 in lump sum payments deposited in an IDA within 30 days of receipt, earned income of children attending school, and interest and dividend income up to $400; require participation in a family skills training program; require certain AFDC recipients to submit to random drug tests and/or participate in alcohol or drug treatment; require children to attend school; increase amount of child support passed through to AFDC recipients; require more extensive information for child support enforcement purposes; modify JOBS exemptions and good cause criteria, and increase sanctions for non-compliance; make job search a condition of eligibility; allow non-custodial parents of AFDC children to participate in JOBS; pay transitional grant equaling 3 percent of the maximum family grant following employment; and provide transitional grant Medicaid and child care for 12 months from the date of employment for cases previously closed due to time limit.

Date Received: 6/12/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Linda Martin (804) 737–6010.

Project Title: Texas—Achieving Change for Texans.

Description: Statewide, would implement requirement for a personal responsibility agreement which addresses issues such as child support cooperation, early medical screening for children, work requirements, drug and alcohol abuse, school attendance, and parenting skills training; would limit the caretaker exemption from employment services, disregard the earned income and resources from earnings of a child, set resource limits which promote independence from AFDC, eliminate work history and 100-hour rules for otherwise eligible two-parent families. In Bexar County would time-limit AFDC benefits to 12, 24, and 36 months depending on education and job experience, with extensions of the time-limit based on severe personal hardship, or in cases where the State could not provide supportive services, or the where the local economy was in such state that the recipient could not reasonably be expected to find employment, if State funds are available to continue assistance. Transitional Medicaid and child care services would be provided to individuals who exhaust their time-limited cash benefits. In two metropolitan statistical areas establish Individual Development Accounts to promote the transition to independence from AFDC, through allowable account deductions for education, business start-up costs and the like. In Fort Bend County would allow at recipient option, one-time AFDC cash emergency assistance payments of $1,000 in lieu of ongoing regular AFDC payments with prohibition from applying for regular AFDC for a period of 12 months from date of receipt. In Dallas-Fort Worth would require electronic imaging (fingerprinting combined with photographic identification).

Date Received: 10/6/95.

Title: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Kent Gummerman, (512) 438–3743.

Project Title: Utah—Untitled.

Description: Statewide, would exclude the value of a vehicle for AFDC recipient families, including those also receiving Food Stamps. Would not apply to initial eligibility determination.

Date Received: 10/3/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Bill Biggs, (801) 538–4337.

III. Listing of Approved Proposals since November 1, 1995

None.

IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research)

Dated: December 1, 1995.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 95–29823 Filed 12–6–95; 8:45 am]

BILLING CODE 4184–01–P

Agency for Health Care Policy and Research

Availability of Draft Clinical Practice Guideline on Smoking Cessation for Pre-Publication Review

AGENCY: Agency for Health Care Policy and Research.

ACTION: Notice.

SUMMARY: The Agency for Health Care Policy and Research (AHCPR) announces the availability of a draft AHCPR-sponsored clinical practice guideline on smoking cessation for pre-publication review. This guideline is being produced by a multidisciplinary private-sector panel of experts convened by AHCPR. The expert panel will not respond to individual comments but will consider all comments in determining revisions to the guideline. Individuals interested in obtaining a copy of the draft guideline for review must agree not to disclose its content to the public prior to its publication by AHCPR.

DATES: Comments must be postmarked by January 4, 1996.

SUPPLEMENTARY INFORMATION: The Agency for Health Care Policy and Research is responsible for the development of clinical practice guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. The AHCPR facilitates the development of guidelines by establishing private-sector panels who are responsible for their content.

A private-sector panel of health care experts and consumers was formed in May, 1994 to develop a clinical practice guideline to improve the effectiveness of smoking cessation activities. A public meeting was also held in November, 1994 for the panel to receive comments and information relevant to development of the guideline. The panel has reviewed and synthesized the literature on this topic and drafted a set of conclusions and recommendations based on the best available scientific data and expert judgment.

A draft of these conclusions and recommendations is now undergoing peer review by a substantial number of individuals and groups who are knowledgeable about smoking cessation programs and related activities. With this notice, the panel and AHCPR are also making the draft guideline available to any person who wishes to review and comment on it, so long as the person agrees to honor the confidentiality of this draft (as specified below).

After review of all comments received, the panel will revise the draft guideline and prepare the clinical practice guideline on smoking cessation.

Potential reviewers should note that AHCPR may disclose the names of the guideline reviewers at the same time the guideline is published. The AHCPR may also release the review comments after the guideline is published. However, the comments will not be attributed to specific reviewers.

Confidentiality Statement for Reviewers

During the review process, and until published by AHCPR, the guideline is confidential. It may not be quoted, distributed, or copied without the prior written consent of the panel chair.

All requests for the draft guideline must include the following confidentiality statement signed by the requestor:

In order to protect the integrity of the panel's deliberative process and its final product, I agree that: I will not release, publicly present, publish, have published, or otherwise disseminate any portion of the draft Smoking Cessation guideline.

Signature _____

Date _____

Affiliation _____

Name (printed or typed) _____

Request for Draft Guideline

To receive a copy of the draft guideline, requests must include: Requestor's name; Affiliation (business or organization); Address (including zip code); Telephone and Fax numbers; Signed confidentiality statement; and Information on reviewer's computer resources, if applicable, (needed to

ascertain ability to use a computerized program for guideline review).

Written requests, together with the signed confidentiality statement, should be mailed to: Cheryl Campbell, Panel Manager; Technical Resources International, Inc. (TRI), 3202 Tower Oaks Boulevard, Rockville, Maryland 20852–4200. (Fax number: (301) 231–6377.) If faxing the request, the original signed confidentiality statement must also be mailed.

Automated review process: A computerized guideline review process, supported by AHCPR, enables comments to be entered on a specially formatted diskette. A diskette will be furnished, with instructions, to those requesting the draft guideline. To facilitate the review process, it is recommended that reviewers use the computer diskette to record their comments. Reviewers who do not use a diskette will be asked to provide typewritten comments.

Requests for a copy of the draft guideline should include the following information regarding the computer system to be used for reviewing the guideline: Type of computer: IBM/compatible or Macintosh; and if IBM/compatible: the size of disk drive (3.5″ or 5.25″).

For technical assistance or questions regarding computer resources, call the Guideline Review Technical Support at (301) 231–5250 ext. 100 and ask for Ms. Cheryl Campbell.

FOR ADDITIONAL INFORMATION: Additional information on the guideline development process is contained in the AHCPR Program Note, ''Clinical Practice Guideline Development,'' (AHCPR Publication No. 93–0023) dated August 1993.

This document may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call toll-free: 1–800–358–9295.

Dated: December 1, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–29865 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 95E–0300]

Determination of Regulatory Review Period for Purposes of Patent Extension; CELLCEPT®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CELLCEPT® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CELLCEPT® (mycophenolate mofetil). CELLCEPT® is indicated for the prophylaxis of organ rejection in patients receiving allogeneic renal transplants. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CELLCEPT® (U.S. Patent No. 4,753,935) from Syntex, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 2, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CELLCEPT® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CELLCEPT® is 2,479 days. Of this time, 2,304 days occurred during the testing phase of the regulatory review period, while 175 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: July 21, 1988. The applicant claims June 24, 1988, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 21, 1988, which was 30 days after FDA receipt of IND 31,747 on June 21, 1988.

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357)*: November 10, 1994. FDA has verified the applicant's claim that the new drug application (NDA) for CELLCEPT® (NDA 50–722) was initially submitted on November 10, 1994.

3. *The date the application was approved*: May 3, 1995. FDA has verified the applicant's claim that NDA 50–722 was approved on May 3, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 824 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 5, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 5, 1996, for a determination regarding whether the

applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–29768 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0299]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZINECARD™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZINECARD™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ZINECARD™ (dexrazoxane). ZINECARD™ is indicated for reducing the incidence and severity of cardomyopathy associated with doxorubicin administration in women with metastatic breast cancer who have received a cumulative doxorubicin dose of 300 milligrams per square meter and who, in their physician's opinion, would benefit from continuing therapy with doxorubicin. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ZINECARD™ (U.S. Patent No. 4,275,063) from British Technology Group Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 5, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ZINECARD™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ZINECARD™ is 2,748 days. Of this time, 1,546 days occurred during the testing phase of the regulatory review period, while 1,202 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: November 18, 1987. The applicant claims September 25, 1987, as the date the investigational new drug application (IND) for ZINECARD™ (IND 30,617) became effective. However, FDA records indicate that the agency received IND 30,617 on September 22, 1987. IND 30,617 was placed on clinical hold on October 22, 1987, and was removed from hold on November 18, 1987. The date IND 30,617 was removed from hold, November 18, 1987, is the IND effective date.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: February 10, 1992. The applicant claims February 7, 1992, as the date the new drug application (NDA) for ZINECARD™ (NDA 20–212) was initially submitted. However, FDA records indicate that FDA received NDA 20–212 on February 10, 1992, making February 10, 1992, the beginning of the NDA regulatory review period.

3. *The date the application was approved*: May 26, 1995. FDA has verified the applicant's claim that NDA 20–212 was approved on May 26, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 5, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 5, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit

single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–29769 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0183]

Determination of Regulatory Review Period for Purposes of Patent Extension; CPI® Ventak® P2 AICD System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CPI® Ventak® P2 AICD System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device CPI® Ventak® P2 AICD System. CPI® Ventak® P2 AICD System is indicated for the treatment of patients with ventricular fibrillation and/or ventricular tachyarrhythmia who are at high risk of sudden cardiac death. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CPI® Ventak® P2 AICD System (U.S. Patent No. Re. 34,879) from Cardiac Pacemakers, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 25, 1995, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of CPI® Ventak® P2 AICD System represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CPI® Ventak® P2 AICD System is 1,178 days. Of this time, 620 days occurred during the testing phase of the regulatory review period, while 558 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: December 20, 1991. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(g)) for human tests to begin became effective on December 20, 1991.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e)*: August 30, 1993. FDA has verified the applicant's claim that the premarket approval application (PMA) for CPI® Ventak® P2 AICD Systems (PMA P930035) was initially submitted on August 30, 1993.

3. *The date the application was approved*: March 10, 1995. FDA has verified the applicant's claim that PMA P930035 was approved on March 10, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 363 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 5, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 5, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–29766 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–01–F

Grassroots Regulatory Partnership Meeting; Southeast Region, New Orleans and Nashville Districts; Seafood Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of a public meeting.

SUMMARY: The Food and Drug Administration (FDA) (Office of External Affairs, Office of Regulatory Affairs, Office of the Southeast Region,

New Orleans and Nashville Districts, and Center for Food Safety and Applied Nutrition) is announcing a free public meeting as a followup to a meeting held in April 1995. The New Orleans and Nashville Offices of FDA will meet with interested persons in the States of Alabama, Louisiana, Mississippi, and Tennessee to address specific issues of concern to the seafood processing industry, other stakeholders, and FDA. Because the Interstate Shellfish Sanitation Conference addressed the issue of *Vibrio vulnificus* in raw oysters, this meeting will not cover that issue. Any other seafood issue will be open for discussion. The agency is holding this meeting to promote the President's initiative for a partnership approach between front-line regulators and the people affected by the work of regulatory agencies, and to create local partnerships.

DATES: The public meeting will be held on Friday, January 19, 1996, from 10 a.m. to 3:30 p.m.

ADDRESSES: The public meeting will be held at the Grand Casino Hotel Gulfport, 3305 West Beach Blvd., Gulfport, MS 39501, 601–870–7770 or 1–800–354–2450.

FOR FURTHER INFORMATION CONTACT: Sandra S. Baxter, FDA Nashville District, 297 Plus Park Blvd., Nashville, TN 37217, 615–781–5372, FAX 615–781–5383.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 20, 1995 (60 FR 19753), FDA announced that a series of Grassroots Regulatory Partnership Meetings would be held. This document announces a followup meeting to the one held on April 25, 1995, in Atlanta, GA. Those persons interested in attending this public meeting should FAX or send their registration, and comments or questions desired to be addressed to the meeting to the above contact person by January 5, 1996. There is no registration fee for this meeting. However, due to space limitations, early registration is required. The goal of this meeting is to listen to concerns and ideas of the regulated seafood industry and other stakeholders, and to identify possible next steps for the agency.

Dated: December 1, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–29767 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0311]

Determination of Regulatory Review Period for Purposes of Patent Extension; VALTREX®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VALTREX® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VALTREX® (valacyclovir hydrochloride). VALTREX® is indicated for the treatment of herpes zoster (shingles) in immunocompetent adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VALTREX® (U.S. Patent No. 4,957,924) from Burroughs Wellcome Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 5, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VALTREX® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VALTREX® is 1,907 days. Of this time, 1,541 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: April 5, 1990. The applicant claims March 6, 1990, as the date the investigational new drug application (IND) became effective. The applicant claims that FDA waived the 30-day post-submission review period and the effective date of the IND relates back to the date of submission, March 6, 1990. According to FDA records, a safety meeting was held on March 23, 1990, for IND 34,526. The meeting is held within 30 days of receipt of an IND to determine its safety in humans. At the meeting it was agreed by the reviewing disciplines that the study was reasonably safe to proceed. There is no record of any waiver for this IND. If a waiver had been issued, there would have been no need to have the safety review meeting. Therefore, the correct IND effective date for IND 34,526 is April 5, 1990, 30 days after agency receipt of IND 34,526.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: June 23, 1994. FDA has

verified the applicant's claim that the new drug application (NDA) for VALTREX® (NDA 20–487) was initially submitted on June 23, 1994.

3. *The date the human drug was approved*: June 23, 1995. FDA has verified the applicant's claim that NDA 20–487 was approved on June 23, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,052 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 5, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 5, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–29809 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0302]

Determination of Regulatory Review Period for Purposes of Patent Extension; ULTANE™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ULTANE™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brain J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ULTANE™ (sevoflurane). ULTANE™ is indicated for induction and maintenance of general anesthesia in adult and pediatric patients for inpatient and outpatient surgery. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ULTANE™ (U.S. Patent No. 4,250,334) from Baxter International, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 25, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ULTANE™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ULTANE™ is 3,418 days. Of this time, 3,086 days occurred during the testing phase of the regulatory review period, while 332 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: January 29, 1986. The applicant claims January 10, 1986, as the date the investigational new drug (IND) became effective. However, FDA records indicate that the correct IND effective date was January 29, 1985, which was 30 days after FDA receipt of IND 27,645 on December 30, 1985.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: July 11, 1994. The applicant claims July 8, 1994, as the date the new drug application (NDA) for ULTANE™ (NDA 20–478) was initially submitted. However, FDA records indicate that the applicant submitted NDA 20–478 on July 8, 1994, and the agency received the NDA on July 11, 1994, which is considered to be the NDA initially submitted date.

3. *The date the application was approved*: June 7, 1995. FDA has verified the applicant's claim that NDA 20–478 was approved on June 7, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 5, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore,

any interested person may petition FDA, on or before June 5, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–29808 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Forms Undergoing Paperwork Reduction Act Review

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Health Education Assistance Loan (HEAL) Program Physician's Certification of Borrower's Total and Permanent Disability Form—New—This form, completed by the HEAL borrower, the borrower's physician, and the holder of the loan, is used to certify that the HEAL borrower meets the total and permanent disability provisions. The PHS will use this form to obtain precise information about the disability claim which includes the following: (1) The borrower's consent to release medical records to the Department of Health and Human Services and to the holder of the borrower's HEAL loans, (2) pertinent information supplied by the certifying physician, (3) the physician's certification that the borrower is unable to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death, and (4) information from the lender on the unpaid balance. Failure to submit the required documentation will result in a disability claim not being honored.

Type of respondent	Number of respondents	Responses per respondent	Average burden per response	Total burden (hours)
Borrower	42	1.0	0.08	3
Physician	42	1.0	2.75	116
Lender	35	1.2	0.17	7

Estimated Total Annual Burden: 126 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 1, 1995.

J. Henry Montes,

Associate Administrator for Policy Coordination

[FR Doc. 95–29810 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 36 U.S.C. 207 or pursuant to 42 U.S.C. 241 to achieve expeditious commercialization of results of federally-funded research and development.

ADDRESSES: Licensing information for the technologies referenced below may be obtained by contacting Stephen Finley, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 215; fax 301/402–0220).

cDNA Sequence of a Clone Encoding Arylalkylamine N-acetyltransferase

Klein et al. (NICHD)

[DHHS Reference No. E–161–95/0]

and

Human Gene Encoding Serotonin N-acetyltransferase

Klein et al. (NICHD)

[DHHS Reference No. E–222–95/0]

The identification of an arylalkylamine N-acetyltransferase (AA–NAT) mRNA in the brain and the cloning of ovine and human cDNAs encoding for the pineal enzyme serotonin N-acetyltransferase. These findings open a new area of research—the importance of AA–NAT in the regulation of brain serotonin and the development of drugs which raise serotonin levels by inhibiting this enzyme. This enzyme is the rate-controlling step in the conversion of serotonin to melatonin. The hormone melatonin has been linked to controlling circadian rhythms. Development of regulators of the synthesis of the hormone melatonin may be the preferred route to controlling seasonal reproduction cycles or sleep cycles of vertebrates. Activators of the serotonin N-acetyltransferase may be beneficial to induce or enhance the quality of sleep at night. Inhibitors of serotonin N-acetyltransferase may lead to drugs that stimulate the levels of alertness and physical activity or delay the onset of fatigue. Licenses for the cDNAs encoding for this enzyme or the production of the enzyme are available.

Dated: November 20, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–29761 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institutes on Aging, Thursday, February 1, and Friday, February 2, 1996, to be held at the National Institutes of health, Building 31, Conference Room 6, Bethesda, Maryland. This meeting will be open to the public on Thursday, February 1, from 8:00 a.m. to 3:00 p.m. for a status report by the Director, NIA; a review of NIA Programs; a report on the Working Group on Program; a report on the Minority Task Force Meeting; and a discussion of program policies and issues, recent legislation, and other items of interest.

The meeting will be open again on Friday, February 2, from 8:00 a.m. until adjournment for a report on the Advisory Committee to the Director, NIH; a report by the Director, National Institute of Neurological Disorders and Stroke; and a review of NIA Programs. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on Thursday, February 1, from 3:00 p.m. to adjournment for the review, discussion and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: December 1, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–29757 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby give of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on January 25–26, 1996, Building 45, Rooms E1 and E2, Bethesda, Maryland.

This meeting will be open to the public from 11 a.m. to 6 p.m. on January 25, and from 8:30 a.m. to 10:30 a.m. on January 26, for the discussion of program policies and issues, opening remarks, report of the Acting Director, NIGMS, and other business of Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 25 from 8:30 a.m. to 11 a.m., and on January 26, from 10:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Services, National Institutes of Health, Natcher Building, Rooms 3AS–43H, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Natcher Building, Rooms 2AN–32C, Bethesda, Maryland 20892, telephone: 301–594–4499 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]; Special Programs, 93.960)

Dated: December 1, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–29758 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meetings: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on January 29–31, 1996. Meetings of the Council, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be held at the National Institutes of Health, Building 31C. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be held at the National Institutes of Health, Natcher Building, Bethesda, Maryland.

The meeting of the full Council will be open to the public on January 29 in Conference Room 6 from approximately 1 p.m. until 3:30 p.m. for opening remarks of the Institute Director, discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include an update on reinvention activities, a presentation on emerging microbes and a report on recommendations of the NIAID, Program Announcement Working Group.

On January 30 the meetings of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8:30 a.m. until adjournment. The subcommittees will meet in conference rooms 8 and 6 respectively. The meeting of the

NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be open to the public from 8 a.m. until recess on January 30, and from 8 a.m. until adjournment on January 31. The subcommittee will meet in the Executive Board Conference Room at the Natcher Building.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8 a.m. until approximately 1 p.m. on January 29, in conference rooms 7, 8 and 6 respectively. The meeting of the full Council will be closed from 3:30 p.m. until recess on January 29 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. John J. McGowan, Director, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 3C20, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301–496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855 Immunology, Allergic and Immunologic Diseases Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: December 1, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–295759 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meetings of the Board of Regents and the Extramural Programs Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 23–24, 1996, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee will meet on January 22 in Conference Room B, Building 38A, from 2 p.m. to approximately 3:30 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 4:30 p.m. on January 23 and from 9 a.m. to adjournment on January 24 for administrative reports and program discussions. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign-language interpretation or other reasonable accommodations, should contact Mrs. Karin Colton at 301–496–4621 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the entire meeting of the Extramural Programs Subcommittee on January 22 will be closed to the public from 2 p.m. to approximately 3:30 p.m., and the regular Board meeting on January 23 will be closed from approximately 4:30 p.m. to 5 p.m. for the review, discussion, and evaluation of individual grant applicants. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93–879—Medical Library Assistance, National Institutes of Health.)

Dated: December 1, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–29760 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

Office of Science Education; Notice of Meeting

Notice is hereby given that the Office of Science Education (OSE), Office of the Director, National Institutes of Health (NIH), will hold a public meeting on December 11, 1995, from 8:30 a.m. to 4:30 p.m., at the Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, MD 20814. This meeting has been rescheduled from November 20, 1995, as published in the November 15, 1995, Federal Register.

The purpose of this meeting is to give members of the public who are interested in the development of the NIH Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds (UGSP) an opportunity to express their views on how that program should be implemented. The UGSP is authorized under Public Law 103–43, U.S. Public Health Service Act Section 487D. The UGSP will offer full-time undergraduate students enrolled or accepted for enrollment at accredited institutions of higher education, who are from disadvantaged backgrounds, scholarships of up to $20,000 per year, to pursue academic programs appropriate for careers in professions needed by the NIH. For each year of scholarship support, the recipient must serve at least 10 consecutive weeks of service as an employee at the NIH, and, within 60 days after obtaining the educational degree involved, the individual must begin serving full-time as an employee of the NIH. The service commitment will be one year of service for each academic year of support as outlined at U.S. Public Health Service Act Section 487D(c).

Consultants to the OSE will be present to discuss the development of the UGSP. The information collected from these consultants, as well as any information collected from the public, will be used to assist the OSE to identify issues and strategies in the development of the UGSP.

This meeting is open to the public. However, attendance will be limited by seat availability. Information to be offered at the public meeting should be confined to comments relating to the recruitment and retention of disadvantaged students for the UGSP, and the indicators of success for careers in biomedical research. If an individual is representing an organization, only one representative may present oral comments. Each speaker will be permitted 3–5 minutes for his/her presentation.

Oral presenters and interested individuals wishing to provide only

written statements must send a copy of such oral comments to the attention of Ms. Muriel Levin, EEI, 66 Canal Center Plaza, Suite 200, Alexandria, VA 22314–1538, 703–683–4915 (FAX) mlevin@eeialex.com (e-mail). Correspondence must be received by EEI no later than 5:00 p.m. (EST) on Monday, December 4, 1995. The order of presentations during the meeting will be determined by the date and time letters of intent are received by EEI.

Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations, should contact Ms. Kristin Kiser, NIH/OS/OSE, 7550 Wisconsin Avenue, Room 102, Bethesda, MD 20892–9015, 301–402–6424 (not a toll-free number), 301–480–5481 (FAX) kk10b@nih.gov (e-mail) in advance of 5:00 p.m., December 4, 1995.

For additional information, contact Marc S. Horowitz, J.D., Director, NIH Undergraduate Scholarship Program, Office of Science Education, 7550 Wisconsin Avenue, Room 102, Bethesda, MD 20892–9015, 301–402–5666 (not a toll-free number), 301–480–5481 (FAX), mh18k@nih.gov (e-mail).

Dated: November 28, 1995.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–29762 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 48518, September 19, 1995) is amended to reflect the reorganization of the Office of the Director, National Institute of Allergy and Infectious Diseases (OD/NIAID) (HNM). The reorganization consists of the following: (1) Establish the Office of Clinical Research (HNM1B) in the Office of the Director. This reorganization will enable the NIAID to better fulfill its mission by restructuring the OD/NIAID to better integrate related program areas and streamline operations.

Section HN–B, Organization and Functions is amended as follows: (1) Under the heading *Office of the Director (HNM1)*, insert the following:

Office of Clinical Research (HNM1B). (1) Is responsible for developing, implementing, and evaluating policies and practices related to the conduct of human subjects research within NIAID, (2) advises the Director, NIAID, on the portfolio of clinical research conducted and sponsored by NIAID and reviews research protocols for relevance to the mission of the Institute, priority to meet the needs of the public health of the nation, ethics in human use, and appropriateness of scientific design, (3) manages NIAID's clinical research program carried out in the Clinical Center, NIH, (4) oversees the activities of the NIAID Institutional Review Board, (5) corresponds with other government agencies, organizations, and the public to provide timely and relevant information on the clinical research programs of NIAID, and (6) promotes interaction between intramural and extramural investigators, particularly with regard to collaboration on clinical research conducted at the Clinical Center, NIH.

Dated: November 19, 1995.

Harold Varmus,

Director, NIH.

[FR Doc. 95–29764 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 46621, September 7, 1995), is amended to reflect the reorganization of the National Institute of Environmental Health Sciences (NIEHS) (HNV), National Institutes of Health (NIH). This reorganization will realign functions within the Office of the Director (HNV1): (1) Establish the Office of the Deputy Director (HNV18); (2) abolish the Office of Occupational Health and Technical Services (HNV13) and the Office of Computer Technology and Services (HNV16); and (3) revise the functional statement of the Office of Communications (HNV14). This reorganization will promote the highest level of research in environmental health sciences and will facilitate the most efficient and effective use of resources.

Section HN–B, Organization and Functions, is amended as follows:

(1) Under the *Office of the Director (HNV1)*, insert the following:

Office of the Deputy Director (HNV18)

(1) Assists the Director in the formulation and implementation of plans and policies necessary to carry out the NIEHS mission; (2) oversees the management of the Executive Secretariat; (3) and oversees the management of the Health and Safety Branch.

(2) Under the *Office of the Director (HNV1)*, delete the titles *Office of Occupational Health and Technical Services (HNV13* and *Office of Computer Technology and Services (HNV16)* and corresponding functional statements in their entirety.

(3) Under the *Office of Communications (HNV14)*, delete the functional statement in its entirety and insert the following:

Advises the Director and other senior Institute staff members on the effective interpretation and utilization of Institute-conducted and -supported research findings in a broad program of scientific and health reporting for targeted audiences. Plans, directs, and coordinates (1) internal and external communications, (2) Environmental Health Perspectives, and (3) library and information services.

Delegations of Authority Statement. All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: November 19, 1995

Harold Varmus,

Director, NIH.

[FR Doc. 95–29763 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3646–N–05]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

soliciting public comments on the subject proposal.

DATES: Comments due: February 5, 1996.

ADDRESSES: Interest persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4240, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202)–708–0846, (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

This Notice also lists the following information:

Title of Proposal: Administrative Use Agreement for Proceeds of Sales of Homeownership Projects.

OMB Control Number, if applicable: 2577–0172

Description of the need for the information and proposed use: This form will be used by Housing Agencies (HAs) to enter into this contractual Agreement by providing certain information to HUD that describes how proceeds from the sale of homeownership units will be used. HUD needs this information to monitor fund usage.

Agency from numbers, if applicable: HUD–53010–T

Members of affected public: State, Local or Tribal Government Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 1,650 respondents, annually, 20 average hours per response, 34,600 hours for a total reporting burden.

Status of the proposed information collection: Extension, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 30, 1995.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

[FR Doc. 95–29827 Filed 12–6–95; 8:45 am]

BILLING CODE 4210–33–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. FR–3917–N–34]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commission, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 5, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451 7th Street SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1684 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application for Property Appraisal and Commitment/ Direct Endorsement Statement of Appraised Value.

OMB Control Number: 2502–0111.

Description of the need for the information and the proposed use: Section 203 of the National Housing Act (Pub. L. 479, 48 Stat. 1256, 12 U.S.C. 1701 *et seq.*) authorizes the Secretary of the Department of Housing and Urban Development (HUD) to insure mortgages on application by an approved mortgagee for an appraisal and commitment/Direct Endorsement statement of appraised value on a designated property.

Agency form numbers: HUD–92800.

Members of affected public: Mortgagees.

An estimation of the total numbers of hours needed to prepare the information is 275,000 number of respondents is 1,100,000 frequency response is dependent on the occasion of the application process.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 29, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–29828 Filed 12–6–95; 8:45 am]

BILLING CODE 42109–27–M

[Docket No. FR–3917–N–33]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 5, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1694 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for payment for labels, mobile home monthly production report, refunds due manufacturer, and adjustment report.

OMB Control Number: 2502–0233.

Description of the need for the information and the proposed use: Section 620 of the National Manufactured Housing Construction and Safety Standards Act (42 U.S.C. 5419) authorizes the Secretary of the Department of Housing and Urban Development to establish and impose on manufacturers, dealers and distributors of manufactured housing such reasonable fees as may be necessary to offset the expense incurred by the Secretary in conducting inspections required by the Act.

Agency form numbers: Not applicable.

Members of affected public: Mortgagees.

An estimation of the total numbers of hours needed to prepare the information collection is 5,480, number of respondents is 10,298, frequency response is bi-monthly, and the response is 0.47 of an hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 9, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 95–29829 Filed 12–6–95; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3911–N–03]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1515. The Telecommunication Device for the Deaf (TDD) number is (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235), approved December 15, 1989) requires that HUD ''publish in the Federal Register a description of and the cause for administrative action against a HUD-approved mortgagee'' by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from July 1, 1995 through September 30, 1995.

1. The Professional Investment & Financial Group; San Gabriel, California

ACTION: Settlement Agreement that includes payment to the Department of a civil money penalty in the amount of $1,000; and revision of the advertising used by the company in its HUD–FHA Title I program activities to comply with HUD–FHA requirements.

CAUSE: Use of misleading advertising by the company in connection with the HUD–FHA Title I property improvement loan program.

2. Washington Credit Union; Lynwood, Washington

ACTION: Settlement Agreement that includes payment to the Department of a civil money penalty in the amount of $5,000, and corrective action to assure compliance with HUD–FHA requirements.

CAUSE: A HUD monitoring review that disclosed violations of HUD–FHA Title I property improvement loan program requirements that included: failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); failure to comply with dealer approval requirements; failure to report borrowers' uncompleted property improvements; inaccurate completion certificates; and failure to resolve a borrower complaint against a dealer.

3. World Wide Credit Corporation; San Diego, California

ACTION: Settlement Agreement that includes indemnification to HUD–FHA for any claim losses in connection with 10 improperly originated Title I loans; implementation of a Quality Control Plan; and payment to the Department of a civil money penalty in the amount of $1,500.

CAUSE: A HUD monitoring review that disclosed violations of HUD–FHA Title I property improvement loan program

requirements that included: failure to document borrowers source of funds required for loan fees and closing costs; advising borrowers that loan fees may be deducted from loan proceeds; improperly advising borrowers to obtain gift letters; and omitting the loan disbursement date on the Note.

4. PNC Mortgage Corp. of America; Vernon Hills, Illinois

ACTION: Settlement Agreement that includes a payment to the Department of $182,180; and an independent CPA review of the company's HUD–FHA insurance claims submissions covering a six-month period to determine if claims are timely submitted to HUD–FHA.

CAUSE: Review by HUD's contractor of the company's HUD–FHA insurance claim submissions citing violations of HUD–FHA requirements including: untimely submissions of insurance claims; and incorrect dates on claim forms.

5. Carl I. Brown & Company; Kansas City, Missouri

ACTION: Settlement Agreement that includes payment to the Department of $75,000; payment of a civil money penalty in the amount of $30,000; and corrective action by the company to assure compliance with HUD–FHA requirements.

CAUSE: Review by HUD's contractor of the company's single family mortgage insurance claims submissions and loan servicing procedures that disclosed violations of HUD–FHA requirements. The violations included: overpayment by HUD of expenses paid; payment for preservation and protection work not performed; overpayment for tax refunds; improperly prepared claims submissions; inadequate quality control; improper disposition of mortgagor escrow surpluses; and inadequate servicing of defaulted loans.

Dated: November 29, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–29805 Filed 12–6–95; 8:45 am]

BILLING CODE 4210–27–P

Office of the General Counsel

[Docket No. FR–3950–N–03]

Notice of Application—Foreclosure Commissioners; Announcement of OMB Approval Number

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of application—foreclosure commissioners; Announcement of OMB approval number.

SUMMARY: On November 27, 1995 (60 FR 58442), the Department published in the Federal Register, a notice that requested applications from parties who seek approval to act as foreclosure commissioners under the Single Family Mortgage Foreclosure Act of 1994 (the ''Act''), 12 U.S.C. 3751–3768. The document indicated that information collection requirements contained in the notice had been submitted to the Office of Management and Budget for emergency review and approval under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and that when approved, the OMB control number would be announced by separate notice in the Federal Register.

The purpose of this document is to announce the OMB approval number for the November 27, 1995 notice.

FOR FURTHER INFORMATION CONTACT: Bruce S. Albright, Office of General Counsel, U.S. Department of Housing and Urban Development, Room 9240, Washington, DC 20410, (202) 708–1272. A telecommunications device for the hearing impaired (TDD) is available at (202) 708–3259. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, the control number approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) for the Notice of Application—Foreclosure Commissioners, published in the Federal Register on November 27, 1995 at 60 FR 58442, is 2510–0012. This approval number expires on February 29, 1996. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: December 1, 1995.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 95–29804 Filed 12–06–95; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1020–00]

Call for Nominations for Northwest and Front Range Resource Advisory Councils (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations.

SUMMARY: The purpose of this notice is to solicit nominations from the public to fill positions which have recently been vacated on two Colorado, Bureau of Land Management (BLM), Resource Advisory Councils.

These councils provide advice and recommendations to BLM on management of the public lands. The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Under Section 309 of FLPMA the Secretary has selected 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council members appointed to the council will reflect a balanced membership representative of the various interests concerned with the management of public lands and users of the public lands.

The position to be filled on the Northwest Resource Advisory Council is from Group 1—holders of federal grazing permits; representatives of energy and mining development; timber industry; off-road vehicle use and developed recreation. The positions on the Front Range Resource Advisory Council which are being filled are from two of the three general interest groups: Group 1—holders of federal grazing permits; representatives of energy and mining development; timber industry; off-road vehicle use and developed recreation. Group 3—state, county, or local elected officials; employees of state agencies responsible for management of natural resources, land, or water; representatives of Indian tribes; academicians involved in natural sciences; and public at large.

Nominees must be residents of Colorado. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed Nomination/Background Information Form, as well as any other information that speaks to the nominee's qualifications.

DATES: Completed Nomination/Background Information Forms and any other necessary information should be received in the appropriate office by December 30, 1995.

ADDRESSES: For more information and a Nomination/Background Information Form contact the appropriate BLM office: Northwest Resource Advisory Council—Bureau of Land Management, Grand Junction District, 2815 H Road, Grand Junction, Colorado 81506. Or call Lynda Boody, Telephone (970) 244–3066; TDD (970) 244–3011.

Front Range Resource Advisory Council—Bureau of Land Management, Canon City District, 3170 East Main Street, Canon City, Colorado 81212. Or call Ken Smith, Telephone (719) 275–0631; TDD (719) 275–4346.

Completed Nomination/Background Forms should be returned to the same addressed listed above.

SUPPLEMENTARY INFORMATION: Individuals may nominate themselves or others. Nominees will be evaluated based on their education, training, and experience of the issues and knowledge of the geographical area of the Council. Nominees should have demonstrated a commitment to collaborative resource decision making.

Donnie R. Sparks,

District Manager.

[FR Doc. 95–29846 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–JB–M

Bureau of Land Management

[MT–960–1430–00; MTM–83716]

Public Notice—Jurisdiction Transfer, Crow Boundary Settlement Act of 1994; Montana

AGENCY: Bureau of Land Management, Montana, Miles City District, Interior.

ACTION: Public notice.

SUMMARY: This document provides notification to the public and state and local governmental officials of the transfer of exclusive jurisdiction and administration of ''Parcel #1'' which includes the surface and mineral estate of 373.70 acres, more or less, of public lands; the public mineral estate of 1,683.78 acres, more or less; the public coal estate of 7,771.43 acres, more or less; and the public coal and oil and gas estate of 44.14 acres, more or less, from the Bureau of Land Management (BLM) to the United States of America, Bureau of Indian Affairs (BIA) in Trust for the Crow Indian Tribe (TRIBE).

EFFECTIVE DATE: November 29, 1994.

FOR FURTHER INFORMATION CONTACT: District Manager, Bureau of Land Management, 111 Garryowen Road, Miles City, Montana 59301, 406–232–4331.

SUPPLEMENTARY INFORMATION: Sec. 5(a)(1) of Public Law 103–444 (108 Stat. 4635), The Crow Boundary Settlement Act of 1994 (Act), provided that the BLM shall transfer to the BIA, in trust for the TRIBE, all rights, titles and interests the United States may have in and to all of the undisposed surface land, coal, oil, gas, coal methane and other minerals within Parcel No. 1 as described below, with all of the rights, easements and appurtenances pertaining to those lands and minerals.

The TRIBE and the BIA have agreed to accept the transfer subject to the terms and conditions of the existing oil and gas leases, grazing leases, and right-of-way.

Pursuant to the same Act of Congress, ''Nothing in this Act or the Settlement Agreement may alter, diminish, disturb, or cause to be divested any right, title, or interest of any person or entity in any land, coal, oil, gas, coal methane, or mineral within parcel number 1 that is based on the 1891 survey line, except for the specific rights that are vested in the United States for the sole use and benefit of the Crow Tribe pursuant to subparagraphs (B) through (D) of paragraph (1).''

A cadastral survey review was completed to enable platting and development of legal descriptions.

Subject to valid existing rights and the terms of the Memorandum of Agreement dated October 30, 1995, jurisdiction of the surface and mineral estates for the following described lands have been transferred to the Bureau of Indian Affairs in Trust for the Crow Indian Tribe, effective November 29, 1994:

Federal Surface and all Minerals

T. 6 S., R. 38 E., P.M.M.	
Section 24, lot 4;	9.96
Section 25, lot 1	9.83
T. 7 S., R. 38 E., P.M.M.	
Section 25, lots 1, 2, 3, 4	26.08
T. 9 S., R. 38 E., P.M.M.	
Section 13, lot 8;	15.68
*Section 13, lot 15;	1.73
Section 36, lots 1, 4, 5, 8;	163.12
*Section 36, lots 9, 12, 13	7.71
T. 10 S., R. 38 E., P.M.M.	
Section 1, lot 7	41.39
T. 7 S., R. 39 E., P.M.M.	
Section 30, lot 1;	32.46
Section 31, lots 3, 4	65.74

Consisting of 373.70 acres, more or less, in Big Horn Co., MT.

Federal All Minerals Estate

(Private Surface, Federal All Minerals Estate)

	Acres
T. 6 S., R. 38 E., P.M.M.	
Sec. 1, lots 1, 2, 5, SE¼SE¼;	103.22
Sec. 13, lots 2, 3, SE¼NE¼, E½SE¼;	141.24
Sec. 25, lots 2, 3, 4.	28.61
T. 7 S., R. 38 E., P.M.M.	
Sec. 1, lots 1, 2, 3;	57.59
Sec. 12, lots 1, 2, 3, 4, E½E½.	192.40
T. 8 S., R. 38 E., P.M.M.	
Sec. 2, lots 1, 2, 6, 7, 10, SE¼NE¼, E½SE¼;	318.73
Sec. 11, lot 1, NE¼NE¼, SE¼SE¼;	117.60
*Sec. 12, lot 8;	0.02
Sec. 13, E½NW¼;	80.00
*Sec. 13, lots 2, 3;	0.32
Sec. 23, lots 4, 5;	51.52
Sec. 25, N½NW¼, S½SW¼;	160.00
*Sec. 25, lots 2, 7.	1.12
T. 10 S., R. 38 E., P.M.M.	
Sec. 1, lot 1;	37.87
*Sec. 1, lot 10.	2.57
T. 6 S., R. 39 E., P.M.M.	
Sec. 6, lot 3;	40.11
*Sec. 6, lot 9;	31.30
Sec. 31, lot 4, SE¼SW¼.	71.89
T. 7 S., R. 39 E., P.M.M.	
Sec. 6, SE¼NW¼;	40.00
*Sec. 6, lot 13;	31.20
Sec. 7, lot 1;	31.87
Sec. 18, NE¼NW¼;	40.00
*Sec. 18, lot 6;	31.88
*Sec. 30, lots 10, 11.	72.72

Consisting of 1,683.78 acres, more or less, in Big Horn Co., MT.

Federal Coal Estate

(Private Surface, Federal Coal Estate)

	Acres
T. 6 S., R. 38 E., P.M.M.	
Sec. 1, lots 3, 4, SE¼NE¼, NE¼SE¼;	103.22
Sec. 12, lots 1, 2, 3, 4, E½E½;	204.52
Sec. 13, lots 1, 4, NE¼NE¼;	61.24
Sec. 24, lots 1, 2, 3, E½E½;	190.64
Sec. 25, E½E½.	160.00
T. 7 S., R. 38 E., P.M.M.	
Sec. 1, lots 4, 5, SE¼NE¼, E½SE¼;	136.99
Sec. 13, lots 1, 2, 3, 4, E½E½;	190.32
Sec. 24, lots 1, 2, E½NE¼;	94.34
Sec. 25, E½E½.	160.00
T. 8 S., R. 38 E., P.M.M.	
Sec. 1, lot 3, 4, S½NW¼, N½SW¼, SW¼SW¼;	290.48
*Sec. 1, lots 6, 7, 10, 11, 13;	40.73
Sec. 11, lots 4, 5, 8, SE¼NE¼, NE¼SE¼;	182.37
Sec. 12, W½NW¼, SE¼NW¼, SW¼;	280.00
*Sec. 12, lots 2, 4, 5, 9;	40.09
Sec. 13, W½NW¼, SW¼;	240.00
*Sec. 13, lots 6, 7;	0.64
Sec. 14, lots 1, 4, 5, 8;	178.51
Sec. 23, lots 1, 8;	51.52
Sec. 24, W½;	320.00
*Sec. 24, lots 2, 3, 6, 7;	1.72
Sec. 25, S½NW¼, N½SW¼;	160.00

Federal Coal Estate—Continued

*Sec. 25, lots 3, 6;	1.13
Sec. 26, lots 1, 4.	34.55
T. 9 S., R. 38 E., P.M.M.	
Sec. 1, lots 7, 8, 11, SE¼NW¼, E½SW¼;	222.15
*Sec. 1, lots 13, 14;	2.53
Sec. 12, lots 1, 4, 5, 8, E½W½;	261.16
*Sec. 12, lots 10, 11, 14, 15;	5.41
Sec. 13, lots 1, 4, 5, E½W½;	216.08
*Sec. 13, lots 10, 11, 14;	5.10
Sec. 24, lot 1;	54.20
*Sec. 24, lots 10, 11, 14, 15;	7.32
Sec. 25, lots 1, 4, 5, 8;	184.96
*Sec. 25, lots 10, 11, 14, 15.	8.64
T. 6 S., R. 39 E., P.M.M.	
Sec. 6, lots 4, 5, 6, 7, SE¼NW¼, E½SW¼;	242.51
*Sec. 6, lots 10, 13, 14;	93.48
Sec. 7, lots 1, 3, 4, NE¼NW¼, E½SW¼;	213.03
*Sec. 7, lots 6, 8, 9;	93.15
Sec. 18, lots 1, 2, 3, 4, E½W½;	285.04
*Sec. 18, lots 6, 7, 10, 11;	122.01
Sec. 19, lots 1, 2, 4, E½NW¼, SE¼SW¼;	214.04
*Sec. 19, lots 6, 7, 9;	87.60
Sec. 30, lots 1, 2, 3, 4, E½W½;	286.16
*Sec. 30, lots 6, 7, 10, 11;	115.03
Sec. 31, lots 1, 2, E½NW¼;	143.48
*Sec. 31, lots 6, 7.	59.17
T. 7 S., R. 39 E., P.M.M.	
Sec. 6, lots 3, 4, 5, 6, 7, E½SW¼;	247.35
*Sec. 6, lots 9, 10, 14;	93.41
Sec. 7, lots 2, 3, 4, E½W½;	255.89
*Sec. 7, lots 6, 7, 10, 11;	126.07
Sec. 18, lots 1, 2, 3, 4, SE¼NW¼;	168.36
*Sec. 18, lots 7, 10, 11;	99.64
Sec. 19, lots 1, 2, E½NW¼;	144.43
*Sec. 19, lots 6, 7;	62.95
Sec. 30, SE¼NW¼, E½SW¼;	120.00
*Sec. 30, lots 6, 7;	72.72
Sec. 31, lot 2, E½W½;	192.73
*Sec. 31, lots 6, 7, 10, 11.	142.62

Consisting of 7,771.43 acres, more or less, in Big Horn Co., MT.

Federal Coal and Oil and Gas Estate

(Private Surface, Federal Coal and Oil & Gas Estate)

	Acres
T. 8 S., R. 38 E., P.M.M.	
Sec. 26, lots 5, 8;	24.26
Sec. 35, lots 1, 4, 5, 8.	19.88

Consisting of 44.14 acres, more or less, in Big Horn Co., MT.

*These descriptions are taken from supplemental plats approved on September 1, 1995, and October 16, 1995, by the Chief Cadastral Surveyor, Montana State Office, Bureau of Land Management.

Darrel Pistorius,

Acting District Manager.

[FR Doc. 95–29845 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–DN-P

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting.

SUMMARY: This notice announces the third meeting of the Arizona Resource Advisory Council. The meeting will be held January 4–5, 1996 beginning at 8:30 a.m. in the New Mexico Room at the Bureau of Land Management's National Training Center, 9828 N. 31st Avenue, Phoenix Arizona 85051. The agenda items to be covered at this meeting include review of previous meeting minutes, standard and guidelines work group report, update on Arizona Preservation Initiative, discussion of recreation travel, tourism, and public relations working group, presentation of Lower Gila Resource Management Plan Phoenix District, and public comment period which will take place at 3:30 p.m. January 4, 1996, and 11:30 a.m. January 5, 1996.

FOR FURTHER INFORMATION CONTACT: Clinton Oke, Bureau of Land Management, Arizona State Office, 3707 N. 7th St., Phoenix Arizona 85014, (602) 650–0512.

Phillip D. Moreland,

Acting Deputy State Director Resource Planning, Use and Protection Division.

[FR Doc. 95–29883 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–32–P

[NM–930–02–1320–00]

New Mexico; San Juan River Regional Coal Team (RCT) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of RCT Meeting.

SUMMARY: The San Juan River RCT will meet to amend and renew the Charter because the latest RCT Charter expired on October 5, 1994. The RCT will expand to include Navajo Nation voting membership, as approved at the last meeting. The RCT will also discuss current activities and future development plans on Federal coal lands in New Mexico and southwest Colorado, including the status of coal Preference Right Lease Applications (PRLA's) and PRLA terminations. The public is invited to attend.

DATES: The RCT will meet at 9:00 a.m. on Friday, January 26, 1996.

ADDRESSES: The meeting will be held in the 2nd Floor Meeting Room of the BLM State Office at, 1474 Rodeo Road, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Jim Olsen at the Bureau of Land Management, New Mexico State Office, Land and Minerals Support Team (92113), P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7455.

SUPPLEMENTARY INFORMATION: The RCT will consider information from the public in making decisions at this meeting. Those who wish to be scheduled to speak at the meeting or introduce additional topics for discussion should provide written copies of their remarks or suggestions to Jim Olsen, Bureau of Land Management, at the above address by Tuesday, January 16, 1996. Written materials will be accepted in lieu of or in addition to any oral presentation.

Following is a preliminary agenda for this meeting:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Annual BLM Coal Market/Industry Interest Assessment
4. Current Activity and Production on Existing Leases
   a. New Mexico
   b. Colorado
6. Navajo Nation voting representation on the RCT
7. Indian Coal Issues
8. RCT Chapter Renewal
9. Public Comment
10. Scheduling of Next Meeting
11. Adjourn

Dated: November 22, 1995.

Rich Whitley,

Acting Chairman, San Juan River Regional Coal Team.

[FR Doc. 95–29848 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–FB–M

[CO–030–06–1610–00–1784]

Southwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Colorado Resource Advisory Council will meet on Thursday, January 11, 1996, at the Anasazi Heritage Center near Dolores, Colorado.

DATES: The meeting is scheduled for Thursday, January 11, 1996.

ADDRESSES: For further information, contact Roger Alexander, Bureau of Land Management (BLM), Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; Telephone (970) 249–7791; TDD (970)–249–4639.

SUPPLEMENTARY INFORMATION: The meeting is scheduled to begin at 9:00 a.m. at the Anasazi Heritage Center, 27501 Highway 184, Dolores, Colorado.

The agenda, which includes a tour of the Heritage Center, will focus on the development of standards for rangeland health and guidelines for livestock grazing.

All resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for the Council meeting will be maintained in the Montrose District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: November 29, 1995.

Mark W. Stiles,

District Manager.

[FR Doc. 95–29849 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–JB–M

[CA–026–1020–01]

Notice of Resource Advisory Council Meeting

November 29, 1995.

AGENCY: Bureau of Land Management, Susanville Resource Advisory Council Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 95–579 (FLPMA) that the Bureau of Land Management's Susanville Resource Advisory Council will meet Friday and Saturday, January 26 and 27, 1996, in the Bureau of Land Management Office at 705 Hall Street in Susanville, California. The January 26 session will convene at 10 a.m. at the BLM wild horse and burro corrals in Litchfield, CA, for a field tour of livestock grazing allotments and other public land areas. The tour will return to Susanville at about 4:30 p.m. The January 27 meeting will begin at 9 a.m. in the conference room at 705 Hall Street. Items to be discussed include the council's work on regional rangeland standards and guidelines, council coordination with subgroups and other Resource Advisory Councils, and council organizational business. The council will hear updates from BLM resource area managers, and hear a progress report on the East Lassen Plan.

The meeting is open to the public, and public comments will be taken from 1 to 2 p.m. Saturday, January. 27. Depending on the number of persons wishing to speak, a time limit may be imposed.

Summary meeting minutes will be maintained at the Susanville BLM Office, 705 Hall Street, Susanville, CA.

For further information, contact: Jeff Fontana (916) 257–5381.

Linda D. Hansen

Eagle Lake Resource Area Manager.

[FR Doc. 95–29850 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–40–P

[ID–060–1610–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Upper Columbia—Salmon Clearwater Districts, Interior.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Bureau of Land Management (BLM) announces the meeting of the Upper Columbia—Salmon Clearwater Districts Resource Advisory Council (RAC) on Thursday, January 18 and Friday, January 19, 1996 in Coeur d'Alene, Idaho. The meeting will be held at the Bureau of Land Management office at 1808 North Third Street in Coeur d'Alene.

The agenda for the two day meeting includes a one day training session for RAC members on team building, presentations by BLM personnel on rangeland ecology and possible standards and guidelines, election of officers and other administrative issues.

DATES: The RAC will meet on January 18, 1996 from 9:00 a.m. to 4:30 p.m. and on Friday, January 19, 1996 from 8:30 a.m. to 4:30 p.m. The public may address the Council during the public comment period on January 19, 1996 starting at 1:30 p.m.

SUPPLEMENTARY INFORMATION: All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with management of public lands. The Council's responsibilities include providing advice on long-range planning and establishing resource management priorities; and assisting the BLM to identify State and regional standards for ecological health and guidelines for grazing.

FOR FURTHER INFORMATION CONTACT: Ted Graf (208) 769–5004.

Dated: November 28, 1995.

Jenifer Arnold,

Acting District Manager.

[FR Doc. 95–29851 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–GG–M

[NM–931–06–1210–00 (600)]

Reestablishment of Visitor Restrictions for Designated Recreation Sites, Special Recreation Management Areas, and Other Public Land in the Roswell District, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of reestablishment of visitor restrictions for designated Recreation sites, Special Recreation Management Areas and other public lands in the Roswell District, New Mexico.

SUMMARY: The Roswell District Bureau of Land Management (BLM), is reestablishing visitor restrictions for use of those public lands within the Roswell District, New Mexico under the New Mexico State Director's Signature. The previous visitor restrictions were published in the Federal Register Vol. 60, No. 90, on May 10, 1995, and signed by the Roswell District Manager. The only correction to the previous document is a date change pertaining to entering the following listed caves within the Roswell District. Fort Stanton, Torgac, Torgac Annex, Crocket, Crystal, Big-Eared Cave, Bathole, Malpais Madness, Tres Ninos and Feather Cave will be closed from November 1 to April 15 due to Bat hibernation. These visitor restrictions are necessary for the management of actions, activities and use of public lands, including those which are acquired or conveyed to the BLM.

EFFECTIVE DATE: December 7, 1995.

ADDRESSES: Any suggestions or inquiries should be addressed to the District Manager, Roswell District Office, 1717 West 2nd, Roswell, New Mexico 88201, Telephone: (505) 627–0272, during normal business hours (7:45 a.m. to 4:30 p.m., MST) at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Happel, Natural Resource Specialist, BLM, Roswell District Office, 1717 West 2nd Roswell, New Mexico 88201, Telephone: (505) 627–0203.

SPECIFIC COMMENTS: A proposed ''establishment of visitor restrictions for

designated recreation sites, special recreation management areas, and other public lands in the Roswell District, New Mexico'' was published in the Federal Register on January 24, 1995, (60 FR No. 15) and provided for a 30-day public comment period that ended February 23, 1995. One letter was received from Gun Owners of America, which contained numerous specific comments. One of the comments urged the BLM to extend the public comment period to 60 days. The BLM Roswell District believes that a 30-day public comment period was adequate for this notice. Another comment stated that the rule as it is related to firearms is vague and will infringe upon Second Amendment rights of law abiding citizens. The BLM Roswell District believes the notice adequately describes firearms under the definition of a weapon. Another comment stated the rule would unduly interfere with the right of self defense. The BLM Roswell District believes that under State law, self defense of one's life would not preclude a person from protecting themselves. Another comment stated the rule would require someone to get a written permit (in advance) in order to discharge a firearm within ½ mile of a developed recreation site. Based on this comment, the BLM Roswell District has changed the wording on the visitor restriction of discharge of firearms from ½ mile to 150 yards. This change corresponds with State law and other Federal agencies providing for public safety. Another comment stated the regulation does not contain a clear definition of what a developed recreation site and area is. The BLM Roswell District believes that a ''developed recreation site and area'' has been adequately described in the Definitions and in the proposed Federal Register notice. The definition is also described in the Code of Federal Regulations 43 CFR 8360.0–5(C). Another comment recommended that the regulation be redrafted and tightened to focus on conduct which poses a danger. It goes on to state that the rule would restrict the discharge of firearms in recreation areas. The BLM, under rules of Conduct of Federal Regulations 43 CFR 8365.2–5 (A)., states on developed recreation sites and areas, unless otherwise authorized, ''No person shall: (a) discharge or use firearms, other weapons or fireworks''. Another comment objected to the breadth of the conditions under which use of a firearm is banned, such as long guns being broken down or otherwise rendered inoperable and should be stored out-of-site. The BLM Roswell District has shortened the wording to read: ''Using weapons in violation of State laws within developed campsites or picnic areas''. Another comment stated that the commentator is concerned that if an individual uses a firearm while being attacked they would be arrested. The BLM Roswell District believes that self protection of one's life is established by State laws and that this restriction would not preclude a person from protecting his/her life.

SUMMARY: The proposed restrictions are necessary for the management of actions, activities, and use on public lands, including those which are acquired or conveyed to the BLM. The making of Rules of Conduct is provided for under Title 43 CFR Subpart 8365. These proposed regulations establish rules of conduct for the protection of persons, property, and public land resources. As a visitor to public lands, the user is required to follow certain restrictions designed to protect the lands and the natural environment, to ensure the health and safety of visitors, and to promote a pleasant and rewarding outdoor experience. This notice supersedes previous notices published in the Federal Register on 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 Lands in New Mexico. More specifically, the purpose falls into the following categories:

- Implementation of Management Plans—Certain prohibited activities have been recommended as Restrictions for designated recreation sites and Special Recreation Management Areas (SRMA's). In order to implement these recommendations, they must be published as specific prohibited acts in the Federal Register. Use of Rules of Conduct Section of 43 CFR, Subpart 8365, is the most appropriate way of implementation. Rationale for these recommendations is presented in its entirety in the Carlsbad Resource Management Plan, the Roswell Management Framework Plan or Recreation Management Plan for the specific areas.
- Mitigation of User Conflict—Certain other visitor restrictions 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 recommended 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. Toilet structures may be permitted by the authorized officer on a case-by-case basis and only when appropriate State and local permits have been obtained. It should be noted that shooting restrictions recommended do not prohibit legitimate hunting activities except within 150 yards of developed sites. Recreational shooters will be encouraged to use public land where such shooting and restrictions do not apply and this use does not significantly conflict with other uses.
- Complementary rules—Some restrictions, such as parking or camping near water sources, are recommended to compliment those of State and local agencies. Because these restrictions provide for the protection of persons and resources in the interest and spirit of cooperation with the responsible agencies, these restrictions are deemed necessary.

Definition: As used in these visitor restrictions, the term:

—*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 certain structures or capital improvements primarily used for recreation purposes by the public. Development may very 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 lands* means any lands, interest in lands, 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 lands 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 specific with no intend 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, irritant gas device, 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; 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.

Visitor Restrictions—All Public Lands: In addition to regulations contained in 43 CFR 8365.1, the following visitor restrictions apply to all public lands, including those lands acquired or conveyed to the BLM and related waters. The following are prohibited unless authorized by written permit:

Sanitation

- To construct or maintain any pit 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 restroom water faucet unless such water source is designated for that purpose.

Occupancy and Use

- To camp or occupy any site on public lands or any approved location, including those in developed recreation areas and sites or SRMA's, 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 14th 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 camping within 300 yards of any spring, man-made water hole, water well, or watering tank used by wildlife or domestic stock.
- 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, but not limited to, rock, sand, gravel, and minerals on or from public lands 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.
- Collection or removal of any natural resource, including wood for campfires, where such restrictions are posted.
- 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-rode 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.
- Ignite or burn any material containing or producing toxic or hazardous material.
- Carrying of concealed weapons.

State and Local Laws

• Failure to comply with all applicable State of New Mexico regulations for boating safety, equipment, and registration.

VISITOR RESTRICTIONS—DEVELOPED RECREATION SITES/AREAS AND SPECIAL RECREATION MANAGEMENT AREAS: In addition to the regulations contained in 43 CFR 8356.1, 8365.2 and those listed above, the following visitor restrictions will be applied in accordance with 43 CFR 8365.2: The following activities are prohibited unless authorized by written permit:

• 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 camping space, except at group facilities. Camping space is available on a first-come-first-serve basis.

• Failure to maintain quiet between the hours of 10:00 p.m. to 6:00 a.m. or other hours posted. During this period no person shall create noise which disturbs other visitors.

• More than two motorized vehicles and/or 10 individuals at any one approved site not designated for group use or parking area. Groups exceeding these limits must use a group site or additional designated sites.

• Vehicles off of 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 in 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 150 years of developed recreation sites and areas.

• Using weapons in violation of State law 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.

• Gathering or collecting woody plants or any other natural resources, minerals, cultural, or historical artifacts that require permits.

• cutting or gathering of green trees or their parts or removal of down or standing dead wood for any purpose.

• Not adhering to fire danger ratings issued by government.

• Entering the following caves from November 1 to April 15 of each year: Fort Stanton, Torgac, Torgac Annex, Crockett, Crystal, Big-Eared Cave, Bat Hole, Malpais Madness, Tres Ninos and Feather. Only personnel engaged in authorized scientific bat studies, census, monitoring, and emergencies will be allowed to enter caves during this time, due to bat hibernation.

• Entering a cave without each person wearing a safety helmet (hard hat) with chin strap and at least three sources of light.

• Annoying or disturbing bats at any time.

List of Developed Recreation Sites/Areas and Special Recreation Management Areas

1. Valley of Fires Recreation Area (Roswell Resource Area).

T. 7 S., R. 10 E.,
Sec. 29, 30.

2. Fort Stanton SRMA (Roswell Resource Area).

T. 9, 10 S., R. 14, 15 E.

3. Mescalero Sands North Dune SRMA (Roswell Resource Area).

T. 10 S., R. 30 E.,
Sec. 34, 35.

4. Cave SRMA's—McKittrick Hill, Lost, Fence Canyon, Manhole, Yellowjacket/Lair, Chosa Draw, Mudgetts, Honest Injun, KFF Caverns, Fort Stanton Cave, Torgac Cave, and Crockett's Cave.

5. Dark Canyon SRMA (Carlsbad Resource Area).

T. 24 S., R. 23, 24E.

6. Lonesome Ridge SRMA (Carlsbad Resource Area).

T. 26 S., R. 22E.,
Sec. 19–21, 29–31.

7. Pecos River Canyon Complex (Carlsbad Resource Area).

T. 24, 25., R. 29, 30E.

8. Guadalupe Escarpment Scenic Area (Carlsbad Resource Area).

T. 23–26 S., R. 22–26 E.

9. Alkali Lake Off-road Vehicle Area (Carlsbad Resource Area).

T. 21 S., R. 27 E.,
Sec. 4, 5, 9.

10. Hackberry Lake Off-road Vehicle Area (Carlsbad Resource Area).

T. 18–20 S., R. 30, 31 E.

11. Pecos River Corridor (Carlsbad Resource area).

T. 22 S., R. 27 E., river section to
T. 26 S., R. 29 E.

12. Cosa Draw SRMA (Carlsbad Resource Area).

T. 25 S., R. 25 E.,
Sec. 20–22, 27–29, 33.

13. Overflow Wetlands (Roswell Resource Area).

T. 11, 12 S., R. 25, 26 E.

SUPPLEMENTARY INFORMATION: The New Mexico State Director is reestablishing these visitor restrictions, which are necessary for the protection of persons, property, and public lands and resources currently under the Bureau's administration within the Roswell 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. These Visitor Restrictions apply to all persons using public lands. Violations of these restrictions are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Exceptions to the following 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.

Dated: November 20, 1995.

William C. Calkins,

State Director.

[FR Doc. 95–29852 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–FB–M

[ES–960–1420–00; ES–47708, Group 155, Wisconsin]

Notice of Filing of Plat of Survey; Wisconsin

The plat of the survey of an island in Lake Michigan, Township 30 North, Range 28 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on January 11, 1996. The survey was made at the request of the Deputy State Director, Resources Planning, Use and Protection, Eastern States, Bureau of Land Management.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., January 11, 1996.

Copies of the plat will be made available upon request and prepayment

of the reproduction fee of $2.75 per copy.

Dated: November 30, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–29853 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–GJ–M

[WY–923–1430–01; WYW 134662]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposed to withdraw 1,020 acres of public land in Fremont County, to protect the habitat of the small rockcress, *Aravis pusilla.* This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for meeting should be received on or before March 6, 1995.

ADDRESS: Comments and meeting requests should be sent to the Wyoming State Director, BLM, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, (307) 775–6124.

SUPPLEMENTARY INFORMATION: On November 8, 1995, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 29 N., R. 101 W.,
Sec. 26, S½NW¼, S½;
Sec. 27, E½SW¼NE¼, SE¼NE¼, E½W½SE¼, E½SE¼;
Sec. 35, N½, N½N½SW¼, N½SE¼.

The area described contains approximately 1,020 acres in Fremont County.

The purpose of the proposed withdrawal is to protect the habitat of the small rockcress, *Arabis pusilla,* a plant species proposed as Threatened and Endangered by the U.S. Fish and Wildlife Service. The Pine Creek area at South Pass is the only known location for this species in the world.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the Federal Register, at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact the plant habitat may be allowed with the approval of an authorized officer of the Bureau of Land Management during the segregative period.

Alan K. Kesterke,

Associate State Director.

[FR Doc. 95–29861 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–22–M

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 155—Extension

AGENCY: Minerals Management Service, Interior.

ACTION: Notice to extend post-sale evaluation period for Western Gulf of Mexico Lease Sale 155.

SUMMARY: The furlough of workers of the Minerals Management Service (MMS) delayed the evaluation of bids from Lease Sale 155 in the Western Gulf of Mexico. This notice extends by 9 days the post-sale evaluation period for Western Gulf of Mexico Lease Sale 155. The extra time will allow MMS personnel to properly evaluate bids.

DATES: The post-sale evaluation period ends on December 20, 1995.

FOR FURTHER INFORMATION CONTACT: John Mirabella or Kumkum Ray, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: On August 11, 1995, MMS published a lease sale notice in the Federal Register (60 FR 41105) announcing a lease sale in the Western Gulf of Mexico with bid openings on September 13, 1995. On November 14, 1995, during the evaluation of the bids received from the lease sale, MMS experienced a 6-day shutdown of all but essential work of the agency. This shutdown broke the continuity of the work of evaluating bids and delayed the evaluation process. MMS is extending the evaluation period to allow personnel to properly evaluate the bids received. MMS will complete the evaluation of all bids received for this sale by December 20, 1995.

Dated: December 4, 1995.

Thomas M. Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 95–29839 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 31, 1995, and published in the Federal Register on June 8, 1995, (60 FR 30318), Radian Corporation, P.O. Box 201088, 8501 Mopac Blvd., Austin, Texas 78720, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Cathinone (1235)	I
.	
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480).	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Dihydromorphine (9145)	I

	Schedule
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol except Levo-Alphacetylmethadol (9603).	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexane-carbonitrile (8603)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Morphine (9300)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

A registered manufacturer filed a request for a hearing with respect to amphetamine and methamphetamine. The requesting party subsequently submitted a letter dated August 29, 1995, withdrawing their request for a hearing. On September 1, 1995, an order terminating the proceedings was issued by Administrative Law Judge Mary Ellen Bittner. Another registered manufacturer filed a comment requesting that the firm's application to manufacture meperidine be denied because there is no need for Radian to register as a third domestic manufacturer of meperidine and that Radian must show it can maintain adequate safeguards against the theft and diversion of meperidine. In regards to this comment, the firm, which has been approved as a manufacturer of meperidine for previous applications, has been subject to periodic in-depth investigations by DEA to evaluate the firm's fitness as a DEA registrant. Additionally, in response to this recent application, the firm was inspected by DEA and found to have adequate safeguards to prevent the theft or diversion of meperidine. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 29, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–29772 Filed 12–6–95; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–23]

Prince George Daniels, D.D.S.; Denial of Application

On January 31, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Prince George Daniels, D.D.S., (Respondent) of San Jose, California, notifying him of an opportunity to show cause as to why DEA should not deny his pending application under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that:

(1) Between December 2, 1982 and February 3, 1983, [the Respondent] issued four prescriptions for Didrex, a Schedule III controlled substance, to two undercover individuals[,] and these prescriptions were not issued for a legitimate medical purpose in the usual course of [his] professional practice.

(2) On June 7, 1983, in the Municipal Court, Santa Clara County Judicial Circuit, State of California, [the Respondent] pled no contest to two counts of prescribing controlled substances to a person not under [his] treatment for a pathology in violation of California Health and Safety Code [Section] 11154 and one count of practicing unauthorized medicine in violation of California Business and Professions Code [Section] 2052.

(3) On January 7, 1985, the Board of Dental Examiners, Department of Consumer Affairs, State of California (Dental Board), suspended [the Respondent's] state dental license for one year, but stayed this suspension pending the successful completion of three years probation.

(4) On or about May 1, 1986, [the Respondent] arranged for the sale of cocaine to an undercover DEA agent. Furthermore, [he] made arrangements for other individuals to forcibly take the cocaine from the DEA undercover agent after [he] sold him the cocaine.

(5) On January 3, 1987 [the Respondent's] previous DEA number, AD6665838, expired [,] and [he] did not submit a renewal application for that number. Thereafter [his] DEA number was retired from DEA registration.

(6) On August 14, 1987, in the United States District Court, District of Northern California, [the Respondent] pled guilty to one count of conspiracy to deliver cocaine in violation of 21 U.S.C. 841 and 846 and to one count of possession of cocaine in violation of 21 U.S.C. 841. On October 2, 1987, [the Respondent was] sentenced to three years imprisonment.

(7) On August 22, 1988, the Dental Board terminated [the Respondent's] probation and revoked [his] state dental license. Effective January 10, 1990, the Dental Board restored [his] state dental license but placed [his] license on a three year probationary term.

On March 9, 1994, the Respondent filed a timely request for a hearing, and following prehearing procedures, a hearing was held in San Francisco, California, on November 9, 1994, before Administrative Law Judge Paul A. Tenney. At the hearing, the Government offered the stipulated testimony of two witnesses and introduced various documentary exhibits, and the Respondent, represented by counsel, testified, called three witnesses, and introduced several documentary exhibits. After the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On January 30, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that the Respondent's application for a DEA Certificate of Registration be denied. Neither party filed exceptions to his decision, and on March 9, 1995, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the opinion and recommended ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the Respondent received his license to practice dentistry in California in 1975. Further, the Respondent previously held a DEA Certificate of Registration, AD6665838, which expired on June 30, 1986, and which the Respondent did not renew but let lapse. However, on November 12, 1992, the Respondent

submitted an Application for Registration under the Controlled Substances Act of 1970, as a practitioner for handling controlled substances in Schedules II through V.

On December 2, 1982, the Respondent issued a prescription for Didrex to an undercover police officer (Officer). The parties stipulated that Didrex (benzphetamine) is a Schedule III non-narcotic stimulant, and has been a Schedule III controlled substance since 1973. The Officer received dental work and then requested the Didrex prescription, purportedly for weight control. The Respondent testified that, although he ''didn't know that much about Didrex,'' he issued the prescriptions based upon the Agent's representation that her doctor had previously prescribed Didrex, and upon a pharmacist's representation that he would fill the prescription. On December 21, 1982, the Respondent authorized a Didrex refill, and on January 4, 1983, he indicated that he would authorize an additional refill. The Respondent was arrested shortly after he prescribed the Didrex, and on June 7, 1983, in a California State court, he pled *nolo contendere* to two counts of violation of California Health and Safety Code Section 11154 by prescribing a controlled substance to a person not under his treatment for a pathology, and a violation of Business and Professions Code Section 2052 for the unauthorized practice of medicine. Based on the facts underlying his *nolo contendere* plea, the California Board of Dental Examiners suspended the Respondent's dental certificate for one year in January 1985, but the suspension was stayed in favor of a three-year probationary period with various conditions.

In April 1986, a DEA Special Agent was introduced to the Respondent's brother as a potential cocaine purchaser. In stipulated testimony, an Agent who had monitored the cocaine transaction noted that after negotiations, the undercover Agent on the scene arranged to buy two kilograms of cocaine from the Respondent's brother. On May 1, 1986, this Agent and the Respondent's brother met at the Respondent's dental clinic, the Respondent showed them into his office, locked the office door, and directed his brother to give the Agent a cardboard box containing two cellophane bags, each filled with a white powdery substance. The Respondent then gave a note to the Agent which represented the contents of the two bags, 1,667 grams of cocaine, and the price for both bags, $61,679.00. The Agent asked why two kilograms of cocaine were not tendered as originally agreed, and the Respondent explained and stated that the rest of the cocaine could probably be obtained later that day. The Respondent also indicated that after May 17th, he could obtain up to three kilograms of cocaine from his source if given four days' notice. While still in the Respondent's office, the Respondent explained that he expected $250 for his part in the cocaine transaction, and when the Agent expressed his opinion that $250 seemed to be a low payment, the Respondent replied that he was doing ''a favor for a favor.'' Upon leaving the dental clinic, the Agent arrested the Respondent and his brother.

On May 7, 1986, the Respondent was indicted in the United States District Court for the Northern District of California on one count of conspiring to distribute cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. 846. He was also indicted on one count of unlawfully distributing 1,667 grams of cocaine in violation of 21 U.S.C. 841(a)(1). On October 2, 1987, the Respondent pled guilty to both counts. He was sentenced to three years' imprisonment on each count, the sentences were ordered to run concurrently, and he was fined $100.00. The Respondent served approximately 16 to 18 months in prison from late 1987 until March 1989, when he was released to a half-way house. He was discharged from his sentence on August 25, 1989.

Effective August 22, 1988, the California Board of Dental Examiners (Dental Board) revoked the Respondent's dental license based on the cocaine-related convictions. The Dental Board also noted that the Respondent's conduct resulted in a violation of the probationary period that it had imposed after the Didrex incident. On January 10, 1990, the Dental Board reinstated the Respondent's dental license subject to various conditions, and by letter dated February 24, 1993, the Dental Board informed the Respondent as follows: ''Our records show that you have fully complied with the terms of your probationary order. Therefore, all the rights and privileges associated with your dental license have been restored.'' The Respondent testified that since his release from prison in March 1989, he has had no negative encounters with law enforcement agencies.

At the hearing before Judge Tenney, the Respondent testified about the cocaine transaction, indicating that he never had sold drugs with his brother until the May 1, 1986 incident, and that his involvement then was minimal. He stated that his brother sought his help ''to get out of a jam,'' and that his brother hinted that the transaction would involve cocaine. The Respondent explained that ''all I did was read a note, and that's all I had intended to do * * *. I wasn't sure what I was supposed to do.'' He testified that he never received any money for his part in the cocaine transaction, nor that there were ever any arrangements to pay him. Further, as to answers he gave to agents who had questioned him about his source for the cocaine, the Respondent testified before Judge Tenney that he had ''made up'' the names of cocaine suppliers and deliverers. The Respondent also testified that he had ''made up the story'' he gave the agents after his arrest concerning a ''plan'' to rob the Agent of the cocaine after he had paid for it. Finally, he stated that he ''was involved with something [he] shouldn't have been involved in. Right, wrong [,] or indifferent, didn't matter. I should not have been involved with the selling of drugs, as a dentist or as a person * * *.''

The Respondent provided extensive information concerning his rehabilitative efforts, including his involvement with Christian workshops, his studies to become a minister during his prison time for the cocaine convictions, his involvement since 1990 with the Morris Cerullo World Evangelists in visiting prisons and evangelizing, his monetary contributions to narcotics programs, his devotion of approximately 12 hours per week working with street gangs and prisoners, his additional ministry work, such as teaching English to Spanish, Vietnamese, and Cambodian people, providing food and clothing to the needy, and his work with the Kenneth Hagen Ministry, the Roberts Ministry, the American Fellowship Church, and various other ministries and religious organizations. The Respondent testified that he had recently visited China, Singapore, Malaysia, and Mexico, to ''share[] the gospel,'' and that while in Malaysia, he had donated his dental services.

While the Respondent was incarcerated, Dr. Lloyd Dickey, and his son, Dr. Leonel Dickey, continued operating the Respondent's practice. After the Respondent's dental license was reinstated in January 1990, the Respondent returned to that practice. Currently Dr. Leonel Dickey continues to assist the Respondent several times per week. The Respondent treats a diverse ethnic population, primarily individuals of Mexican or Vietnamese descent, and currently treats patients who have private insurance, although he devotes about 10 percent of his

practice to providing free treatment to poor individuals. He testified that he could not treat ''MediCal'' patients at the present time because he does not have a DEA Certificate of Registration. Also, the Respondent stated that he performs a variety of dental work, the Respondent stated that he performs a variety of dental work, but that he can only perform extractions or root canals when Dr. Leonel Dickey was available in case the patient needed controlled substances for relief from pain. The Respondent stated that his inability to prescribe controlled substances prohibited him from maximizing his patient load, inhibited his earning potential, and prevented him from giving his patients full and complete treatment. Further, in some cases, he is required to refer his patients to other dentists because his inability to prescribed controlled pain medications.

Both the Respondent and Dr. Dickey testified that controlled substances were not stored at the office, but that when a patient required pain medication, Dr. Dickey wrote a prescription. However, the Respondent testified that if he was granted a DEA Certificate of Registration, he will would not want to store any controlled substances at his office.

Dr. Leonel Dickey, a dentist licensed to practice in California since 1979, testified that he had known the Respondent since the early 1970's, but that they had lost tough from 1974 until approximately 1987. He also stated that the Respondent had informed him of ''[p]roblems he ran into with the law'' when he asked him to cover for his practice while he was incarcerated. Based upon his experiences of working with the Respondent since 1990, Dr. Dickey expressed the opinion that the Respondent was a very competent dentist. He also testified that the Respondent provided free dental work to a portion of his patients, but that without a DEA Certificate of Registration, it was difficult for the Respondent to ease the discomfort level of his patients. He also attested to the Respondent's involvement in Christian ministries. Dr. Dickey also stated that he had no ''hesitations'' about the Respondent receiving a DEA registration, and that he had seen no evidence of ''any kind of unusual activity'' that would suggest that the Respondent was untrustworthy or incompetent. However, he testified that he had very little knowledge about the details of the Respondent's convictions for selling cocaine, and that he was unfamiliar with the Respondent's problems with Didrex in 1982 and 1983.

De. Lloyd Dickey, an experienced Doctor of Dental Surgery since 1947, testified that he had know the Respondent since approximately 1971, and that he regarded him as ''a son.'' He stated that he believed the Respondent should be granted a DEA registration, for it would benefit his patients. However, he testified that he was not very familiar with the Respondent's cocaine charges, having heard only ''street gossip'' about the incidents. Dr. Dickey was more familiar with the Respondent's problems with Didrex, because he had testified on the Respondent's behalf before the Dental Board.

Finally, Reverend Kevin West, who holds a Doctor of Divinity degree, testified that he had met the Respondent in late 1989, and that they had decided to form a ministry together, which was incorporated in 1991. The ministry consists of Bible studies, Alcoholics Anonymous/Narcotics Anonymous meetings, and general acts of ''[ministry] to the local people at a local church.'' Reverend West stated that he had observed the Respondent closely, and he attested to the Respondent's ordination as a minister, his work as Reverend West's associate pastor, his visits to prisons, his work with gang members, and various other good deeds performed by the Respondent. He opined that the Respondent was ''definitely * * * rehabilitated.'' However, Reverend West testified that, prior to the hearing before Judge Tenney, he had heard only limited information about the Respondent's involvement with cocaine in May of 1986, and that he was totally unaware of the Didrex prescription problems.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny a pending application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether an application for registration should be denied. See *Richard J. Lanham, M.D.,* 57 FR 40,475 (1992); *Henry J. Schwarz, Jr., M.D.,* 54 FR 16,422 (1989).

In this case, although the Government argued that it had established a *prima facie* case under all five factors, the Deputy Administrator agrees with Judge Tenney, and finds that a *prima facie* case has only been established under factors 2 through 5. As to factor one, ''recommendation of the appropriate State licensing board,'' the Dental Board restored all rights and privileges associated with the Respondent's dental license in 1993. Since the record contains no adverse recommendations from the ''appropriate State licensing board or professional disciplinary authority,'' the Deputy Administrator agrees with Judge Tenney and finds that the Government has not established a *prima facie* case under factor one.

As to factor two, ''the applicant's experience in dispensing * * * controlled substances,'' the Deputy Administrator again agrees with Judge Tenney that the Government has established a *prima facie* case under factor two. First, the evidence of the 1982 Didrex prescriptions demonstrated that the Respondent, lacking familiarity with that substance's characteristics, prescribed Didrex to a patient merely at her request, without a legitimate medical purpose, and outside the regular course of his practice. Further, the evidence of the Respondent's participation in May 1986, in the distribution of cocaine and in a conspiracy to distribute cocaine, contributed to the establishment of the Government's case under factor two.

The Deputy Administrator also agrees with Judge Tenny's finding that the Government established a *prima facie* case under factors three and four, ''the applicant's conviction record under Federal or State laws relating to the * * * distribution * * * of controlled substances,'' and ''[c]ompliance with applicable State, Federal * * * laws relating to controlled substances,'' for the Respondent had pled *nolo contendere* to State charges involving Didrex, a controlled substance, and he had pled guilty to two Federal charges involving the distribution of cocaine. Further, the Respondent's conduct underlying these two convictions demonstrate his participation in illegal activities, thus violating applicable State and Federal laws relating to controlled substances.

Finally, the Deputy Administrator agrees with Judge Tenney's finding as to the relevancy of the Respondent's testimony before him concerning the cocaine incident and factor five, ''other conduct which may threaten the public health or safety.'' Specifically, the Deputy Administrator finds that the Respondent's lack of candor in his 1994 testimony as to the full extent of his involvement in the cocaine incident creates concern about his future conduct. The record discloses that the Respondent was quite involved in the cocaine distribution and conspiracy, as evidenced by the stipulated testimony of the undercover Agent involved first-hand in the incident, and by the fact that the Respondent pled guilty to the charges of conspiracy to distribute cocaine and unlawfully distributing cocaine. His failure to take responsibility for his past misconduct causes concern about his commitment to protecting the ''public health and safety'' in the future, should he be granted a DEA Certificate of Registration.

However, the Government's establishment of its case does not end the inquiry, for the Respondent has submitted extensive evidence of his rehabilitative efforts. The issue then becomes whether the Respondent has offered sufficient proof of rehabilitation to mitigate the egregious conduct established by the Government, such that the DEA can now find that granting the Respondent's application for a Certificate of Registration would be consistent with the ''public interest.'' See *Shatz* v. *United States Dept. of Justice*, 873 F.2d 1089, 1091 (8th Cir. 1989) (holding that, in a case such as this, the Respondent has the burden to prove rehabilitation).

Again, the Deputy Administrator agrees with Judge Tenny's findings as to the weight to be given the Respondent's rehabilitative evidence, for the Respondent's evidence concerning his rehabilitative efforts, to include his commitment to performing good deeds through a variety of Christian ministries, was credible. However, the Respondent's November 1994 testimony concerning his conduct surrounding the May 1, 1986, cocaine transaction was indeed troubling, for despite the plea and conviction, the Respondent continued to minimize his involvement and resulting responsibility for the conspiracy and cocaine distribution incidents. As Judge Tenny noted, ''the Respondent's inability to be completely candid at the hearing causes sufficient doubt as to whether he is fully rehabilitated.'' Further, the Deputy Administrator also notes the lack of evidence of continuing education relevant to controlled substances, evidence which would have been helpful in light of the Respondent's experience in prescribing Didrex without understanding its characteristics.

Therefore, the preponderance of the evidence supports denial of the Respondent's application at this time. If the Respondent reapplies and submits evidence of his continuing rehabilitative efforts, such as evidence of completion of educational courses at least partially focused upon the handling of controlled substances, then his application may receive more favorable consideration. See, e.g., *Shatz*, 873 F.2d at 1092 (suggesting that ''careful consideration'' be given to any future application for registration, and in particular, to ''any additional evidence in support of [a] claim of rehabilitation''); *Sokoloff* v. *Saxbe*, 501 F.2d 571, 576 (2d Cir. 1974) (stating that ''permanent revocation'' of a DEA Certificate of Registration may be ''unduly harsh'')

Therefore, the Deputy Administrator finds that the public interest is best served by denying the Respondent's application at this time. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 21 C.F.R. 0.100(b) and 0.104, hereby orders that the Respondent's application for a DEA Certificate of Registration be, and it hereby is, denied. This order is effective January 8, 1996.

Dated: November 30, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–29771 Filed 12–6–95; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 93–39]

William F. Skinner, M.D., Continuation of Registration

On April 5, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William F. Skinner, M.D., (Respondent) of Santa Monica, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AS7287534, under 21 U.S.C. 824(a)(4), and deny any pending applications under 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that:

(1) During the period April 1987 through November 1988, the Respondent prescribed, administered, and dispensed excessive amounts of controlled substances to a single patient, including Demerol, Dilaudid, Xanax, Ativan, Percodan, Tylenol with Codeine, Valium, Percocet, Methadone, and Doriden, without a legitimate medical purpose and while not acting in the usual course of professional practice; and

(2) During the same time period, the Respondent prescribed narcotic drugs to the same narcotic dependent patient for the purpose of maintenance treatment, and engaged in detoxification treatment of the patient without holding a separate DEA registration to conduct a narcotic treatment program.

On April 27, 1993, the Respondent, through counsel, filed a timely request for a hearing. On February 23, 1994, the case was consolidated for hearing with *Michael S. Gottlieb, M.D.*, Docket No. 93–53, and *Michael J. Roth, M.D.*, Docket No. 94–10. Following prehearing procedures, a hearing was held in Los Angeles, California, on March 29–30 and May 10–12, 1994, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On October 17, 1994, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, finding that Respondent's registration was not inconsistent with the public interest, and recommending that no action be taken against Respondent, Dr. Skinner. On November 8, 1994, the Government filed exceptions to Judge Tenney's opinion, and on December 7, 1994, the Respondent filed his response to the Government's exceptions. On December 12, 1994, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the filings of the parties and the record in its entirety, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the opinion and recommended ruling of Judge Tenney, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the Respondent is licensed to practice as a physician in the State of California, and that he had served as the medical director of the St. John's Hospital Chemical Dependency Center from 1981

to 1990. He is registered with the DEA as a practitioner authorized to handle controlled substances in Schedule II through V.

The DEA's allegations concern the Respondent's treatment of one patient, ''Patient A'', from March 1986 through October 1988. During this time period, Patient A had a number of significant physical conditions which caused pain, including pressure on the nerves from cervical degenerative joint disease; degenerative osteoarthritis of the lumbar vertebrae above a previous area where fusion surgery had been performed; spinal stenosis which occurs when the spinal canal narrows, at times putting pressure on a nerve with pain and muscle spasms; severe temporal mandibular joint degenerative disease; compression fracture of the patient's spine at L–1 and L–2; and trochanteric bursitis of the hip. Also during this time period, Patient A had a series of accidents which caused her acute pain: An automobile accident in which she was a passenger, resulting in a whiplash injury to her neck; an accident resulting in a knee injury; a fall down a spiral staircase, resulting in back strain; and a fall on a marble floor, resulting in a compression fracture of her spine. The record contains no evidence that drug intoxication caused any of these accidents.

During the time period of March 1986 through October 1988, the Government contended that the Respondent prescribed controlled substances to Patient A for other than a legitimate medical purpose and not in the usual course of his professional practice. Beginning March 20, 1986, the Respondent prescribed Demerol to Patient A. Demerol is a brand name for a medication containing meperidine hydrochloride, a Schedule II controlled substance. During the remainder of 1986, the Respondent prescribed Demerol and Percodan or Percocet, and occasionally he prescribed other Schedule II substances, such as Dilaudid, Doriden, and Tuinal. For example, from May 13 through December 26, 1986, the Respondent prescribed 1,604 tablets of Percodan or Percocet, and from March 20 through December 26, 1986, he prescribed approximately 30,000 milligrams of Demerol. This prescription practice continued into 1987 and 1988. However, also as a part of his prescription pattern, the Respondent tapered the amount of narcotics prescribed after the incidents of acute pain following the injuries suffered as a result of the various accidents. Dr. Smith, Dr. Ling, and Dr. Margoles testified that such tapering was within the usual course of professional practice.

Also throughout this time period, the Respondent used various non-narcotic methods of treating Patient A's pain. Specifically, he ordered bed rest, traction, hot packs, ultrasound, steroids, biofeedback, massage, electrocane, a cervical collar, facet blocks, physical therapy, acupuncture, and non-narcotic drugs. The Respondent also referred Patient A to numerous specialists, including Dr. Dodge, a neurosurgeon, Dr. Horacek, an orthopedic surgeon, and Dr. Woods, a neurologist.

However, Dr. Skinner was the primary treating physician for Patient A, and his treatment records were included in the record of this case. The medical records recounted the Respondent's observations, examination results, and the prescriptions issued as a result of his house calls to Patient A. Further, the medical records also contain hospital test results, hospital admission, treatment and discharge records, and consultation reports. For example, the medical records show that Patient A was hospitalized during this time period. On July 26, 1988, following a CAT scan, Dr. Joyce issued a report, writing that Patient A had a mild compression fracture at L1, mild stenosis at L2–3, moderate stenosis at L3–4, and a post-posterior bony fusion from L4 to the sacrum. Patient A was discharged on August 18, 1988. Again on September 29, 1988, Patient A was admitted to the hospital by Dr. Skinner, and she was discharged on October 4, 1988, with a diagnosis of a compression fracture, osteoporosis, and congenital scoliosis. On October 17, 1988, Patient A was again admitted with a complaint of severe left leg pain, and on October 23, 1988, she was discharged with the diagnosis of acute back pain secondary compression fracture of L1, acute lumbosacral spinal sprain and strain secondary to severe osteoarthritis at L2–3 with neuroforaminal narrowing, sciatica (resolved) and osteoporosis with high risk of possible spontaneous hip fracture.

Further, as Judge Tenney noted, ''[t]here is a 'debate' or difference of opinion between those [physicians who] specialized in addiction medicine and those in pain management regarding the use of narcotics for the treatment of severe pain.'' He also noted that Dr. Smith and Dr. Ling, the Government expert witnesses, were primarily experts in addiction medicine, and Dr. Margoles and Dr. Brechner, the Respondent's expert witnesses, were primarily experts in pain management. Dr. Smith and Dr. Margoles agreed that there exists a difference of opinion within the medical community as to the appropriate level of prescribing of controlled substances for the treatment of chronic pain patients. Also significant is the fact that the opinions of Dr. Brechner, Dr. Dodge, Dr. Horacek, and Dr. Woods were supported by either their personal examination, treatment, or both, of Patient A during the relevant time period, whereas the opinions of Dr. Smith and Dr. Ling were based upon their review of Patient A's treatment records and prescription documentation.

Initially, the Government presented evidence from expert witnesses who had concluded that Patient A was addicted to controlled substances, and that the Respondent had prescribed medications to Patient A to maintain her addiction. On March 3, 1990, Dr. Smith wrote in a report for the District Attorney: ''[the] spectrum of medications [prescribed to Patient A] was not justified by the medical pathology and, in fact, the medications caused the patient far more harm than benefit. The dosage of medication was clearly excessive and the duration over the several month period as outlined in the medical records was both excessive and not justified by the medical pathology.'' He concluded that ''[a]s a result of this analysis it is my opinion then, that Dr. Skinner and his colleagues were not prescribing a narcotic medication primarily for the management of pain but, in fact, were maintaining her addiction.'' During the hearing before Judge Tenney, Dr. Smith, after reviewing the quantities of controlled substances prescribed on selected dates, testified that those quantities were excessive in light of the standard therapeutic dosage. He then restated the conclusion he had reached in his 1990 letter to the District Attorney.

Based upon his review of Patient A's treatment record and relevant pharmacy records, Dr. Ling, a medical expert in the areas of neurology, psychiatry, addiction, and pain medicine, opined that the Respondent's prescribing practices did not meet the standard of care of the average practitioner with experience in the field of chemical dependency. He also testified that, in 1988, the standard of care was not to prescribe a large amount of narcotics, for such practice could result in the patient's developing a tolerance to controlled substances. He testified: ''You'd be treating the tolerance. You'd be treating addiction, you're no longer treating the [diagnosed medical condition].''

Both Dr. Smith and Dr. Ling concluded that Patient A was an addict who was opiate dependent and

benzodiazipine dependent. However, Dr. Ling also testified that he believed a drug dependent patient was entitled to treatment for pain, that Patient A was in pain, and that the Respondent was treating her in good faith.

The Respondent presented evidence from consulting physicians who had concluded that Patient A was not an addict, but that she was dependent upon controlled substances for treatment of her chronic and sometimes acute pain. Specifically, Dr. Margoles, a medical expert in pain management, testified, after having reviewed Patient A's medical history and having interviewed her twice, that throughout the years 1986 to 1988, Patient A had experienced intractable pain as a result of numerous medical problems and degenerative changes. He concluded that Patient A was a chronic pain patient, as opposed to an opioid abuser, and that she sought and was given medications to control her pain, not for euphoria. He found that, although Patient A had received an increase in amounts of opioids prescribed for her use, such an increase had resulted from the severity of her pain, not from addiction. He testified: ''It was obvious that the medication was being used to keep her going in her professional career.'' He also summarized the distinction between the use of pain medication to enable a patient with pain to function, and the use of narcotics to simply maintain an addict, as follows: ''the chronic pain patient * * * [is] goal oriented, they're working, they're functioning. They've got something in mind, they've got a goal. They're working, they've got a job. Narcotic maintenance is usually, as far as I'm concerned, * * * just keeping a person * * * from going through withdrawal symptoms.'' Also, he noted that there was no evidence in Patient A's records of abstinent syndrome, clinical or laboratory evidence of toxicity, nor evidence that she had sought drugs in order to obtain euphoria. Dr. Margoles testified that the lack of toxicity evidence meant that the ''patient obviously tolerated the medication that she had, that was used in her case, and evidently benefitted her [,] and [that] she had no toxic side effects * * * no slurred speech, inability to have cognitive speech, straight speaking.''

Finally, Dr. Margoles noted that in the 1980's, guidelines were established in prescribing controlled substances for chronic conditions. These guidelines were indorsed by various medical and legal groups, to include the California Board of Medical Quality Assurance and the California Bureau of Narcotic Enforcement. Dr. Margoles testified that the Respondent's prescribing to Patient A met these standards.

The Respondent also presented an affidavit from Dr. Dodge, a consulting neurosurgeon involved with the treatment of Patient A from 1986 through 1988, who wrote:

> In my opinion, although the amounts of drugs were large compared to the average patient, they were necessary in order to treat the patient's pain. Although the patient clearly had a drug dependence problem, I do not believe the pain was controllable by other means besides narcotics. The amounts of narcotics tended to increase at the time of the acute events * * *. Dr. Skinner and the other physicians responsible for her care always attempted to minimize the amounts of drugs that she took and sought to detoxify her from those drugs when the acute phase of pain and muscle spasm from the injuries passed.
>
> In my opinion, Dr. Skinner and the other physicians responsible for her care did not violate the standard of practice in prescribing narcotic analgesics to this patient.

Further, is an affidavit, Dr. Woods, a neurologist who treated Patient A from January 1987 to January 1988, made similar observations as Dr. Dodge, and concluded: ''In my opinion, Dr. Skinner and the other physicians responsible for her care did not violate the standard of practice in prescribing narcotic analgesics to this patient, in that the drugs were prescribed to control the patient's pain not to maintain her addiction.''

As to the legitimacy of the quantities of the controlled substances prescribed, Dr. Brechner, a medical expert in the field of pain management and anesthesiology, testified that in 1988, he was consulted concerning an aspect of Patient A's treatment, for he had performed a facet block procedure to aid in the diagnosis of the source of Patient A's back pain. In the course of performing that procedure, he administered narcotic analgesics, observing that Patient A had ''an extraordinary tolerance to narcotics, even when potentiated with the tranquilizers.'' Dr. Brechner also noted that Patient A suffered from severe chronic pain and from periods of acute, intractable pain. Dr. Brechner concluded that Patient A had received narcotics prescribed in amounts that were ''extraordinary compared to the average patient,'' because of her extreme tolerance for narcotics, and that she needed the narcotics in the amounts prescribed in order to control her pain. He testified that prescribing the narcotics in lower doses was not effective, and thus, she was not ''over-dosed.'' Also, Dr. Brechner testified that alternative means of treatment were tried to control Patient A's pain, but that he did not believe such treatment was effective alone in treating the pain resulting from her acute pain-inducing incidents, such as the automobile accident or the fall down the stairway. Finally, Dr. Brechner testified that the doctors treating Patient A prescribed narcotics for a legitimate medical purpose, to treat her pain, and not to maintain her condition as an addict.

Also, the Respondent testified that he had begun treating Patient A at the request of Dr. Roth in 1983. Dr. Skinner testified extensively about the acute pain incidents experienced by Patient A through 1988, the consulting physicians' diagnoses resulting from these incidents, and the various narcotic and non-narcotic treatment regimen implemented to control her pain. He also stated that there was no evidence that drug intoxication caused any of Patient A's acute events, and that he had made an extra effort to insure her lack of toxicity throughout his treatment of her. Further, Dr. Skinner testified that all narcotics were either administered in the hospital or under the supervision of a private duty nurse selected by him from the nursing staff of the Chemical Dependency Center at Saint John's Hospital, and that the nurses were familiar with Patient A's case, her tolerances, and with treating patients who had Patient A's type of problems. As a result of his treatment of Patient A, Dr. Skinner concluded that she was not an addict: ''She did not demonstrate typical findings of addiction behavior * * * never did she evidence toxicity, never did she evidence any abstinence withdrawal syndrome, and never did she evidence, while under my care at home or in the hospitals, any evidence of street-like drug seeking behavior.'' He also stated that, given Patient A's medical condition, he did not believe that he over-prescribed controlled substances to her. Further, he testified that in prescribing medications to Patient A, he would taper her off the medicines to try to control her tolerance levels. He strongly denied prescribing controlled substances to Patient A to maintain an addiction, stating: ''if it [is] your contention that I was maintaining an addict, what motive would I possibly have for that? It's against all the training that I have; it's against everything that I have done in treating chemical dependency patients.''

Also, as to the Respondent's recordkeeping practices, he testified that he was aware that tabloid newspapers would pay clerks at the hospital to copy celebrity patient records, such as Patient A's, and to send the records to the tabloids. Therefore, the Respondent stated he was careful in his records to document conditions and prescriptions

made to Patient A, while remaining in compliance with federal laws of confidentiality.

As to his future practice, the Respondent stated that if he encountered a medically complex patient similar to Patient A, he would refer that patient to a chronic pain management specialist. He also testified concerning his current practice and the need for his DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a)(4) and 823(f), the Deputy Administrator may revoke or suspend the Respondent's DEA Certificate of Registration and deny any pending application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See *Henry J. Schwarz, Jr., M.D.,* Docket No. 88-42, 54 FR 16422 (1989).

In this case, factors two, four, and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor two, the Respondent's ''experience in dispensing * * * controlled substances,'' and factor four, the Respondent's compliance with ''Federal, State, or local law,'' the Government contends that during March 1986 through October 1988, the Respondent prescribed controlled substances in the treatment of Patient A not for a legitimate medical purpose and not in the usual course of his professional practice, in violation of State and Federal law. Specifically, the Government argues that controlled substances were prescribed to Patient A during these periods to maintain her addiction, and that the amount of narcotics prescribed far exceeded what Patient A needed for pain relief.

An ''addict'' is defined in 21 U.S.C. 802(1) as ''any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to [one's] addiction.'' There was no dispute that very high does of narcotic analgesics were administered to Patient A, but the evidence also demonstrated that she had a high tolerance to the controlled substances and required this dosage to effectively treat her pain. Patient A's medical records and the statements and testimony of medical experts established that Patient A had several injuries and was plausibly experiencing severe and chronic pain.

Further, the evidence did not adequately establish that Patient A was an ''addict.'' No evidence was presented to show that Patient A had acted to ''endanger the public morals, health, safety, or welfare,'' or that she had a compulsion to use drugs, had lost control over the drugs, or that she continued to use the drugs in spite of adverse consequences. Also, medical testimony was presented to establish that, although considered, there was no evidence of abstinent syndrome, slurred speech, inability to have cognitive speech, nor clinical or laboratory evidence of toxicity. However, there was expert testimony to establish that use of the controlled substances helped Patient A to function and participate in her professional activities in spite of chronic pain. Although the Respondent did not deny that Patient A had experienced chemical dependency for the control of her pain, he did testify that he was not prescribing controlled substances to Patient A to maintain an addiction, for she had not presented any addictive behavior to him. Therefore, the Deputy Administrator concurs with Judge Tenney's finding that the ''preponderance of the evidence demonstrates that although Patient A was prescribed a large amount of controlled substances, these were prescribed by Dr. Skinner for a legitimate medical purpose and in the usual course of his professional practice.''

The Government also asserted that the Respondent's practices violated California Health and Safety Code Sections 11153 and 11154. Pursuant to Section 11153(a), a ''prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice,'' and a prescription issued ''for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment * * * but for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use'' would not be a legal prescription pursuant to this section. Section 11154 provides in relevant part that ''[e]xcept in the regular practice of his or her profession, no person shall knowingly prescribe, administer, dispense, or furnish a controlled substance to or for any person * * * which is not under his or her treatment for a pathology or condition other than addiction to a controlled substance * * * .''

The Respondent asserted that he had prescribed controlled substances to Patient A in good faith, and that such prescribing was an absolute defense to an allegation of violation of these State law provisions. Dr. Ling testified that he accepted that the Respondent believed Patient A was in pain, and that he was treating her in good faith. Dr. Margoles also testified to the Respondent's good faith treatment of Patient A.

The Deputy Administrator agrees with the conclusion of Judge Tenney, that the Respondent did not violate these State code provisions. See *People* v. *Lonergan*, 219 Cal. App. 3d 82, 90 (1990) (acting in ''good faith,'' as defined by California Health and Safety Code 11210, exempts a physician from criminal liability under the provision of 11153). In response to the Government's exceptions relevant to the standard applicable in this administrative proceeding, the Deputy Administrator also finds that the preponderance of the evidence was against a finding that Patient A was an ''addict'', and supports the conclusion that the Respondent had prescribed controlled substances to Patient A for a legitimate medical purpose, treating her pain, while acting in the usual course of his professional practice. Thus, the evidence does not support a finding that the Respondent violated the cited State law.

Next, the Government asserted that from April 1987 through November 1988, the Respondent performed detoxification or maintenance treatment of a narcotic drug-dependent patient without obtaining a registration for that purpose, in violation of Federal law. Pursuant to 21 U.S.C. 802(30), ''detoxification treatment'' is—

the dispensing for a period not in excess of one hundred and eighty days of a narcotic drug in decreasing doses to an individual in order to alleviate adverse physiological or psychological effects incident to withdrawal

from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period.

Further, the statute defines ''maintenance treatment'' as the dispensing, ''for a period in excess of twenty-one days, of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.'' 21 U.S.C. 802(29). However, the applicable implementing regulation states in pertinent part:

This section is not intended to impose any limitations on a physician * * * to administer or dispense narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction, or * * * to persons with intractable pain in which no relief or cure is possible or none has been found after reasonable efforts.

21 CFR 1306.07(c).

The preponderance of the evidence supports a finding that the Respondent was tapering the drugs prescribed to Patient A after acute pain resolved. Dr. Ling, as well as others, testified that such tapering would be appropriate under such circumstances. Further, the record does not establish that Patient A experienced ''adverse physiological or psychological effects incident to withdrawal'' nor that, in fact, Patient A exhibited behavior consistent with the finding that she was an ''addict.'' Therefore, the Deputy Administrator agrees with Judge Tenney, that the ''Respondent made a reasonable effort to manage the patient's intractable pain and limit the patient's use of controlled substances in terms of treatment of [Patient A's] other medical conditions, and did not prescribe controlled substances to her primarily to wean her from dependence on narcotic analgesics.'' Thus, the Respondent was not maintaining Patient A's addiction nor detoxifying Patient A without a prior registration.

Finally, the Government argued that from March 1986 through October 1988, the Respondent failed to keep adequate medical records of his treatment of Patient A, and thus, his prescriptions were not issued for a legitimate medical purpose nor in the usual course of professional practice in violation of 21 CFR 1306.04, and California Health and Safety Code Sections 11168, 11190, and 11191. Yet the Government failed to cite to any specific inadequacies of the Respondent's records in either their proposed findings of fact or in the exceptions filed to the Administrative Law Judge's recommended decision.

Pursuant to 21 CFR 1304.03(c), a ''registered individual practitioner is not required to keep records of controlled substances in Schedules II, III, IV, and V which are prescribed in the lawful course of professional practice, unless such substances are prescribed in the course of maintenance or detoxification treatment of an individual.'' Further, a ''registered individual practitioner is not required to keep records of controlled substances listed in [Schedules II through V] which are administered in the lawful course of professional practice unless the practitioner regularly engaged in the dispensing or administering of controlled substances and charges patients, either separately or together with charges for other professional services, for substances so dispensed or administered.'' 21 CFR 1304.03(d). Here, the Respondent prescribed controlled substances to Patient A, but the record does not indicate that he ''regularly dispensed'' those substances to her nor that he prescribed them ''in the course of maintenance or detoxification treatment.'' The Deputy Administrator thus agrees with Judge Tenney's conclusion that ''the Government failed to prove that Respondent kept inadequate records. No violation of the Federal statute is found.''

As for violations of State law, California Health and Safety Code Section 11190 provides that a practitioner who issues a prescription of a controlled substance classified in Schedule II must make a record for each transaction which shows the name and address of the patient, the date of the transaction, the ''character, including the name and strength, and quantity of controlled substances involved'', and the pathology and purpose for which the prescription was issued. The Government did not cite to any specific instances where the Respondent failed to provide this required information. Thus, after reviewing the record, the Deputy Administrator agrees with Judge Tenney's conclusion that the ''DEA did not prove that there were recordkeeping violations by a preponderance of the evidence.''

As to factor five, ''such other conduct which may threaten the public health and safety,'' the Government argued that the Respondent's pattern of prescribing to Patient A caused a threat to the public health and safety. As Judge Tenney noted, this is an unusual case for it involved the Respondent's prescribing practices for a single patient, and no evidence was provided to show a pattern of excessive prescribing to any other patients. Further, as to that single patient, the Deputy Administrator concurs with Judge Tenney's finding that the ''overriding purpose of [the] Respondent's prescribing practices was the treatment of Patient A's pain,'' a legitimate medical purpose. In the balance, the Deputy Administrator finds that it is in the public interest for the Respondent to retain his DEA Certificate of Registration.

However, the Deputy Administrator notes with concern the large quantities of controlled substances prescribed to Patient A over an extended period of time. Yet the conflicting expert opinion evidence presented leads to the conclusion that the medical community has not reached a consensus as to the appropriate level of prescribing of controlled substances in the treatment of chronic pain patients. Given this dispute, the Deputy Administrator is reluctant to conclude that the Respondent's prescribing of controlled substances to Patient A lacked a legitimate medical purpose or was outside the usual course of professional practice. It remains the role of the treating physician to make medical treatment decisions consistent with a medical standard of care and the dictates of the Federal and State law. Here, the preponderance of the evidence established that the Respondent so acted.

Therefore, the Deputy Administrator finds that the public interest is best served by taking no action with respect to the continued registration of the Respondent. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 21 CFR 0.100(b) and 0.104, hereby orders DEA Certificate of Registration AS7287534, issued to William F. Skinner, M.D., be, and it hereby is, continued, and that any pending applications be, and they hereby are, granted. This order is effective January 8, 1996.

Dated: November 30, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–29770 Filed 12–6–95; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before January 22, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Agricultural Research Service (N1–310–95–2). Background records and input and source documents for applied human nutrition projects.

2. Department of Energy, Superconducting Super Collider Project Office (N1–434–95–4). Administrative, routine facilities, and interim construction records associated with the Superconducting Super Collider Project.

3. Department of Health and Human Services, Indian Health Service (N1–513–94–1). Comprehensive schedule of major electronic data systems.

4. Department of the Interior, Bureau of Reclamation (N1–115–94–5). General administrative records pertaining to economics, repayment, and water sales and rights.

5. Department of the Interior, Bureau of Reclamation (N1–115–94–6). General administrative records pertaining to land operations and realty functions.

6. Department of Justice, Immigration and Naturalization Service (N1–85–96–1). Service Center receipt files.

7. Department of State, Bureau of Economic and Business Affairs (N1–59–94–36). Duplicative records maintained in all bureau offices.

8. Department of State, Bureau of Diplomatic Security (N1–59–94–43). Routine, facilitative, and duplicative records. Policy records are scheduled as permanent.

9. The Administrative Conference of the United States (N1–451–96–1). Unrecoverable electronic roster and unidentified/uncaptioned still photographs.

10. Board of Governors of the Federal Reserve System (N1–82–95–1). Comprehensive schedule for the Federal Open Market Committee.

11. Bureau of Alcohol, Tobacco, and Firearms (N1–436–96–1). Requisition requests for firearms explosives forms.

12. Pension Benefit Guaranty Corporation (N1–465–94–1). Special project or task force case files that are non-precedent in nature.

13. Tennessee Valley Authority (N1–142–93–13). Reduction in retention period for employee rehabilitation case files.

14. Tennessee Valley Authority (N1–142–93–17). Employee service surveys and suggestions.

15. Tennessee Valley Authority (N1–142–95–2). Heavy equipment contract files.

16. Tennessee Valley Authority (N1–142–95–7). Oscillogram and transient recorder record created in monitoring power generation equipment and facilities.

Dated: November 28, 1995.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 95–29854 Filed 12–6–95; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Challenge and Advancement Teleconference

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a teleconference of the Challenge and Advancement Advisory Panel (Design Review Section) to the National Council on the Arts will occur from 1 p.m. to 3 p.m. on December 12, 1995 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman on June 22, 1995 these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: December 1, 1995.

Yvonne M. Sabine,

Director, Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 95–29793 Filed 12–6–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call Herman Fleming NSF Clearance Officer of (703) 306–1243.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the propose collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Send Comments to Herman Fleming, Clearance Officer, National Science Foundation 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230. Written comments should be received by December 20, 1995.

Proposed Project: Fastlane Baseline Data Collection.

Abstract: Information will be collected from faculty and administration at 21 colleges and universities. The purpose of the data collection is to establish baseline measures of applicant burden and customer perceptions about the NSF and Federal grant application process. The baseline measures will be used in future years to measures the effect of Fastland (NSF's electronic proposal preparation system) and will provide customer input to the system design. The data will also be used by NIH and the Department of Energy for similar purposes.

Respondents/Burden hours: 320 respondents (16 individuals at 20 institutions) will be interviewed for about one-hour each.

Dated: November 30, 1995.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 95–29811 Filed 12–6–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298]

Exemption

In the Matter of: Nebraska Public Power District (Cooper Nuclear Station).

I.

Nebraska Public Power District (the licensee) is the holder of Facility Operating License No. DPR–46, which authorizes operation of the Cooper Nuclear Station (CNS) at power levels not in excess of 2381 megawatts thermal. The facility consists of a boiling water reactor at the licensee's site in Nemaha County, Nebraska. The operating license provides, among other things, that CNS is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II.

The licensee requested, in its application dated May 13, 1994, an exemption from the pressure test requirements of Section III.D.2(b)(ii) of Appendix J, ''Primary Reactor Containment Leakage Testing For Water-Cooled Power Reactors,'' to 10 CFR Part 50 (Appendix J to 10 CFR Part 50). The staff discussed the details of the proposed exemption with the licensee in a telephone conference call on September 28, 1995. The proposed exemption would allow the licensee to leak test the personnel air lock at CNS at a test pressure less than P_a, (the calculated peak containment internal pressure resulting from the containment design basis accident), under certain conditions. The reduced pressure test of the air lock would be conducted as the first of two tests during a restart from refueling or cold shutdown, prior to entry into an operational mode requiring containment leaktight integrity by the CNS Technical Specifications (TSs). As stated in CNS TS 4.7.A.2.f.5, for periodic leakage testing of the personnel air lock, P_a is 58 psig and the reduced test pressure is 3 psig.

This leakage test is part of the Type B tests required by Appendix J to 10 CFR Part 50 to verify containment integrity. Because an air lock allows entry into the containment and is part of the containment pressure boundary, excessive leakage through the air lock could compromise containment integrity. The air lock consists of an inner and outer door and the leakage test is performed by pressurizing the space between the doors.

Section III.D.2 of Appendix J to 10 CFR Part 50 specifies the required periodic retest schedule for Type B tests, including testing of air locks. Pursuant to Section III.D.2(b)(ii), licensees are required to leakage test air locks, opened during periods when containment integrity is not required by the TSs, at the end of such periods. This section applies to testing of air locks during restart from refueling or cold shutdown because the CNS TSs do not require containment integrity for either of these operational modes. This section states that the air lock test shall be performed at a pressure that is not less than P_a.

The proposed exemption is concerned with Section III.D.2(b)(ii); however, there are two other sections in Appendix J which have requirements on testing air locks. Section III.D.2(b)(i) requires an air lock test every 6 months at a test pressure of P_a and Section III.D.2(b)(iii) requires a test every 3 days when the air lock is used during a period when containment integrity is required by the TSs. The latter section requires the test pressure to be P_a, or the test pressure specified in the TSs, which for CNS is specified as 3 psig in TS 4.7.A.2.f.5.

The licensee stated in its application that it currently tests the personnel air lock twice during the restart of the plant for power operation from refueling or cold shutdown: (1) Prior to the reactor being taken critical, or the reactor water temperature being above 100°C (212°F), and (2) after the last entry into containment for leak inspection during restart. The time between the two tests is about 24 to 48 hours, and the second test is at low reactor power prior to entry into the run mode, the full power mode of operation.

The first test is in accordance with Section III.D.2(b)(ii) and is performed at the conclusion of the period when containment integrity is not required by the TSs. This test is conducted prior to entry into an operational mode requiring containment integrity. The second test is in accordance with Section III.D.2(b)(iii) and is performed at 3-day intervals while the air lock is being used when containment integrity is required. As stated above, in accordance with this section, the second test could be conducted at a test pressure of 3 psig at CNS, because this pressure is stated in TS 4.7.A.2.f.5. However, because the licensee also performs the second test to meet the 6-month interval requirement in Section III.D.2(b)(i), the second test is conducted at P_a.

The proposed exemption would not change the number of air lock tests for the restart to power operation for CNS, the manner in which the second test is

conducted, the time when the tests would be run, nor the acceptance criteria for the tests. The proposed exemption also would not change the requirements of Section III.D.2(b)(i) regarding the 6-month periodic test of the air lock at P_a, nor the existing CNS safety limits, safety settings, power operations, or effluent limits.

III.

Pursuant to 10 CFR 50.12(a), ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and for which special circumstances identified in 50.12(a)(2) are present.

The licensee is proposing to conduct the first air lock test during restart at a test pressure of 3 psig, which is less than P_a, which is not presently allowed by Section III.D.2(b)(ii). The air lock leakage measured at the reduced test pressure would be extrapolated to a value consistent with P_a, then that value would be compared to the acceptance criteria in Appendix J for Type B tests to confirm that containment integrity is verified. If containment integrity is verified, the measured air lock leakage is considered acceptable.

For CNS, by testing the air lock at reduced pressure of 3 psig, a strongback (structural bracing) would not have to be installed on the inner air lock door. During the test, the space between the inner and outer doors is pressurized. The strongback is needed when the test pressure is P_a because the pressure exerted on the inner door during the test is in a direction opposite to the pressure on the inner door during an accident, and the test pressure is sufficiently high to damage the inner door without the strongback. The reduced pressure test is conducted at a pressure low enough such that the strongback is not needed to protect the inner door.

When no maintenance or repairs have been performed on the air lock that could affect its sealing capability and the periodic 6-month test at P_a has been performed successfully, there is no reason to expect the air lock to leak excessively because it has been opened during a plant shutdown or refueling outage. When the air lock is tested at a pressure less than P_a in preparation for restart from refueling or cold shutdown, the air lock would have been successfully tested at P_a within the previous six months.

Accordingly, the Commission concludes that the licensee's proposed exemption to conduct the first air lock test during the restart from refueling or cold shutdown (when the air lock was opened while containment integrity was not required by the TSs) at the reduced pressure of 3 psig in CNS TS 4.7.A.2.f.5 is acceptable, provided no maintenance or repairs have been performed on the air lock which would affect its sealing capability since the last 6-month test required by Section III.D.2(b)(i) of Appendix J. Section III.D.2(b)(i) requires a test of the air lock at not less than P_a every 6 months since the initial fuel loading and this requirement is not being changed by this exemption. If maintenance or repairs have been performed on the air lock affecting its sealing capability since the last 6-month test, the first test prior to entering a condition which requires containment integrity must meet the test pressure requirements of Section III.D.2(b)(ii) and be conducted at a test pressure not less than P_a.

Although the licensee conducts the second air lock test during restart at P_a to meet Section III.D.2(b)(i) and thus begin the 6-month interval for air lock tests during the power operating cycle, this exemption does not require that the second test be conducted at P_a. The entry into an operational mode which requires containment integrity by the TSs must be based on an assurance that the containment has such integrity. This assurance can not rely on a test to be conducted hours or days in the future after the operational mode has been entered, unless the proper test can only be conducted after entering the operational mode (i.e., the proper conditions for the test do not exist in the prior mode). An air lock test at P_a could be conducted before entering the operational mode requiring containment integrity and has been conducted in this manner in the past at CNS. Therefore, in approving this exemption to allow the first air lock test during restart to be conducted at the reduced test pressure of 3 psig, the staff does not rely on the second test being conducted at P_a. The method used to correlate the reduced pressure leakage rates to the full pressure leakage rates shall be in accordance with the NRC staff's safety evaluation and the Franklin Research Center technical evaluation report enclosed with the exemption of September 3, 1982.

The special circumstances for granting this exemption pursuant to 10 CFR 50.12 have been identified in the licensee's application dated May 13, 1994. The purpose of Appendix J to 10 CFR Part 50 is to ensure that the containment leaktight integrity can be verified periodically throughout the service lifetime of the containment (including the air lock) so as to maintain containment leakage within the limits specified in the design basis accident analyses that were part of the basis for licensing CNS. The proposed alternative test method is sufficient to achieve the underlying purpose of the regulation in that it provides adequate assurance of the leaktight integrity of the air lock, and thus of the containment.

Consequently, the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensee has proposed an acceptable alternative test method that accomplishes the intent of the regulation.

IV.

Based on the findings and conclusions above, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee in its letter dated May 13, 1994, is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and has present special circumstances which are identified in 50.12(a)(2). The Commission hereby grants to the licensee an exemption from the requirements in Section III.D.2(b)(ii) of Appendix J to 10 CFR Part 50, to allow reduced pressure testing of the personnel airlock in accordance with TS 4.7.A.2.f.5, prior to entry into operational modes requiring containment integrity, provided there has been no maintenance or repair of the air lock that could affect its sealing capability since the last 6-month test of the air lock.

Pursuant to 10 CFR 51.32, the Commission has also determined that the issuance of the exemption will have no significant impact on the environment. An Environmental Assessment and Finding of No Significant Impact was noticed in the Federal Register on November 6, 1995 (60 FR 57250).

For further details with respect to this action, see the licensee's request for exemption dated May 13, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Commission's Local Public Document Room at the Auburn Public Library, 118 15th Street, Auburn, NE 68305.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 30th day of November 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29812 Filed 12–6–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–219]

GPU Nuclear Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

The proposed amendment would amend paragraph 2.C.(5) of Facility Operating License DPR–16 to eliminate the administrative process associated with obtaining separate NRC approvals for reviewing inspection results and obtaining restart authorization prior to the end of each refueling outage. In addition, the phrase ''once per 24 months'' has been changed to ''per refueling outage.''

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 8, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Phillip F. McKee: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 26, 1995,

which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Dated at Rockville, Maryland, this 30th day of November 1995.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Acting Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29813 Filed 12–6–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–237, 50–249, 50–254, 50–265, 50–373, and 50–374]

Commonwealth Edison Company and Midamerican Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DRP–19, DRP–25, DRP–29, DRP–30, NPF–11, and NPF–18 issued to Commonwealth Edison Company (ComEd, the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois, Quad Cities Nuclear Power Station, Units 1 and 2, located in Dixon County, Illinois, and LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

The proposed amendment would change the technical specifications of these plants to incorporate 10 CFR Part 50, Appendix J, ''Primary Reactor Containment Leakage Testing For Water-Cooled Power Reactors'', Option B.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

10 CFR 50, Appendix J has been amended to include provisions regarding performance-based leakage testing requirements (Option B). Option B allows plants with satisfactory Integrated Leak Rate Testing (ILRT) performance history to reduce the Type A testing frequency from three tests in ten years to one test in ten years. For Type B and Type C tests, Option B allows plants to reduce testing frequency based on the leak rate test history of each component. In addition, Option B establishes controls to ensure continued satisfactory performance of the affected penetrations during the extended testing interval. To be consistent with the requirements of Option B to 10 CFR 50, Appendix J, ComEd proposes to include appropriate changes to the Technical Specifications that incorporate the necessary revisions associated with Option B of 10 CFR 50, Appendix J.

The proposed amendment represents the conversion of current Technical Specification requirements to maintain consistency with those requirements specified by Option B to 10 CFR 50, Appendix J. The proposed changes are consistent with the current plant safety analyses. Implementation of these changes will provide continued assurance that specified parameters associated with containment integrity will remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes represent minor curtailments to current Technical Specification requirements, but are based on the requirements specified by Option B to 10 CFR 50, Appendix J. Any such changes are consistent with the current plant safety analyses and have been determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analyses, or provide continued assurance that specified parameters associated with containment integrity remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

The associated systems affecting the leak rate integrity related to this proposed amendment request are not assumed in any safety analyses to initiate any accident sequence; therefore, the probability of any accident previously evaluated is not increased by this proposed amendment which incorporates the requirements of Option B to 10 CFR 50, Appendix J. In addition, the proposed limiting conditions for operation and surveillance requirements for the proposed amendments to any such systems that affect the leak rate integrity are consistent with the current requirements specified within the Technical Specifications. The proposed changes to any Technical Specification limiting condition for operation or surveillance requirement maintain an equivalent level of reliability and availability for all affected systems. Therefore, the proposed amendment does not increase the consequences of any accident previously evaluated as the probability of the affected systems associated with leak rate integrity, from performing their intended function, is unaffected by the proposed limiting conditions for operation or surveillance requirements.

There is no change to the consequences of an accident previously evaluated because maintaining leakage within the analyzed limit assumed for any associated accident analyses does not adversely affect either the on-site or off-site dose consequences resulting from an accident. In addition, containment leakage is not an accident initiator. As such, there is no adverse impact on the probability of accident initiators. Thus, there is no significant increase in the probability of any previously analyzed accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

Option B of 10 CFR 50, Appendix J specifies, in part, that a Type A test which measures both the containment system overall integrated leakage rate at the containment pressure and system alignments assumed during a large break loss of coolant accident (LOCA), and demonstrates the capability of the primary containment to withstand an internal pressure load, may be conducted at a periodic interval based on the performance of the overall containment system. The acceptable leakage rates are specified in the plant's Technical Specifications. For Type B and Type C tests, intervals are proposed for establishment based on the performance history of each component. Acceptance criteria for each component is based upon demonstration that the sum leakage rates at design basis pressure conditions for applicable penetrations, is within the limit specified in the Technical Specifications.

The proposed amendment represents the conversion of current Technical Specification requirements to maintain consistency with those requirements specified in Option B to 10 CFR 50, Appendix J. The proposed changes are consistent with the current plant safety analyses. Some minor curtailments of current Technical Specification requirements, associated with containment integrity are based on generic guidance or similarly approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the testing of components at the station; however, these are in accordance with the current plant safety analyses, and provide for appropriate testing or surveillance that are consistent with Option B to 10 CFR part 50, Appendix J. The proposed changes will not introduce new failure mechanisms beyond those already considered in the current plant safety analyses.

The proposed amendment has been reviewed for acceptability at the stations considering similarity of system or component design affecting containment integrity. No new modes of operation are introduced by the proposed changes. Surveillance requirements are changed to reflect corresponding changes associated with Option B to 10 CFR part 50, Appendix J and improvements in technique or frequency of leak rate testing performance. The proposed changes maintain at least the present level of operability of any such system that affects plant containment integrity. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The associated systems that affect plant leak rate integrity related to the proposed amendment, are not assumed in any plant safety analysis to initiate any accident sequence. In addition, the proposed surveillance requirements for any such affected systems are consistent with the current requirements specified within the Technical Specifications and are consistent with the requirements of Option B to 10 CFR part 50, Appendix J. The proposed surveillance requirements maintain an equivalent level of reliability and availability of all affected systems and therefore, does not increase the consequences of any previously evaluated accident. As such, the probability of the affected systems, associated with leak rate test integrity, from performing their intended function, is unaffected by the proposed limiting conditions for operation and surveillance requirements.

(3) Involve a significant reduction in the margin of safety because:

The provisions specified in Option B to 10 CFR part 50 Appendix J allows changes to Type A, Type B and Type C test intervals based upon the performance of past leak rate tests. The effect of extending containment leakage rate testing intervals is a corresponding increase in the likelihood of containment leakage.

The degree to which intervals can be extended is a direct function on the potential effect on existing plant safety margins and the public health and safety that can occur due to an increased likelihood of containment leakage.

Changing Appendix J test intervals from those currently provided in the Technical Specification to those provided for in 10 CFR part 50, Appendix J, Option B, slightly increases the risk associated with Type A, Type B, and Type C specific accident sequences. Historical data suggests that increasing the Type C test interval can slightly increase the associated risk; however, this is compensated by the corresponding risk reduction benefits associated with reduction in component cycling, stress, and wear associated with increased test intervals. In addition, when considering the total integrated risk which includes all analyzed accident sequences, the risk associated with increasing test intervals is negligible.

ComEd proposes to revise the Technical Specifications to be consistent with those provisions specified in Option B of 10 CFR part 50, Appendix J. The proposed changes are consistent with current plant safety analyses. In addition, these proposed changes do not involve revisions to the design of the station. As such, the proposed individual changes will maintain the same level of reliability of the equipment associated with containment integrity, assumed to operate in the plant safety analysis, or provide continued assurance that specified parameters affecting plant leak rate integrity, will remain within their acceptance limits. Therefore, the proposed changes provide continued assurance of the leakage integrity of the containment without adversely affecting the public health and safety and as such, will not significantly reduce existing plant safety margins.

The proposed amendment to the Technical Specifications implements present requirements, or the requirements in accordance with the guidelines set forth in Option B to 10 CFR part 50, Appendix J. The proposed changes have been evaluated and found to be acceptable for use at the stations based on system design, safety analysis requirements, and operational performance. Since the proposed changes are based on NRC accepted provisions that are applicable at the stations and maintain necessary levels of system or component reliability affecting plant containment integrity, the proposed changes do not involve a significant reduction in the margin of safety.

The performance-based approach to leakage rate testing concludes that the impact on public health and safety due to revised testing intervals is negligible. The proposed amendment for the stations will not reduce the availability of systems associated with containment integrity when required to mitigate accident conditions; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 8, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois for Dresden Station, Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois for LaSalle County Station, and Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois for Quad Cities Station. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 14, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois for the Dresden Station, Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois for LaSalle County Station, and Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois for Quad Cities Station.

Dated at Rockville, Maryland, this 1st day of December 1995.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29814 Filed 12–06–95; 8:45 am]

BILLING CODE 7590–01–P

Application for a License to Import Nuclear Waste

Pursuant to 10 CFR 110.70(b) ''Public notice of receipt of an application'', please take notice that the Nuclear Regulatory Commission has received the following application for an import license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

The information concerning the application follows.

NRC IMPORT LICENSE APPLICATION

Name of applicant, Date of application, Date received, Application number	Description of material		End use	Country of origin
	Material type	Total quantity		
Nuclear Sources & Services, Inc. Sept. 22, 1995 Oct. 18, 1995 IW001	Low-level radioactive waste ...	940 cu. ft. (over 5 yr.)	Management and Disposal	Mexico.

Dated this 28th day of November 1995 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 95–29816 Filed 12–6–95; 8:45 am]

BILLING CODE 7590–01–M

Application for a License To Export Nuclear Material

Pursuant to 10 CFR 110.70 (b) ''public notice of receipt of an application'', please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of the applications for licenses to export nuclear grade graphite and heavy water as defined in 10 CFR Part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, Date of application, Date received, Application number	Description of material		End use	Country of destination
	Material type	Total quantity		
Poco Graphite, Inc ..... Nov. 6, 1995 Nov. 13, 1995 XMAT0391	Nuclear Grade Graphite	1,200,000 Kilograms (over 5 yr.).	Non-Nuclear Commercial Products.	So. Korea

Dated this 28th day of November 1995 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 95–29815 Filed 12–6–95; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Order No. 1092; Docket No. A96–7

Twin Brooks, South Dakota 57269 (Josephine Lambrechts, Petitioner): Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued December 1, 1995.

Docket Number: A96–7.

Name of Affected Post Office: Twin Brooks, South Dakota 57269.

Name(s) of Petitioner(s): Josephine Lambrechts.

Type of Determination: Closing

Date of Filing of Appeal Papers: November 24, 1995.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by December 8, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

November 24, 1995—Filing of Appeal letter

December 1, 1995—Commission Notice and Order of Filing of Appeal

December 19, 1995—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
December 29, 1995—Petitioner's Participant Statement or Initial Brief [see 39 CFR 3001.115 (a) and (b)]
January 18, 1996—Postal Service's Answering Brief [see 39 CFR 3001.115(c)]
February 2, 1996—Petitioner's Reply Brief should Petitioner choose to file one [see 39 CFR 3001.115(d)]
February 9, 1996—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]
March 23, 1996—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 95–29789 Filed 12–06–95; 8:45 am]

BILLING CODE 7710–FW-P

[Order No. 1091; Docket No. A96–6]

Clarkia, Idaho 83812: (Jennie Carlen, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: December 1, 1995

Docket Number: A96–6

Name of Affected Post Office: Clarkia, Idaho 83812.

Name(s) of Petitioner(s): Jennie Carlen, et al.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: November 24, 1995.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by December 8, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

November 24, 1995—Filing of Appeal letter
December 1, 1995—Commission Notice and Order of Filing of Appeal
December 19, 1995—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
December 29, 1995—Petitioners' Participant Statement or Initial Brief [see 39 CFR 3001.115 (a) and (b)]
January 18, 1996—Postal Service's Answering Brief [see 39 CFR 3001.115(c)]
February 2, 1996—Petitioners' Reply Brief should Petitioner choose to file one [see 39 CFR 3001.115(d)]
February 9, 1996—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]
March 23, 1996—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 95–29788 Filed 12–7–95; 8:45 am]

BILLING CODE 7710–FW-P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of amendment and addition of new routine use for an existing system of records.

SUMMARY: This document publishes notice of modifications to Privacy Act system of records USPS 050.005, Finance Records—Accounts Receivable Files. The proposed modifications add a new routine use and restore an earlier removal from the description of the categories of individuals covered by the system.

The routine use allows disclosure of limited information to a Postal Service permit holder or presenter of a bulk mailing when the customer on whose behalf the mailing was made has submitted a nonsufficient funds check for payment of postage. The categories of individuals segment is amended to restore the previously removed category of customers whose checks are returned by the bank.

This notice complies with subsection (e)(11) of the Privacy Act, which requires agencies to publish advance notice of any new use of information in a system of records.

DATES: Any interested party may submit written comments on the proposed amendments and addition. This proposal will become effective without further notice on January 16, 1996, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Payroll Accounting/Records, United States Postal Service, 475 L'Enfant Plaza SW, Room 8650, Washington, DC 20260–5242. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: Privacy Act system of records USPS 050.005, Finance Records—Accounts Receivable Files, contains records used to facilitate the collection of debts owed to the Postal Service. It is proposed that the system be amended to add routine use No. 8 and to replace in the categories of individuals segment the category of customers whose checks are returned by the bank.

Proposed routine use No. 8 permits the Postal Service to disclose to a permit holder or presenter of a mailing information concerning a nonsufficient funds check used by the permit holder or presenter to pay postage for a customer on whose behalf a mailing was made. When a permit holder or presenter of a mailing submits a mailing to the Postal Service, the mailing may have been prepared for an individual or organization other than the permit holder or presenter. In such cases, the permit holder or presenter of the mailing may, for payment of postage, submit the check of the individual or organization for which the mailing is prepared. Currently, the Postal Service pursues collection for nonsufficient funds checks directly from the permit holder or presenter of the mailing. Under a new policy, the Postal Service will pursue collection for nonsufficient funds check directly from the check writer. Post offices may then refuse to accept further check payment of postage and fees by that check writer. For that transaction and future transactions, it might be necessary to disclose to the permit holder or presenter of the

mailing that the individual or organization for whom the mailing was made has submitted a check for nonsufficient funds. New routine use No. 8 permits such disclosure.

The proposed routine use is compatible with the purpose for collecting the information, that is, facilitating debt collection and preventing the future acceptance of bad checks from repeat offenders. Because the disclosures allowed by this routine use will enable the Postal Service to protect itself from bad-check writers, the routine use is clearly compatible with the purpose of USPS Privacy Act system 050.005.

The categories of individuals segment of the system notice formerly included the language ''customers whose checks are returned by the bank.'' That language, intended to cover records that include existing local lists of such customers, was removed in an administrative error. This notice restores the language.

All records within USPS Privacy Act system 050.005 continue to be kept in a secured environment, with automated data processing (ADP) physical and administrative security and technical software applied to data on computer media. Paper records are kept in a secured area of the post office and are made available internally on an official need-to-know basis. Contractors who maintain data collected by USPS Privacy Act system 050.005 are subject to subsection (m) of the Privacy Act and are required to apply appropriate protections subject to the audit and inspection of the Postal Inspection Service.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS Privacy Act system 050.005 was last published in its entirety in the Federal Register on October 26, 1989 (54 FR 43666–43667) and was amended in the Federal Register on December 22, 1994 (59 FR 66061–66062). The Postal Service proposes amending USPS Privacy Act system 050.005 as shown below.

USPS 050.005

SYSTEM NAME:

Finance Records—Accounts Receivable Files, 050.005.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

[CHANGE TO READ] Postal Service debtors such as the following: Contractors who fail either to provide equipment, supplies, or services to the Postal Service as agreed or to purchase property from the Postal Service as agreed; customers who have written checks returned by the bank; payees of money orders who make an erroneous payment, improper payment, or overpayment; employees or former employees who make an erroneous payment, improper payment, or overpayment; employees, former employees, or private parties who lose or damage Postal Service property through carelessness, negligence, or malice.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

[CHANGE TO READ] Routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

* * * * *

[ADD THE FOLLOWING]

8. Disclosure of information about postal customers who write nonsufficient funds checks for postal services may be made to the permit holder or presenter of a mailing being made on the customer's behalf. Disclosure is limited to the identity of the customer, the date of the mailing, and the date and amount of the check.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–29756 Filed 12–6–95; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC—21560; File No. 812–9660]

Connecticut General Life Insurance Company, et al.

November 30, 1995.

AGENCY: Securities and Exchange Commission (''SEC'') or ''Commission'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Connecticut General Life Insurance Company (''CG Life''), CG Variable Life Insurance Separate Account A (''Separate Account''), and CIGNA Financial Advisors, Inc. (''CFA'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4) thereunder.

SUMMARY OF APPLICATION: Applicants request an order permitting the Separate Account and any separate accounts established in the future by CG Life to support certain group variable universal life insurance contracts to deduct from premium payments received an amount that is reasonably related to the increased federal tax burden of CG Life resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended.

FILING DATE: The application was filed on July 12, 1995. An amended and restated application was filed on October 13, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 26, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, c/o Michael Berenson, Esq., Jorden Burt Berenson & Johnson LLP, 1025 Thomas Jefferson Street, N.W., Suite 400 East, Washington, DC 20007–0805.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management) at (202) 272–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. CG Life, a stock life insurance company organized in Connecticut, is an indirect wholly-owned subsidiary of CIGNA Corporation (''CIGNA'').

2. The Separate Account was established by CG Life under the laws of the state of Connecticut, and is registered as a unit investment trust

under the 1940 Act. The assets of the Separate Account are owned by CG Life, but are held separately from the other assets of CG Life and are not chargeable with liabilities incurred in any other business operation of CG Life. The income, capital gains and capital losses incurred on the assets of the Separate Account are credited to or charged against the assets of the Separate Account, without regard to the income, capital gains or capital losses arising out of any other business CG Life may conduct.

3. The Separate Account consists of a number of subaccounts, each of which invests exclusively in the shares of one of seven investment portfolios of four investment companies (the ''Funds'') registered under the 1940 Act. The number and identity of available Funds and investment portfolios may change from time to time.

4. In the future, the Board of Directors of CG Life may establish additional separate accounts (the ''Future Accounts'') which may serve as funding vehicles for group variable universal life insurance contracts issued by CG Life. The Future Accounts will be organized as unit investment trusts and will file registration statements under the Securities Act of 1933 and under the 1940 Act.

5. CFA will serve as the distributor and principal underwriter of certain group variable universal life insurance contracts (the ''Contracts'') and any group variable universal life insurance contracts made available in the future (the ''Future Contracts'') through the Separate Account or Future Accounts. CFA is a wholly-owned subsidiary of CG Life. CFA is registered under the Securities Exchange Act of 1934 as a broker-dealer, and under the Investment Advisers Act of 1940 as an investment adviser. CFA is a member of the National Association of Securities Dealers.

6. In the Omnibus Budget Reconciliation Act of 1990, Congress amended the Internal Revenue Code of 1986 (the ''Code'') by, among other things, enacting Section 848 thereof. Section 848 changed the federal income taxation of life insurance companies by requiring them to capitalize and amortize over a period of ten years part of their general expenses for the current year. Under prior law, these expenses were deductible in full from the current year's gross income.

7. The amount of expenses that must be capitalized and amortized under Section 848 generally is determined with reference to premiums for certain categories of life insurance and other contracts (''specified contracts''). More specifically, an amount of expenses equal to a percentage of the current year's net premiums (*i.e.*, gross premiums minus return premiums and reinsurance premiums) must be capitalized and amortized for each specified contract. The percentage varies, depending on the type of specified contract in question, in accordance with a schedule set forth in Section 848.

8. The effect of Section 858 is to accelerate the realization of income from insurance contracts covered by that Section and, accordingly, the payment of taxes on the income generated by those contracts.

9. The Contracts and any Future Contracts to which a charge for the federal tax burden related to deferred acquisition costs (the ''tax burden charge'') will be applied are/will be among the specified contracts. They fall/will fall into the category of life insurance contracts under Section 848 for which 2.05% of the net premiums received must be capitalized and amortized.

10. The increased tax burden resulting from the application of Section 848 may be quantified as follows. For each $10,000 of net premiums received by CG Life under the Contracts in a given year, CG Life may capitalize $2.05 (*i.e.*, 205% of $10,000). $10.25 of that $205 may be deducted in the current year, leaving $194.75 (*i.e.*, $205 minus $10.25) subject to taxation at the corporate tax rate of 35 percent. This works out to an increase in tax for the current year of $68.16 (*i.e.*, 0.35 x $194.75) This increased federal income tax burden will be partially offset by deductions allowed during the next ten years as a result of amortizing the remainder of the $205—$20.50 in each of the following nine years, and $10.25 in year ten.

11. To the extent the capital must be used by CG Life to satisfy its increased tax burden under Section 848, such profits are not available to CG Life for investment. CG Life submits that the cost of capital used to satisfy its increased federal income tax burden under Section 848 is, in essence, its after tax rate of return on capital. Because CG Life seeks an after tax rate of return of 15% on its invested capital,[1] CG Life submits that a discount rate of 15% is appropriate for use in calculating the present value of its future tax deductions resulting from the amortization described above.

12. Using a corporate tax rate of 35 percent, and assuming a discount rate of 15 percent, the present value of the federal income tax effect of the increased deductions allowable in the following ten years is $35.12. Because this amount partially offsets the increased tax burden, Section 848 imposes an increased tax burden on CG Life equal to a present value of $33.04 (*i.e.*, $68.16 minus $35.12) for each $10,000 of net premiums received under the Contracts.

13 CG Life does not incur incremental federal income tax when it passes on state premium taxes to contract owners because state premium taxes are deductible when computing federal income taxes. In contrast, federal income taxes are *not* tax-deductible when computing an insurer's federal income taxes. Therefore, to offset fully the impact of Section 848, CG Life must impose an additional charge that would make it whole not only for the $33.04 additional federal income tax burden attributable to section 848, but also for the tax on the additional $33.04 itself. This additional charge can be computed by dividing $33.04 by the complement of the 35% federal corporate income tax rate (*i.e.*, 65%), resulting in an additional charge of $50.83 for each $10,000 of net premiums, or 0.51% of net premiums.

14. Based on its prior experience, CG Life expects that all of its current and future deductions will be fully taken. CG Life submits that a charge of 0.5% of net premium payments would reimburse it for the impact of Section 848 (as currently written) on its federal tax liabilities. CG Life represents that a 0.5% charge is reasonably related to its increased tax burden under Section 848, taking into account the benefit to CG Life of the amortization permitted by

[1] In determining the after tax rate of return used in arriving at this discount rate, CG Life considered a number of factors including: the cost of capital incurred by its parent, CIGNA; market interest rates; inflation; and the market's perception of how well CIGNA is doing.

As of December 31, 1994, 81% of the capital of CIGNA consisted of equity, with the remainder long-term debt. CIGNA's cost of capital can be determined using the proportions of financing components (i.e., debt and equity) to calculate a weighted average cost of capital. As of August 1995, the average current yield to maturity of CIGNA's outstanding long-term debt issues was 7.67 percent. Using a corporate tax rate of 35 percent, the after tax cost of debt for CG Life is 4.98 percent. An estimate for the cost of equity capital for CIGNA—computed by using the Capital Asset Pricing Model—is 15.8 percent. Using these component costs of capital and their related proportions, the weighted average cost of capital for CIGNA is 13.7% (i.e., $[(0.19 \times 0.0498) + (0.81 \times 0.158]$).

The remaining factors (*e.g.*, itnerest rates, inflation, and the market's perception of how well CIGNA is doing) are unpredictable and can fluctuate widely over long periods of time, causing the cost of capital to vary at any given time. Taking these factors into account, as well as the analysis above, CG Life has concluded that the 15% cost of capital is appropriate and reasonable to use in calculating the tax burden charge.

Section 848 and the use by CG Life of a discount rate of 15% (which is equivalent to its cost of capital) in computing the future deductions resulting from such amortization.

15. CG Life asserts that it may choose to increase the 0.5% charge if future changes in, or interpretations of, Section 848 or any successor or related provisions result in a further increased tax burden resulting from the receipt of premiums. Such an increase could result from, among other things, a change in the federal corporate income tax rate, a change in the 2.05% figure, or a change in the amortization period.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may exempt any person, security or transaction (or any class or classes of persons, securities or transactions) from provisions of the 1940 Act or any rules thereunder, if and to the extent that the 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 1940 Act.

2. Applicants request an order of the Commission pursuant to Section 6(c) exempting them from the provisions of section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder to permit Applicants to deduct form premium pavements received in connection with the Contracts and Future Contracts an amount that is reasonable in relation to CG Life's increased federal income tax burden related to the receipt of such premiums. Applicants further request an exemption from Rule 6e–3(T)(c)(4)(v) of the 1940 Act to permit the proposed deductions to be treated as other than ''sale load'' for the purposes of Section 27 of th3 1940 Act and the exemptions from various provisions of that Section found in Rule 6e–3(T)(b)(13).

3. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by Sections 26(a)(2) and 26(a)(3) of the 1940 Act. Sections 27(a)(1) and 27(h)(1), in effect, limit sales load on periodic payment plan certificates to 9% of total payments.

4. Certain provisions of Rule 6e–3(T) provide a range of exemptive relief for the offering of flexible premium variable life insurance policies such as the Contracts and any Future Contracts. For example, subject to certain conditions, Rule 6e–3(T)(b)(13)(iii) provides exemptions from Section 27(c)(2) that include permitting the payment of certain administrative fees and expenses, the deduction of a charge for certain mortality and expense risks, and the ''deduction of premium taxes imposed by any state or other governmental entity.''

5. Rule 6e–(T)(c)(4)(v) defines ''sales load'' charged during a contract period as the excess of any payment made during the period over the sum of certain specified charges and adjustments, including ''[a] deduction for and approximately equal to state premium taxes.'' Applicants submit that the proposed tax burden charge is akin to a state premium tax charge in that it is an appropriate charge related to CG Life's federal tax burden attributable to premiums received under the Contracts and any Future Contracts.

6. Applicants represent that the requested exemptions from Rule 6e–3(T)(c)(4)(v) are necessary in connection with Applicants' reliance on certain provisions of Rule 6e–(T)(b)(13), particularly on subparagraph (b)(13)(i), which provides exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates may rely on Rule 6e–3(T)(b)(13)(i) if they meet the Rule's alternative limitations on ''sales load,'' as defined in Rule 6e–3(T)(c)(4). Depending on the load structure of a particular contract, these alternative limitations may not be met if the deduction for the increase in an issuer's federal tax burden is included in sales load. Applicants acknowledge that a deduction for an insurance company's increased federal tax burden does not fall squarely within any of the specified charges or adjustments which are excluded from the definition of ''sales load'' in Rule 6e–3(T)(c)(4). Nevertheless, Applicants submit that there is no public policy reason for treating such increased federal tax burden as ''sales load.''

7. Applicants assert that the public policy which underlies Rule 6e–3(T)(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a federal income tax charge attributable to premium payments a sales load would in no way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission has concurred in this conclusion by excluding deductions for state premium taxes from the Rule 6e–3(T)(c)(4) definition of ''sales load.''

8. Applicants assert that the genesis of Rule 6e–3(T)(c)(4) supports this analysis. In this regard, Applicants note that Section 2(a)(35) of the 1940 Act provides a scale against which the percent limits of Sections 27(a)(1) and 27(h)(1) thereof may be measured. Applicants submit that the Commission's intent in adopting Rule 6e–3(T)(c)(4) was to tailor the general terms of Section 2(a)(35) of the 1940 Act to variable life insurance contracts in order, among other things, to facilitate verification by the Commission of compliance with the sales load limits set forth in Rule 6e–3(T)(b)(13)(i). Applicants submit that Rule 6e–3(T)(c)(4) does not depart, in principal, from Section 2(a)(35).

9. Applicants assert that the language of Section 2(a)(35) suggests that the only charges or deductions intended to fall within the definition of ''sales load'' are those that are ''properly chargeable to sales or promotional activities.'' Because the proposed tax burden charge will be used to pay costs attributable to CG Life's federal tax liabilities, and such costs are not properly chargeable to sales or promotional activities, Applicants submit that not treating the proposed tax burden charge as sales load is consistent with the purposes intended by the policies of the 1940 Act.

10. Applicants further assert that Section 2(a)(35) excludes from the definition of ''sales load'' under the 1940 Act deductions from premiums for ''issue taxes.'' Applicants submit that the exclusion of charges for expenses attributable to federal taxes from sales load (as defined in Section 2(a)(35)) is consistent with the policies of the 1940 Act. By extension, Applicants submit, it is equally consistent to exclude such charges, including the proposed tax burden charge, from the definition of ''sales load'' in Rule 6e–3(T)(c)(4).

11. For these reasons, Applicants assert that deducting a charge from variable life insurance contract premium payments for an insurer's tax burdens attributable to its receipt of such payments, and excluding that charge from sales load, is consistent with the policies of the 1940 Act. Applicants submit that this is because such a deduction is an appropriate charge related to the insurer's tax burden attributable to the premium payments received.

12. Applicants seek the relief requested with respect to Contracts and Future Contracts which may be issued by CG Life. Without the requested relief, CG Life would have to request and obtain exemptive relief for each Future

Contract to be issued. Such additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this request for exemptive relief.

13. Applicants assert that the standards of Section 6(c) of the 1940 Act are satisfied because the requested relief is appropriate in the public interest and consistent with the purposes of the 1940 Act and the protection of investors. Applicants submit that the requested relief would promote competitiveness in the variable life insurance market by eliminating the need for CG Life to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing efficient use of its resources. Applicants further submit that the delay and expense involved in having to seek exemptive relief repeatedly would impair the ability of CG Life to take full advantage of business opportunities as they arise. Moreover, if CG Life were required to seek exemptive relief repeatedly with respect to the issues addressed in this application, investors would not receive any benefit or additional protection thereby, and might be disadvantaged as a result of increased overhead expenses for CG Life.

Conditions for Relief

Applicants agree to comply with the following conditions for relief.

1. CG Life will monitor the tax burden imposed on it, and undertakes to reduce the tax burden charge to the extent of any significant decrease in tax burden.

2. The registration statement for any Contracts and Future Contracts under which a tax burden charge is deducted will: (i) disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to CG Life's increase federal income tax burden under Section 848 of the Code resulting from the receipt of premiums.

3. The registration statement for any Contracts and Future Contracts under which a tax burden charge is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to CG Life's increased federal income tax burden under Section 848 resulting from the receipt of premiums; (ii) the reasonableness of the after tax rate of return used in calculating such charge, and the relationship of that charge to CG Life's cost of capital; and (iii) the appropriateness of the factors taken into account by CG Life in determining the after tax rate of return.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder—to permit the deduction of 0.5% of premium payments under the Contracts and any Future Contracts—would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, by delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29830 Filed 12–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21559; File No. 812–9706]

PaineWebber Life Insurance Company, et al.

November 30, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: PaineWebber Life Insurance Company (''PaineWebber Life''), and PaineWebber Variable Annuity Account (the ''Account'').

RELEVANT 1940 ACT SECTIONS: Approval requested under Section 26(b) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(b) of the 1940 Act approving the substitution of shares of the Balanced Portfolio (''BP'') of the PaineWebber Series Trust (''Trust'') for the shares of the Asset Allocation Portfolio (''AAP'') of the Trust.

FILING DATE: The application was filed on August 4, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 26, 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 interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Mr. Richard J. Tucker, PaineWebber Life Insurance Company, 1200 Harbor Boulevard, Weehawken, New Jersey 07087.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Wendy Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. PaineWebber Life is a stock life insurance company organized under California law in 1956. PaineWebber Holdings, Inc., a wholly-owned subsidiary of PaineWebber Group, Inc., owns 100 percent of the stock of PaineWebber Life. The Account, established by PaineWebber Life to fund variable annuity contracts (''Contracts'') on December 31, 1992, pursuant to California law, is registered with the Commission as a unit investment trust. The assets of the Account are divided among ten investment divisions (''Divisions''), each of which invests in shares of one of the ten designated portfolios of the Trust, including the BP and AAP, each with its own investment objectives and investment portfolio. The Trust is an open-end diversified management investment company registered under the 1940 Act.[1] Mitchell Hutchins Asset Management, Inc. (''Mitchell Hutchins''), a registered investment adviser under the Investment Advisers Act of 1940, is the investment adviser and administrator for the Trust.

2. PaineWebber Incorporated (''PWI''), a wholly-owned subsidiary of PaineWebber Group, Inc., a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc., acts as principal underwriter for the Contracts.

3. The BP seeks total return while preserving capital by investing in equity securities and by investing no less than 25% of its assets in fixed income securities. The BP pays its investment adviser an annual fee of .75% of average daily net assets. The total assets of the

[1] The Trust was established in November 1986 to function as the underlying investment medium for the separate account of an otherwise unaffiliated insurance company and subsequently of a separate account of an affiliate of that insurance company. Those two separate accounts, together with the Account, are the only separate accounts invested in the Trust. The unaffiliated insurance company separate accounts hold shares in all the Portfolios of the Trust except the BP, Fixed Income and Aggressive Growth Portfolios.

BP as of December 31, 1994, were approximately $12 million. The AAP seeks to provide a high total return with low volatility by allocating investments among equity securities, long- and mid-term debt securities and money market instruments. The AAP pays its investment adviser an annual fee of .75% of average daily net assets as compensation for its services. The total assets of the AAP as of December 31, 1994, were approximately $23.3 million.

4. On July 20, 1995, the Board of Trustees of the Trust (''Board'') approved both changing the name and the investment policies of the AAP. The changes will cause the AAP to operate more as a balanced fund in that it would invest in a combination of equity securities, investment grade debt obligations and money market instruments. The AAP name will be changed to the ''Balanced Portfolio.''

5. Also on July 20, 1995, the Board determined that it was in the best interest of the shareholders of the BP to terminate the sale of shares of that Portfolio, effective July 21, 1995. The Board based its decision on (a) the minimal assets of BP after almost three years of operations; (b) disproportionately high expenses; (c) the investment adviser's indication that the small size of the Portfolio, partially the result of the Portfolio being offered to only one separate account, makes it difficult to make appropriate investment decisions and comply with the diversification requirements applicable to variable insurance products under section 817(h) of the Internal Revenue Code (''Code''); and (d) PaineWebber Life's assertion that because the investment objectives and policies of the BP and the AAP, as recently changed by the Board, are substantially similar, the two Portfolios basically compete for the same investment goals of Contract purchasers. PaineWebber Life was notified of the Board's determination and discontinued accepting premium payments in the Balanced Division.

6. PaineWebber Life proposes that shares of the AAP be substituted for the shares of the BP now held by the Account's Balanced Division. The substitution would be effected at net asset value so that the dollar value of the amount invested in shares of the BP would be the same as the amount invested in shares of the AAP after the substitution. Contract owners will be able to direct their interests in the BP among the remaining eight Portfolios of the Trust (''Remaining Portfolios'') if they do not want to move their interests to the AAP.

7. On the date of the substitution, the per share values of each of the Portfolios will be determined in the normal course of business. The shares underlying the contract values in the BP will be redeemed by PaineWebber Life and the net asset values applied to purchase shares of the AAP at net asset value. The investment securities held by the BP will be disposed of and any expense incurred in disposing of the investment securities and effecting substitution will be shared by PaineWebber Life and Mitchell Hutchins. There will be no change in the amount of the Contract owner's cash value as a result of the substitution.

8. The Contracts reserve to PaineWebber Life the right to replace the shares of the Trust held by the Separate Account with shares of another series or another registered investment company, subject to Commission approval. Contract owners were notified that shares of the BP were no longer available as an investment option for purchase or transfer under the Contracts and that PaineWebber Life intended to file this application with the SEC seeking an Order permitting it to effectuate the proposed substitution. Contract owners with allocation instructions on file with PaineWebber Life that currently direct net premiums to the BP have been notified of the discontinuance of the BP as an investment option.

9. Upon receipt of SEC approval of the proposed substitution, Contract owners with Contract values in the BP will be provided a form with which they can elect to transfer their Contract values to one or more of the Remaining Portfolios. Contract owners will be advised that the AAP has an investment objective most similar to the BP in which the Contract owner has values invested. If no instructions are received within 30 days after notice of the request to elect, Contract values in the BP will be transferred automatically to the AAP.

10. The Contracts provide Contract owners the right to transfer part or all of the Contract value from one allocation option to one or more of the remaining options. The Contracts also provide that each transfer in excess of 12 in a calendar year is subject to a $10 charge, which has been waived by PaineWebber Life until further notice. The substitution of the shares of one or more of the Remaining Portfolios for shares of the BP will not be considered a ''transfer'' for the purpose of the above limitation. Contract owners will not be subject to any charges or costs for the substitution.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act prohibits the depositor or trustee of a registered unit investment trust holding the security of a single issuer from substituting another security for such security unless the Commission has approved the substitution. Section 26(b) provides that the Commission will approve a substitution if it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Contract owners will not be subject to any additional fees or charges as a result of the substitution. The substitution will not affect any benefits, rights or Contract values under the Contracts nor will it affect the purchase payment dates under the Contracts used in determining the early withdrawal charge. Contract owners will be given notice of the substitution and an opportunity to allocate existing Contract values among the eight Remaining Portfolios as they wish.

3. Since the Account can no longer purchase shares of the BP, with normal redemptions the BP is expected to shrink rapidly. Applicants state that because of the relatively minor amount of total net assets in the BP, the fact that only one separate account had been investing in the BP when the sale of shares was terminated, and the resulting expense level and investment limitations, PaineWebber Life believes investment in the BP is no longer appropriate. Applicants contend that combining the assets of the BP and AAP, and the investment in the Portfolio by three separate accounts, should enhance its asset growth abilities.

4. Applicants state that the diminishing amount of assets in the BP makes it difficult for the investment adviser to make appropriate investments for the Portfolio that will meet the Code's requirement for diversification. Failure to meet the diversification requirement could result in the entire Contract being currently taxable, not just that portion of the Contract that is invested in the non-complying Portfolio. Applicants state that it was determined that it was more important to the interests and the benefit of Contract owners to preserve the tax status enjoyed by Contract owners than to maintain the Portfolio which is no longer available for additional purchase. Applicants also contend that the minimal amount of total net assets available for investment and the termination of the sale of shares diminishes investment opportunities and handicaps Mitchell Hutchins in its

ability to invest in potentially advantageous securities.

5. Applicants state that expenses incurred by the BP have remained relatively high, and a large portion of the BP's expenses is fixed. Applicants represent that the lack of substantial assets in the BP results in high operating expenses that are borne by the Contract owners. The BP's 1994 actual expenses of 1.56% of average total net assets were higher than expenses of 1.03% of average total net assets for the AAP. Applicants contend that in comparing the expenses of the BP and AAP, the asset base of the BP and the increasing asset base of the AAP is a relevant consideration. Applicants assert that the increase in total assets of the AAP resulting from the substitution should result in a lessening of its overall expenses.

6. Applicants state that the AAP offers Contract owners investments compatible with the objectives of Contract owners investing in the BP. Applicants state that management of PaineWebber Life, in consultation with Mitchell Hutchins, studied the investment objectives, policies and restrictions of each of the Remaining Portfolios to form an opinion as to which of the Remaining Portfolios appeared most closely identified with the investment intent of a Contract owner invested in the BP. It was concluded that a Contract owner who had Contract values invested in the BP was primarily interested in a Portfolios with an objective of a stable return while preserving capital. The investment objective of the AAP is to seek a high total return with low volatility, and the recent revision of the investment policies of the BP led to the conclusion that the AAP most closely suits the investment intent of the Contract owner who now has Contract values invested in the BP.

Applicants' Conclusion

For the reasons discussed above, applicants submit that the proposed substitution of shares of the AAP for shares of the BP is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29831 Filed 12–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No IC–21562; File No. 812–9794]

Stagecoach Funds, Inc., et al.; Notice of Application

December 1, 1995.

AGENCY: Securities and Exchange Commission (''SEC'')

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: Stagecoach Funds, Inc. (''Stagecoach Funds''), Stagecoach Inc., Stagecoach Trust, Overland Express Funds, Inc. (''Overland''), Life & Annuity Trust (''Annuity Trust''), Master Investment Portfolio (''MIP''), Master Investment Trust (''MIT''), Managed Series Investment Trust (''MSIT'') (collectively, the ''Companies''), Wells Fargo Bank, N.A. (''Wells Fargo''), and The Nikko Building Co., Ltd. (''Nikko Building'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(f)(1)(A).

SUMMARY OF APPLICATION: Applicants request an exemption from section 15(f)(1)(A) to permit Wells Fargo and Nikko Building to sell their interests in Wells Fargo Nikko Investment Advisors (''WFNIA''), the sub-adviser to certain of the series offered by the Companies, to Barclays Bank PLC (''Barclays''). Without the requested exemption, the Companies would have to reconstitute their boards of directors to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) in order to comply with the safe harbor provisions of section 15(f).

FILING DATES: The application was filed on October 4, 1995, and amended on December 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 December 22, 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 writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: Companies, 111 Center Street, Little Rock, Arkansas 72201; Wells Fargo, 420 Montgomery Street, San Francisco, California 94105; Nikko Building, 3–1 Marunouchi, 3-Chrome, Chiyoda-Ku, Tokyo 100, Japan.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, 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 Companies are open-end management investment companies registered under the Act, each of which currently offers several series.[1] Wells Fargo, a wholly-owned subsidiary of Wells Fargo & Co., currently serves as investment adviser to each series of the Companies (including the master portfolios in which feeder funds invest, but not the feeder funds themselves).

2. WFNIA is a California general partnership owned 50 percent by Wells Fargo Investment Advisors (''WF Advisors''), a wholly-owned subsidiary of Wells Fargo, and 50 percent by The Nikko Building U.S.A., Inc., a wholly-owned subsidiary of Nikko Building. WFNIA currently serves as sub-adviser to 15 of the 40 active series (the ''Sub-Advised Series'') offered by the Companies. As of June 30, 1995, the Sub-Advised Series had approximately $3 billion in assets under management, which represented less than 27% of the aggregate assets under management in all active series of the Companies, and approximately 1.6% of the approximately $183 billion in assets that WFNIA had under management.

3. On June 21, 1995, Wells Fargo, Nikko Building, and certain of their affiliates entered into a purchase and assumption agreement (the ''Agreement'') with Barclays to sell their interests in WFNIA for an aggregate price of approximately $443 million, subject to various adjustments at the time of closing (the ''Transaction''). As part of the purchase price, the Agreement also provides for Barclays to make monthly payments to Wells Fargo and its affiliated sellers of .15 percent of the aggregate value of the interests held by retail shareholders of Stagecoach Trust in the LifePath Master Portfolios

[1] Certain series of Stagecoach Inc., Stagecoach Trust and Overland are feeder funds in a master/feeder structure and currently invest substantially all of their assets in corresponding master portfolios of MIP, MIT or MSIT.

of MIP (''Installment Payments''), subject to certain continuity conditions.

4. Barclays has indicated an intention to reorganize WFNIA into WF Advisors (which also is being sold to Barclays), which then would be re-named BZW Global Investors. Alternatively, Barclays may maintain WFNIA as a separate subsidiary or combine it with the quantitative group of BZW Asset Management (''BZWAM''), the international management arm of Barclays. Upon completion of the Transaction, BZWAM and WFNIA (or its successor) will have, on a combined basis, approximately $269 billion of assets under management, of which approximately $3 billion, or approximately 1.1%, will represent assets of the Sub-Advised Series. Applicants state that WFNIA or its successor will continue to operate with WFNIA's current management, investment professionals, and resources essentially intact, and that WFNIA or its successor will continue to provide investment advisory services at least comparable to those currently provided by WFNIA to the Sub-Advised Series.

5. The Transaction will result in a ''change in control'' of WFNIA under the Act. As required by section 15(a)(4) of the Act, the current sub-advisory agreements will terminate upon their assignment. Applicants anticipate that, except as described below, WFNIA or its successor will, subject to the receipt of all necessary board and shareholder approvals and the complete satisfaction of other conditions to the closing of the Transaction, continue to act as sub-adviser to the Sub-Advised Series pursuant to new sub-advisory agreements (the ''Proposed Sub-Advisory Agreements''). The Proposed Sub-Advisory Agreements will be identical in all material respects, including the respective fee levels, to the current sub-advisory agreements.

6. Applicants contemplate that WFNIA or its successor will, upon consummation of the Transaction, enter into advisory agreements (the ''Proposed Advisory Agreements'') with respect to nine of the fifteen Sub-Advised Series, pursuant to which WFNIA or its successor will become the primary investment adviser to such series. Wells Fargo has agreed to resign as primary adviser to these series primarily in recognition of an expectation that, following consummation of the Transaction, these series will be marketed largely through sales channels associated with Barclays. The Proposed Advisory Agreements will be identical in all material respects, including the fee levels, to the current advisory agreements with Wells Fargo. The Proposed Advisory Agreements and the Proposed Sub-Advisory Agreements are referred to as the ''Proposed Agreements.'' In accordance with the requirements of section 15(c) of the Act, each Company's board of directors, including the directors who are not interested persons of the Companies, considered and unanimously approved the Proposed Agreements at a special meeting held on October 10, 1995, after careful consideration of all material elements of the Transaction, including the Installment Payment agreement.[2] Proxy materials have been mailed to shareholders, and shareholder meetings will be convened in early December. The closing of the Transaction is currently scheduled for December 27, 1995, but is subject to a variety of conditions, including the receipt of various regulatory approvals.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit upon the sale of its business if certain conditions are met. One of these conditions is set forth in section 15(f)(1)(A). This condition provides that, for a period of three years after such a sale, at least 75 percent of the board of an investment company may not be ''interested persons'' with respect to either the predecessor or successor adviser of the investment company. Section 2(a)(19)(B)(v) defines an interested person of an investment adviser to include any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such broker or dealer. In addition, section 2(a)(19)(B)(iii) defines an interested person of an investment adviser to include anyone who has any interest in any security issued by the investment adviser or by a controlling person thereof.

2. The board of directors of each Company is comprised of the same seven individuals. Four of the seven directors of each Company may be considered interested persons of either the predecessor or successor adviser of the Company. Two of these directors are officers of a registered broker-dealer, and another is a limited partner of a government securities dealer. As such, these three directors are affiliated persons of a broker or dealer (the ''Broker-Affiliated Directors''), and interested persons of both the predecessor and successor advisers of the Companies.[3] Another director is a shareholder of Wells Fargo & Co., the parent of Wells Fargo, and therefore is an interested person of the predecessor adviser of the Companies. The three remaining directors are not interested persons of either the Companies or the predecessor or successor adviser. Because four of the seven directors of the Companies are interested persons of the predecessor and successor advisers, absent an exemption, applicants would be unable to comply with the requirements of section 15(f)(1)(A).

3. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, or any rule or regulation thereunder, if the 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.

4. Applicants believe that the requested exemption is necessary or appropriate in the public interest. Applicants submit that section 15(f)(1)(A) was designed primarily to address the types of biases and conflicts of interest that might exist where a fund's board of directors is influenced by a substantial number of interested directors to approve a transaction because the interested directors have an economic interest in the adviser or another party to the transaction, and the adviser has a material economic motivation to influence the interested directors. Applicants argue that no such circumstances exist with respect to the Broker-Affiliated Directors and the Transaction. Although the Broker-Affiliated Directors are technically interested persons of Wells Fargo and WFNIA or its successor (the ''Advisers''), these directors and the broker-dealers with which they are affiliated are not affiliated persons of the Advisers within the meaning of section 2(a)(3) of the Act, nor are they

[2] Presentations relating to the Transaction were made to the board of directors at three separate board meetings. All of the non-interested directors attended and actively participated in all of these meetings, as did counsel for the non-interested directors and counsel to the Companies. Extensive written materials were provided to the directors in advance of the October 10 in-person meetings at which the new advisory arrangements were approved, and extensive deliberations occurred at these meetings.

[3] The exemption provided by rule 2a19–1 is not available with respect to the two directors who are officers of a broker-dealer because the broker-dealer serves as placement agent or distributor to the Companies (the ''Distributor''). The exemption provided by rule 2a19–1 is not available with respect to the director who is a limited partner of a government securities dealer because the dealer engages in government securities transactions with the broker-dealer, as well as with Wells Fargo and Barclays, all of which fall within the definition of ''complex'' in the rule. Accordingly, this director does not meet the condition specified in the rule.

controlled by or under common control with the Advisers. Moreover, none of these directors is an officer, director, partner, co-partner, or employee of any Adviser, and the broker-dealers do not share any common directors, officers, or employees with the Advisers. Applicants also state that the Distributor is retained directly by the Companies. Accordingly, the Companies' retention of the Distributor is not dependent on the identity of, or transactions involving, the Adviser. The Distributor's compensation for its services is based on asset levels and/or the receipt of sales loads, and it therefore has a direct economic interest in having the Sub-Advised Series prosper and grow. In this respect, the Distributor's interests are consistent with the interests of the shareholders of the Sub-Advised Series.

5. Applicants believe that the requested exemption is consistent with the protection of investors. WFNIA or its successor will continue to offer services at least comparable to those currently performed by WFNIA, and will be supported by the resources of one of the largest international financial services corporations. WFNIA or its successor will continue operations with WFNIA's current management, investment professionals, and resources remaining essentially intact. The services that WFNIA or its successor will perform under the Proposed Sub-Advisory Agreements will be identical in all material respects to the services currently performed by WFNIA, and the fee levels for such services will remain the same. Finally, applicants state that each series will continue to be subject to all other provisions of the Act designed to protect the interests of investors, including section 15(f)(1)(B), and all four interested directors will continue to be treated as interested persons of the Companies and the Advisers for all purposes other than section 15(f)(1)(A).

6. Applicants also believe that the requested exemption is consistent with the purposes fairly intended by the policies and provisions of the Act. Applicants submit that the legislative history of section 15(f) indicates that Congress intended the SEC to deal flexibly with situations where the imposition of the 75 percent requirement might pose an unnecessary obstacle or burden on a fund. Applicants argue that the SEC should exercise this flexibility in situations such as the proposed Transaction. Further, applicants state that section 15(f) was intended to ensure that, where there is a change in control of an investment adviser, the interests of investment company shareholders will be protected and they will not be subject to any unfair burden as a result of such transaction. Applicants argue that the proposed Transaction is structured to protect the interests of the shareholders of each Sub-Advised Series and that shareholders will benefit from the requested exemption.

Applicants' Condition

Applicants agree that any order of the SEC granting the requested relief will be subject to the following condition:

If within three years of the completion of the Transaction, it becomes necessary to replace any director, that director will be replaced by a director who is not an interested person of Wells Fargo Bank, WFNIA, or its successor within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time are not interested persons of Wells Fargo Bank, WFNIA, or its successor.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29916 Filed 12–4–95; 3:57 pm]

BILLING CODE 8010–01–M

[Release No. 34–36542; International Series No. 896; File No. S7–8–90]

Order Approving Proposed Amendment to the Options Price Reporting Authority's National Market System Plan for the Purpose of Updating the Current Fee Structure and Eliminating the Use of Separate News Service Agreements

November 30, 1995.

On April 25, 1995, the Options Price Reporting Authority (''OPRA'')[1] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Rule 11Aa3–2[2] under the Securities Exchange Act of 1934 (''Exchange Act'')[3] a proposed amendment to its National Market System Plan (''OPRA Plan'') for the purpose of updating the current fee structure and eliminating the use of separate news service agreements. Notice of the proposed amendment was provided by issuance of a Commission release[4] and by publication in the Federal Register.[5] The Commission received 220 comment letters. For the reasons discussed below, the Commission is approving the proposed amendment.

I. Description

OPRA proposes to establish a new redistribution fee of $1800 per month that will be payable by every vendor that redistributes options market information to nay person, whether on a current or delayed basis. The redistribution fee, however, will not apply to a vendor whose redistribution of options information is limited solely to ''historical'' information.[6] With the introduction of the redistribution fee, the amendment eliminates the vendor and news service pass-through fee, previously $2800.[7] Further, OPRA proposes to reduce the direct access change from $2800 to $900 per month.[8]

In addition to restructuring its fees, OPRA proposes to eliminate the separate news service agreement. Instead, OPRA will categorize news services as vendor and will seek to have news services sign vendor agreements. OPRA also is proposing to make conforming changes to the OPRA Plan.

II. Summary of Comments

As noted above, the Commission received 220 comments letters regarding the proposal. Most comments were submitted by suers of delayed data, primarily small investors who expressed concern about the impact the redistribution fee will have on their owns fees. While some commenters did not object to existing and proposed OPRA fee for real-time data, virtually all commenters opposed the proposed redistribution fee as it applies to delayed data. The commenters claimed that the proposal will set a bad precedent that will lead other markets also to charge for delayed data.

Many commenters expressed a belief that all market information should be

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[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection dissemination of last sale and quotation information options that are traded on the five member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the New York Stock Exchange (''NYSE''); the Pacific Stock Exchange (''PSE''); and the Philadelphia Stock Exchange (''PHLX'').

[2] 17 CFR 240.11Aa3–2.

[3] 15 .S.C. 78K-1.

[4] Securities Exchange Act Release No. 35804 (June 5, 1995).

[5] 60 FR 30905 (June 12, 1995).

[6] Under the proposal, information becomes ''historical'' upon the opening of trading in the next succeeding trading session of that same market. For example, reports of transactions completed in a trading session on Wednesday become historical reports from and after the opening of trading on the following Thursday.

[7] This $2800 monthly fee currently is payable by every vendor and news service that receives options information from another vendor on a current basis.

[8] Currently, the direct access charge is payable by every vendor, subscriber or news service that has been authorized by OPRA to receive options information via the consolidated high-speed service from OPRA's Processor.

available to the public at no charge. Some equated market data to a form of advertising for which markets should not charge consumers. These commenters argues that the Commission should ensure the availability and accessibility of market information; that even a small increase in fees will force them to give up access to delayed data services; and that reduced access to market data will reduce trading activity by same investors. These commetners argued, therefore, that the proposal will reduce overall market liquidity.

Some commenters claimed that the proposal discriminates against he small investor because real-time data, while far more useful than delayed data, in their view is not affordable to the average investor. They argued that the effect of the redistribution fee on vendors of delayed data will be to price the small investor our of the information market altogether.

A few commenters challenged whether the exchanges have a proprietary interest in quote or transaction data. They claimed that OPRA should not be entitled to charge for information that OPRA does not own. One commenter claimed that while the manner in which the information is displayed may be protected under copyright laws, OPRA has no exclusive right to the information itself.[9]

OPRA responded to these comments in a letter dated August 1, 1995.[10] In its letter, OPRA stated that the Exchange Act contemplates the recovery of a portion of the costs of operating and maintaining exchange markets through fair, reasonable and nondiscriminatory fees for access to securities market information, and that the proposal is consistent with these standards. OPRA claimed that the fair allocation of costs among all persons that derive a commercial benefit from options market information will help level the playing field for all users of market data by eliminating an unintended subsidy for redistributors of less useful delayed data at the expense of more useful current information. OPRA noted that the proposal would not establish fees for end users of market data. Instead, the redistribution fee would apply to vendors. OPRA acknowledged, however, that vendors of securities market information most often pass their costs on the customers. Nevertheless, in OPRA's views, the proposal would more fairly allocate distribution fees and would reduce fees payable by some vendors. OPRA stated that the proposal would reduce fees payable by vendors that receive direct access to OPRA data from $2800 (current direct access charge) to $2700 per month (the $900 direct access change plus the $1800 redistribution fee). Further, fees payable by vendors whose access includes indirect access to real-time and delayed data will be reduced from $2800 (the current pass-through fee) to $1800 per month (redistribution fee). Only vendors whose access is limited to indirect access to delayed data would be subject to higher fees (an increase from zero to $1800 per month).

OPRA argued that most, if not all end-users will benefit from the proposed fee changes, assuming vendors of real-time data pass on their savings to real-time and delayed data subscribers. OPRA claimed that even customers of an indirect access vendor whose business is exclusively delayed data distribution should not see any significant increase in vendor charges. For example, OPRA stated that is such a vendor has 1,000 subscribers, the vendor would have to increase the subscriber charge by only $1.80 per month in order to receiver the entire redistribution fee. In addition, OPRA claimed that the proposal would not impose any fee on redistributors or end-users of ''historical'' information, facilitating the affordability and availability of market data for long-term monitoring and analysis. OPRA also noted that it provides several methods by which an individual investor may access real-time data at a low cost.[11]

III. Discussion

Section 11A of the Exchange Act sets forth the standards under which the Commission must consider whether to approve fees proposed by exclusive securities information processors (''SIPs''), such as the pending OPRA proposal. Among other things, the proposal must assure that exchange members, brokers, dealers, SIPs, and investors would be able to obtain information with respect to quotations for and transactions in securities published or distributed by any self-regulatory organization or SIP on terms that are not unfair, unreasonable, or unreasonably discriminatory.[12]

The Commission believes that the proposed fee changes satisfy the standards set forth by Congress with regard to the permissible terms for access to market information and, therefore, believes that the proposed fees are consistent with the Exchange Act. In this case, the proposal represents a reduction in fees for several vendors; the delayed data fees do not appear unfairly to restrict access to market information; and the reduction in fees for access to current information will further other statutory goals. In addition, historical price information, such as is used for academic and analytical purposes, will continue to be available exclusive of OPRA fees.[13]

In 1978, the Commission stated that three sections of the Exchange Act directly relate to the terms upon which securities information is obtained: (1) The standards set forth in Section 11A(b)(3) governing the registration of SIPSs; (2) the standards set forth in Section 11A(b)(5) for review of prohibitions or limitations on access to services of registered SIPS; and (3) the standards set forth in the Commission's rule-making authority under Section 11A(c).[14] The Commission found that these sections permit a registered SIP to impose terms of access on vendors, including access fees.[15] The Commission also noted that the ability to impose such terms is subject to Commission review as to fairness and reasonableness, and may be limited by the Commission's adoption of a rule specifically prohibiting the terms or fees as being unfair, unreasonable or unreasonably discriminatory.[16]

The Commission also has addressed the issue of whether, pursuant to a joint industry plan, charges for the retransmission, on a current and continuing basis, of consolidated market data are permissible.[17] The Commission

[9] See Letter from Carl Hendrix, to Jonathan G. Katz, Secretary, SEC (June 27, 1995).

[10] See Letter from Michael L. Meyer, Schiff Hardin & Waite, Attorney for OPRA, to David Oestreicher, Attorney Division of Market Regulation, SEC (August 1, 1995).

[11] For example, OPRA excludes non-professional subscribes from its real-time data subscriber fees. Instead, OPRA charges that vendor at $2.00 per month fee for each non-professional subscriber that receives real-time data from the vendor. Further, OPRA imposes no fees on end users of telephone dial-up services. Vendors of such services, however, are charged a port-based fee.

[12] 15 U.S.C. 78k–1; S. Rep. No 75, 94th Cong, 1st Sess. 9–12 (1975) (''Senate Report'').

[13] The Commission understands the concerns of commenters, including the potential consequences of fee increases. As a related matter, the Commission believes that user comment on proposed OPRA fees could be even more effective if sought prior to filing such fees with the Commission. The Commission encourages OPRA to solicit comment on fee proposals before filing those proposals for Commission review.

[14] See Securities Exchange Act Release No. 15372 (November 29, 1978) (''OPRA Order'').

[15] *Id.*

[16] *Id.* To date, the Commission has not exercised its rulemaking authority under Section 11A(c) of the Exchange Act with respect to the fees charged by registered SIPs.

[17] See Securities Exchange Act Release No. 17161 (September 24, 1980) (Order approving proposed amendment to the Consolidated Tape Plan).

found a proposed Consolidated Tape Association retransmission fee consistent with the Exchange Act.[18]

In addition, the appropriate scope of fees was addressed in a denial of access petition filed by Instinet against the National Association of Securities Dealers, Inc. (''NASD'').[19] The NASD attempted to impose certain vendor and subscriber fees on the quotation information (referred to as the National Quotation Data Service) sought by Instinet. In its review of the denial of access petition, the Commission noted that in a situation where a monopolistic supplier of market information is in direct competition with vendors in providing such information, there is the potential for the supplier to erect barriers to entry by charging higher fees to vendors of competing information services.[20] The Commission determined, therefore, that because Instinet sought to distribute certain quotation information in competition with the NASD, an exclusive processor of that information, the NASD's proposed fees were required to be cost-based to ensure neutrality and reasonableness of the vendor and subscriber fees.[21]

OPRA's proposal will encourage the use of real-time data by reducing the OPRA fees charged to vendors of real-time data. The Commission believes that investment decisions should be based on the most accurate, up-to-date information available. Thus, this proposal marks a step toward making real-time data more accessible to a greater number of market information users. Recent technological innovations have further enhanced the feasibility of providing easy access to real-time market data to a larger segment of the investor community. The Commission encourages OPRA to utilize these new technologies to encourage additional steps to promote the use of real-time information on a fair, reasonable and non-discriminatory basis.

The Commission recognizes that not all subscribers can afford regular real-time service and, as noted by some commenters, not all subscribers believe their use of market data justifies the cost of such service (even assuming that real-time vendors pass on their savings to their subscribers). As to these subscribers, there is a continued need for access to affordable delayed data. One adverse consequence of the fee restructuring will be to increase the costs to vendors of delayed data which, in turn, may result in a modest increase in the cost of delayed data to subscribers. The Commission has long been committed to protecting the public's right of access to market information and believes that any modest increase in costs to subscribers of delayed data under OPRA's proposed fee restructuring will not act as a barrier to fair and reasonable access to information for those subscribers. Competition among technology and information providers continues to thrive. Over the past few years, individual inventors have enjoyed unprecedented access to market data through varied media, including CNN, CNBC, satellite services, on-line computer services, the World Wide Web, and the Internet. The Commission believes that those innovations will continue to facilitate the fair and reasonable distribution of delayed data even though redistributors of delayed options data will be required to pay a redistribution fee.

It is therefore ordered, pursuant to Section 11A(a)(3)(B) of the Act,[22] that the amendment (S7–8–90) to the OPRA Plan be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[23]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–29775 Filed 12–6–95; 8:45 am]

BILLING CODE 8010–01–M

[18] *Id.* See also 17 CFR 240.11Aa3–1(d) (relating to retransmission of transaction reports or last sale data); 17 CFR 240.11Aa3–1(e) (permitting the imposition of reasonable, uniform charges for the distribution of transaction reports or last sale data).

[19] Securities Exchange Act release No. 20874 (April 17, 1984) (''Instinet case'').

[20] *Id.* at 40–41.

[21] *Id.* Although the fee restructuring proposal is not cost-based in the sense described in the Instinet case, the purpose of the restructured fee schedule is fundamentally different. OPRA's proposal is designed to reallocate costs fairly and equitably among all persons that derive a commercial benefit from the information obtained from exchange markets. Because ORPA is not in direct competition with the vendors that will be subject to the redistribution fee, the analysis applied in the Instinet case is not strictly applicable. Although OPRA's posture with respect to the vendors that will be affected by the redistribution fee is different than the relationship between the NASD and Instinet, the Commission continues to have the duty to ensure that OPRA's fees satisfy applicable standards.

[22] 15 U.S.C. 78k–1(a)(3)(B).

[23] 17 CFR 240.30–3(a)(29).

[Release No. 34–36539; International Series Release No. 895; File No. SR–Phlx–95–47]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Japanese Yen Quote Spread Parameters

November 30, 1995.

I. Introduction

On August 22, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to widen the quote spread parameters applicable to Japanese yen options. The proposed rule change was published for comment in the Federal Register on September 21, 1995.[3] No comments were received on the proposed rule change. This order approves the proposal.

II. Description of the Proposal

The Phlx seeks to widen the quotation spread parameters (bid/ask differentials) applicable to Japanese yen options in light of the increased volatility and value of the underlying currency, the Japanese yen.[4] The Exchange proposes to change the parameters in Rule 1014(c)(ii) and Floor Procedure Advice (''Advice'') F–6, Option Quote Parameters, from $.000004, $.000006, and $.000008 to $.000006, $.000009, and $.000012. Under the proposal, the new quote spread parameters will be reflected in Rule 1014 as follows: no more than $.000006 between the bid and the offer for each option contract for which the bid is $.000040 or less; no more than $.000009 where the bid is more than $.000040 but does not exceed $.000160; and no more than $.000012 where the bid is more than $.000160.

In its proposal, the Phlx notes that as the yen spot value has risen, the spreads between the bid and the offer in the spot price also have risen. For example, a spot market of 101.50 (bid)–.60 (ask) yen in January 1995 represented $.009852–.009842 in American terms, which is ten ''ticks'' wide. Comparatively, a spot market of 85.10–.20 yen in May 1995 represented $.011751–.011737, which is 14 ticks wide. Similarly, the Exchange states that the spreads in Japanese yen

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 36239 (September 15, 1995), 60 FR 49032.

[4] Option quote parameters govern the width of market quotations, establishing the maximum widths between the bid and the offer for an option contract.

futures and forward contracts also have widened.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[5] that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts, and, in general, protect investors and the public interest by providing a more efficient and competitive market for foreign currency options.

The Commission believes that the recent significant rise in the value of the yen in relation to the U.S. dollar justifies amending the present applicable quote spread parameters. As the Japanese yen spot value (in relation to the U.S. dollar) has increased, the U.S. dollar value of each yen option contract likewise has increased. However, the quote spread parameters have not previously been adjusted to account for this movement. Setting Japanese yen option quote spread parameters as proposed by the Phlx should continue to facilitate tightly quoted markets without impairing Phlx market makers' ability to provide market depth and liquidity. In addition, the new quote spread parameters should allow the Phlx and Phlx Japanese yen option market makers to compete more effectively with similar over-the-counter-based products.

Finally, the Commission notes that under Phlx Rule 1014, ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders,'' Japanese yen market makers are required to maintain a fair and orderly market and are not permitted to enter into transactions or make bids or offers that are inconsistent with such obligations. Accordingly, the Commission expects the Phlx to monitor trading in Japanese yen options affected by the proposal to ensure that there is adequate market activity in those series and to ensure that market makers are meeting their obligations to maintain fair and orderly markets.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Phlx–95–47) is approved.

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29776 Filed 12–6–95; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–36535; File No. SR–AMEX–95–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc. Relating to Transactions in Currency Warrants by Registered Options Traders

November 30, 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 American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On September 26, 1995, the Amex filed Amendment No. 1 (''Amendment No. 1'') to the proposal.[1] 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 Amex proposes to amend Commentary .12 to Amex Rule 111 (Restrictions on Registered Traders). Commentary .14 to Rule 114 (Registered Equity Market Makers) and Commentary .10 to Rule 958 (Options Transactions of Registered Traders) to provide that proprietary transactions on the Floor in currency warrants shall be governed by, and affected in accordance with, Rule 958. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to amend Commentary .12 to Rule 111 (Restrictions on Registered Traders), Commentary .14 to Rule 114 (Registered Equity Market Makers) and Commentary .10 to Rule 958 (Options Transactions of Registered Traders) to provide that proprietary transactions on the Amex Floor in currency warrants, shall be governed by, and effected in accordance with, Rule 958.

In 1992, the Exchange amended its rules to permit regular members to register as a Registered Trader under Rule 958 to engage in supplemental market making activity in stock index warrants and certain other non-options derivative products.[2] The Exchange enacted these changes to conform its rules to those of other markets, and to provide additional liquidity to the market for the Exchange's Portfolio Depositary Receipts and LOR SuperUnits. Due to the limited purpose of the 1992 rule changes, the Exchange did not seek at that time to extend this treatment to the trading of listed currency warrants by ROTs.

At present, currency warrants are traded on the Floor by Registered Equity Market Makers (''REMMs'') under the Exchange's equity trading rules, pursuant to the provisions of Rule 114 (which includes applicable provisions of Rule 111). Under the proposed rule changes, regular members wishing to engage in supplemental market making activity in currency warrants may register as Registered Traders under Rule 958, and would trade for their own account in such securities pursuant to the provisions of that Rule.

In contrast to REMMs trading pursuant to Rules 111 and 114, Rule 958 imposes continuous affirmative market making obligations upon Registered Traders.[3] In recognition of this, such

[1] See Letter from William Floyd-Jones, Assistant General Counsel, Amex, to Stephen M. Youhn, SEC, dated Sept. 26, 1995. The amendment renumbers two rule provisions that were misstated in the original filing.

[2] See Securities Exchange Act Release No. 30768 (June 2, 1992). A Registered Trader under Rule 958 is also referred to as a Registered Options Trader (''ROT'').

[3] Moreover, due to the derivative pricing of currency warrants, the Exchange believes it is

Continued

market makers are designated as Specialists on the Exchange for all purposes under the Act (See Rule 958, Commentary .01), and are entitled to good faith market maker margin with respect to transactions on the Floor in these assigned securities. The Exchange anticipates that application of Rule 958 requirements to supplemental Exchange market makers will encourage additional competing market maker activity in currency warrants, thereby enhancing liquidity in such securities, and eliminate an anomalous regulatory disparity between currency warrant and stock index warrant trading.

2. Statutory Basis

The Exchange believes 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 and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishers its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-95–38 and should be submitted by December 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29777 Filed 12–6–95; 8:45 am]

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inappropriate to apply the stabilization requirements applicable to REMMs to market maker transactions in currency warrants.

[4] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36536; File No. SR–NASD–95–48]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Non-Member Subscriber Deposits for Nasdaq Level 2/3 Service and Equipment

November 30, 1995.

I. Introduction

On October 11, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the non-member subscriber deposit requirements contained in Part VIII, Paragraph G.1. and 2. of Schedule D to the NASD By-Laws.[3] The proposed rule change reflects increased charges for the provision of telecommunications services and equipment and broadens the language to encompass the various fees associated with these services and equipment.

Notice of the proposed rule change appeared in the Federal Register on October 26, 1995.[4] No comment letters were received on the proposal. The Commission is approving the proposed rule change.

II. Description of Proposal

The proposed rule change reflects increased charges for the provision of telecommunications services underlying Nasdaq Workstation II service, and clarifies the various component functions encompassed within the circuit installation fee so that the true nature of the charge is made clear to new subscribers. These requirements would pertain only to new subscribers or existing subscribers that have defaulted on the payment of their charges.

This proposed rule change applies to subscribers who are not NASD members. A companion filing, which applies the proposed rule change to member subscribers, was filed separately for immediate effectiveness.[5]

The NASD represents that the subscriber deposit requirement helps hedge against uncollected balances owed by firms for Level 2/3 or Nasdaq Workstation equipment. The subscriber deposit in part represents actual expenses incurred by The Nasdaq Stock Market, Inc. as obligations to telecommunications providers.

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is consistent with sections 15A(b)(5),[6]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The Commission also received a separate, yet identical proposed rule change relating to member subscriber deposits for Nasdaq Level 2/3 service and equipment which became effective upon receipt by the Commission pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because it established or changed a due, fee or other charge imposed by the NASD on its members. Securities Exchange Act Release No. 36396 (October 20, 1995), 60 FR 54896.

[4] Securities Exchange Act Release No. 36397 (October 20, 1995), 60 FR 54897.

[5] *See supra* note 3.

[6] Section 15A(b)(5) requires the Commission to determine that a registered national securities association's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

15A(b)(6),[7] and 15A(b)(9)[8] of the Act. Pursuant to sections 15A (b)(5) and (b)(6), the proposed rule change equitably allocates the fees between NASD members and non-NASD members. Because both members and non-members are subject to the same fee schedules and arrangements, there is no unfair discrimination between member and non-member subscribers. Pursuant to section 15A(b)(9), the proposed rule change does not impose any unnecessary or inappropriate burden on competition, but reflects an attempt to update a rule that contains provisions that are no longer applicable because they do not adequately represent current market practices or pricing. In light of the technological advancements in the telecommunications area, increased costs are commensurate with providing current and potential subscribers with access to the various communications services and equipment. However, the schedule of NASD charges for services and equipment is based on a per unit cost; therefore, members and non-members are subject to the same charges. Thus, the revision in subscriber deposit requirements does not impose any unnecessary or inappropriate burdens on competition.

IV. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with sections 15A(b)(5), 15A(b)(6), and 15A(b)(9).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–95–48) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95–29778 Filed 12–06–95; 8:45 am]

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[7] Section 15A(b)(6) requires the Commission to determine that a registered national securities association's rules are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the NASD.

[8] Section 15A(b)(9) requires the Commission to determine that a registered national securities association's rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12).

[Release No. 34–36534; File No. SR–CBOE–95–65]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Joint Account Participant Trading in Equity Options

November 30, 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 October 20, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise its policy regarding joint account participation in equity options. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to revise that provision of the Exchange's policy governing joint account participant trading in equity options that currently prohibits the simultaneous representation in a trading crowd by more than one member of a joint account.[1] Under the proposed regulatory circular, a joint account may be simultaneously represented in a trading crowd but only by participants trading in-person. All other provisions of the current regulatory circular would remain unchanged, including a prohibition against orders being entered in the crowd via a floor broker when a joint account participant is trading in the crowd in-person. This change in policy is also reflected in a deletion of one sentence and the addition of another from paragraph (a)(ii) of Rule 8.16, RAES Eligibility in Equity Options.

There are two reasons why the Exchange has determined to propose this change, which has been recommended by the Exchange's Equity Floor Procedure Committee. First, the change will make the policy governing joint account trading in equity options more consistent with the current policy governing index option trading, where multiple representation of orders for the same joint account is permitted by participants in the joint account trading in-person at the trading post, or by floor brokers representing the orders at the post.[2] The policy proposed for equity options is more restrictive, in that it would only permit joint representation by participants trading in-person, and would not permit multiple representation of orders for the same joint account if one or more of the orders is represented by a floor broker. The policy for index options reflects that, as a practical matter, floor broker representation is often required in index option trading crowds, where special trading practices and procedures have been adopted to deal with the special needs of these very large crowds. Since a trader from another crowd may be unfamiliar with these practices, he may need to use the services of a floor broker who is regularly present at the index crowd and who understands its trading practices. Smaller equity option trading posts do not present the same practical need for the services of floor brokers, which is why the proposed policy permitting joint account representation at equity option posts is limited to in-person representation of orders by market-makers.

[1] This policy is set forth in Regulatory Circular RG 93–50, which is a reissuance of RG 91–68, submitted for immediate effectiveness as File No. SR–CBOE–91–48, noticed in Securities Exchange Act Release No. 30334 (February 4, 1992), 57 FR 4900 (February 10, 1992).

[2] See Regulatory Circular RG 95–64, which is a reissuance of Regulatory Circular RG 91–57, approved in Securities Exchange Act Release No. 31174 (September 10, 1992), 57 FR 42789 (September 16, 1992).

A second reason why the Exchange has chosen to institute this policy is to ensure that member organizations that choose to employ a joint account for their Exchange trading, rather than using individual market-maker accounts, are not disadvantaged in participating in trades vis-a-vis those member organizations that do employ individual market-maker accounts. Some member organizations choose to have their various market-makers trade in a joint account so that the member organization's positions can be more easily monitored and managed. Under the current equity policy regarding joint accounts, however, these member organizations would only be able to be represented by one joint account participant in a trading crowd at one time. On the other hand, the member organization using the individual market-maker accounts would be able to be represented by each market-maker's individual account. The proposed change would eliminate the disadvantage currently suffered by member organizations using joint account structures.

In addition to the regulatory circular, one sentence will be deleted and another added from Rule 8.16(a)(ii). This rule currently prohibits more than one joint account participant from using the joint account for trading on RAES in a particular option class unless the Exchange's Market Performance Committee (''MPC'') provides an exemption. However, because any joint account participant trading in-person would be entitled to participate on the same side of a trade with his fellow joint account participants in the same trading crowd as a result of the proposed regulatory circular, the Exchange believes it is appropriate to no longer require an exemption from the MPC to have more than one participant use the joint account for trading on RAES. In any event, to participate on RAES, a member must be present in the trading crowd.

The Exchange represents that by eliminating a distinction that currently exists between member organizations that manage their positions differently, the proposed rule change furthers the objectives of Section 6(b) of the Act in general and Section 6(b)(5) in particular by providing rules that perfect the mechanisms of a free and open market and that protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–65 and should be submitted by December 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29779 Filed 12–6–95; 8:45 am]

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[3] 17 CFR 200.30–3(a)(12).

[Release No. 34–36538; International Series Release No. 894; File No. SR–Amex–95–44]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Equity Linked Term Notes on Non-U.S. Securities

November 30, 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 November 9, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 107B of the Amex Company Guide to provide alternate criteria for the listing and trading of certain hybrid debt securities whose value is linked to the performance of a non-U.S. company which is traded in the U.S. market as sponsored American Depositary Shares, ordinary shares or otherwise. 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 test 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

On May 20, 1993 and December 13, 1993, the Commission approved amendments to Section 107 of the Amex Company Guide to provide for the listing and trading of Equity Linked

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Term Notes (''ELNs'').[3] ELNs are intermediate term (two to seven years), non-convertible, hybrid debt instruments, the value of which is linked to the performance of a highly capitalized, actively traded U.S. and non-U.S. companies.

In August 1994, the Exchange amended Section 107B of the Amex Company Guide to permit the listing and trading of ELNs linked to actively traded non-U.S. companies which are traded in the U.S. market as sponsored American Depositary Shares, ordinary shares or otherwise (''non-U.S. securities''), provided that (1) the Exchange has in place a comprehensive surveillance sharing agreement with the primary exchange on which the non-U.S. security trades; or (2) the trading volume of the non-U.S. security in the U.S. market represents at least 50% of the world-wide trading volume in the non-U.S. security (''50% Test'').[4]

The Exchange now proposes to amend its ELNs on non-U.S. security listing criteria by (1) revising the manner in which the applicable percentage of world-wide trading volume is calculated under the 50% Test; and (2) adding new criteria for the listing of ELNs on non-U.S. securities, based on the daily trading volume in the U.S. Specifically, the Exchange proposes to revise the 50% Test so that trading in non-U.S. securities and other related non-U.S. securities in any market with which the Exchange has in place a comprehensive/effective surveillance sharing agreement will be added to U.S. market volume for the purpose of determining whether the 50% Test has been met. Currently, only trading in the U.S. market counts toward satisfying the 50% Test.

In addition, the Exchange proposes to add an alternate set of criteria under which the Exchange may list ELNs on non-U.S. securities (''Daily Trading Volume Standard''). The new standard will permit the Exchange to list ELNs on non-U.S. securities if all of the following conditions are satisfied: (1) the combined world-wide trading volume for the non-U.S. security in the U.S. market or in any market with which the Exchange has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and other related non-U.S. securities over the six month period preceding the date of selection of the non-U.S. security for an ELN listing; (2) the average daily trading volume for the non-U.S. security in the U.S. market over the six months preceding the date of selection of the non-U.S. security for an ELN listing is at least 100,000 shares; and (3) the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six months preceding the date of selection of the non-U.S. security for an ELN listing.

The Exchange believes that the alternate criteria is appropriate in that it limits the listing of ELNs linked to non-U.S. securities to those that have both a significant amount of U.S. market trading volume and a substantial volume of trading covered by a comprehensive/effective surveillance sharing agreement, which gives the Exchange the ability to inquire into potential trading problems or irregularities in a market place that serves as a significant price discovery market for the non-U.S. security. Thus, the proposed requirement of observable, high trading volumes, should ameliorate any regulatory concern regarding investor protection and, at the same time, allow investors to trade ELNs linked to more non-U.S. securities.

The Exchange also believes that the proposed amendment will benefit investors by expanding the number of non-U.S. securities that may be linked to ELNs, thereby providing investors with enhanced investment flexibility. The Exchange believes that it is appropriate to now include additional non-U.S. securities within the existing regulatory framework because of the significant level of U.S. investor interest in both U.S. and non-U.S. highly capitalized and actively traded reporting companies.

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 change, 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 proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–Amex–95–44 and should be submitted by December 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29780 Filed 12–6–95; 8:45 am]

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[3] See Securities Exchange Act Release Nos. 32345 (May 20, 1993), 58 FR 30833 (May 27, 1993), and 33328 (December 13, 1993), 58 FR 66041 (December 20, 1993).

[4] See Securities Exchange Act Release No. 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994).

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–36537; File Nos. SR–Amex–95–45; and SR–PSE–95–30]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Modifications of the Position and Exercise Limits for Narrow-Based Index Options

November 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 15, 1995, the American Stock Exchange, Inc. (''Amex''); and on November 16, 1995, the Pacific Stock Exchange, Inc. (''PSE'') (each individually referred to as an ''Exchange'' and both collectively referred to as ''Exchanges'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes as described in Items I and II below, which Items have been prepared by the self-regulatory organizations.[2] The Commission is approving the proposals on an accelerated basis.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to amend their rules to increase the position and exercise limits[3] for narrow-based (or industry) index options from the current levels of 5,500, 7,500, or 10,500 contracts to 6,000, 9,000, or 12,000 contracts.[4] The Commission has approved identical proposal by the Philadelphia Stock Exchange, Inc. (''PHLX'') and by the Chicago Board Options Exchange, Inc. (''CBOE'').[5]

The texts of the proposed rule changes are available at the offices of the Exchanges, and at the Commission.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The Exchanges propose to amend their rules to increase the position and exercise limits for narrow-based (or industry) index options from the current levels of 5,500, 7,500, or 10,500 contracts to 6,000, 9,000, or 12,000 contracts. The Exchanges note that the Commission has approved identical proposals by the PHLX and the CBOE.[6]

Currently, the Exchanges' rules establish 5,500, 7,500, and 10,500 contract levels as position limits for industry index options. The Exchanges propose to increase these limits to 6,000, 9,000, and 12,000 contracts, respectively. Under the Exchanges' rules, exercise limits correspond to position limits.

The Exchanges note that the current position and exercise limits have been in place since 1993[7] and that there have been no further increases in position limits for narrow-based index options since that time, despite appreciable growth in index options trading. According to the Amex, there has been a notable increase in narrow-based index option trading since 1993. Specifically, the Amex states that through October 31, 1995, narrow-based index option volume has increased 79% over all of 1994.

In addition, the Exchanges believe that the proposed increases are reasonable and consistent with the gradual, evolutionary approach adopted previously by the Commission and the options exchanges when increasing position and exercise limits.[8] Accordingly, the Exchanges propose a 9% increase for the lowest tier (5,000 to 6,000 contracts); a 20% increase for the middle level position limit (from 7,500 to 9,000 contracts); and a 15% increase in the highest level (from 10,500 contracts to 12,000 contracts).

The Exchanges also believe that the proposed increases are required by traders and investors to meet their investment needs. In this regard, the Exchanges believe that the current position limit levels create difficulties for investors in narrow-based index options, especially those institutional investors who own large portfolios of the component securities and who wish to use the options markets to hedge those portfolios. The Exchanges propose to raise the position and exercise limits for narrow-based index options to accommodate the liquidity and hedging needs of large investors and the institutions that compete to facilitate the trading interests of the large investors.

Finally, the Exchanges believe that the proposed limits of 6,000, 9,000, and 12,000 contracts will increase the depth and liquidity of the market for industry index options without causing any market disruption. The Exchanges represent that they will continue to monitor and surveill for manipulation and violations of the position and exercise limits. Specifically, the Amex

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] On November 27, 1995, the PSE amended its proposal to submit its filing pursuant to Section 19(b)(2) under the Act and to request accelerated effectiveness of the proposal. See Letter from Michael Pierson, Senior Attorney, Market Regulation, PSE, to Yvonne Fraticelli, Office of Market Supervision, Division of Market Regulation, Commission, dated November 27, 1995 (''Amendment No. 1'').

[3] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls). Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[4] The Amex's position and exercise limits for industry index options are provided in Amex Rules 904C, ''Position Limits,'' and 905C, ''Exercise Limits.'' The PSE's position and exercise limits for industry index options are provided in PSE Rules 7.6, ''Position Limits for Index Options,'' and 7.7, ''Exercise Limits.'' Under the Exchanges' rules, the current position limits for industry index options are as follows: (1) 5,500 contracts if the Exchange determines in its semi-annual review that any single underlying stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; (2) 7,500 contracts if the Exchange determines in its semi-annual review that any single underlying stock accounted, on average, for more than 20% of the index value or that any five underlying stocks accounted, on average, for more than 50% of the index value, but that no single stock in the group accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; or (3) 10,500 contracts if the Exchange determines that the conditions requiring the establishment of a lower limit have not occurred.

[5] See Securities Exchange Act Release Nos. 36194 (September 6, 1995), 60 FR 47637 (September 13, 1995) (order approving File No. SR–PHLX–95–16) (''PHLX Approval Order''); and 36439 (October 31, 1995), 60 FR 56075 (November 6, 1995) (order approving File No. SR–CBOE–95–56) (''CBOE Approval Order'').

[6] *Id.*

[7] See Securities Exchange Act Release Nos. 33282 (December 3, 1993), 58 FR 65218 (December 13, 1993) (order approving File No. SR–PSE–93–38); and 33285 (December 3, 1993), 58 FR 65201 (December 13, 1993) (order approving File No. SR–Amex–93–27).

[8] According to the PSE, the most recent position limit changes in 1993 represented changes of 38% (from 4,000 to 5,500 contracts); 25% (from 6,000 to 7,500 contracts); and 31% (from 8,000 to 10,500 contracts).

states that it will use monitoring systems currently in place to detect and deter attempted manipulative activity and other trading abuses through the use of illegal positions by market participants. The PSE states that it will monitor the markets for evidence of manipulation or disruption caused by investors with positions at or near current position or exercise limits and that the proposed limits will not diminish the surveillance function in this regard.

The Exchanges believe that the proposals to increase narrow-based index option position limits are consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that they are designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices. The Amex also believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The PSE also believes that the proposal is designed to protect investors and the public interest.

(B) Self-Regulatory Organizations' Statements on Burden on Competition

The Exchanges do not believe that the proposed rule changes will impose any burden on competition.

(C) Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Changes

The Exchanges have requested that the proposed rule changes be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. As noted above, the Commission has previously approved identical proposals submitted by the PHLX and the CBOE.[9]

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[10] Specifically, the Commission finds that the proposed position and exercise limits for narrow-based index options should accommodate the needs of investors and market participants and should increase the potential depth and liquidity of the options market as well as the underlying cash market without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or the underlying securities.

As noted above, the Commission believes that although the position and exercise limits for options must be sufficient to protect the options and related markets from disruptions by manipulation, the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent market makers from adequately meeting their obligations to maintain a fair and orderly market. In this regard, the Exchanges have stated that they believe that the proposals will increase the depth and liquidity or the market for industry index options without causing any market disruption. In addition, the Exchanges represent that they will continue to conduct surveillance for manipulation and other trading abuses.

The Commission notes that the proposals, while increasing the applicable position and exercise limits for narrow-based index options, continue to reflect the unique characteristics of each index option and maintain the structure of the current three-tiered system. Specifically, the lowest proposed limit, 6,000 contracts, will apply to narrow-based index options in which a single underlying stock accounts for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option positions limits. Limits of 9,000 contracts will apply if any single underlying stock accounts, on average, for 20% or more of the index value or any five underlying stocks account, on average for more than 50% of the index value, but no single stock in the group accounts, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. The 12,000-contract limit will apply only if the Exchange determines that the conditions requiring either the 6,000-contract limit or the 9,000-contract limit have not occurred. Accordingly, the proposal allows the Exchanges to avoid placing unnecessary restraints on those narrow-based index options where the manipulative potential is the least and the need for increased positions, both by traders and institutional investors, may be the greatest.

The Commission believes that the proposed increases for the three tiers of 9%, 20%, and 15%, for lowest to highest, respectively, appear to be appropriate and consistent with the Commission's evolutionary approach to position and exercise limits. In this regard, the absence of discernible manipulative problems under the current three-tiered position and exercise limit system for narrow-based index options leads the Commission to conclude that the modest increases proposed by the Exchanges are warranted. The Commission recognizes that there are no ideal limits in the sense the options positions of any given size can be stated conclusively to be free of any manipulative concerns. However, based upon the absence of discernible manipulation or disruption problems under current limits, the Commission believes that the proposed limits can be safely considered. Accordingly, the Commission believes that the liberalization of existing position and exercise limits for narrow-based index options is now appropriate.[11]

The Commission notes that the Exchanges have had considerable experience monitoring the current three-tiered framework in narrow-based stock index options. The Commission has not found that differing position and exercise limit requirements based on the particular options product to have created programming or monitoring problems for securities firms, or to have led to significant customer confusion. Based on the current experience in handling position and exercise limits, the Commission believes that the proposed increases in position and exercise limits for narrow-based index options will not cause significant problems.

Finally, the Exchanges have indicated that they will continue to conduct surveillance for manipulation. The Commission believes that the Exchanges' surveillance programs are adequate to detect and deter violations of position and exercise limits as well as to detect and deter attempted manipulative activity and other trading abuses through the use of such illegal positions by market participants.

For the foregoing reasons, the Commission finds that the proposals to increase the position and exercise limits

[9] See PHLX and CBOE Approval Orders, *supra* note 5.

[10] 15 U.S.C. 78f(b) (1988 & Supp. V 1993).

[11] The Commission continues to believe that proposals to increase position limits and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for each tier, the Commission has concluded that the proposed exercise limit increases for the three-tiered framework do not raise manipulation problems or increase concerns over market disruption in the underlying securities.

for narrow-based index options to 6,000, 9,000, or 12,000 contracts, depending on the percentage stock concentrations within the index, are consistent with the requirements of the Act and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. As noted above, the Commission has previously approved identical proposals submitted by the PHLX and the CBOE.[12] The PHLX's proposals was published for the full notice and comment period and the Commission received no comments on the PHLX's proposal. The Exchanges' proposals raise no new regulatory issues. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule changes on an accelerated basis. In addition, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the PSE's proposal on an accelerated basis so that both proposals may become effective simultaneously.

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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by December 28, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule changes (SR–Amex–95–45 and SR–PSE–95–30) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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[12] See PHLX and CBOE Approval Orders, *supra* note 5.

[13] 15 U.S.C. 78f(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36531; File No. SR–CHX–95–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Listing Standards

November 30, 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 November 8, 1995, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XXVIII of the Exchange's Rules to modify the Exchange's listing standards and create two tiers of listings.

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

The North American Securities Administration Association (''NASAA'')[1] has endorsed certain listing standards as sufficient to warrant a state's granting exchange-listed securities a listing exemption from registration. The CHX proposes to modify its own listing standards to comply with those endorsed by NASAA and adopted by other stock exchanges.[2]

The CHX proposes changes to its Rules regarding the quantitative requirements for issuers and issues, qualitative requirements for issuers (*e.g.*, corporate governance standards), and maintenance criteria for issues. In no case do the proposed changes decrease current CHX standards.

NASAA has entered into a Memorandum of Understanding (''MOU'') with the Philadelphia Stock Exchange (''Phlx'')[3] and the Pacific Stock Exchange (''PSE'').[4] Those memoranda set out standards that NASAA recognizes as sufficient to warrant listing exemptions from state blue sky requirements. The proposed rules establish listing standards that are essentially identical to the standards set out in those two NASAA MOUs. Although the CHX is in the process of reaching a similar MOU with NASAA, the CHX's new listing standards are specifically designed to satisfy the listing standards endorsed by NASAA.

Other exchanges have established two tiers of listing requirements. In general, Tier I listing standards are quantitatively and qualitatively higher (*i.e.*, more restrictive and demanding) than Tier II listing standards.

The CHX does not currently have a two-tier structure for listings but proposes to create a two-tiered structure. Both Tier I and Tier II listed issues will be traded pursuant to identical auction rules, but otherwise the two tiers will differ in several ways.

[1] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

[2] See, *e.g.*, Securities Exchange Act Release No. 34235 (June 17, 1994), 59 FR 32736 (June 24, 1994) (approving a Philadelphia Stock Exchange rule change adopting NASAA endorsed standards); Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 38998 (Aug. 1, 1994) (approving a Pacific Stock Exchange rule change adopting NASAA endorsed standards).

[3] The Memorandum of Understanding was approved by NASAA and Phlx on October 12, 1994.

[4] The Memorandum of Understanding was approved by NASAA and the PSE on October 12, 1994.

The new, higher standards proposed by the CHX will constitute requirements for a new Tier I listing. The Tier I requirements for a CHX listing will be identical in all material respects with the requirements of the NASAA MOUs. The current standards of the CHX will constitute the listing requirements for the new CHX Tier II listing. The NASAA MOUs do not address Tier II standards.

Tier I issuers and issues will have to meet the corporate governance and disclosure standards endorsed by NASAA MOUs. These include newly specific requirements for disclosure of reports filed with federal regulatory bodies; specific requirements for shareholder approval for certain corporate actions involving the sale or issuance of stock; and specific voting rights provisions forbidding corporate actions that have a disparate impact on holders of stock. The CHX currently has strict corporate governance and disclosure requirements, which will remain in place for Tier II issuers and issues.

The CHX will identify and distinguish at all times which securities are listed pursuant to Tier I and Tier II standards. If a Tier I listed security fails to satisfy Tier I maintenance standards for continued listing, the issue will be removed from Tier I listing. If it meets Tier II standards, it will thereupon be listed on Tier II. If it does not meet Tier II standards, it will be delisted. Moreover, if a Tier II listed security matures to the point that it could meet the Tier I standards, the issuer must apply and receive approval to list the security pursuant to the Tier I standards before the CHX will recognize that security as a Tier I issue. The CHX believes that adopting two tiers of listing standards will provide flexibility for the CHX in pursuing various listing objectives beneficial to CHX members and the public.

The CHX has chosen to adopt NASAA's MOU standards as criteria for its new Tier I because the CHX views those standards as carefully crafted to provide an extremely high level of investor and shareholder protection. For the same reason, the CHX proposes for Tier I to adopt also NASAA's substantial corporate governance standards, including requirements for independent directors, audit committees, shareholder quorums, common stock voting rights, and conflict of interest provisions. The CHX's current rules already address many of these same issues, but for Tier I the CHX proposes to adopt all of NASAA's suggested standards.

Tier I standards must be satisfied by all issuers on a continuing basis. Moreover, CHX standards for Tier I initial and maintenance listing are both mandatory and non-waivable.

Tier I Standards

With regard to common stock, Rule 8(a) replicates the NASAA MOUs' numerical criteria applicable to original listing determinations in every aspect including net tangible assets, numbers of shareholders and shares publicly held, pre-tax and net earnings, and stock price.

In Rule 8(b), the CHX proposes to also offer alternate listing standards for common stock issues. The proposed standards are identical to those endorsed by NASAA. The CHX offers the alternate standards because there are certain smaller companies that either due to the nature of their business or the amount of resources committed by the company to research and development, would not meet the standards in Rule 8(a) but nevertheless deserve Tier I status. Thus, those types of companies may be approved for listing under Tier I if they satisfy the alternate listing criteria.

Rule 8(c), in conformance with the NASAA MOUs, provides standards for initial public offerings approved for listing on the CHX. Such offerings must be underwritten on a ''firm commitment'' basis and must meet the CHX's listing standards within a 30-day grace period after completion of the offering.

With regard to preferred stock, Rule 9 provides the Tier I original listing criteria. Preferred stock issuers must satisfy the same net tangible assets and net earnings criteria applicable to issuers of common stock. The ability of the issuers to service the dividend requirements for preferred stock will also be evaluated. The requirements will differ for number of shares publicly held and aggregate market value depending on whether the issuer has common stock listed. Where the common stock is listed on the CHX, New York Stock Exchange (''NYSE''), or American Stock Exchange (''Amex''), at least 100,000 shares of preferred stock must be publicly held with an aggregate market value of at least $2 million dollars. Where the common stock is not so listed, at least 400,000 shares of preferred stock must be publicly held with an aggregate market value of at least $4 million. Differentiating on this basis reflects the CHX's belief that companies whose securities are publicly traded have a more significant investor following and a greater demonstrated ability to raise necessary capital while meeting the contingent payment obligations associated with preferred stock and, as described below, bond and debentures. In either case, a share of preferred stock must have a minimum closing bid price of $10 to be eligible for listing.

Listing of bonds and debentures under Tier I will be governed by Rule 10. In addition to evaluating issuers according to the same net tangible assets and earnings standards applicable to equity issuers, the CHX will also evaluate the ability of these issuers to satisfy the interest and principal payments of bonds and debentures as they become due. As above, the required aggregate market value and number of public beneficial holders varies depending on whether the issuer's common stock is listed and traded on either the CHX, Amex or NYSE. Additionally, the CHX will require municipal bonds to meet higher standards than other bonds.

Issuers seeking listing of warrants under Tier I must satisfy the criteria of Rule 11. The CHX will set standards with regard to public distribution, and it will not list warrants unless the security underlying the warrant is already listed or will be listed concurrently with the warrants on Tier I.

Rule 12 provides criteria for contingent value rights (''CVRs''). The CHX will set standards for CVRs with regard to aggregate market value, public distribution, net tangible assets, and maturity date. CVR issuers must meet the net tangible assets and earnings requirements for issuers of stock listed on the Exchange, and the CVRs to be listed must have been approved for listed on another national securities exchange. Finally, Rule 13 contains criteria applicable to new and innovative products that do not fall within Rules 8–12 but otherwise have the financial qualifications to be listed and are suitable for auction market trading.

The CHX's maintenance requirements for Tier I securities duplicate those found in the NASAA MOU with the PSE. Rules 14–17 set forth those maintenance requirements for each type of issue. The CHX will initiate delisting procedures against any issue that fails to meet the maintenance requirements on a continuing basis.

Tier II Standards

Rule 18 sets forth the CHX's proposed Tier II standards. Tier II standards will allow companies that may not be large enough to list under Tier I the opportunity to have their securities traded in an auction market, thereby increasing liquidity and issuer access to the investment community.

The CHX's proposed Tier II standards are essentially identical to the current CHX standards applicable to all listed issues, except that index warrants and contingent value rights will no longer be listed under Tier II.

Miscellaneous

The CHX does not propose to materially change its admissions procedures or its delisting procedures.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that the proposal fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system and protects investors and the public interest. The proposal also is consistent with Section 11A of the Act in that approval of the Tier I standards will aid in the development of the national market system by enhancing competition for equity listings.

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 which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–26 and should be submitted by December 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 95–29782 Filed 12–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36533; File Nos. SR–PHILADEP–95–09; SR–MSTC–95–09]

Self-Regulatory Organizations; Philadelphia Depository Trust Company and Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Modifying Procedures to Enable Compliance With Confirmation Disclosure Requirements Through the Use of the Institutional Delivery System

November 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act),[1] notice is hereby given that on October 24, 1995, and on October 27, 1995, respectively, the Philadelphia Depository Trust Company (''PHILADEP'') and the Midwest Securities Trust Company (''MSTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by PHILADEP and MSTC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

PHILADEP and MSTC propose to make additions to their respective procedures[2] to enable their participants using the Institutional Delivery (''ID'') system for generating confirmations for customer transactions to comply with certain disclosure requirements of Rule 10b–10 under the Act.[3]

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, PHILADEP and MSTC included statements concerning the purpose of and the basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. PHILADEP and MSTC have prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.[4]

A. Self-Regulatory Organizations' Statements of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes

In 1994, the Commission adopted amendments to Rule 10b–10.[5] Subsequently, the Division of Market Regulation issued a no-action letter to the Public Securities Association (''PSA'') on behalf of its members and all other brokers and dealers temporarily exempting them from certain disclosure requirements of paragraphs (a)(7), (a)(8), and (a)(9) of Rule 20b–10 until November 1, 1995.[6]

The purpose of these proposed rule changes is to enable PHILADEP and MSTC participants using the ID system for generating confirmations for customer transactions to comply with the following three disclosure requirements upon the expiration of the temporary exemption on November 1, 1995.

[2] While MSTC does not have specific written ID procedures, the MST System Flash newsletter is sent to MSTC participants to update them on, among other things, ID system changes. The newsletter is kept on record at MSTC and is used by MSTC as its participant procedures.

[3] 27 CFR 240.10b–10 (1994).

[4] The Commission has modified the text of the summaries prepared by PHILADEP and MSTC.

[5] For a complete discussion of the amendments, refer to Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612.

[6] Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, to George P. Miller, Esq., Vice President and Associate General Counsel, PSA (September 29, 1995).

(1) The amended rule reburies broker-dealers to disclose that they are not members of the Securities Investor Protection Corporation (''SIPC'') if, in fact, they are not so affiliated. These broker-dealers may make such disclosures by noting ''[Name of broker-dealer] is not a member of SIPC'' in the Special Instructions field of trade data submitted to the ID system. PHILADEP's and MSTC's proposed rule changes add to their respective procedures the method by which broker-dealers indicate that they are not SIPC members.

(2) In the case of a private debt security, the amended rule requires broker-dealers to disclose if the security is not rated by a nationally recognized statistical rating organization. A broker-dealer using the ID system can disclose that fact by entering ''Not Rated'' or ''N/R'' in the Special Instructions field. PHILADEP's and MSTC's proposed rule changes add to their respective procedures a statement of the meaning of the codes ''Not Rated'' or ''N/R.''

(3) The amended rule requires broker-dealers to disclose that the yield for asset-backed securities that are continuously subject to prepayment may vary depending upon the rate of prepayments. Upon written request from their customers, broker-dealers will provide certain information concerning the factors that affect these securities' yield. A broker-dealer using the ID System can enter one of several acronyms in the Security Type field identifying the security as one of several types of securities that meet the rule's definition of asset-backed security. PHILADEP's and MSTC's proposed rule changes add to their respective procedures a provision designating several acronyms that when placed in the Security Type field will denote that the security meets the Rule 10b–10 definition of an asset-backed security.

PHILADEP and MSTC believe the proposed rule changes are consistent with the requirements of Section 17A(B)(3)(F)[7] of the Act and the rules and regulations thereunder applicable to PHILADEP and MSTC because the proposed rule changes will facilitate the confirmation of transactions through the use of the ID system in compliance with the additional requirements of Rule 10b–10 and in conjunction with the expiration date of the temporary exemption on November 1, 1995.

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

B. Self-Regulatory Organizations' Statements on Burden on Competition

PHILADEP and MSTC believe these procedural modifications will not impose a burden on competition.

Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

PHILADEP and MSTC have neither solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule changes have become effective pursuant to Section 19(b)(3)(A)(i)[8] of the Act and pursuant to Rule 19b–4(e)(4)[9] promulgated thereunder because the proposals constitute changes in existing services of registered clearing agencies that do not adversely affect the safeguarding of securities or funds in the custody or control of those clearing agencies or for which they are responsible and do not significantly affect the respective rights or obligations of the clearing agencies or persons using the service. At any time within sixty days of the filing of such rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements respecting the proposed rule changes that are filed with the Commission, and all written communications concerning the proposed rule changes between the Commission and any person, other than those that may be withheld from the public pursuant to the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the respective filings will also be available for inspection and copying at the principal offices of PHILADEP and MSTC. All submissions should refer to File Nos. SR–PHILADEP–95–09 and SR–MSTC–95–09 and should be submitted by December 28, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–29783 Filed 12–6–95; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(3)(A)(i) (1988).

[9] 17 CFR 240.19b–4(e)(4) (1994).

[10] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36541; File No. SR–Amex–95–28]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Updates to the Exchange's Company Guide

November 30, 1995.

I. Introduction

On July 19, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to update various sections of its Company Guide. On September 28, 1995, the Exchange filed Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the Federal Register on October 10, 1995.[4] No comments were received on the proposal.

II. Description of the Proposal

The Exchange has proposed amendments to several sections of the Amex Company Guide in order to conform it with recent changes to comparable New York Stock Exchange (''NYSE'') sections, to update certain sections that contain provisions that are no longer applicable, and to clarify certain obligations contained in the rules. As described more fully below, the Exchange proposes to amend sections of its Company Guide that pertain to preferred stock, warrants, conflicts of interest, original and annual listing fees, the listing resolution, ''backdoor'' listings, fractional shares, the listing agreement, interim reports,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Glen Barrentine, Senior Counsel/Team Leader, SEC (Sept. 28, 1995).

[4] Securities Exchange Act Release No. 36326 (Oct. 3, 1995), 60 FR 52713.

legending requirements, and delisting standards.

A. Preferred Stock

The Exchange proposes to amend Section 103 to make it clear that the numerical guidelines contained in this section concerning aggregate market value and price per share only apply to publicly held shares. The Exchange also proposes to amend Section 103 of the Company Guide to provide that the Amex will not consider listing any issue of convertible preferred stock unless the underlying security is subject to real-time last sale reporting. Currently, as a general rule, convertible preferred stock may be listed on the Exchange only if the underlying security is listed on either the Amex or the NYSE. The Exchange believes this restriction is no longer necessary because it was adopted at a time when only the Amex and the NYSE provided last sale reporting information. Now, however, other markets disseminate such information.[5]

B. Warrants

In order to simplify the listing process, the Exchange proposes to consolidate all of its listing guidelines concerning warrants into Section 105, add a paragraph to Section 105 that requires an issuer to provide the Amex with two months advance notice of any extension of the expiration date of a warrant issue, delete Section 508 of the Company Guide[6] and incorporate it into Section 105, and amend Section 105 to reference the guidelines contained in Section 902 of the Company Guide.[7]

C. Conflicts of Interest

The Exchange proposes to delete the clause in Section 120 of the Company Guide that authorizes the Exchange to require a company to enter into a special agreement designed to reduce the possibility of abuse of a conflict of interest situation. The Exchange believes this provision is obsolete because audit committees[8] are responsible for reviewing transactions presenting potential conflicts of interest and, in practice, the Exchange no longer utilizes these special agreements. Moreover, the Exchange notes that the NYSE did away with a similar provision some time ago.[9]

D. Original and Annual Listing Fees

Currently, Section 140 of the Company Guide specifies the original listing fee for more than one million shares and the fee for less than one million shares, but does not specify the fee for exactly one million shares. The Exchange proposes to correct this oversight by making it clear that the fee for exactly one million shares is $10,000. The Exchange also proposes to make it clear that, according to Section 141 of the Company Guide, the annual listing fee for a warrant issue is based on the number of warrants issued, not the number of shares underlying the warrants.

E. Opinion of Counsel

The Exchange proposes to delete from Section 213 of the Company Guide the requirement that the opinion of counsel address a prospect company's qualification to conduct business in jurisdictions other than that of its state of incorporation. In support of this, the Exchange cites an ABA sponsored study of third-party legal opinions that states that an opinion concerning a corporation's qualification to do business in jurisdictions other than that of incorporation is generally not cost effective or necessary.[10] In addition, the Exchange notes that the NYSE does not have a similar requirement.

F. Listing Resolution

The Exchange proposes to delete from Sections 213 and 330 the requirement that a prospect company's Board of Directors provide the Exchange with a listing resolution authorizing the filing of the listing application. The Exchange believes this requirement does not serve any significant purpose and, essentially, is ceremonial in nature.

G. ''Backdoor'' Listings

Currently, the literal language of Section 341 of the Company Guide indicates that the surviving entity of a backdoor listing[11] transaction must meet the Exchange's original listing guidelines in all respects. The Exchange states, however, that it has been its longstanding practice to evaluate a backdoor listing on the same basis that an original listing is reviewed. Among other things, this allows the Exchange to exercise its discretion to approve a backdoor listing even though the company does not meet all of the Exchange's numerical guidelines.[12] The Exchange proposes to make this section consistent with the Exchange's practice.

H. Fractional Shares

Very often when a company issues a stock dividend, the issuer must settle fractional share interests. The Exchange's current practice is to require those companies that do not choose to settle such interests with a cash payment to round up to a full share in payment for the fractional amount. The Exchange reasons that if the issuer were to round down, the shareholder would be deprived of assets due him or her. The Exchange proposes to make this requirement explicit by inserting it into Section 507 of the Company Guide.

I. Listing Agreement

In its present form, the Exchange's listing agreement specifies a number of obligations that a listed company is subject to by virtue of listing its securities on the Amex. Most of these obligations also are contained in various sections of the Company Guide. In order to eliminate redundancies and avoid confusion, the Exchange proposes to move to the Company Guide those provisions that currently are contained in the listing agreement, but are not contained in the Company Guide. In addition, the Exchange proposes to amend its listing agreement to simply state that the issuer agrees to comply with all of the Exchange's rules, policies, and procedures that apply to listed companies.

J. Interim Reports

The Exchange proposes to amend Section 623 of the Company Guide to advise companies that when they choose to mail interim reports to shareholders, they should send the reports to both the record holders and the beneficial owners. The Exchange believes this change strikes an appropriate balance between the benefit of mailing these reports to both the record holders and the beneficial owners against the high cost of

[5] The Exchange also notes that such a change would be consistent with Section 104 of the Company Guide because this section permits the listing of convertible bonds and debentures so long as the underlying issue into which the bond or debenture is convertible is subject to last sale reporting. See Securities Exchange Act Release No. 22714 (Dec. 20, 1985), 50 FR 51958.

[6] Under certain circumstances, this section requires warrants to be split in the same proportion as the underlying common stock.

[7] Section 902 contains guidelines that are applicable to redeemable (callable) issues.

[8] The Exchange requires every listed company to establish and maintain an audit committee that, at the very least, is composed of a majority of independent directors. Amex Company Guide section 121.

[9] Securities Exchange Act Release No. 20767 (Mar. 20, 1984), 49 FR 11275 (approving File No. SR–NYSE–83–11).

[10] See American Bar Association, *Third-Party Legal Opinion Report, Including the Legal Opinion Accord, of the Section of Business Law,* 47 Bus. Law. 167 (Nov. 1991).

[11] The Exchange defines a ''backdoor'' listing as any plan of acquisition, merger, or consolidation, the net effect of which is that a listed company is acquired by an unlisted company even though the listed company is the nominal survivor. Amex Company Guide section 341.

[12] Similarly, the fact that an issuer meets the numerical guidelines does not necessarily mean that its application will be approved.

mandating such action. In support of this rule change, the Exchange notes that the NYSE previously made a similar change to its rules.[13]

K. Legending Requirements

Currently, Section 980 of the Company Guide requires that listed securities issued in reliance upon an exemption from the registration requirements of Section 5 of the Securities Act of 1933[14] bear a legend specifying that sale or transfer restrictions apply to such securities. The Exchange proposes to delete this requirement. The Exchange states issuers have complained that the Exchange requirement may be unnecessary and, in some instances, more restrictive than the applicable laws. In addition, the Amex notes that the NYSE does not impose an independent legending requirement on its listed companies.

L. Delisting Standards

Because more brokerage firms are holding securities for their customers in ''street name,'' and fewer customers are demanding physical delivery of their securities,[15] the proportion of beneficial holders to record holders has increased dramatically in recent years. Accordingly, companies are less likely to meet the Exchange's maintenance standards concerning the total number of round lot shareholders of record. As a result, certain companies that have well over 300 round lot beneficial shareholders could be subject to delisting proceedings.[16] In order to address this situation, the Exchange proposes to amend Section 1003 of the Company Guide to refer to ''public shareholders''[17] instead of ''shareholders of record.''

III. Discussion

The Commission has reviewed the Amex's proposed rule changes carefully and concludes that these proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the amendments contained in this proposal are consistent with the Section 6(b)(5)[18] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public; and are not designed to permit unfair discrimination between issuers.

The Commission supports the Amex's efforts to continue to review the form and substance of its listed company regulations in response to changes in market structure and eliminate requirements that no longer serve a meaningful regulatory purpose. In this regard, the changes to the listing process, such as eliminating the requirement for a Board resolution authorizing the submission of a listing application, should make the listing process easier for issuers without raising any regulatory concerns. The Commission also believes the proposed rule changes should be helpful in updating the Amex's listed company rules, should facilitate transactions in securities, should clarify certain obligations contained in the rules and, in general, further the purposes of the Act. Finally, although the Commission has certain concerns regarding the amendments to backdoor listings, delisting standards, and convertible preferred stock, for the reasons discussed below, we believe these provisions should be approved.

First, according to the Amex, the changes to the backdoor listing standards will provide the Exchange with the same flexibility it currently has in evaluating original listing applications. Although the Commission is approving the Exchange's more liberal language concerning backdoor listings, we believe that, as a general matter, listed companies should meet the Exchange's numerical and other listing guidelines. To the extent certain flexibility in applying listing standards may occasionally be needed, the Commission expects the Exchange to exercise its discretion conservatively when granting an exception to these standards. Moreover, when the Exchange chooses to make an exception to its stated listing standards, the Commission expects the Exchange to have procedures in place that adequately document and provide sufficient analysis as to why it is making such an exception and which factors it considered pertinent.

Second, the proposed amendment to the Exchange's delisting standards concerning the total number of round lot shareholders is a reasonable response to changing market conditions. In approving this amendment, however, the Commission understands the Exchange will have certain procedures in place to verify the total number of round lot beneficial holders. In this regard, the Exchange has represented to the Commission that if Item 5 of a listed company's Form 10K reflects that there are less than 300 record holders, the Corporate Relations Manager assigned to this company will ask the company to provide confirmation of the number of beneficial holders.[19] The Commission believes these procedures will help ensure that listed companies continue to meet the minimum shareholder requirements for continued listing.

Finally, in approving the changes to Section 103 that would permit the listing of convertible preferred stock where the underlying security is subject to real-time last sale reporting, the Commission expects the Amex, where appropriate, to ensure that the underlying security is generally consistent with the Exchange's common stock listing guidelines. This would be particularly expected in cases where the convertible preferred could act as a surrogate for trading in the underlying common stock (*i.e.*, the preferred stock is structured in a way to trade as a surrogate for the common stock and represents a substantial portion of the outstanding underlying common stock).

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[20] that the amended proposed rule change (SR–Amex–95–28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–29784 Filed 12–6–95; 8:45 am]

BILLING CODE 8010–01–M

[13] Securities Exchange Act Release No. 35373 (Feb. 14, 1995), 60 FR 9709 (approving File No. SR–NYSE–94–42).

[14] 15 U.S.C. 77e.

[15] This change in practice is in accordance with recommendations for increased safety and soundness in the securities industry made by the Bachmann Task Force. *See* Bachmann Task Force, Report of the Bachmann Task Force on Clearance and Settlement Reform in the U.S. Securities Markets 24–26 (May 1992) (recommending the reduction in use of physical certificates).

[16] Section 1003 of the Company Guide provides, in pertinent part, that the Exchange normally will consider delisting a security ''if the total number of round lot shareholders of record is less than 300 * * *.'' (Emphasis added).

[17] This term would include both shareholders of record and beneficial holders, but exclude officers, directors, controlling shareholders, and other concentrated (*i.e.*, 5% or greater), affiliated, or family holdings. In addition, the Exchange proposes to make conforming changes to sections 102, 103, 105, 106, 107, 110, and 118.

[18] 15 U.S.C. 78f(b)(5).

[19] See Letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy, Amex, to Glen Barrentine, Senior Counsel, SEC (Oct. 18, 1995).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: 49 U.S.C. 5334(g), [formerly called Section 12(k) of The Federal Transit Act], permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the city of Philadelphia intends to transfer vacant parcels of land located in the block bounded by 8th, 9th, Callowhill and Vine Streets, in Philadelphia, Pennsylvania.

EFFECTIVE DATE: Any Federal agency interested in acquiring the land or facility must notify the FTA Philadelphia Regional Office of its interest, by January 8, 1996.

ADDRESSES: Interested parties should notify the Regional Office by writing to Mr. Sheldon A. Kinbar, Regional Administrator, Federal Transit Administration, 1760 Market Street, Room 500, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Margaret Tornello, Transportation Program Specialist, Region 3, at 215/656–6900 or Ann Catlin, Real Estate Specialist, Office of Program Management at 202/366–1647.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. 5334(g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

49 U.S.C. 5334(g) Determinations

(A) the asset will remain in public use for not less than 5 years after the date of the transfer the asset is transferred;

(B) there is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) the overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) through an appropriate screening or survey process, that there is interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. Section 5334(g) [formerly referenced as Section 12(k) of the Federal Transit Act, now codified]. Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in 49 U.S.C. Section 5334(g)(1)(A) through (1)(D) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

Vacant parcels of land in the block bounded by 8th, 9th, Callowhill and Vine Streets, Philadelphia, Pennsylvania. This land is located over the Center City Commuter Tunnel with certain construction restrictions.

Issued on: December 4, 1995.

Sheldon A. Kinbar,

Regional Administrator.

[FR Doc. 95–29872 Filed 12–06–95; 8:45 am]

BILLING CODE 4910–57–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Request for Recommendations

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice.

SUMMARY: Request for recommendations for potential projects to mitigate the impacts on fish, wildlife and recreation resources from the construction and operation of Federal reclamation projects in Utah. Selected projects will be incorporated into the Utah Reclamation Mitigation and Conservation Commission five-year plan.

DATES: Recommendations will be accepted no later than 5:00 p.m. on Tuesday, January 2, 1996.

ADDRESSES: One original and two copies of each recommendation should be submitted to: Planning Manager, Utah Reclamation Mitigation and Conservation Commission, 111 East Broadway, Suite 310, Salt Lake City, Utah 84111–5225.

FOR FURTHER INFORMATION CONTACT: Joan Degiorgio, Telephone (801) 524–3146; Facsimile (801) 524–3148.

SUPPLEMENTARY INFORMATION: The Utah Reclamation Mitigation and Conservation Commission was established to coordinate the implementation of mitigation and conservation provisions of Titles II, III and IV of the Central Utah Project Completion Act. Section 301(g) of the Act requires the Commission to develop and adopt a plan that will identify projects to be implemented over a five year period that will mitigate and conserve fish, wildlife, and recreation resources. A Planning Rule was adopted by the Commission on August 21, 1995, and published in the Federal Register on September 25, 1995. The Planning Rule outlines the planning process and identifies decision factors to be used by the Commission to evaluate and select proposals. On October 3, 1995, notice was sent to Federal and State fish, wildlife, recreation, and water management agencies, Indian tribes, county and municipal entities and interested publics within Utah requesting recommendations to implement the mitigation and conservation measures authorized in the Act.

Authority: Pub. L. 102–575, 106 Stat. 4600, 4625, October 30, 1992.

Michael C. Weland,

Executive Director.

[FR Doc. 95–29855 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–05–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 235
Thursday, December 7, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BROADCASTING BOARD OF GOVERNORS

DATE AND TIME: December 13, 1995; 9:00 a.m.

PLACE: Cohen Building, 330 Independence Avenue, S.W., Room 3360, Washington, D.C. 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to address internal procedural issues, as well as sensitive foreign policy and personnel issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c) (1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C) 552b. (c)(9) (B)). In addition, part of the discussion will relate solely to the internal personnel rules and practices, and personnel, of the BBG, the International Broadcasting Bureau, and USIA. (5 U.S.C. 552b. (c) (2) and (6).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Barbara Floyd at (202) 401–3736.

Dated: December 5, 1995.

David W Burke.

Chairman.

[FR Doc. 95–29980 Filed 12-5–95; 1:35 pm]

BILLING CODE 6155–01–M

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, December 15, 1995, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of October 6, 1995 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Reports
- ''Race Relations and Equal Education Opportunities at Proviso West High School'' (Illinois)
- ''Civil Rights Issues in Maine: A Briefing Summary of Hate Crimes, Racial Tensions, and Migrant/Immigrant Workers'' (Maine)
- ''Discipline in Michigan Public Schools and Government Enforcement of Equal Education Opportunity'' (Michigan)
- ''Equality Issues in South Dakota Women's Employment'' (South Dakota)
- ''Racial and Ethnic Tensions in Florida'' (Florida)

VI. State Advisory Committee Appointments for Montana, Oregon, and Utah
VII. Discussion of Commission Subpoena Power
VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376–8312.

Dated: December 5, 1995.

Miguel A. Sapp,

Parliamentarian.

[FR Doc. 95–29998 Filed 12–5–95; 3:23 pm]

BILLING CODE 6335–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 7, 1995.

PLACE: 1155 21st St., NW., Washington, DC Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Proposed rules on minimum financial requirements, prepayment of subordinate debt and gross collection of Exchange-set martin for omnibus accounts.

Final and proposed amendments to Commission Rule 3.34 concerning ethics training.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–29951 Filed 12–5–95; 1:35 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND PLACE: 10 a.m., Thursday, December 21, 1995.

PLACE: 1155 21st St., NW., Washington, DC 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A Webb,

Secretary of the Commission.

[FR Doc. 95–29952 Filed 12–5–95; 1:35 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 29, 1995.

PLACE: 1155 21st St., NW., Washington, DC 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–29953 Filed 12–5–95; 1:35 pm]

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 22, 1995.

PLACE: 1155 21st St., NW., Washington, DC 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A Webb,

Secretary of the Commission.

[FR Doc. 95–29954 Filed 12–5–95; 1:35 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, December 15, 1995.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–29955 Filed 12–5–95; 1:35 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 8, 1995.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–29956 Filed 12–5–95; 1:35 pm]

BILLING CODE 6351–01–M

Corrections

Federal Register
Vol. 60, No. 235
Thursday, December 7, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 93-133, FCC 95-447]

Maritime Communications

Correction

In rule document 95–28826 beginning on page 58243, in the issue of Monday, November 27, 1995, make the following correction:

§80.1065 [Corrected]

On page 58245, in the second column, in §80.1065 (b)(5)(iii), in the second line, ''§8.933.'' should read ''§80.933.''.

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

[Docket No. FR-3960-N-01]

Notice of Request for Cooperative Agreement Applications for the Community Renaissance Fellows Program

Correction

In notice document 95–29228 beginning on page 61634 in the issue of Thursday, November 30, 1995, make the following correction:

On page 61634, in the second column, under **FOR FURTHER INFORMATION CONTACT**, the last line should read ''Jane__R.__Karadbil@hud.gov''.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Herman E. Walker, Jr., M.D.; Revocation of Registration

Correction

In notice document 95–24949, beginning on page 52705, in the issue of Tuesday, October 10, 1995, make the following correction:

On page 52707, in the second column, the second paragraph, the last line, ''832'' should read ''823.''

BILLING CODE 1505–01–D

federal register

Thursday
December 7, 1995

Part II

Environmental Protection Agency

40 CFR Parts 9 and 63

Final Standards for Hazardous Air Pollutant Emissions From Wood Furniture Manufacturing Operations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9 and 63

[AD–FRL–5336–2]

National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions From Wood Furniture Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and test method.

SUMMARY: This final rule promulgates standards that limit the emissions of hazardous air pollutants (HAP) from existing and new wood furniture manufacturing operations located at major sources. These final standards implement Section 112(d) of the Clean Air Act (CAA), as amended, which require the Administrator to regulate emissions of HAP listed in Section 112(b) of the CAA. The intent of the standards is to protect the public by requiring new and existing major sources to control emissions to the level attainable by implementing the maximum achievable control technology (MACT), taking into consideration the cost of achieving such emission reductions, any nonair quality and other air quality-related health and environmental impacts, and energy requirements.

Many wood furniture manufacturing facilities are major sources of HAP emissions. Individual facilities can emit more than 23 megagrams per year (Mg/yr) (25 tons per year [tons/yr]) of organic HAP, including toluene, xylene, methanol, methyl ethyl ketone, methyl isobutyl ketone, glycol ethers, and formaldehyde. All of these pollutants can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include eye, nose, throat, and skin irritation and blood cell, heart, liver, and kidney damage, as well as reproductive effects. These adverse health effects are associated with a wide range of ambient concentrations and exposure times and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on multiple factors that affect human variability such as genetics, age, health status, (e.g., the presence of pre-existing disease), and lifestyle.

The EPA is also finalizing Method 311 with the standards. Method 311 will be used to assist in demonstrating compliance with the emission limitations.

DATES: This regulation is effective December 7, 1995.

Judicial Review. Under Section 307(b)(1) of the CAA, judicial review of national emission standards for hazardous air pollutants (NESHAP) is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under Section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES:

Docket: Docket No. A–93–10, containing information considered by the EPA in developing the promulgated NESHAP for wood furniture manufacturing operations, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the EPA Air and Radiation Docket and Information Center, Room M1500, U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

Background Information Document: A background information document (BID) for the promulgated NESHAP may be obtained from the docket; the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777; or from National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. Please refer to ''National Emission Standards for Hazardous Air Pollutants for Wood Furniture Manufacturing Operations-Background Information for Final Standards'' (EPA–453/R–95–018B). The BID contains a summary of changes made to the standards since proposal, public comments made on the proposed wood furniture manufacturing standard, and the EPA responses to the comments.

Electronic versions of the promulgation BID as well as this final rule are available for download from the EPA Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to a 14,400 bits per second. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Almodovar of the Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–0283.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. The Standards
II. Summary of Impacts
III. Significant Changes to the Proposed Standards
  A. Public Participation
  B. Comments on the Proposed Standards
  C. Significant Changes
  D. Other Issues
IV. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866
  D. Regulatory Flexibility Act
  E. Unfunded Mandates Act

I. The Standards

The affected source for the promulgated standards is each facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant site that is a major source. The promulgated standards include emission limits on the finishing materials and contact adhesives used by the wood furniture industry and work practice standards to reduce emissions from all sources of HAP emissions. To allow owners and operators flexibility in meeting the emission limits, the promulgated standards include multiple options for complying with the limits. A summary of the emission limits and compliance options is presented in Table 1. A summary of the work practice standards is presented in Table 2.

The promulgated standards include methods for affected sources to demonstrate both initial and continuous compliance with both the emission limits and work practice standards. The majority of affected sources will demonstrate compliance through recordkeeping. Affected sources that use a control device to meet the emission limits must monitor the performance of the control device.

TABLE 1.—SUMMARY OF EMISSION LIMITS

Emission point	Existing source	New source
Finishing operations:		
(a) Achieve a weighted average VHAP content across all coatings (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied);	[a] 1.0	[a] 0.8
(b) Use compliant finishing materials (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied);		
—Stains	[a] 1.0	[a] 1.0
—washcoats	[a b] 1.0	[a b] 0.8
—sealers	[a] 1.0	[a] 0.8
—topcoats	[a] 1.0	[a] 0.8
—basecoats	[a b] 1.0	[a b] 0.8
—enamels	[a b] 1.0	[a b] 0.8
—thinners (maximum % HAP allowable); or	10.0	10.0
(c) As an alternative, use control device; or	[c] 1.0	[c] 0.8
(d) Use any combination of (a), (b), and (c)	1.0	0.8
Cleaning operations:		
Strippable spray booth material (maximum VOC content, kg VOC/kg solids [lb VOC/lb solids])	0.8	0.8
Contact adhesives:		
(a) Use compliant contact adhesives (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied) based on following criteria:		
i. For aerosol adhesives, and for contact adhesives applied to nonporous substrates	[d] NA	[d] NA
ii. For foam adhesives used in products that meet flammability requirements	1.8	0.2
iii. For all other contact adhesives (including foam adhesives used in products that do not meet flammability requirements); or	1.0	0.2
(b) Use a control device	[e] 1.0	[e] 0.2

[a] The limits refer to the VHAP content of the coating, as applied.
[b] Washcoats, basecoats, and enamels must comply with the limits presented in this table if they are purchased premade, that is, if they are not formulated onsite by thinning other finishing materials. If they are formulated onsite, they must be formulated using compliant finishing materials, i.e., those that meet the limits specified in this table, and thinners containing no more than 3.0 percent HAP by weight.
[c] The control device must operate at an efficiency that is equivalent to no greater than 1.0 kilogram (or 0.8 kilogram) of VHAP being emitted from the affected emission source per kilogram of solids used.
[d] There is no limit on the VHAP content of these adhesives.
[e] The control device must operate at an efficiency that is equivalent to no greater than 1.0 kilogram (or 0.2 kilogram) of VHAP being emitted from the affected emission source per kilogram of solids used.

TABLE 2.—SUMMARY OF WORK PRACTICE STANDARDS[a]

Emission source	Work practice
Finishing Operations	
Transfer equipment leaks	Develop written inspection and maintenance plan to address and prevent leaks. The plan must identify a minimum inspection frequency of 1/month.
Storage containers, including mixing equipment.	When such containers are used for HAP or HAP-containing materials, keep covered when not in use.
Application equipment	Discontinue use of air spray guns.[b]
Finishing materials	Demonstrate that usage of HAP of potential concern have not increased except as allowed by proposed standards; document in the formulation assessment plan.
Cleaning Operations	
Gun/line cleaning	—Collect cleaning solvent into a closed container. —Cover all containers associated with cleaning when not in use.
Spray booth cleaning	Do not use solvents except as allowed by the rule.
Washoff/general cleaning	—Do not use chemicals that are listed in Table 4 of the rule in concentrations subject to MSDS reporting, as required by OSHA. —Keep washoff tank covered when not in use. —Minimize dripping by tilting and/or rotating part to drain as much solvent as possible and allowing sufficient dry time. —Maintain a log of the quantity and type of solvent used for washoff and cleaning, as well as the quantity of waste solvent shipped offsite, and the fate of this waste (recycling or disposal). —Maintain a log of the number of pieces washed off, and the reason for the wash off.
Miscellaneous	
Operator training	All operators shall be trained on proper application, cleanup, and equipment use. The training program shall be written and retained onsite.
Implementation plan	Develop a plan to implement these work practice standards and maintain onsite.

[a] The work practice standards apply to both existing and new major sources.
[b] Air guns will be allowed only in the following instances:
—when they are used in conjunction with coatings that emit less than 1.0 kg VOC per kg of solids used;

—touchup and repair under limited conditions;
—when spray is automated;
—when add-on controls are employed;
—if the cumulative application is less than 5 percent of the total gallons of coating applied; or
—if the permitting agency determines that it is economically or technically infeasible to use other application technologies.

Existing affected sources that emit less than 50 tons of HAP in 1996 must comply with the promulgated standards by December 7, 1998. Existing affected sources that emit 50 tons or more of HAP in 1996 must comply with the promulgated standards by November 21, 1997. Existing area sources that become major sources are required to comply within one year after becoming a major source.

New affected sources must comply with the promulgated standards by December 7, 1995 or upon startup, whichever is later. New area sources that become major sources are required to comply with the promulgated standards immediately upon becoming a major source.

II. Summary of Impacts

These standards will reduce nationwide emissions of HAP from wood furniture manufacturing operations by approximately 29,759 Mg/yr (32,795 tons/yr). While the emission limits do not require the use of lower-VOC materials, the work practice standards should reduce the use of VOC containing materials and, therefore, VOC emissions. No significant adverse secondary air, water, solid waste, or energy impacts are anticipated from the promulgation of these standards.

The implementation of this regulation is expected to result in nationwide annualized costs for existing wood furniture manufacturing operations of $15.3 million with a cost effectiveness of $513/Mg ($466/ton). Industry-wide capital costs resulting from the promulgated standards is expected to be approximately $7.0 million.

III. Significant Changes to the Proposed Standards

A. Public Participation

The standards were proposed in the Federal Register on December 6, 1994 (59 FR 62652). The preamble to the proposed standards discussed the availability of the regulatory text. Public comments were solicited at the time of proposal, and copies of the regulatory text were distributed to interested parties. Electronic versions of the proposed preamble and regulation were made available to interested parties via the TTN (see **ADDRESSES** section of this preamble).

The preamble to the proposed standards provided the public the opportunity to request a public hearing. However, a public hearing was not requested. The public comment period for the proposed standards was originally December 6, 1994 to February 21, 1995. Upon request from interested parties the comment period on the proposed standards was extended to March 21, 1995, and the comment period on Method 311 was extended to April 21, 1995. In all, 50 comment letters were received. The comments have been carefully considered, and changes have been made to the proposed standards when determined by the Administrator to be appropriate.

B. Comments on the Proposed Standards

Comments on the proposed standards were received from 50 commenters, composed mainly of States, trade organizations, coating manufacturers, and wood furniture manufacturers. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions that have been made to the standards between proposal and promulgation. Most of the comment letters contained multiple comments. The comments have been divided into the following areas:

1. Applicability;
2. Definitions;
3. Selection of MACT;
4. Emission limits;
5. Work practice requirements;
6. Reporting and recordkeeping requirements;
7. Monitoring requirements;
8. Format of the standard;
9. Compliance provisions and dates;
10. Test Methods; and
11. Miscellaneous.

C. Significant Changes

Several changes have been made since the proposal of these standards. Some of the changes are substantive, while many changes were made to clarify portions of the rule that were unclear to the commenters. A summary of the major changes is presented below.

1. Addition of Category for Incidental Furniture Manufacturers

The EPA received several comments from facilities that manufacture small quantities of furniture at their facility, primarily for onsite use. For example, a large laboratory facility may have a small shop onsite for manufacturing specialized pieces of laboratory furniture. Many army and navy bases have small woodworking shops onsite. The cutoff for finishing material usage included in the proposed standards did not exclude these sources from the standards, because they are major sources due to emissions from other operations. The majority of these commenters indicated that they were concerned about all of the work practice standards and the recordkeeping and reporting requirements associated with the proposed standards. They indicated that the environmental benefit of regulating their facilities under this subpart would be minimal.

The promulgated standards include a category of manufacturers known as incidental furniture manufacturers. An incidental furniture manufacturer is defined in the promulgated standards as ''a major source that is primarily engaged in the manufacture of products other than wood furniture or wood furniture components and that uses no more than 100 gallons per month of finishing material or adhesives in the manufacture of wood furniture or wood furniture components.'' Because the promulgated standard regulates the amount of coating these facilities can use and still be considered incidental furniture manufacturers, emissions from wood furniture manufacturing operations at these facilities will be minimal. The EPA agrees with the commenters that the environmental benefit associated with regulating these facilities would be minimal. Therefore, in the promulgated standards, these facilities are exempted from the standard. However, these facilities will have to maintain records of coating and adhesive usage to demonstrate they are incidental wood furniture manufacturers.

2. Additional Mechanism for Exempting Smaller Sources From the Standards

The proposed standards established applicability cutoffs based on total material usage. Sources using no more than 250 gallons per month, or 3,000 gallons per rolling 12-month period, of finishing materials, adhesives, cleaning solvents, and washoff solvents, including materials used for operations other than wood furniture manufacturing, were automatically exempted from the regulation as long as

they maintained records demonstrating they were below the cutoffs.

In the final rule, these provisions are modified to ensure that they can serve the purpose of exempting a facility from the standard by limiting its potential to emit HAP to area source levels. A facility that otherwise would be a major source can, at the option of the owner or operator, become an area source exempt from other provisions of the rule by meeting the usage limits and associated criteria. The usage limits ensure that the facility's potential and actual emissions of HAP are below the major source thresholds of 10 tons of a single HAP or 25 tons of a combination of HAP. (The EPA expects that the usage limits will keep actual emissions from most facilities substantially below the major thresholds.)

To qualify as an area source under these provisions, at least 90 percent of annual HAP emissions from the plant site must come from finishing materials, adhesives, cleaning solvents, and washoff solvents. If the plant site has sources of HAP emissions other than these materials, the owner or operator must keep any records necessary to demonstrate that the facility meets the 90 percent criterion.

A facility may exceed the users limits and still remain an area source exempt from the standard if, before exceeding the limit, the facility obtains other limits that keep its potential to emit HAP below the major threshold. Otherwise, a facility that exceeds the usage limits becomes a major source and thereafter must comply with the standard starting with the applicable compliance date in the rule. These provisions prevent facilities from vacillating between area-source and major-source status while evading major source requirements. Also, these provisions make it possible from a legal standpoint to consider the usage cutoff levels as limiting a source's potential to emit HAP.

The EPA also requested comment on other mechanisms that could be used to exempt smaller sources from the regulation. Unless such a mechanism is provided in the standards or by State and local permitting authorities, many of these smaller facilities will have to enter the Title V permitting process in order to obtain a Federally enforceable limitation on their potential to emit. This would impose a substantial burden on many smaller facilities and on the State and local permitting agencies.

In response to the EPA request for comment, several commenters indicated that a reasonable mechanism to exempt these sources would be to establish an applicability cutoff based on total emissions of HAP materials, instead of material usage in gallons. The EPA has included such a mechanism in the promulgated standards, again structured as an optional way for facilities to limit their potential to emit. Facilities that otherwise would be major sources are considered area sources if they meet the limits and criteria in the rule. To qualify, a facility must use materials containing no more than 4.5 Mg (5 tons) of any one HAP per rolling 12-month period or no more than 11.4 Mg (12.5 tons) of any combination of HAP per rolling 12-month period, including materials from source categories other than wood furniture. Also, at least 90 percent of their plantwide emissions per rolling 12-month period need to be associated with the manufacture of wood furniture or wood furniture components. These sources need to maintain records that demonstrate that annual emissions do not exceed these levels, including monthly usage records for all finishing, gluing, cleaning, and washoff materials; certified product data sheets for these materials; and any other records necessary to document emissions from source categories other than wood furniture.

3. Inclusion of Custom Cabinet Manufacturers Operating Under Standard Industrial Classification (SIC) Code 5712

Under the proposed standards, sources under any of nine SIC codes were considered wood furniture manufacturers. The SIC codes included 2434, which includes manufacturers of kitchen cabinets. However, one commenter pointed out that manufacturers of custom kitchen cabinets are included in SIC Code 5712. The commenter felt that the operations at these sources were not significantly different than those operating under SIC Code 2434 and that these sources should also be subject to the standards. The EPA agrees with the commenter, and the promulgated standards include custom kitchen cabinet manufacturers operating under SIC Code 5712.

4. Inclusion of Definitions for Wood Furniture and Wood Furniture Component

Two commenters requested that the EPA include definitions for ''wood furniture'' and ''wood furniture component'' in the rule. The EPA agrees that these definitions will help clarify which sources are subject to the rule and has included these definitions in the final rule.

5. Change in Title of the Formulation Assessment Plan

Because the formulation assessment plan only applies to VHAP of potential concern that are present in finishing materials, one commenter suggested that the title be changed to formulation assessment plan for finishing operations. The EPA agrees that this clarifies the scope of the formulation assessment plan and in the final rule the title is changed to Formulation Assessment plan for Finishing Operations.

6. Timeframe for Submitting Initial Notification

Several commenters requested that the date for submission of the initial notification be extended. One commenter requested that the date for submittal of the initial notification be extended to 270 days and two commenters requested that the date be extended to 180 days. The EPA agrees with the commenters and has extended the date for submittal of the initial notification to 270 days after the effective date of the final rule.

7. Compliance Options

The proposed rule allowed facilities to use one of four methods to demonstrate compliance with the standard: compliant coatings, averaging, an add-on control device, or a combination of compliant coatings and an add-on control device. The proposed rule did not allow facilities to use a combination of an add-on control device and averaging. One commenter pointed out that this should also be a compliance option. In some facilities, emissions from only one or two finishing lines will be directed to the control device. The emission reductions from these lines will typically be much greater than the reductions required for a facility using compliant coatings. These facilities would like to be allowed to average these ''overcontrolled'' finishing lines with uncontrolled lines. The EPA believes this is consistent with the regulatory negotiation agreement and with the CAA, both of which state that a facility should be able to use any compliance method that they can demonstrate achieves an equivalent level of reductions. Therefore, the EPA has included this compliance option in the final rule.

8. Guidelines for Determining Capture Efficiency

Since the wood furniture NESHAP was proposed, the EPA has released additional guidance on determining capture efficiency. This guidance allows facilities to use any method of

determining the capture efficiency of a control system as long as the data generated from the method meets one of two sets of criteria. These criteria are known as the data quality objective (DQO) approach and the lower confidence limit (LCL) approach. As one commenter requested, this new guidance has been included in the final rule.

9. Clarification of Compliance Dates

Under the proposed rule, the compliance date for sources emitting less than 50 tons of HAP per year is three years after the effective date of the rule. For sources emitting more than 50 tons of HAP per year, the compliance date is November 21, 1997. As one commenter pointed out, however, the proposed rule did not include guidance as to which year's emissions should be used to determine the compliance date for a facility. In the final rule, 1996 is identified as the baseline year for determining a facility's compliance date. If a facility's emissions in 1996 are less than 50 tons of HAP then the compliance date for that facility is December 7, 1998. If the facility's emissions are 50 tons of HAP or more in 1996 then the compliance date for the facility is November 21, 1997.

10. Clarification of Definitions and Emission Limits for Adhesives

Several commenters requested clarification of some of the definitions related to adhesives and also clarification as to which adhesives are subject to the emission limits. One commenter indicated they did not believe adhesives should be considered coatings. The EPA agrees and has changed the definition of coating so that it no longer includes adhesives. The definition of adhesive was also changed to clarify that adhesives should not be considered coatings or finishing materials under this subpart.

Several commenters also indicated that the rule should more accurately reflect that contact adhesives are the only types of adhesives that are subject to an emission limit under this subpart. Several changes have been made in the definitions, § 63.801, and in the summary of emission limits, § 63.802, that should clarify this issue.

D. Other Issues

During the EPA work group review of the final rule, two of the EPA offices represented on the work group indicated they had issues that they believed needed to be addressed in the preamble. Both EPA offices recognized that this rule was developed under a regulatory negotiation approach, and they both indicated that they did not want these issues to impact negatively on the consensus achieved during the regulatory negotiation. These issues are addressed in the following paragraphs.

The EPA Office of Research and Development (ORD) expressed concern about the differential use of toxicity information in the regulation. In particular, the ORD was concerned about the prohibition of Class A and B_1/B_2 carcinogens in cleaning and washoff solvents. The ORD was concerned that this prohibition implies that these pollutants are ''worse'' than other HAP, which may cause serious chronic health effects and/or life-threatening acute effects. Concern was also expressed that the regulation draws a line between pollutants with ''B'' and ''C'' designations, when the scientific evidence may not support such a clear distinction. Because this regulation was developed through a negotiation process, ORD agreed to include this provision in the final regulation. However, it is important to emphasize that the decision to include such a provision in this specific rulemaking does not represent a generic policy decision on the use of weight-of-evidence designations.

The second issue, which was raised by the Office of Pollution Prevention and Toxics (OPPT), was also addressed in the preamble to the proposed rule. The preamble to the proposed rule stressed that urea-formaldehyde resins, which are used extensively in gluing operations in the wood furniture and are a source of formaldehyde emissions, are not subject to an emission limit under this regulation. During the development of the regulation, the EPA, working closely with urea-formaldehyde resin manufacturers and the wood furniture industry, decided that it would be more appropriate to regulate emissions from these adhesives under the NESHAP for plywood and particleboard manufacturing. The OPPT has agreed with this approach, but they indicated that the preamble to the final rule should reiterate the EPA intention to regulate these adhesives under a future rulemaking. Therefore, while the EPA is not regulating emissions from urea-formaldehyde resins at wood furniture manufacturing facilities under this rulemaking, emissions from these resins will be regulated under the NESHAP for plywood and particleboard manufacturing.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rule. The docket is a dynamic file; material is added throughout the rulemaking process. The docketing system is intended to allow members of the public to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of the basis and purpose of the proposed and promulgated standards and the EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [Section 307(d)(7)(A)].

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0324.

The information required to be collected by this rule is necessary to identify the regulated entities who are subject to the rule and to ensure their compliance with the rule. The recordkeeping and reporting requirements are mandatory and are being established under authority of Section 114 of the CAA. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies set forth in Title 40, Part 2, subpart B—Confidentiality of Business Information.

The total annual reporting and recordkeeping burden for this collection averaged over the first three years is estimated to be 140,603 hours per year. The average burden, per respondent, is 187 hours per year. The rule requires an initial one-time notification from each respondent and subsequent reports/notification would have to be submitted semiannually. There would be an estimated 750 respondents to the collection requirements. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments on the EPA need for this information, the accuracy of the

provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St. SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW; Washington, DC 20503; marked ''Attention: Desk Officer for EPA.'' Include the OMB control number in any correspondence.

C. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the EPA is required to judge whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, OMB has notified the EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of proposed regulations on small business ''entities.'' If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be performed. The EPA analysis of these impacts was presented in the preamble to the proposed rule (59 FR 62652), and a copy of the Economic Impact Regulatory Flexibility Analysis is included in the docket. The final rule includes no changes that will be deleterious to small businesses.

E. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the EPA generally must prepare a written statement including a cost-benefit analysis for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is required, Section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Parts 9 and 63

Environmental Protection, Air Pollution Control, Hazardous Substances, Wood Furniture Manufacturing, Reporting and Recordkeeping Requirements.

Dated: November 14, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, of the Code of Federal Regulations is amended as set forth below:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 135–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j; 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21234, 3 CFR, 1971–1975, Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–G992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding in numerical order a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
National Emission Standards for Hazardous Air Pollutants for Source Categories:	
63–806–63–807	2060–0324

* * * * *

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Part 63 is amended by adding subpart JJ to read as follows:

Subpart JJ—National Emission Standards for Wood Furniture Manufacturing Operations

Sec.

63.800 Applicability.
63.801 Definitions.
63.802 Emission limits.
63.803 Work practice standards.
63.804 Compliance procedures and monitoring requirements.
63.805 Performance test methods.
63.806 Recordkeeping requirements.
63.807 Reporting requirements.
63.808 Delegation of authority.
63.809–63.819 [Reserved].

Tables to Subpart JJ

Subpart JJ—National Emission Standards for Wood Furniture Manufacturing Operations

§ 63.800 Applicability.

(a) The affected source to which this subpart applies is each facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant site that is a major source as defined in 40 CFR part 63.2. The owner or operator of a source that meets the criteria for an incidental furniture manufacturer shall maintain purchase or usage records demonstrating the source meets the criteria specified in § 63.801 of this subpart, but the source shall not be subject to any other provisions of this subpart.

(b) A source that complies with the limits and criteria specified in paragraphs (b)(1), (b)(2), or (b)(3) of this section is an area source for the purposes of this subpart and is not subject to any other provision of this rule, provided that: In the case of parargraphs (b)(1) and (b)(2), finishing materials, adhesives, cleaning solvents and washoff solvents account for at least 90 percent of annual HAP emissions at the plant site, and if the plant site has HAP emissions that do not originate from the listed materials, the owner or operator keeps any records necessary to demonstrate that the 90 percent criterion is met. A source that initially relies on the limits and criteria specified in paragraphs (b)(1), (b)(2), and (b)(3) to become an area source, but subsequently exceeds the relevant limit (without first obtaining and complying with other limits that keep its potential to emit hazardous air pollutants below major source levels), becomes a major source and must comply thereafter with all applicable provisions of this subpart starting on the applicable compliance date in § 63.800. Nothing in this paragraph (b) is intended to preclude a source from limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

(1) The owner or operator of the source uses no more than 250 gallons per month, for every month, of coating, gluing, cleaning, and washoff materials at the source, including materials used for source categories other than wood furniture (surface coating), but excluding materials used in routine janitorial or facility grounds maintenance, personal uses by employees or other persons, the use of products for the purpose of maintaining motor vehicles operated by the facility, or the use of toxic chemicals contained in intake water (used for processing or noncontact cooling) or intake air (used either as compressed air or for combustion). The owner or operator shall maintain records of the total gallons of coating, gluing, cleaning, and washoff materials used each month, and upon request submit such records to the Administrator. These records shall be maintained for five years.

(2) The owner or operator of the source uses no more than 3,000 gallons per rolling 12-month period, for every 12-month period, of coating, gluing, cleaning, and washoff materials at the source, including materials used for source categories other than wood furniture (surface coating), but excluding materials used in routine janitorial or facility grounds maintenance, personal uses by employees or other persons, the use of products for the purpose of maintaining motor vehicles operated by the facility, or the use of toxic chemicals contained in intake water (used for processing or noncontact cooling) or intake air (used either as compressed air or for combustion). A rolling 12-month period includes the previous 12 months of operation. The owner or operator of the source shall maintain records of the total gallons of coating, gluing, cleaning, and washoff materials used each month and the total gallons used each previous month, and upon request submit such records to the Administrator. Because records are needed over the previous set of 12 months, the owner or operator shall keep monthly records beginning no less than one year before the compliance date specified in § 63.800(e). Records shall be maintained for five years.

(3) The source uses materials containing no more than 4.5 Mg (5 tons) of any one HAP per rolling 12-month period or no more than 11.4 Mg (12.5 tons) of any combination of HAP per rolling 12-month period, including materials from source categories other than wood furniture; and at least 90 percent of the plantwide emissions per rolling 12-month period are associated with the manufacture of wood furniture or wood furniture components. The owner or operator shall maintain records that demonstrate that annual emissions do not exceed these levels, including monthly usage records for all finishing, gluing, cleaning, and washoff materials; certified product data sheets for these materials; and any other records necessary to document emissions from source categories other than wood furniture and upon request submit such records to the Administrator. These records shall be maintained for five years.

(c) This subpart does not apply to research or laboratory facilities as defined in § 63.801.

(d) Owners or operators of affected sources shall also comply with the requirements of subpart A of this part (General Provisions), according to the applicability of subpart A to such sources, as identified in Table 1 of this subpart.

(e) The compliance date for existing affected sources that emit less than 50 tons per year of HAP in 1996 is December 7, 1998. The compliance date for existing affected sources that emit 50 tons or more of hazardous air pollutants in 1996 is November 21, 1997. The owner or operator of an existing area source that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source that is subject to this subpart shall comply with this subpart one year after becoming a major source.

(f) New affected sources must comply with the provisions of this standard immediately upon startup or by December 7, 1995, whichever is later. New area sources that become major sources shall comply with the provisions of this standard immediately upon becoming a major source.

(g) Reconstructed affected sources are subject to the requirements for new affected sources. The costs associated with the purchase and installation of air pollution control equipment (e.g., incinerators, carbon adsorbers, etc.) are not considered in determining whether the facility has been reconstructed, unless the control equipment is required as part of the process (e.g., product recovery). Additionally, the costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart are not considered reconstruction costs. For example, an affected source may convert to waterborne coatings to meet the requirements of this subpart. At most facilities, this conversion will require the replacement of existing storage tanks, mix equipment, and transfer lines. The cost of replacing the equipment is not considered in determining whether the facility has been reconstructed.

§ 63.801 Definitions.

(a) All terms used in this subpart that are not defined below have the meaning given to them in the CAA and in subpart A (General Provisions) of this part.

Adhesive means any chemical substance that is applied for the purpose

of bonding two surfaces together other than by mechanical means. Under this subpart, adhesives shall not be considered coatings or finishing materials. Products used on humans and animals, adhesive tape, contact paper, or any other product with an adhesive incorporated onto or in an inert substrate shall not be considered adhesives under this subpart.

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

Aerosol adhesive means an adhesive that is dispensed from a pressurized container as a suspension of fine solid or liquid particles in gas.

Affected source means a wood furniture manufacturing facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant site that is a major source as defined in 40 CFR part 63.2, excluding sources that meet the criteria established in § 63.800(a), (b) and (c) of this subpart.

Alternative method means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but has been demonstrated to the Administrator's satisfaction to, in specific cases, produce results adequate for a determination of compliance.

As applied means the HAP and solids content of the coating or contact adhesive that is actually used for coating or gluing the substrate. It includes the contribution of materials used for in-house dilution of the coating or contact adhesive.

Basecoat means a coat of colored material, usually opaque, that is applied before graining inks, glazing coats, or other opaque finishing materials, and is usually topcoated for protection.

Baseline conditions means the conditions that exist prior to an affected source implementing controls, such as a control system.

Building enclosure means a building housing a process that meets the requirements of a temporary total enclosure. The EPA Method 204E is used to identify all emission points from the building enclosure and to determine which emission points must be tested. For additional information see *Guidelines for Determining Capture Efficiency*, January 1994. Docket No. A–93–10, Item No. IV–B–1.

Capture device means a hood, enclosed room, floor sweep, or other means of collecting solvent emissions or other pollutants into a duct so that the pollutant can be directed to a pollution control device such as an incinerator or carbon adsorber.

Capture efficiency means the fraction of all organic vapors generated by a process that are directed to a control device.

Certified product data sheet (CPDS) means documentation furnished by coating or adhesive suppliers or an outside laboratory that provides the HAP content of a finishing material, contact adhesive, or solvent, by percent weight, measured using the EPA Method 311 (as promulgated in this subpart), or an equivalent or alternative method (or formulation data if the coating meets the criteria specified in § 63.805(a)); the solids content of a finishing material or contact adhesive by percent weight, determined using data from the EPA Method 24, or an alternative or equivalent method (or formulation data if the coating meets the criteria specified in § 63.805(a)); and the density, measured by EPA Method 24 or an alternative or equivalent method. Therefore, the reportable HAP content should represent the maximum aggregate emissions potential of the finishing material, adhesive, or solvent in concentrations greater than or equal to 1.0 percent by weight or 0.1 percent for HAP that are carcinogens, as defined by the Occupational Safety and Health Administration Hazard Communication Standard (29 CFR part 1910), as formulated. The purpose of the CPDS is to assist the affected source in demonstrating compliance with the emission limitations presented in § 63.802.

(Note: Because the optimum analytical conditions under EPA Method 311 vary by coating, the coating or adhesive supplier may also choose to include on the CPDS the optimum analytical conditions for analysis of the coating, adhesive, or solvent using EPA Method 311. Such information may include, but not be limited to, separation column, oven temperature, carrier gas, injection port temperature, extraction solvent, and internal standard.)

Cleaning operations means operations in which organic solvent is used to remove coating materials or adhesives from equipment used in wood furniture manufacturing operations.

Coating means a protective, decorative, or functional film applied in a thin layer to a surface. Such materials include, but are not limited to, paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, enamels, inks, and temporary protective coatings.

Coating application station means the part of a coating operation where the coating is applied, e.g., a spray booth.

Coating operation means those activities in which a coating is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

Coating solids (or solids) means the part of the coating which remains after the coating is dried or cured; solids content is determined using data from the EPA Method 24, or an equivalent or alternative method.

Compliant coating/contact adhesive means a finishing material, contact adhesive, or strippable booth coating that meets the emission limits specified in Table 3 of this subpart.

Contact adhesive means an adhesive that is applied to two substrates, dried, and mated under only enough pressure to result in good contact. The bond is immediate and sufficiently strong to hold pieces together without further clamping, pressure, or airing.

Continuous coater means a finishing system that continuously applies finishing materials onto furniture parts moving along a conveyor. Finishing materials that are not transferred to the part are recycled to a reservoir. Several types of application methods can be used with a continuous coater including spraying, curtain coating, roll coating, dip coating, and flow coating.

Continuous compliance means that the affected source is meeting the emission limitations and other requirements of the rule at all times and is fulfilling all monitoring and recordkeeping provisions of the rule in order to demonstrate compliance.

Control device means any equipment that reduces the quantity of a pollutant that is emitted to the air. The device may destroy or secure the pollutant for subsequent recovery. Includes, but is not limited to, incinerators, carbon adsorbers, and condensers.

Control device efficiency means the ratio of the pollutant released by a control device and the pollutant introduced to the control device.

Control system means the combination of capture and control devices used to reduce emissions to the atmosphere.

Conventional air spray means a spray coating method in which the coating is atomized by mixing it with compressed air and applied at an air pressure greater than 10 pounds per square inch (gauge) at the point of atomization. Airless and air assisted airless spray technologies are not conventional air spray because the coating is not atomized by mixing it with compressed air. Electrostatic spray technology is also not considered conventional air spray because an electrostatic charge is employed to attract the coating to the workpiece.

Data quality objective (DQO) approach means a set of approval

criteria that must be met so that data from an alternative test method can be used in determining the capture efficiency of a control system. For additional information, see *Guidelines for Determining Capture Efficiency*, January 1994. (Docket No. A–93–10, Item No. IV–B–1).

Day means a period of 24 consecutive hours beginning at midnight local time, or beginning at a time consistent with a facility's operating schedule.

Disposed offsite means sending used organic solvent or coatings outside of the facility boundaries for disposal.

Emission means the release or discharge, whether directly or indirectly, of HAP into the ambient air.

Enamel means a coat of colored material, usually opaque, that is applied as a protective topcoat over a basecoat, primer, or previously applied enamel coats. In some cases, another finishing material may be applied as a topcoat over the enamel.

Equipment leak means emissions of volatile hazardous air pollutants from pumps, valves, flanges, or other equipment used to transfer or apply coatings, adhesives, or organic solvents.

Equivalent method means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Administrator's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specific conditions.

Finishing material means a coating used in the wood furniture industry. Such materials include, but are not limited to, stains, basecoats, washcoats, enamels, sealers, and topcoats.

Finishing operation means those operations in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

Foam adhesive means a contact adhesive used for gluing foam to fabric, foam to foam, and fabric to wood.

Gluing operation means those operations in which adhesives are used to join components, for example, to apply a laminate to a wood substrate or foam to fabric.

Incidental wood furniture manufacturer means a major source that is primarily engaged in the manufacture of products other than wood furniture or wood furniture components and that uses no more than 100 gallons per month of finishing material or adhesives in the manufacture of wood furniture or wood furniture components.

Incinerator means, for the purposes of this industry, an enclosed combustion device that thermally oxidizes volatile organic compounds to CO and CO_2. This term does not include devices that burn municipal or hazardous waste material.

Janitorial maintenance means the upkeep of equipment or building structures that is not directly related to the manufacturing process, for example, cleaning of restroom facilities.

Lower confidence limit (LCL) approach means a set of approval criteria that must be met so that data from an alternative test method can be used in determining the capture efficiency of a control system. For additional information, see *Guidelines for Determining Capture Efficiency*, January 1994. (Docket No. A–93–10, Item No. IV–B–1).

Material safety data sheet (MSDS) means the documentation required for hazardous chemicals by the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR Part 1910) for a solvent, cleaning material, contact adhesive, coating, or other material that identifies select reportable hazardous ingredients of the material, safety and health considerations, and handling procedures.

Noncompliant coating/contact adhesive means a finishing material, contact adhesive, or strippable booth coating that has a VHAP content (VOC content for the strippable booth coating) greater than the emission limitation presented in Table 3 of this subpart.

Nonporous substrate means a surface that is impermeable to liquids. Examples include metal, rigid plastic, flexible vinyl, and rubber.

Normally closed container means a container that is closed unless an operator is actively engaged in activities such as emptying or filling the container.

Operating parameter value means a minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limit.

Organic solvent means a volatile organic liquid that is used for dissolving or dispersing constituents in a coating or contact adhesive, adjusting the viscosity of a coating or contact adhesive, or cleaning equipment. When used in a coating or contact adhesive, the organic solvent evaporates during drying and does not become a part of the dried film.

Overall control efficiency means the efficiency of a control system, calculated as the product of the capture and control device efficiencies, expressed as a percentage.

Permanent total enclosure means a permanently installed enclosure that completely surrounds a source of emissions such that all emissions are captured and contained for discharge through a control device. For additional information, see *Guidelines for Determining Capture Efficiency*, January 1994. (Docket No. A–93–10, Item No. IV–B–1).

Recycled onsite means the reuse of an organic solvent in a process other than cleaning or washoff.

Reference method means any method of sampling and analyzing for an air pollutant that is published in Appendix A of 40 CFR part 60.

Research or laboratory facility means any stationary source whose primary purpose is to conduct research and development to develop new processes and products where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

Responsible official has the meaning given to it in 40 CFR part 70, State Operating Permit Programs (Title V permits).

Sealer means a finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. Special purpose finishing materials that are used in some finishing systems to optimize aesthetics are not sealers.

Solvent means a liquid used in a coating or contact adhesive to dissolve or disperse constituents and/or to adjust viscosity. It evaporates during drying and does not become a part of the dried film.

Stain means any color coat having a solids content by weight of no more than 8.0 percent that is applied in single or multiple coats directly to the substrate. It includes, but is not limited to, nongrain raising stains, equalizer stains, prestains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

Storage containers means vessels or tanks, including mix equipment, used to hold finishing, gluing, cleaning, or washoff materials.

Strippable spray booth material means a coating that:

(1) Is applied to a spray booth wall to provide a protective film to receive overspray during finishing operations;

(2) That is subsequently peeled off and disposed; and

(3) By achieving (1) and (2), reduces or eliminates the need to use organic solvents to clean spray booth walls.

Substrate means the surface onto which a coating or contact adhesive is

applied (or into which a coating or contact adhesive is impregnated).

Temporary total enclosure means an enclosure that meets the requirements of § 63.805(e)(1) (i) through (iv) and is not permanent, but constructed only to measure the capture efficiency of pollutants emitted from a given source. Additionally, any exhaust point from the enclosure shall be at least four equivalent duct or hood diameters from each natural draft opening. For additional information, see *Guidelines for Determining Capture Efficiency,* January 1994. (Docket No. A–93–10, Item No. IV–B–1).

Thinner means a volatile liquid that is used to dilute coatings or contact adhesives (to reduce viscosity, color strength, and solids, or to modify drying conditions).

Topcoat means the last film-building finishing material that is applied in a finishing system.

Touchup and repair means the application of finishing materials to cover minor finishing imperfections.

VHAP means any volatile hazardous air pollutant listed in Table 2 to Subpart JJ.

VHAP of potential concern means any VHAP from the nonthreshold, high concern, or unrankable list in Table b of this subpart.

Volatile organic compound (VOC) means any organic compound which participates in atmospheric photochemical reactions, that is, any organic compound other than those which the Administrator designates as having negligible photochemical reactivity. A VOC may be measured by a reference method, an equivalent method, an alternative method, or by procedures specified under any rule. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, the owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard. For a list of compounds that the Administrator has designated as having negligible photochemical reactivity, refer to 40 CFR part 51.10.

Washcoat means a transparent special purpose finishing material having a solids content by weight of 12.0 percent by weight or less. Washcoats are applied over initial stains to protect, to control color, and to stiffen the wood fibers in order to aid sanding.

Washoff operations means those operations in which organic solvent is used to remove coating from wood furniture or a wood furniture component.

Wood furniture means any product made of wood, a wood product such as rattan or wicker, or an engineered wood product such as particleboard that is manufactured under any of the following standard industrial classification codes: 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, 2599, or 5712.

Wood furniture component means any part that is used in the manufacture of wood furniture. Examples include, but are not limited to, drawer sides, cabinet doors, seat cushions, and laminated tops.

Wood furniture manufacturing operations means the finishing, gluing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

(b) The nomenclature used in this subpart has the following meaning:

(1) A_k = the area of each natural draft opening (k) in a total enclosure, in square meters.

(2) C_c=the VHAP content of a finishing material (c), in kilograms of volatile hazardous air pollutants per kilogram of coating solids (kg VHAP/kg solids), as supplied. Also given in pounds of volatile hazardous air pollutants per pound of coating solids (lb VHAP/lb solids).

(3) C_{aj}=the concentration of VHAP in gas stream (j) exiting the control device, in parts per million by volume.

(4) C_{bi}=the concentration of VHAP in gas stream (i) entering the control device, in parts per million by volume.

(5) C_{di}=the concentration of VHAP in gas stream (i) entering the control device from the affected source, in parts per million by volume.

(6) C_{fk}=the concentration of VHAP in uncontrolled gas stream (k) emitted directly to the atmosphere from the affected source, in parts per million by volume.

(7) E=the emission limit achieved by an emission point or a set of emission points, in kg VHAP/kg solids (lb VHAP/lb solids).

(8) F=the control device efficiency, expressed as a fraction.

(9) FV=the average inward face velocity across all natural draft openings in a total enclosure, in meters per hour.

(10) G=the VHAP content of a contact adhesive, in kg VHAP/kg solids (lb VHAP/lb solids), as applied.

(11) M=the mass of solids in finishing material used monthly, kg solids/month (lb solids/month).

(12) N=the capture efficiency, expressed as a fraction.

(13) Q_{aj}=the volumetric flow rate of gas stream (j) exiting the control device, in dry standard cubic meters per hour.

(14) Q_{bi}=the volumetric flow rate of gas stream (i) entering the control device, in dry standard cubic meters per hour.

(15) Q_{di}=the volumetric flow rate of gas stream (i) entering the control device from the emission point, in dry standard cubic meters per hour.

(16) Q_{fk}=the volumetric flow rate of uncontrolled gas stream (k) emitted directly to the atmosphere from the emission point, in dry standard cubic meters per hour.

(17) $Q_{in\ i}$=the volumetric flow rate of gas stream (i) entering the total enclosure through a forced makeup air duct, in standard cubic meters per hour (wet basis).

(18) $Q_{out\ j}$=the volumetric flow rate of gas stream (j) exiting the total enclosure through an exhaust duct or hood, in standard cubic meters per hour (wet basis).

(19) R=the overall efficiency of the control system, expressed as a percentage.

(20) S=the VHAP content of a solvent, expressed as a weight fraction, added to finishing materials.

(21) W=the amount of solvent, in kilograms (pounds), added to finishing materials during the monthly averaging period.

(22) ac=after the control system is installed and operated.

(23) bc=before control.

§ 63.802 Emission limits.

(a) Each owner or operator of an existing affected source subject to this subpart shall:

(1) Limit VHAP emissions from finishing operations by meeting the emission limitations for existing sources presented in Table 3 of this subpart, using any of the compliance methods in § 63.804(a). To determine VHAP emissions from a finishing material containing formaldehyde or styrene, the owner or operator of the affected source shall use the methods presented in § 63.803(l)(2) for determining styrene and formaldehyde usage.

(2) Limit VHAP emissions from contact adhesives by achieving a VHAP limit for contact adhesives based on the following criteria:

(i) For foam adhesives (contact adhesives used for upholstery operations) used in products that meet the upholstered seating flammability requirements of California Technical Bulletin 116, 117, or 133, the Business and Institutional Furniture Manufacturers Association's (BIFMA's) X5.7, UFAC flammability testing, or any similar requirements from local, State, or Federal fire regulatory agencies, the VHAP content of the adhesive shall not

exceed 1.8 kg VHAP/kg solids (1.8 lb VHAP/lb solids), as applied; or

(ii) For all other contact adhesives (including foam adhesives used in products that do not meet the standards presented in paragraph (a)(2)(i) of this section, but excluding aerosol adhesives and excluding contact adhesives applied to nonporous substrates, the VHAP content of the adhesive shall not exceed 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied.

(3) Limit HAP emissions from strippable spray booth coatings by using coatings that contain no more than 0.8 kg VOC/kg solids (0.8 lb VOC/lb solids), as applied.

(b) Each owner or operator of a new affected source subject to this subpart shall:

(1) Limit VHAP emissions from finishing operations by meeting the emission limitations for new sources presented in Table 3 of this subpart using any of the compliance methods in § 63.804(d). To determine VHAP emissions from a finishing material containing formaldehyde or styrene, the owner or operator of the affected source shall use the methods presented in § 63.803(l)(2) for determining styrene and formaldehyde usage.

(2) Limit VHAP emissions from contact adhesives by achieving a VHAP limit for contact adhesives, excluding aerosol adhesives and excluding contact adhesives applied to nonporous substrates, of no greater than 0.2 kg VHAP/kg solids (0.2 lb VHAP/lb solids), as applied, using either of the compliance methods in § 63.804(e).

(3) Limit HAP emissions from strippable spray booth coatings by using coatings that contain no more than 0.8 kg VOC/kg solids (0.8 lb VOC/lb solids), as applied.

§ 63.803 Work practice standards.

(a) *Work practice implementation plan.* Each owner or operator of an affected source subject to this subpart shall prepare and maintain a written work practice implementation plan that defines environmentally desirable work practices for each wood furniture manufacturing operation and addresses each of the work practice standards presented in paragraphs (b) through (l) of this section. The plan shall be developed no more than 60 days after the compliance date. The written work practice implementation plan shall be available for inspection by the Administrator upon request. If the Administrator determines that the work practice implementation plan does not adequately address each of the topics specified in paragraphs (b) through (l) of this section or that the plan does not include sufficient mechanisms for ensuring that the work practice standards are being implemented, the Administrator may require the affected source to modify the plan. Revisions or modifications to the plan do not require a revision of the source's Title V permit.

(b) *Operator training course.* Each owner or operator of an affected source shall train all new and existing personnel, including contract personnel, who are involved in finishing, gluing, cleaning, and washoff operations, use of manufacturing equipment, or implementation of the requirements of this subpart. All new personnel, those hired after the compliance date of the standard, shall be trained upon hiring. All existing personnel, those hired before the compliance date of the standard, shall be trained within six months of the compliance date of the standard. All personnel shall be given refresher training annually. The affected source shall maintain a copy of the training program with the work practice implementation plan. The training program shall include, at a minimum, the following:

(1) A list of all current personnel by name and job description that are required to be trained;

(2) An outline of the subjects to be covered in the initial and refresher training for each position or group of personnel;

(3) Lesson plans for courses to be given at the initial and the annual refresher training that include, at a minimum, appropriate application techniques, appropriate cleaning and washoff procedures, appropriate equipment setup and adjustment to minimize finishing material usage and overspray, and appropriate management of cleanup wastes; and

(4) A description of the methods to be used at the completion of initial or refresher training to demonstrate and document successful completion.

(c) *Inspection and maintenance plan.* Each owner or operator of an affected source shall prepare and maintain with the work practice implementation plan a written leak inspection and maintenance plan that specifies:

(1) A minimum visual inspection frequency of once per month for all equipment used to transfer or apply coatings, adhesives, or organic solvents;

(2) An inspection schedule;

(3) Methods for documenting the date and results of each inspection and any repairs that were made;

(4) The timeframe between identifying the leak and making the repair, which adheres, at a minimum, to the following schedule:

(i) A first attempt at repair (e.g., tightening of packing glands) shall be made no later than five calendar days after the leak is detected; and

(ii) Final repairs shall be made within 15 calendar days after the leak is detected, unless the leaking equipment is to be replaced by a new purchase, in which case repairs shall be completed within three months.

(d) *Cleaning and washoff solvent accounting system.* Each owner or operator of an affected source shall develop an organic solvent accounting form to record:

(1) The quantity and type of organic solvent used each month for washoff and cleaning, as defined in § 63.801 of this subpart;

(2) The number of pieces washed off, and the reason for the washoff; and

(3) The quantity of spent solvent generated from each washoff and cleaning operation each month, and whether it is recycled onsite or disposed offsite.

(e) *Chemical composition of cleaning and washoff solvents.* Each owner or operator of an affected source shall not use cleaning or washoff solvents that contain any of the pollutants listed in Table 4 to this subpart, in concentrations subject to MSDS reporting as required by OSHA.

(f) *Spray booth cleaning.* Each owner or operator of an affected source shall not use compounds containing more than 8.0 percent by weight of VOC for cleaning spray booth components other than conveyors, continuous coaters and their enclosures, or metal filters, unless the spray booth is being refurbished. If the spray booth is being refurbished, that is the spray booth coating or other protective material used to cover the booth is being replaced, the affected source shall use no more than 1.0 gallon of organic solvent per booth to prepare the surface of the booth prior to applying the booth coating.

(g) *Storage requirements.* Each owner or operator of an affected source shall use normally closed containers for storing finishing, gluing, cleaning, and washoff materials.

(h) *Application equipment requirements.* Each owner or operator of an affected source shall use conventional air spray guns to apply finishing materials only under any of the following circumstances:

(1) To apply finishing materials that have a VOC content no greater than 1.0 lb VOC/lb solids, as applied;

(2) For touchup and repair under the following conditions:

(i) The touchup and repair occurs after completion of the finishing operation; or

(ii) The touchup and repair occurs after the application of stain and before the application of any other type of finishing material, and the materials used for touchup and repair are applied from a container that has a volume of no more than 2.0 gallons.

(3) When spray is automated, that is, the spray gun is aimed and triggered automatically, not manually;

(4) When emissions from the finishing application station are directed to a control device;

(5) The conventional air gun is used to apply finishing materials and the cumulative total usage of that finishing material is no more than 5.0 percent of the total gallons of finishing material used during that semiannual period; or

(6) The conventional air gun is used to apply stain on a part for which it is technically or economically infeasible to use any other spray application technology.

The affected source shall demonstrate technical or economic infeasibility by submitting to the Administrator a videotape, a technical report, or other documentation that supports the affected source's claim of technical or economic infeasibility. The following criteria shall be used, either independently or in combination, to support the affected source's claim of technical or economic infeasibility:

(i) The production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or

(ii) The excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.

(i) *Line cleaning.* Each owner or operator of an affected source shall pump or drain all organic solvent used for line cleaning into a normally closed container.

(j) *Gun cleaning.* Each owner or operator of an affected source shall collect all organic solvent used to clean spray guns into a normally closed container.

(k) *Washoff operations.* Each owner or operator of an affected source shall control emissions from washoff operations by:

(1) Using normally closed tanks for washoff; and

(2) Minimizing dripping by tilting or rotating the part to drain as much solvent as possible.

(l) *Formulation assessment plan for finishing operations.* Each owner or operator of an affected source shall prepare and maintain with the work practice implementation plan a formulation assessment plan that:

(1) Identifies VHAP from the list presented in Table 5 of this subpart that are being used in finishing operations by the affected source;

(2) Establishes a baseline level of usage by the affected source, for each VHAP identified in paragraph (l)(1) of this section. The baseline usage level shall be the highest annual usage from 1994, 1995, or 1996, for each VHAP identified in paragraph (l)(1) of this section. For formaldehyde, the baseline level of usage shall be based on the amount of free formaldehyde present in the finishing material when it is applied. For styrene, the baseline level of usage shall be an estimate of unreacted styrene, which shall be calculated by multiplying the amount of styrene monomer in the finishing material, when it is applied, by a factor of 0.16. Sources using a control device to reduce emissions may adjust their usage based on the overall control efficiency of the control system, which is determined using the equation in § 63.805 (d) or (e).

(3) Tracks the annual usage of each VHAP identified in (l)(1) by the affected source that is present in amounts subject to MSDS reporting as required by OSHA.

(4) If, after November 1998, the annual usage of the VHAP identified in paragraph (l)(1) exceeds its baseline level, then the owner or operator of the affected source shall provide a written notification to the permitting authority that describes the amount of the increase and explains the reasons for exceedance of the baseline level. The following explanations would relieve the owner or operator from further action, unless the affected source is not in compliance with any State regulations or requirements for that VHAP:

(i) The exceedance is no more than 15.0 percent above the baseline level;

(ii) Usage of the VHAP is below the de minimis level presented in Table 5 of this subpart for that VHAP (sources using a control device to reduce emissions may adjust their usage based on the overall control efficiency of the control system, which is determined using the procedures in § 63.805 (d) or (e);

(iii) The affected source is in compliance with its State's air toxic regulations or guidelines for the VHAP; or

(iv) The source of the pollutant is a finishing material with a VOC content of no more than 1.0 kg VOC/kg solids (1.0 lb VOC/lb solids), as applied.

(5) If none of the above explanations are the reason for the increase, the owner or operator shall confer with the permitting authority to discuss the reason for the increase and whether there are practical and reasonable technology-based solutions for reducing the usage. The evaluation of whether a technology is reasonable and practical shall be based on cost, quality, and marketability of the product, whether the technology is being used successfully by other wood furniture manufacturing operations, or other criteria mutually agreed upon by the permitting authority and owner or operator. If there are no practical and reasonable solutions, the facility need take no further action. If there are solutions, the owner or operator shall develop a plan to reduce usage of the pollutant to the extent feasible. The plan shall address the approach to be used to reduce emissions, a timetable for implementing the plan, and a schedule for submitting notification of progress.

(6) If after November 1998, an affected source uses a VHAP of potential concern for which a baseline level has not been previously established, then the baseline level shall be established as the de minimis level, based on 70 year exposure levels and data provided in the proposed rulemaking pursuant to Section 112(g) of the CAA, for that pollutant. A list of VHAP of potential concern is provided in Table 6 of this subpart. If usage of the VHAP of potential concern exceeds the de minimis level, then the affected source shall provide an explanation to the permitting authority that documents the reason for exceedance of the de minimis level. If the explanation is not one of those listed in paragraphs (l)(4)(i) through (l)(4)(iv), the affected source shall follow the procedures established in (l)(5).

§ 63.804 Compliance procedures and monitoring requirements.

(a) The owner or operator of an existing affected source subject to § 63.802(a)(1) shall comply with those provisions using any of the methods presented in § 63.804 (a)(1) through (a)(4).

(1) Calculate the average VHAP content for all finishing materials used at the facility using Equation 1, and maintain a value of E no greater than 1.0;

$$E=(M_{c1}C_{c1} + M_{c2}C_{c2} + * * * + M_{cn}C_{cn} + S_1W_1 + S_2W_2 + * * * S_nW_n)/(M_{c1} + M_{c2} + * * * + M_{cn}) \quad \text{Equation 1}$$

(2) Use compliant finishing materials according to the following criteria:

(i) Demonstrate that each stain, sealer, and topcoat has a VHAP content of no more than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied, and each thinner contains no more than 10.0

percent VHAP by weight by maintaining certified product data sheets for each coating and thinner;

(ii) Demonstrate that each washcoat, basecoat, and enamel that is purchased pre-made, that is, it is not formulated onsite by thinning another finishing material, has a VHAP content of no more than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied, and each thinner contains no more than 10.0 percent VHAP by weight by maintaining certified product data sheets for each coating and thinner; and

(iii) Demonstrate that each washcoat, basecoat, and enamel that is formulated at the affected source is formulated using a finishing material containing no more than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids) and a thinner containing no more than 3.0 percent VHAP by weight.

(3) Use a control system with an overall control efficiency (R) such that the value of E_{ac} in Equation 2 is no greater than 1.0.

$$R=[(E_{bc}-E_{ac})/E_{bc}](100) \qquad \text{Equation 2}$$

The value of E_{bc} in Equation 2 shall be calculated using Equation 1; or

(4) Use any combination of an averaging approach, as described in paragraph (a)(1) of this section, compliant finishing materials, as described in paragraph (a)(2) of this section, and a control system, as described in paragraph (a)(3) of this section.

(b) The owner or operator of an affected source subject to § 63.802(a)(2)(i) shall comply with the provisions by using compliant foam adhesives with a VHAP content no greater than 1.8 kg VHAP/kg solids (1.8 lb VHAP/lb solids), as applied.

(c) The owner or operator of an affected source subject to § 63.802(a)(2)(ii) shall comply with those provisions by using either of the methods presented in § 63.804 (c)(1) and (c)(2).

(1) Use compliant contact adhesives with a VHAP content no greater than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied; or

(2) Use a control system with an overall control efficiency (R) such that the value of G_{ac} is no greater than 1.0.

$$R=[(G_{bc}-G_{ac})/G_{bc}]\ (100) \qquad \text{Equation 3}$$

(d) The owner or operator of a new affected source subject to § 63.802(b)(1) may comply with those provisions by using any of the following methods:

(1) Calculate the average VHAP content across all finishing materials used at the facility using Equation 1, and maintain a value of E no greater than 0.8;

(2) Use compliant finishing materials according to the following criteria:

(i) Demonstrate that each sealer and topcoat has a VHAP content of no more than 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids), as applied, each stain has a VHAP content of no more than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied, and each thinner contains no more than 10.0 percent VHAP by weight;

(ii) Demonstrate that each washcoat, basecoat, and enamel that is purchased pre-made, that is, it is not formulated onsite by thinning another finishing material, has a VHAP content of no more than 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids), as applied, and each thinner contains no more than 10.0 percent VHAP by weight; and

(iii) Demonstrate that each washcoat, basecoat, and enamel that is formulated onsite is formulated using a finishing material containing no more than 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids) and a thinner containing no more than 3.0 percent HAP by weight.

(3) Use a control system with an overall control efficiency (R) such that the value of E_{ac} in Equation 4 is no greater than 0.8.

$$R=[(E_{bc}-E_{ac})/E_{bc}](100) \qquad \text{Equation 4}$$

The value of E_{bc} in Equation 4 shall be calculated using Equation 1; or

(4) Use any combination of an averaging approach, as described in (d)(1), compliant finishing materials, as described in (d)(2), and a control system, as described in (d)(3).

(e) The owner or operator of a new affected source subject to § 63.802(b)(2) shall comply with the provisions using either of the following methods:

(1) Use compliant contact adhesives with a VHAP content no greater than 0.2 kg VHAP/kg solids (0.2 lb VHAP/lb solids), as applied; or

(2) Use a control system with an overall control efficiency (R) such that the value of G_{ac} in Equation 3 is no greater than 0.2.

(f) *Initial compliance.* (1) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that comply through the procedures established in § 63.804 (a)(1) or (d)(1) shall submit the results of the averaging calculation (Equation 1) for the first month with the initial compliance status report required by § 63.807(b). The first month's calculation shall include data for the entire month in which the compliance date falls. For example, if the source's compliance date is November 21, 1997, the averaging calculation shall include data from November 1, 1997 to November 30, 1997.

(2) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that comply through the procedures established in § 63.804 (a)(2) or (d)(2) shall submit an initial compliance status report, as required by § 63.807(b), stating that compliant stains, washcoats, sealers, topcoats, basecoats, enamels, and thinners, as applicable, are being used by the affected source.

(3) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that are complying through the procedures established in § 63.804 (a)(2) or (d)(2) and are applying coatings using continuous coaters shall demonstrate initial compliance by:

(i) Submitting an initial compliance status report, as required by § 63.807(b), stating that compliant coatings, as determined by the VHAP content of the coating in the reservoir and the VHAP content as calculated from records, and compliant thinners are being used; or

(ii) Submitting an initial compliance status report, as required by § 63.807(b), stating that compliant coatings, as determined by the VHAP content of the coating in the reservoir, are being used; the viscosity of the coating in the reservoir is being monitored; and compliant thinners are being used. The affected source shall also submit data that demonstrate that viscosity is an appropriate parameter for demonstrating compliance.

(4) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that comply through the procedures established in § 63.804 (a)(3) or (d)(3) shall demonstrate initial compliance by:

(i) Submitting a monitoring plan that identifies each operating parameter to be monitored for the capture device and discusses why each parameter is appropriate for demonstrating continuous compliance;

(ii) Conducting an initial performance test as required under § 63.7 using the procedures and test methods listed in § 63.7 and § 63.805 (c) and (d) or (e);

(iii) Calculating the overall control efficiency (R) following the procedures in § 63.805 (d) or (e); and

(iv) Determining those operating conditions critical to determining compliance and establishing one or more operating parameters that will ensure compliance with the standard.

(A) For compliance with a thermal incinerator, minimum combustion temperature shall be the operating parameter.

(B) For compliance with a catalytic incinerator equipped with a fixed catalyst bed, the minimum gas temperature both upstream and

downstream of the catalyst bed shall be the operating parameter.

(C) For compliance with a catalytic incinerator equipped with a fluidized catalyst bed, the minimum gas temperature upstream of the catalyst bed and the pressure drop across the catalyst bed shall be the operating parameters.

(D) For compliance with a carbon adsorber, the operating parameters shall be the total regeneration mass stream flow for each regeneration cycle and the carbon bed temperature after each regeneration, or the concentration level of organic compounds exiting the adsorber, unless the owner or operator requests and receives approval from the Administrator to establish other operating parameters.

(E) For compliance with a control device not listed in this section, one or more operating parameter values shall be established using the procedures identified in § 63.804(g)(4)(vi).

(v) Owners or operators complying with § 63.804(f)(4) shall calculate each site-specific operating parameter value as the arithmetic average of the maximum or minimum operating parameter values, as appropriate, that demonstrate compliance with the standards, during the three test runs required by § 63.805(c)(1).

(5) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(2) or (b)(2) that comply through the procedures established in § 63.804 (b), (c)(1), or (e)(1), shall submit an initial compliance status report, as required by § 63.807(b), stating that compliant contact adhesives are being used by the affected source.

(6) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(2)(ii) or (b)(2) that comply through the procedures established in § 63.804 (c)(2) or (e)(2), shall demonstrate initial compliance by:

(i) Submitting a monitoring plan that identifies each operating parameter to be monitored for the capture device and discusses why each parameter is appropriate for demonstrating continuous compliance;

(ii) Conducting an initial performance test as required under § 63.7 using the procedures and test methods listed in § 63.7 and § 63.805 (c) and (d) or (e);

(iii) Calculating the overall control efficiency (R) following the procedures in § 63.805 (d) or (e); and

(iv) Determining those operating conditions critical to determining compliance and establishing one or more operating parameters that will ensure compliance with the standard.

(A) For compliance with a thermal incinerator, minimum combustion temperature shall be the operating parameter.

(B) For compliance with a catalytic incinerator equipped with a fixed catalyst bed, the minimum gas temperature both upstream and downstream of the catalyst shall be the operating parameter.

(C) For compliance with a catalytic incinerator equipped with a fluidized catalyst bed, the minimum gas temperature upstream of the catalyst bed and the pressure drop across the catalyst bed shall be the operating parameters.

(v) Owners or operators complying with § 63.804(f)(6) shall calculate each site-specific operating parameter value as the arithmetic average of the maximum or minimum operating values as appropriate, that demonstrate compliance with the standards, during the three test runs required by § 63.805(c)(1).

(7) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(3) or (b)(3) shall submit an initial compliance status report, as required by § 63.807(b), stating that compliant strippable spray booth coatings are being used by the affected source.

(8) Owners or operators of an affected source subject to the work practice standards in § 63.803 shall submit an initial compliance status report, as required by § 63.807(b), stating that the work practice implementation plan has been developed and procedures have been established for implementing the provisions of the plan.

(g) *Continuous compliance demonstrations.* (1) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that comply through the procedures established in § 63.804 (a)(1) or (d)(1) shall demonstrate continuous compliance by submitting the results of the averaging calculation (Equation 1) for each month within that semiannual period and submitting a compliance certification with the semiannual report required by § 63.807(c).

(i) The compliance certification shall state that the value of (E), as calculated by Equation 1, is no greater than 1.0 for existing sources or 0.8 for new sources. An affected source is in violation of the standard if E is greater than 1.0 for existing sources or 0.8 for new sources for any month. A violation of the monthly average is a separate violation of the standard for each day of operation during the month, unless the affected source can demonstrate through records that the violation of the monthly average can be attributed to a particular day or days during the period.

(ii) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

(2) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that comply through the procedures established in § 63.804 (a)(2) or (d)(2) shall demonstrate continuous compliance by using compliant coatings and thinners, maintaining records that demonstrate the coatings and thinners are compliant, and submitting a compliance certification with the semiannual report required by § 63.807(c).

(i) The compliance certification shall state that compliant stains, washcoats, sealers, topcoats, basecoats, enamels, and thinners, as applicable, have been used each day in the semiannual reporting period or should otherwise identify the periods of noncompliance and the reasons for noncompliance. An affected source is in violation of the standard whenever a noncompliant coating, as demonstrated by records or by a sample of the coating, is used.

(ii) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

(3) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that are complying through the procedures established in § 63.804 (a)(2) or (d)(2) and are applying coatings using continuous coaters shall demonstrate continuous compliance by following the procedures in paragraph (g)(3) (i) or (ii) of this section.

(i) Using compliant coatings, as determined by the VHAP content of the coating in the reservoir and the VHAP content as calculated from records, using compliant thinners, and submitting a compliance certification with the semiannual report required by § 63.807(c).

(A) The compliance certification shall state that compliant coatings have been used each day in the semiannual reporting period, or should otherwise identify the days of noncompliance and the reasons for noncompliance. An affected source is in violation of the standard whenever a noncompliant coating, as determined by records or by a sample of the coating, is used. Use of a noncompliant coating is a separate violation for each day the noncompliant coating is used.

(B) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

(ii) Using compliant coatings, as determined by the VHAP content of the

coating in the reservoir, using compliant thinners, maintaining a viscosity of the coating in the reservoir that is no less than the viscosity of the initial coating by monitoring the viscosity with a viscosity meter or by testing the viscosity of the initial coating and retesting the coating in the reservoir each time solvent is added, maintaining records of solvent additions, and submitting a compliance certification with the semiannual report required by § 63.807(c).

(A) The compliance certification shall state that compliant coatings, as determined by the VHAP content of the coating in the reservoir, have been used each day in the semiannual reporting period. Additionally, the certification shall state that the viscosity of the coating in the reservoir has not been less than the viscosity of the initial coating, that is, the coating that is initially mixed and placed in the reservoir, for any day in the semiannual reporting period.

(B) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

(C) An affected source is in violation of the standard when a sample of the as-applied coating exceeds the applicable limit established in § 63.804 (a)(2) or (d)(2), as determined using EPA Method 311, or the viscosity of the coating in the reservoir is less than the viscosity of the initial coating.

(4) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that comply through the procedures established in § 63.804 (a)(3) or (d)(3) shall demonstrate continuous compliance by installing, calibrating, maintaining, and operating the appropriate monitoring equipment according to manufacturer's specifications. The owner or operator shall also submit the excess emissions and continuous monitoring system performance report and summary report required by § 63.807(d) and § 63.10(e) of subpart A.

(i) Where a capture/control device is used, a device to monitor each site-specific operating parameter established in accordance with § 63.804(f)(6)(i) is required.

(ii) Where an incinerator is used, a temperature monitoring device equipped with a continuous recorder is required.

(A) Where a thermal incinerator is used, a temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(B) Where a catalytic incinerator equipped with a fixed catalyst bed is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(C) Where a catalytic incinerator equipped with a fluidized catalyst bed is used, a temperature monitoring device shall be installed in the gas stream immediately before the bed. In addition, a pressure monitoring device shall be installed to determine the pressure drop across the catalyst bed. The pressure drop shall be measured monthly at a constant flow rate.

(iii) Where a carbon adsorber is used one of the following is required:

(A) An integrating stream flow monitoring device having an accuracy of ±10 percent, capable of recording the total regeneration stream mass flow for each regeneration cycle; and a carbon bed temperature monitoring device, having an accuracy of ±1 percent of the temperature being monitored or ±0.5 °C, whichever is greater, and capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle;

(B) An organic monitoring device, equipped with a continuous recorder, to indicate the concentration level of organic compounds exiting the carbon adsorber; or

(C) Any other monitoring device that has been approved by the Administrator in accordance with § 63.804(f)(4)(iv)(D).

(iv) Owners or operators of an affected source shall not operate the capture or control device at a daily average value greater than or less than (as appropriate) the operating parameter values. The daily average value shall be calculated as the average of all values for a monitored parameter recorded during the operating day.

(v) Owners or operators of an affected source that are complying through the use of a catalytic incinerator equipped with a fluidized catalyst bed shall maintain a constant pressure drop, measured monthly, across the catalyst bed.

(vi) An owner or operator who uses a control device not listed in § 63.804(f)(4) shall submit, for the Administrator's approval, a description of the device, test data verifying performance, and appropriate site-specific operating parameters that will be monitored to demonstrate continuous compliance with the standard.

(5) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(2) (i) or (ii) or (b)(2) that comply through the procedures established in § 63.804 (b), (c)(1), or (e)(1), shall submit a compliance certification with the semiannual report required by § 63.807(c).

(i) The compliance certification shall state that compliant contact and/or foam adhesives have been used each day in the semiannual reporting period, or should otherwise identify each day noncompliant contact and/or foam adhesives were used. Each day a noncompliant contact or foam adhesive is used is a single violation of the standard.

(ii) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

(6) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(2)(ii) or (b)(2) that comply through the procedures established in § 63.804 (c)(2) or (e)(2), shall demonstrate continuous compliance by installing, calibrating, maintaining, and operating the appropriate monitoring equipment according to the manufacturer's specifications. The owner or operator shall also submit the excess emissions and continuous monitoring system performance report and summary report required by § 63.807(d) and § 63.10(e) of subpart A of this part.

(i) Where a capture/control device is used, a device to monitor each site-specific operating parameter established in accordance with § 63.804(f)(6)(i) is required.

(ii) Where an incinerator is used, a temperature monitoring device equipped with a continuous recorder is required.

(A) Where a thermal incinerator is used, a temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(B) Where a catalytic incinerator equipped with a fixed catalyst bed is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(C) Where a catalytic incinerator equipped with a fluidized catalyst bed is used, a temperature monitoring device shall be installed in the gas stream immediately before the bed. In addition, a pressure monitoring device shall be installed to measure the pressure drop across the catalyst bed. The pressure drop shall be measured monthly at a constant flow rate.

(iii) Where a carbon adsorber is used one of the following is required:

(A) An integrating stream flow monitoring device having an accuracy of ±10 percent, capable of recording the total regeneration stream mass flow for each regeneration cycle; and a carbon bed temperature monitoring device, having an accuracy of ±1 percent of the temperature being monitored or ±0.5 °C, whichever is greater, and capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle;

(B) An organic monitoring device, equipped with a continuous recorder, to indicate the concentration level of organic compounds exiting the carbon adsorber; or

(C) Any other monitoring device that has been approved by the Administrator in accordance with § 63.804(f)(4)(iv)(D).

(iv) Owners or operators of an affected source shall not operate the capture or control device at a daily average value greater than or less than (as appropriate) the operating parameter values. The daily average value shall be calculated as the average of all values for a monitored parameter recorded during the operating day.

(v) Owners or operators of an affected source that are complying through the use of a catalytic incinerator equipped with a fluidized catalyst bed shall maintain a constant pressure drop, measured monthly, across the catalyst bed.

(vi) An owner or operator using a control device not listed in this section shall submit to the Administrator a description of the device, test data verifying the performance of the device, and appropriate operating parameter values that will be monitored to demonstrate continuous compliance with the standard. Compliance using this device is subject to the Administrator's approval.

(7) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(3) or (b)(3) shall submit a compliance certification with the semiannual report required by § 63.807(c).

(i) The compliance certification shall state that compliant strippable spray booth coatings have been used each day in the semiannual reporting period, or should otherwise identify each day noncompliant materials were used. Each day a noncompliant strippable booth coating is used is a single violation of the standard.

(ii) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

(8) Owners or operators of an affected source subject to the work practice standards in § 63.803 shall submit a compliance certification with the semiannual report required by § 63.807(c).

(i) The compliance certification shall state that the work practice implementation plan is being followed, or should otherwise identify the provisions of the plan that have not been implemented and each day the provisions were not implemented. During any period of time that an owner or operator is required to implement the provisions of the plan, each failure to implement an obligation under the plan during any particular day is a violation.

(ii) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

§ 63.805 Performance test methods.

(a) The EPA Method 311 of Appendix A of part 63 shall be used in conjunction with formulation data to determine the VHAP content of the liquid coating. Formulation data shall be used to identify VHAP present in the coating. The EPA Method 311 shall then be used to quantify those VHAP identified through formulation data. The EPA Method 311 shall not be used to quantify HAP such as styrene and formaldehyde that are emitted during the cure. The EPA Method 24 (40 CFR part 60, Appendix A) shall be used to determine the solids content by weight and the density of coatings. If it is demonstrated to the satisfaction of the Administrator that a coating does not release VOC or HAP byproducts during the cure, for example, all VOC and HAP present in the coating is solvent, then batch formulation information shall be accepted. The owner or operator of an affected source may request approval from the Administrator to use an alternative method for determining the VHAP content of the coating. In the event of any inconsistency between the EPA Method 24 or Method 311 test data and a facility's formulation data, that is, if the EPA Method 24/311 value is higher, the EPA Method 24/311 test shall govern unless after consultation, a regulated source could demonstrate to the satisfaction of the enforcement agency that the formulation data were correct. Sampling procedures shall follow the guidelines presented in ''Standard Procedures for Collection of Coating and Ink Samples for VOC Content Analysis by Reference Method 24 and Reference Method 24A,'' EPA–340/1–91–010. (Docket No. A–93–10, Item No. IV–A–1).

(b) Owners or operators demonstrating compliance in accordance with § 63.804 (f)(4) or (f)(6) and § 63.804 (g)(4) or (g)(6), or complying with any of the other emission limits of § 63.802 by operating a capture or control device shall determine the overall control efficiency of the control system (R) as the product of the capture and control device efficiency, using the test methods cited in § 63.805(c) and the procedures in § 63.805 (d) or (e).

(c) When an initial compliance demonstration is required by § 63.804 (f)(4) or (f)(6) of this subpart, the procedures in paragraphs (c)(1) through (c)(6) of this section shall be used in determining initial compliance with the provisions of this subpart.

(1) The EPA Method 18 (40 CFR part 60, Appendix A) shall be used to determine the HAP concentration of gaseous air streams. The test shall consist of three separate runs, each lasting a minimum of 30 minutes.

(2) The EPA Method 1 or 1A (40 CFR part 60, Appendix A) shall be used for sample and velocity traverses.

(3) The EPA Method 2, 2A, 2C, or 2D (40 CFR part 60, Appendix A) shall be used to measure velocity and volumetric flow rates.

(4) The EPA Method 3 (40 CFR part 60, appendix A) shall be used to analyze the exhaust gases.

(5) The EPA Method 4 (40 CFR part 60, Appendix A) shall be used to measure the moisture in the stack gas.

(6) The EPA Methods 2, 2A, 2C, 2D, 3, and 4 shall be performed, as applicable, at least twice during each test period.

(d) Each owner or operator of an affected source demonstrating compliance in accordance with § 63.804 (f)(4) or (f)(6) shall perform a gaseous emission test using the following procedures:

(1) Construct the overall HAP emission reduction system so that all volumetric flow rates and total HAP emissions can be accurately determined by the applicable test methods specified in § 63.805(c) (1) through (6);

(2) Determine capture efficiency from the affected emission point(s) by capturing, venting, and measuring all HAP emissions from the affected emission point(s). During a performance test, the owner or operator shall isolate affected emission point(s) located in an area with other nonaffected gaseous emission sources from all other gaseous emission point(s) by any of the following methods:

(i) Build a temporary total enclosure (see § 63.801) around the affected emission point(s); or

(ii) Use the building that houses the process as the enclosure (see § 63.801);

(iii) Use any alternative protocol and test method provided they meet either the requirements of the data quality objective (DQO) approach or the lower confidence level (LCL) approach (see § 63.801);

(iv) Shut down all nonaffected HAP emission point(s) and continue to exhaust fugitive emissions from the affected emission point(s) through any building ventilation system and other room exhausts such as drying ovens. All exhaust air must be vented through stacks suitable for testing; or

(v) Use another methodology approved by the Administrator provided it complies with the EPA criteria for acceptance under part 63, appendix A, Method 301.

(3) Operate the control device with all affected emission points that will subsequently be delivered to the control device connected and operating at maximum production rate;

(4) Determine the efficiency (F) of the control device using the following equation:

$$F = \frac{\sum_{i=1}^{n} Q_{bi}\, C_{bi} - \sum_{j=1}^{p} Q_{aj}\, C_{aj}}{\sum_{i=1}^{n} Q_{bi}\, C_{bi}} \qquad \text{(Equation 5)}$$

(5) Determine the efficiency (N) of the capture system using the following equation:

$$N = \frac{\sum_{i=1}^{n} Q_{di}\, C_{di}}{\sum_{i=1}^{n} Q_{di}\, C_{di} + \sum_{k=1}^{p} Q_{fk}\, C_{fk}} \qquad \text{(Equation 6)}$$

(6) For each affected source complying with § 63.802(a)(1) in accordance with § 63.804(a)(3), compliance is demonstrated if the product of (F×N)(100) yields a value (R) such that the value of E_{ac} in Equation 2 is no greater than 1.0.

(7) For each new affected source complying with § 63.802(b)(1) in accordance with § 63.804(d)(3), compliance is demonstrated if the product of (F×N)(100) yields a value (R) such that the value of E_{ac} in Equation 4 is no greater than 0.8.

(8) For each affected source complying with § 63.802(a)(2)(ii) in accordance with § 63.804(c)(2), compliance is demonstrated if the product of (F×N)(100) yields a value (R) such that the value of G_{ac} in Equation 3 is no greater than 1.0.

(9) For each new affected source complying with § 63.802(b)(2) in accordance with § 63.804(e)(2), compliance is demonstrated if the product of (F×N)(100) yields a value (R) such that the value of G_{ac} in Equation 3 is no greater than 0.2.

(e) An alternative method to the compliance method in § 63.805(d) is the installation of a permanent total enclosure around the affected emission point(s). A permanent total enclosure presents prima facia evidence that all HAP emissions from the affected emission point(s) are directed to the control device. Each affected source that complies using a permanent total enclosure shall:

(1) Demonstrate that the total enclosure meets the requirements in paragraphs (e)(1) (i) through (iv). The owner or operator of an enclosure that does not meet these requirements may apply to the Administrator for approval of the enclosure as a total enclosure on a case-by-case basis. The enclosure shall be considered a total enclosure if it is demonstrated to the satisfaction of the Administrator that all HAP emissions from the affected emission point(s) are contained and vented to the control device. The requirements for automatic approval are as follows:

(i) The total area of all natural draft openings shall not exceed 5 percent of the total surface area of the total enclosure's walls, floor, and ceiling;

(ii) All sources of emissions within the enclosure shall be a minimum of four equivalent diameters away from each natural draft opening;

(iii) The average inward face velocity (FV) across all natural draft openings shall be a minimum of 3,600 meters per hour as determined by the following procedures:

(A) All forced makeup air ducts and all exhaust ducts are constructed so that the volumetric flow rate in each can be accurately determined by the test methods specified in § 63.805 (c)(2) and (3). Volumetric flow rates shall be calculated without the adjustment normally made for moisture content; and

(B) Determine FV by the following equation:

$$FV = \frac{\sum_{j=1}^{n} Q_{out\,j} - \sum_{i=1}^{p} Q_{in\,i}}{\sum_{k=1}^{q} A_k} \qquad \text{(Equation 7)}$$

(iv) All access doors and windows whose areas are not included as natural draft openings and are not included in the calculation of FV shall be closed during routine operation of the process.

(2) Determine the control device efficiency using Equation (5), and the test methods and procedures specified in § 63.805 (c)(1) through (6).

(3) For each affected source complying with § 63.802(a)(1) in accordance with § 63.804(a)(3), compliance is demonstrated if:

(i) The installation of a permanent total enclosure is demonstrated (N=1);

(ii) The value of F is determined from Equation (5); and

(iii) The product of (F×N)(100) yields a value (R) such that the value of E_{ac} in Equation 2 is no greater than 1.0.

(4) For each new affected source complying with § 63.802(b)(1) in accordance with § 63.804(d)(3), compliance is demonstrated if:

(i) The installation of a permanent total enclosure is demonstrated (N = 1);

(ii) The value of F is determined from Equation (5); and

(iii) The product of (F×N)(100) yields a value (R) such that the value of E_{ac} in Equation 4 is no greater than 0.8.

(5) For each affected source complying with § 63.802(a)(2)(ii) in accordance with § 63.804(c)(2), compliance is demonstrated if:

(i) The installation of a permanent total enclosure is demonstrated (N=1);

(ii) The value of F is determined from Equation (5); and

(iii) The product of (F×N)(100) yields a value (R) such that the value of G_{ac} in Equation 3 is no greater than 1.0.

(6) For each new affected source complying with § 63.802(b)(2) in accordance with § 63.804(e)(2), compliance is demonstrated if:

(i) The installation of a permanent total enclosure is demonstrated (N=1);

(ii) The value of F is determined from Equation (5); and

(iii) The product of (F×N)(100) yields a value (R) such that the value of G_{ac} in Equation 3 is no greater than 0.2.

§ 63.806 Recordkeeping requirements.

(a) The owner or operator of an affected source subject to this subpart shall fulfill all recordkeeping requirements of § 63.10 of subpart A, according to the applicability criteria in § 63.800(d) of this subpart.

(b) The owner or operator of an affected source subject to the emission limits in § 63.802 of this subpart shall maintain records of the following:

(1) A certified product data sheet for each finishing material, thinner, contact adhesive, and strippable spray booth coating subject to the emission limits in § 63.802; and

(2) The VHAP content, in kg VHAP/kg solids (lb VHAP/lb solids), as applied, of each finishing material and contact adhesive subject to the emission limits in § 63.802; and

(3) The VOC content, in kg VOC/kg solids (lb VOC/lb solids), as applied, of each strippable booth coating subject to the emission limits in § 63.802 (a)(3) or (b)(3).

(c) The owner or operator of an affected source following the compliance method in § 63.804 (a)(1) or (d)(1) shall maintain copies of the averaging calculation for each month following the compliance date, as well as the data on the quantity of coatings and thinners used that is necessary to support the calculation of E in Equation 1.

(d) The owner or operator of an affected source following the compliance procedures of § 63.804 (f)(3)(ii) and (g)(3)(ii) shall maintain the records required by § 63.806(b) as well as records of the following:

(1) Solvent and coating additions to the continuous coater reservoir;

(2) Viscosity measurements; and

(3) Data demonstrating that viscosity is an appropriate parameter for demonstrating compliance.

(e) The owner or operator of an affected source subject to the work practice standards in § 63.803 of this subpart shall maintain onsite the work practice implementation plan and all records associated with fulfilling the requirements of that plan, including, but not limited to:

(1) Records demonstrating that the operator training program required by § 63.803(b) is in place;

(2) Records collected in accordance with the inspection and maintenance plan required by § 63.803(c);

(3) Records associated with the cleaning solvent accounting system required by § 63.803(d);

(4) Records associated with the limitation on the use of conventional air spray guns showing total finishing material usage and the percentage of finishing materials applied with conventional air spray guns for each semiannual period as required by § 63.803(h)(5).

(5) Records associated with the formulation assessment plan required by § 63.803(l); and

(6) Copies of documentation such as logs developed to demonstrate that the other provisions of the work practice implementation plan are followed.

(f) The owner or operator of an affected source following the compliance method of § 63.804 (f)(4) or (g)(4) shall maintain copies of the calculations demonstrating that the overall control efficiency (R) of the control system results in the value of E_{ac} required by Equations 2 or 4, records of the operating parameter values, and copies of the semiannual compliance reports required by § 63.807(d).

(g) The owner or operator of an affected source following the compliance method of § 63.804 (f)(6) or (g)(6), shall maintain copies of the calculations demonstrating that the overall control efficiency (R) of the control system results in the applicable value of G_{ac} calculated using Equation 3, records of the operating parameter values, and copies of the semiannual compliance reports required by § 63.807(d).

(h) The owner or operator of an affected source subject to the emission limits in § 63.802 and following the compliance provisions of § 63.804(f) (1), (2), (3), (5), (7) and (8) and § 63.804(g) (1), (2), (3), (5), (7), and (8) shall maintain records of the compliance certifications submitted in accordance with § 63.807(c) for each semiannual period following the compliance date.

(i) The owner or operator of an affected source shall maintain records of all other information submitted with the compliance status report required by § 63.9(h) and § 63.807(b) and the semiannual reports required by § 63.807(c).

(j) The owner or operator of an affected source shall maintain all records in accordance with the requirements of § 63.10(b)(1).

§ 63.807 Reporting requirements.

(a) The owner or operator of an affected source subject to this subpart

shall fulfill all reporting requirements of § 63.7 through § 63.10 of subpart A (General Provisions) according to the applicability criteria in § 63.800(d) of this subpart.

(b) The owner or operator of an affected source demonstrating compliance in accordance with § 63.804(f) (1), (2), (3), (5), (7) and (8) shall submit the compliance status report required by § 63.9(h) of subpart A (General Provisions) no later than 60 days after the compliance date. The report shall include the information required by § 63.804(f) (1), (2), (3), (5), (7), and (8) of this subpart.

(c) The owner or operator of an affected source demonstrating compliance in accordance with § 63.804(g) (1), (2), (3), (5), (7), and (8) shall submit a report covering the previous 6 months of wood furniture manufacturing operations:

(1) The first report shall be submitted 30 calendar days after the end of the first 6-month period following the compliance date.

(2) Subsequent reports shall be submitted 30 calendar days after the end of each 6-month period following the first report.

(3) The semiannual reports shall include the information required by § 63.804(g) (1), (2), (3), (5), (7), and (8), a statement of whether the affected source was in compliance or noncompliance, and, if the affected source was in noncompliance, the measures taken to bring the affected source into compliance.

(4) The frequency of the reports required by paragraph (c) of this section shall not be reduced from semiannually regardless of the history of the owner's or operator's compliance status.

(d) The owner or operator of an affected source demonstrating compliance in accordance with § 63.804(g) (4) and (6) of this subpart shall submit the excess emissions and continuous monitoring system performance report and summary report required by § 63.10(e) of subpart A. The report shall include the monitored operating parameter values required by § 63.804(g) (4) and (6). If the source experiences excess emissions, the report shall be submitted quarterly for at least 1 year after the excess emissions occur and until a request to reduce reporting frequency is approved, as indicated in § 63.10(e)(3)(C). If no excess emissions occur, the report shall be submitted semiannually.

(e) The owner or operator of an affected source required to provide a written notification under § 63.803(1)(4) shall include in the notification one or more statements that explains the reasons for the usage increase. The notification shall be submitted no later than 30 calendar days after the end of the annual period in which the usage increase occurred.

§ 63.808 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under § 112(d) of the Clean Air Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) The authority conferred in § 63.804(f)(4)(iv) (D) and (E), § 63.804(g)(4)(iii)(C), § 63.804(g)(4)(vi), § 63.804(g)(6)(vi), § 63.805(a), § 63.805(d)(2)(V), and § 63.805(e)(1) shall not be delegated to any State.

§§ 63.809–63.819 [Reserved]

Tables to Subpart JJ to Part 63

TABLE 1.—GENERAL PROVISIONS APPLICABILITY TO SUBPART JJ

Reference	Applies to subpart JJ	Comment
63.1(a)	Yes	
63.1(b)(1)	No	Subpart JJ specifies applicability.
63.1(b)(2)	Yes	
63.1(b)(3)	Yes	
63.1(c)(1)	No	Subpart JJ specifies applicability.
63.1(c)(2)	No	Area sources are not subject to subpart JJ.
63.1(c)(4)	Yes	
63.1(c)(5)	Yes	
63.1(e)	Yes	
63.2	Yes	Additional terms are defined in 63.801(a) of subpart JJ. When overlap between subparts A and JJ occurs, subpart JJ takes precedence.
63.3	Yes	Other units used in subpart JJ are defined in 63.801(b).
63.4	Yes	
63.5	Yes	
63.6(a)	Yes	
63.6(b)(1)	Yes	
63.6(b)(2)	Yes	
63.6(b)(3)	Yes	
63.6(b)(4)	No	May apply when standards are proposed under Section 112(f) of the CAA.
63.6(b)(5)	Yes	
63.6(b)(7)	Yes	
63.6(c)(1)	Yes	
63.6(c)(2)	No	
63.6(c)(5)	Yes	
63.6(e)(1)	Yes	
63.6(e)(2)	Yes	
63.6(e)(3)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.6(f)(1)	No	Affected sources complying through the procedures specified in 63.804 (a)(1), (a)(2), (b), (c)(1), (d)(1), (d)(2), (e)(1), and (e)(2) are subject to the emission standards at all times, including periods of startup, shutdown, and malfunction.
63.6(f)(2)	Yes	
63.6(f)(3)	Yes	
63.6(g)	Yes	
63.6(h)	No.	
63.6 (i)(1)–(i)(3)	Yes	
63.6(i)(4)(i)	Yes	

TABLE 1.—GENERAL PROVISIONS APPLICABILITY TO SUBPART JJ—Continued

Reference	Applies to subpart JJ	Comment
63.6(i)(4)(ii)	No.	
63.6 (i)(5)–(i)(14)	Yes	
63.6(i)(16)	Yes	
63.6(j)	Yes	
63.7	Yes	Applies only to affected sources using a control device to comply with the rule.
63.8	Yes	Applies only to affected sources using a control device to comply with the rule.
63.9(a)	Yes	
63.9(b)	Yes	Existing sources are required to submit initial notification report within 270 days of the effective date.
63.9(c)	Yes	
63.9(d)	Yes	
63.9(e)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.9(f)	No	
63.9(g)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.9(h)	Yes	63.9(h)(2)(ii) applies only to affected sources using a control device to comply with the rule.
63.9(i)	Yes	
63.9(j)	Yes	
63.10(a)	Yes	
63.10(b)(1)	Yes	
63.10(b)(2)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.10(b)(3)	Yes	
63.10(c)	Yes	
63.10(d)(1)	Yes	
63.10(d)(2)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.10(d)(3)	No	
63.10(d)(4)	Yes	
63.10(d)(5)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.10(e)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.10(f)	Yes	
63.11	No	
63.12–63.15	Yes	

TABLE 2.—LIST OF VOLATILE HAZARDOUS AIR POLLUTANTS

Chemical name	CAS No.
Acetaldehyde	75070
Acetamide	60355
Acetonitrile	75058
Acetophenone	98862
2-Acetylaminofluorine	53963
Acrolein	107028
Acrylamide	79061
Acrylic acid	79107
Acrylonitrile	107131
Allyl chloride	107051
4-Aminobiphenyl	92671
Aniline	62533
o-Anisidine	90040
Benzene	71432
Benzidine	92875
Benzotrichloride	98077
Benzyl chloride	100447
Biphenyl	92524
Bis(2-ethylhexyl) phthalate (DEHP)	117817
Bis(chloromethyl) ether	542881
Bromoform	75252
1,3-Butadiene	106990
Caprolactam	105602
Carbon disulfide	75150
Carbon tetrachloride	56235
Carbonyl sulfide	463581
Catechol	120809
Chloroacetic acid	79118
2-Chloroacetophenone	532274
Chlorobenzene	108907
Chloroform	67663
Chloromethyl methyl ether	107302
Chloroprene	126998

TABLE 2.—LIST OF VOLATILE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name	CAS No.
Cresols (isomers and mixture)	1319773
o-Cresol	95487
m-Cresol	108394
p-Cresol	106445
Cumene	98828
2,4-D (2,4-Dichlorophenoxyacetic acid, including salts and esters)	94757
DDE (1,1-Dichloro-2,2-bis (p-chlorophenyl) ethylene)	72559
Diazomethane	334883
Dibenzofuran	132649
1,2-Dibromo-3-chloropropane	96128
Dibutylphthalate	84742
1,4-Dichlorobenzene	106467
3,3′-Dichlorobenzidine	91941
Dichloroethyl ether (Bis (2-chloroethyl) ether)	111444
1,3-Dichloropropene	542756
Diethanolamine	111422
N,N-Dimethylaniline	121697
Diethyl sulfate	64675
3,3′-Dimethoxybenzidine	119904
4-Dimethylaminoazobenzene	60117
3,3′-Dimethylbenzidine	119937
Dimethylcarbamoyl chloride	79447
N,N-Dimethylformamide	68122
1,1-Dimethylhydrazine	57147
Dimethyl phthalate	131113
Dimethyl sulfate	77781
4,6-Dinitro-o-cresol, and salts	.....
2,4-Dinitrophenol	51285
2,4-Dinitrotoluene	121142
1,4-Dioxane (1,4-Diethyleneoxide)	123911
1,2-Diphenylhydrazine	122667

TABLE 2.—LIST OF VOLATILE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name	CAS No.
Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106898
1,2-Epoxybutane	106887
Ethyl acrylate	140885
Ethylbenzene	100414
Ethyl carbamate (Urethane)	51796
Ethyl chloride (Chloroethane)	75003
Ethylene dibromide (Dibromoethane)	106934
Ethylene dichloride (1,2-Dichloroethane)	107062
Ethylene glycol	107211
Ethylene oxide	75218
Ethylenethiourea	96457
Ethylidene dichloride (1,1-Dichloroethane)	75343
Formaldehyde	50000
Glycol ethers	0
Hexachlorobenzene	118741
Hexachloro-1,3-butadiene	87683
Hexachloroethane	67721
Hexamethylene-1,6-diisocyanate	822060
Hexamethylphosphoramide	680319
Hexane	110543
Hydrazine	302012
Hydroquinone	123319
Isophorone	78591
Maleic anhydride	108316
Methanol	67561
Methyl bromide (Bromomethane)	74839
Methyl chloride (Chloromethane)	74873
Methyl chloroform (1,1,1-Trichloroethane)	71556
Methyl ethyl ketone (2-Butanone)	78933

TABLE 2.—LIST OF VOLATILE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name	CAS No.
Methylhydrazine	60344
Methyl iodide (Iodomethane)	74884
Methyl isobutyl ketone (Hexone)	108101
Methyl isocyanate	624839
Methyl methacrylate	80626
Methyl tert-butyl ether	1634044
4,4′-Methylenebis (2-chloroaniline)	101144
Methylene chloride (Dichloromethane)	75092
4,4′-Methylenediphenyl diisocyanate (MDI)	101688
4,4′-Methylenedianiline	101779
Naphthalene	91203
Nitrobenzene	98953
4-Nitrobiphenyl	92933
4-Nitrophenol	100027
2-Nitropropane	79469
N-Nitroso-N-methylurea	684935
N-Nitrosodimethylamine	62759
N-Nitrosomorpholine	59892
Phenol	108952
p-Phenylenediamine	106503
Phosgene	75445
Phthalic anhydride	85449
Polychlorinated biphenyls (Aroclors)	1336363
Polycyclic Organic Matter [b]	0
1,3-Propane sultone	1120714
beta-Propiolactone	57578
Propionaldehyde	123386
Propoxur (Baygon)	114261
Propylene dichloride (1,2-Dichloropropane)	78875
Propylene oxide	75569
1,2-Propylenimine (2-Methyl aziridine)	75558
Quinone	106514
Styrene	100425
Styrene oxide	96093
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746016
1,1,2,2-Tetrachloroethane	79345
Tetrachloroethylene (Perchloroethylene)	127184
Toluene	108883
2,4-Toluenediamine	95807
Toluene-2,4-diisocyanate	584849
o-Toluidine	95534
1,2,4-Trichlorobenzene	120821
1,1,2-Trichloroethane	79005
Trichloroethylene	79016
2,4,5-Trichlorophenol	95954
2,4,6-Trichlorophenol	88062
Triethylamine	121448
Trifluralin	1582098
2,2,4-Trimethylpentane	540841
Vinyl acetate	108054
Vinyl bromide	593602
Vinyl chloride	75014
Vinylidene chloride (1,1-Dichloroethylene)	75354
Xylenes (isomers and mixture)	1330207
o-Xylene	95476
m-Xylene	108383
p-Xylene	106423

[a] Includes mono- and di-ethers of ethylene glycol, diethylene glycols and triethylene glycol; R-(OCH_2CH_2)RR-OR where:
n = 1, 2, or 3,
R = alkyl or aryl groups
R′ = R, H, or groups which, when removed, yield glycol ethers with the structure: R-$(OCH_2CH_2)_n$-OH. Polymers are excluded from the glycol category.

[b] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

TABLE 3.—SUMMARY OF EMISSION LIMITS

Emission point	Existing source	New source
Finishing Operations:		
(a) Achieve a weighted average VHAP content across all coatings (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied	[a] 1.0	[a] 0.8
(b) Use compliant finishing materials (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied):		
—stains	[a] 1.0	[a] 1.0
—washcoats	[a,b] 1.0	[a,b] 0.8
—sealers	[a] 1.0	[a] 0.8
—topcoats	[a] 1.0	[a] 0.8
—basecoats	[a,b] 1.0	[a,b] 0.8
—enamels	[a,b] 1.0	[a,b] 0.8
—thinners (maximum % HAP allowable); or	10.0	10.0
(c) As an alternative, use control device; or	[c] 1.0	[c] 0.8
(d) Use any combination of (a), (b), and (c)	1.0	0.8
Cleaning Operations:		
Strippable spray booth material (maximum VOC content, kg VOC/kg solids [lb VOC/lb solids])	0.8	0.8
Contact Adhesives:		
(a) Use compliant contact adhesives (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied) based on following criteria:		
i. For aerosol adhesives, and for contact adhesives applied to nonporous substrates	[d] NA	[d] NA
ii. For foam adhesives used in products that meet flammability requirements	1.8	0.2
iii. For all other contact adhesives (including foam adhesives used in products that do not meet flammability requirements); or	1.0	0.2
(b) Use a control device	[e] 1.0	[e] 0.2

[a] The limits refer to the VHAP content of the coating, as applied.

[b] Washcoats, basecoats, and enamels must comply with the limits presented in this table if they are purchased premade, that is, if they are not formulated onsite by thinning other finishing materials. If they are formulated onsite, they must be formulated using compliant finishing materials, i.e., those that meet the limits specified in this table, and thinners containing no more than 3.0 percent HAP by weight.

[c] The control device must operate at an efficiency that is equivalent to no greater than 1.0 kilogram (or 0.8 kilogram) of VHAP being emitted from the affected emission source per kilogram of solids used.

[d] There is no limit on the VHAP content of these adhesives.

[e] The control device must operate at an efficiency that is equivalent to no greater than 1.0 kilogram (or 0.2 kilogram) of VHAP being emitted from the affected emission source per kilogram of solids used.

TABLE 4.—POLLUTANTS EXCLUDED FROM USE IN CLEANING AND WASHOFF SOLVENTS

Chemical name	CAS No.
4-Aminobiphenyl	92671
Styrene oxide	96093
Diethyl sulfate	64675
N-Nitrosomorpholine	59892
Dimethyl formamide	68122
Hexamethylphosphoramide	680319
Acetamide	60355
4,4′-Methylenedianiline	101779
o-Anisidine	90040
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746016
Beryllium salts	
Benzidine	92875
N-Nitroso-N-methylurea	684935
Bis(chloromethyl)ether	542881
Dimethyl carbamoyl chloride	79447
Chromium compounds (hexavalent)	
1,2-Propylenimine (2-Methyl aziridine)	75558
Arsenic and inorganic arsenic compounds	99999904
Hydrazine	302012
1,1-Dimethyl hydrazine	57147
Beryllium compounds	7440417
1,2-Dibromo-3-chloropropane	96128
N-Nitrosodimethylamine	62759
Cadmium compounds	
Benzo (a) pyrene	50328
Polychlorinated biphenyls (Aroclors)	1336363
Heptachlor	76448
3,3′-Dimethyl benzidine	119937
Nickel subsulfide	12035722
Acrylamide	79061
Hexachlorobenzene	118741
Chlordane	57749
1,3-Propane sultone	1120714
1,3-Butadiene	106990
Nickel refinery dust	
2-Acetylaminoflourine	53963
3,3′-Dichlorobenzidine	53963
Lindane (hexachlorcyclohexane, gamma)	58899
2,4-Toluene diamine	95807
Dichloroethyl ether (Bis(2-chloroethyl)ether)	111444
1,2-Diphenylhydrazine	122667
Toxaphene (chlorinated camphene)	8001352
2,4-Dinitrotoluene	121142
3,3′-Dimethoxybenzidine	119904
Formaldehyde	50000
4,4′-Methylene bis(2-chloroaniline)	101144
Acrylonitrile	107131
Ethylene dibromide(1,2-Dibromoethane)	106934
DDE (1,1-p-chlorophenyl 1-2 dichloroethylene)	72559
Chlorobenzilate	510156
Dichlorvos	62737
Vinyl chloride	75014
Coke Oven Emissions	99999908
Ethylene oxide	75218
Ethylene thiourea	96457
Vinyl bromide (bromoethene)	593602
Selenium sulfide (mono and di)	7488564
Chloroform	67663
Pentachlorophenol	87865
Ethyl carbamate (Urethane)	51796

TABLE 4.—POLLUTANTS EXCLUDED FROM USE IN CLEANING AND WASHOFF SOLVENTS—Continued

Chemical name	CAS No.
Ethylene dichloride (1,2-Dichloroethane)	107062
Propylene dichloride (1,2-Dichloropropane)	78875
Carbon tetrachloride	56235
Benzene	71432
Methyl hydrazine	60344
Ethyl acrylate	140885
Propylene oxide	75569
Aniline	62533
1,4-Dichlorobenzene(p)	106467
2,4,6-Trichlorophenol	88062
Bis(2-ethylhexyl)phthalate (DEHP)	117817
o-Toluidine	95534
Propoxur	114261
Trichloroethylene	79016
1,4-Dioxane (1,4-Diethyleneoxide)	123911
Acetaldehyde	75070
Bromoform	75252
Captan	133062
Epichlorohydrin	106898
Methylene chloride (Dichloromethane)	75092
Tetrachloroethylene (Perchloroethylene)	127184
Dibenz (ah) anthracene	53703
Chrysene	218019
Dimethyl aminoazobenzene	60117
Benzo (a) anthracene	56553
Benzo (b) fluoranthene	205992
Antimony trioxide	1309644
2-Nitropropane	79469
1,3-Dichloropropene	542756
7, 12-Dimethylbenz(a)anthracene	57976
Benz(c)acridine	225514
Indeno(1,2,3-cd)pyrene	193395
1,2:7,8-Dibenzopyrene	189559

TABLE 5.—LIST OF VHAP OF POTENTIAL CONCERN IDENTIFIED BY INDUSTRY

Chemical	CAS No.	EPA de minimis, tons/yr
Dimethyl formamide	68122	1.0
Formaldehyde	50000	0.2
Methylene chloride	75092	4.0
2-Nitropropane	79469	1.0
Isophorone	78591	0.7
Styrene monomer	1000425	1.0
Phenol	108952	0.1
Diethanolamine	11422	5.0
2-Methoxyethanol	109864	10.0
2-Ethoxyethyl acetate	111159	5.0

TABLE 6.—VHAP OF POTENTIAL CONCERN

CAS No.	Chemical name
"Nonthreshold" Pollutants	
92671	4-Aminobiphenyl.
96093	Styrene oxide.
64675	Diethyl sulfate.

TABLE 6.—VHAP OF POTENTIAL CONCERN—Continued

CAS No.	Chemical name
59892	N-Nitrosomorpholine.
68122	Dimethyl formamide.
80319	Hexamethylphosphoramide.
60355	Acetamide.
101779	4,4'-Methylenedianiline.
90040	o-Anisidine.
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxindioxin.
92875	Benzidine
684935	N-Nitroso-N-methylurea.
542881	Bis(chloromethyl)ether.
79447	Dimethyl carbamoyl chloride.
75558	1,2-Propylenimine (2-Methyl aziridine).
57147	1,1-Dimethyl hydrazine.
96128	1,2-Dibromo-3-chloropropane.
62759	N-Nitrosodimethylamine.
50328	Benzo (a) pyrene.
1336363	Polychlorinated biphenyls (Aroclors).
76448	Heptachlor.
119937	3,3'-Dimethyl benzidine.
79061	Acrylamide.
118741	Hexachlorobenzene.
57749	Chlordane.
1120714	1,3-Propane sultone.
106990	1,3-Butadiene.
53963	2-Acetylaminoflourine.
53963	3,3'-Dichlorobenzidine.
58899	Lindane (hexachlorcyclohexane, gamma).
95807	2,4-Toluene diamine.
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether).
122667	1,2 - Diphenylhydrazine.
8001352	Toxaphene (chlorinated camphene).
121142	2,4-Dinitrotoluene.
119904	3,3'-Dimethoxybenzidine.
50000	Formaldehyde.
101144	4,4'-Methylene bis(2-chloroaniline).
107131	Acrylonitrile.
106934	Ethylene dibromide(1,2-Dibromoethane).
72559	DDE (1,1-p-chlorophenyl 1-2 dichloroethylene).
510156	Chlorobenzilate.
62737	Dichlorvos.
75014	Vinyl chloride.
75218	Ethylene oxide.
96457	Ethylene thiourea.
593602	Vinyl bromide (bromoethene).
67663	Chloroform.
87865	Pentachlorophenol.
51796	Ethyl carbamate (Urethane).
107062	Ethylene dichloride (1,2-Dichloroethane).
78875	Propylene dichloride (1,2-Dichloropropane).
56235	Carbon tetrachloride.
71432	Benzene.
140885	Ethyl acrylate.
75569	Propylene oxide.
62533	Aniline.
106467	1,4-Dichlorobenzene(p).
88062	2,4,6-Trichlorophenol.
117817	Bis(2-ethylhexyl)phthalate (DEHP).
95534	o-Toluidine.
114261	Propoxur.

TABLE 6.—VHAP OF POTENTIAL CONCERN—Continued

CAS No.	Chemical name
79016	Trichloroethylene.
123911	1,4-Dioxane (1,4-Diethyleneoxide).
75070	Acetaldehyde.
75252	Bromoform.
133062	Captan.
106898	Epichlorohydrin.
75092	Methylene chloride (Dichloromethane).
127184	Tetrachloroethylene (Perchloroethylene).
53703	Dibenz (ah) anthracene.
218019	Chrysene.
60117	Dimethyl aminoazobenzene.
56553	Benzo (a) anthracene.
205992	Benzo (b) fluoranthene.
79469	2-Nitropropane.
542756	1,3-Dichloropropene.
57976	7, 12-Dimethylbenz(a)anthracene.
225514	Benz(c)acridine.
193395	Indeno(1,2,3-cd)pyrene.
189559	1,2:7,8-Dibenzopyrene.
79345	1,1,2,2-Tetrachloroethane.
91225	Quinoline.
75354	Vinylidene chloride (1,1-Dichloroethylene).
87683	Hexachlorobutadiene.
82688	Pentachloronitrobenzene (Quintobenzene).
78591	Isophorone.
79005	1,1,2-Trichloroethane.
74873	Methyl chloride (Chloromethane).
67721	Hexachloroethane.
1582098 ...	Trifluralin.
1319773 ...	Cresols/Cresylic acid (isomers and mixture).
108394	m-Cresol.
75343	Ethylidene dichloride (1,1-Dichloroethane).
95487	o-Cresol.
106445	p-Cresol.
74884	Methyl iodide (Iodomethane).
100425	Styrene [a].
107051	Allyl chloride.
334883	Diazomethane.
95954	2,4,5 – Trichlorophenol.
133904	Chloramben.
106887	1,2 - Epoxybutane.
108054	Vinyl acetate.
126998	Chloroprene.
123319	Hydroquinone.
92933	4-Nitrobiphenyl
"High-Concern" Pollutants	
56382	Parathion.
13463393 .	Nickel Carbonyl.
60344	Methyl hydrazine.
75218	Ethylene oxide.
151564	Ethylene imine.
77781	Dimethyl sulfate.
107302	Chloromethyl methyl ether.
57578	beta-Propiolactone.
100447	Benzyl chloride.
98077	Benzotrichloride.
107028	Acrolein.
584849	2,4 - Toluene diisocyanate.
75741	Tetramethyl lead.
78002	Tetraethyl lead.

TABLE 6.—VHAP OF POTENTIAL CONCERN—Continued

CAS No.	Chemical name
12108133 .	Methylcyclopentadienyl manganese.
624839	Methyl isocyanate.
77474	Hexachlorocyclopentadiene.
62207765 .	Fluomine.
10210681 .	Cobalt carbonyl.
79118	Chloroacetic acid.
534521	4,6-Dinitro-o-cresol, and salts.
101688	Methylene diphenyl diisocyanate.
108952	Phenol.
62384	Mercury, (acetato-o) phenyl.
98862	Acetophenone.
108316	Maleic anhydride.
532274	2-Chloroacetophenone.
51285	2,4-Dinitrophenol.
108864	2-Methyoxy ethanol.
98953	Nitrobenzene.
74839	Methyl bromide (Bromomethane).
75150	Carbon disulfide.
121697	N,N-Dimethylaniline.
"Unrankable" Pollutants	
106514	Quinone.
123386	Propionaldehyde.
120809	Catechol.
85449	Phthalic anhydride.
463581	Carbonyl sulfide.
132649	Dibenzofurans.
100027	4-Nitrophenol.
540841	2,2,4-Trimethylpentane.
11422	Diethanolamine.
822060	Hexamethylene-1,6-diisocyanate
	Glycol ethers[b]
	Polycyclic organic matter[c]

* = Currently an EPA weight of evidence classification is under review.

[a] The EPA does not currently have an official weight-of-evidence classification for styrene. For purposes of this rule, styrene is treated as a "nonthreshold" pollutant. (See data report form in appendix A of the hazard ranking technical background document.)

[b] Except for 2-ethoxy ethanol, ethylene glycol monobutyl ether, and 2-methoxy ethanol.

[c] Except for benzo(b)fluoranthene, benzo(a)anthracene, benzo(a)pyrene, 7,12-dimethylbenz(a)anthracene, benz(c)acridine, chrysene, dibenz(ah) anthracene, 1,2:7,8-dibenzopyrene, indeno(1,2,3-cd)pyrene, but including dioxins and furans.

3. Appendix A of part 63 is amended by adding Method 311 to read as follows:

Appendix A to Part 63—Test Methods

Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection Into a Gas Chromatograph

1. Scope and Application

1.1 Applicability. This method is applicable for determination of most compounds designated by the U.S. Environmental Protection Agency as volatile hazardous air pollutants (HAP's) (See Reference 1) that are contained in paints and coatings. Styrene, ethyl acrylate, and methyl methacrylate can be measured by ASTM D 4827–93 or ASTM D 4747–87. Formaldehyde can be measured by ASTM PS 9–94 or ASTM D 1979–91. Toluene diisocyanate can be measured in urethane prepolymers by ASTM D 3432–89. Method 311 applies only to those volatile HAP's which are added to the coating when it is manufactured, not to those which may form as the coating cures (reaction products or cure volatiles). A separate or modified test procedure must be used to measure these reaction products or cure volatiles in order to determine the total volatile HAP emissions from a coating. Cure volatiles are a significant component of the total HAP content of some coatings. The term "coating" used in this method shall be understood to mean paints and coatings.

1.2 Principle. The method uses the principle of gas chromatographic separation and quantification using a detector that responds to concentration differences. Because there are many potential analytical systems or sets of operating conditions that may represent useable methods for determining the concentrations of the compounds cited in Section 1.1 in the applicable matrices, all systems that employ this principle, but differ only in details of equipment and operation, may be used as alternative methods, provided that the prescribed quality control, calibration, and method performance requirements are met. Certified product data sheets (CPDS) may also include information relevant to the analysis of the coating sample including, but not limited to, separation column, oven temperature, carrier gas, injection port temperature, extraction solvent, and internal standard.

2. Summary of Method

Whole coating is added to dimethylformamide and a suitable internal standard compound is added. An aliquot of the sample mixture is injected onto a chromatographic column containing a stationary phase that separates the analytes from each other and from other volatile compounds contained in the sample. The concentrations of the analytes are determined by comparing the detector responses for the sample to the responses obtained using known concentrations of the analytes.

3. Definitions [Reserved]

4. Interferences

4.1 Coating samples of unknown composition may contain the compound used as the internal standard. Whether or not this is the case may be determined by following the procedures of Section 11 and deleting the addition of the internal standard specified in Section 11.5.3. If necessary, a different internal standard may be used.

4.2 The GC column and operating conditions developed for one coating formulation may not ensure adequate resolution of target analytes for other coating formulations. Some formulations may contain nontarget analytes that coelute with target analytes. If there is any doubt about the identification or resolution of any gas chromatograph (GC) peak, it may be necessary to analyze the sample using a different GC column or different GC operating conditions.

4.3 Cross-contamination may occur whenever high-level and low-level samples are analyzed sequentially. The order of sample analyses specified in Section 11.7 is designed to minimize this problem.

4.4 Cross-contamination may also occur if the devices used to transfer coating during the sample preparation process or for injecting the sample into the GC are not adequately cleaned between uses. All such devices should be cleaned with acetone or other suitable solvent and checked for plugs or cracks before and after each use.

5. Safety

5.1 Many solvents used in coatings are hazardous. Precautions should be taken to avoid unnecessary inhalation and skin or eye contact. This method may involve hazardous materials, operations, and equipment. This test method does not purport to address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations in regards to the performance of this test method.

5.2 Dimethylformamide is harmful if inhaled or absorbed through the skin. The user should obtain relevant health and safety information from the manufacturer. Dimethylformamide should be used only with adequate ventilation. Avoid contact with skin, eyes, and clothing. In case of contact, immediately flush skin or eyes with plenty of water for at least 15 minutes. If eyes are affected, consult a physician. Remove and wash contaminated clothing before reuse.

5.3 User's manuals for the gas chromatograph and other related equipment should be consulted for specific precautions to be taken related to their use.

6. Equipment and Supplies

Note: Certified product data sheets (CPDS) may also include information relevant to the analysis of the coating sample including, but not limited to, separation column, oven temperature, carrier gas, injection port temperature, extraction solvent, and internal standard.

6.1 Sample Collection.

6.1.1 Sampling Containers. Dual-seal sampling containers, four to eight fluid ounce capacity, should be used to collect the samples. Glass sample bottles or plastic containers with volatile organic compound (VOC) impermeable walls must be used for corrosive substances (*e.g.*, etch primers and certain coating catalysts such as methyl ethyl ketone (MEK) peroxide). Sample containers, caps, and inner seal liners must be inert to the compounds in the sample and must be selected on a case-by-case basis.

6.1.1.1 Other routine sampling supplies needed include waterproof marking pens, tubing, scrappers/spatulas, clean rags, paper towels, cooler/ice, long handle tongs, and mixing/stirring paddles.

6.1.2 Personal safety equipment needed includes eye protection, respiratory protection, a hard hat, gloves, steel toe shoes, etc.

6.1.3 Shipping supplies needed include shipping boxes, packing material, shipping labels, strapping tape, etc.

6.1.4 Data recording forms and labels needed include coating data sheets and sample can labels.

Note: The actual requirements will depend upon the conditions existing at the source sampled.

6.2 Laboratory Equipment and Supplies.

6.2.1 Gas Chromatograph (GC). Any instrument equipped with a flame ionization detector and capable of being temperature programmed may be used. Optionally, other types of detectors (e.g., a mass spectrometer), and any necessary interfaces, may be used provided that the detector system yields an appropriate and reproducible response to the analytes in the injected sample. Autosampler injection may be used, if available.

6.2.2 Recorder. If available, an electronic data station or integrator may be used to record the gas chromatogram and associated data. If a strip chart recorder is used, it must meet the following criteria: A 1 to 10 millivolt (mV) linear response with a full scale response time of 2 seconds or less and a maximum noise level of ±0.03 percent of full scale. Other types of recorders may be used as appropriate to the specific detector installed provided that the recorder has a full scale response time of 2 seconds or less and a maximum noise level of ±0.03 percent of full scale.

6.2.3 Column. The column must be constructed of materials that do not react with components of the sample (*e.g.*, fused silica, stainless steel, glass). The column should be of appropriate physical dimensions (*e.g.*, length, internal diameter) and contain sufficient suitable stationary phase to allow separation of the analytes. DB–5, DB-Wax, and FFAP columns are commonly used for paint analysis; however, it is the responsibility of each analyst to select appropriate columns and stationary phases.

6.2.4 Tube and Tube Fittings. Supplies to connect the GC and gas cylinders.

6.2.5 Pressure Regulators. Devices used to regulate the pressure between gas cylinders and the GC.

6.2.6 Flow Meter. A device used to determine the carrier gas flow rate through the GC. Either a digital flow meter or a soap film bubble meter may be used to measure gas flow rates.

6.2.7 Septa. Seals on the GC injection port through which liquid or gas samples can be injected using a syringe.

6.2.8 Liquid Charging Devices. Devices used to inject samples into the GC such as clean and graduated 1, 5, and 10 microliter (µl) capacity syringes.

6.2.9 Vials. Containers that can be sealed with a septum in which samples may be prepared or stored. The recommended size is 25 ml capacity. Mininert® valves have been found satisfactory and are available from Pierce Chemical Company, Rockford, Illinois.

6.2.10 Balance. Device used to determine the weights of standards and samples. An analytical balance capable of accurately weighing to 0.0001 g is required.

7. Reagents and Standards

7.1 Purity of Reagents. Reagent grade chemicals shall be used in all tests. Unless otherwise specified, all reagents shall conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available. Other grades may be used provided it is first ascertained that the reagent is of sufficient purity to permit its use without lessening the accuracy of determination.

7.2 Carrier Gas. Helium carrier gas shall have a purity of 99.995 percent or higher. High purity nitrogen may also be used. Other carrier gases that are appropriate for the column system and analyte may also be used. Ultra-high purity grade hydrogen gas and zero-grade air shall be used for the flame ionization detector.

7.3 Dimethylformamide (DMF). Solvent for all standards and samples. Some other suitable solvent may be used if DMF is not compatible with the sample or coelutes with a target analyte.

Note: DMF may coelute with ethylbenzene or p-xylene under the conditions described in the note under Section 6.2.3.

7.4 Internal Standard Materials. The internal standard material is used in the quantitation of the analytes for this method. It shall be gas chromatography spectrophotometric quality or, if this grade is not available, the highest quality available. Obtain the assay for the internal standard material and maintain at that purity during use. The recommended internal standard material is 1-propanol; however, selection of an appropriate internal standard material for the particular coating and GC conditions used is the responsibility of each analyst.

7.5 Reference Standard Materials. The reference standard materials are the chemicals cited in Section 1.1 which are of known identity and purity and which are used to assist in the identification and quantification of the analytes of this method. They shall be the highest quality available. Obtain the assays for the reference standard materials and maintain at those purities during use.

7.6 Stock Reference Standards. Stock reference standards are dilutions of the reference standard materials that may be used on a daily basis to prepare calibration standards, calibration check standards, and quality control check standards. Stock reference standards may be prepared from the reference standard materials or purchased as certified solutions.

7.6.1 Stock reference standards should be prepared in dimethylformamide for each analyte expected in the coating samples to be analyzed. The concentrations of analytes in the stock reference standards are not specified but must be adequate to prepare the calibration standards required in the method. A stock reference standard may contain more than one analyte provided all analytes are chemically compatible and no analytes coelute. The actual concentrations prepared must be known to within 0.1 percent (e.g., 0.1000 ± 0.0001 g/g solution). The following procedure is suggested. Place about 35 ml of dimethylformamide into a tared ground-glass stoppered 50 ml volumetric flask. Weigh the flask to the nearest 0.1 mg. Add 12.5 g of the reference standard material and reweigh the flask. Dilute to volume with dimethylformamide and reweigh. Stopper the

flask and mix the contents by inverting the flask several times. Calculate the concentration in grams per gram of solution from the net gain in weights, correcting for the assayed purity of the reference standard material.

Note: Although a glass-stoppered volumetric flask is convenient, any suitable glass container may be used because stock reference standards are prepared by weight.

7.6.2 Transfer the stock reference standard solution into one or more Teflon-sealed screw-cap bottles. Store, with minimal headspace, at −10°C to 0°C and protect from light.

7.6.3 Prepare fresh stock reference standards every six months, or sooner if analysis results from daily calibration check standards indicate a problem. Fresh stock reference standards for very volatile HAP's may have to be prepared more frequently.

7.7 Calibration Standards. Calibration standards are used to determine the response of the detector to known amounts of reference material. Calibration standards must be prepared at a minimum of three concentration levels from the stock reference standards (see Section 7.6). Prepare the calibration standards in dimethylformamide (see Section 7.3). The lowest concentration standard should contain a concentration of analyte equivalent either to a concentration of no more than 0.01% of the analyte in a coating or to a concentration that is lower than the actual concentration of the analyte in the coating, whichever concentration is higher. The highest concentration standard should contain a concentration of analyte equivalent to slightly more than the highest concentration expected for the analyte in a coating. The remaining calibration standard should contain a concentration of analyte roughly at the midpoint of the range defined by the lowest and highest concentration calibration standards. The concentration range of the standards should thus correspond to the expected range of analyte concentrations in the prepared coating samples (see Section 11.5). Each calibration standard should contain each analyte for detection by this method expected in the actual coating samples (e.g., some or all of the compounds listed in Section 1.1 may be included). Each calibration standard should also contain an appropriate amount of internal standard material (response for the internal standard material is within 25 to 75 percent of full scale on the attenuation setting for the particular reference standard concentration level). Calibration Standards should be stored for 1 week only in sealed vials with minimal headspace. If the stock reference standards were prepared as specified in Section 7.6, the calibration standards may be prepared by either weighing each addition of the stock reference standard or by adding known volumes of the stock reference standard and calculating the mass of the standard reference material added. Alternative 1 (Section 7.7.1) specifies the procedure to be followed when the stock reference standard is added by volume. Alternative 2 (Section 7.7.2) specifies the procedure to be followed when the stock reference standard is added by weight.

Note: To assist with determining the appropriate amount of internal standard to add, as required here and in other sections of this method, the analyst may find it advantageous to prepare a curve showing the area response versus the amount of internal standard injected into the GC.

7.7.1 Preparation Alternative 1. Determine the amount of each stock reference standard and dimethylformamide solvent needed to prepare approximately 25 ml of the specific calibration concentration level desired. To a tared 25 ml vial that can be sealed with a crimp-on or Mininert® valve, add the total amount of dimethylformamide calculated to be needed. As quickly as practical, add the calculated amount of each stock reference standard using new pipets (or pipet tips) for each stock reference standard. Reweigh the vial and seal it. Using the known weights of the standard reference materials per ml in the stock reference standards, the volumes added, and the total weight of all reagents added to the vial, calculate the weight percent of each standard reference material in the calibration standard prepared. Repeat this process for each calibration standard to be prepared.

7.7.2 Preparation Alternative 2. Determine the amount of each stock reference standard and dimethylformamide solvent needed to prepare approximately 25 ml of the specific calibration concentration level desired. To a tared 25 ml vial that can be sealed with a crimp-on or Mininert® valve, add the total amount of dimethylformamide calculated to be needed. As quickly as practical, add the calculated amount of a stock reference standard using a new pipet (or pipet tip) and reweigh the vial. Repeat this process for each stock reference standard to be added. Seal the vial after obtaining the final weight. Using the known weight percents of the standard reference materials in the stock reference standards, the weights of the stock reference standards added, and the total weight of all reagents added to the vial, calculate the weight percent of each standard reference material in the calibration standard prepared. Repeat this process for each calibration standard to be prepared.

8. Sample Collection, Preservation, Transport, and Storage

8.1 Copies of material safety data sheets (MSDS's) for each sample should be obtained prior to sampling. The MSDS's contain information on the ingredients, and physical and chemical properties data. The MSDS's also contain recommendations for proper handling or required safety precautions. Certified product data sheets (CPDS) may also include information relevant to the analysis of the coating sample including, but not limited to, separation column, oven temperature, carrier gas, injection port temperature, extraction solvent, and internal standard.

8.2 A copy of the blender's worksheet can be requested to obtain data on the exact coating being sampled. A blank coating data sheet form (see Section 18) may also be used. The manufacturer's formulation information from the product data sheet should also be obtained.

8.3 Prior to sample collection, thoroughly mix the coating to ensure that a representative, homogeneous sample is obtained. It is preferred that this be accomplished using a coating can shaker or similar device; however, when necessary, this may be accomplished using mechanical agitation or circulation systems.

8.3.1 Water-thinned coatings tend to incorporate or entrain air bubbles if stirred too vigorously; mix these types of coatings slowly and only as long as necessary to homogenize.

8.3.2 Each component of multicomponent coatings that harden when mixed must be sampled separately. The component mix ratios must be obtained at the facility at the time of sampling and submitted to the analytical laboratory.

8.4 Sample Collection. Samples must be collected in a manner that prevents or minimizes loss of volatile components and that does not contaminate the coating reservoir. A suggested procedure is as follows. Select a sample collection container which has a capacity at least 25 percent greater than the container in which the sample is to be transported. Make sure both sample containers are clean and dry. Using clean, long-handled tongs, turn the sample collection container upside down and lower it into the coating reservoir. The mouth of the sample collection container should be at approximately the midpoint of the reservoir (do not take the sample from the top surface). Turn the sample collection container over and slowly bring it to the top of the coating reservoir. Rapidly pour the collected coating into the sample container, filling it completely. It is important to fill the sample container completely to avoid any loss of volatiles due to volatilization into the headspace. Return any unused coating to the reservoir or dispose as appropriate.

Note: If a company requests a set of samples for its own analysis, a separate set of samples, using new sample containers, should be taken at the same time.

8.5 Once the sample is collected, place the sample container on a firm surface and insert the inner seal in the container by placing the seal inside the rim of the container, inverting a screw cap, and pressing down on the screw cap which will evenly force the inner seal into the container for a tight fit. Using clean towels or rags, remove all residual coating material from the outside of the sample container after inserting the inner seal. Screw the cap onto the container.

8.5.1 Affix a sample label (see Section 18) clearly identifying the sample, date collected, and person collecting the sample.

8.5.2 Prepare the sample for transportation to the laboratory. The sample should be maintained at the coating's recommended storage temperature specified on the Material Safety Data Sheet, or, if no temperature is specified, the sample should be maintained within the range of 5°C to 38°C.

8.9 The shipping container should adhere to U.S. Department of Transportation specification DOT 12–B. Coating samples are considered hazardous materials; appropriate shipping procedures should be followed.

9. Quality Control

9.1 Laboratories using this method should operate a formal quality control program. The minimum requirements of the program should consist of an initial demonstration of laboratory capability and an ongoing analysis of blanks and quality control samples to evaluate and document quality data. The laboratory must maintain records to document the quality of the data generated. When results indicate atypical method performance, a quality control check standard (see Section 9.4) must be analyzed to confirm that the measurements were performed in an in-control mode of operation.

9.2 Before processing any samples, the analyst must demonstrate, through analysis of a reagent blank, that there are no interferences from the analytical system, glassware, and reagents that would bias the sample analysis results. Each time a set of analytical samples is processed or there is a change in reagents, a reagent blank should be processed as a safeguard against chronic laboratory contamination. The blank samples should be carried through all stages of the sample preparation and measurement steps.

9.3 Required instrument quality control parameters are found in the following sections:

9.3.1 Baseline stability must be demonstrated to be ≤5 percent of full scale using the procedures given in Section 10.1.

9.3.2 The GC calibration is not valid unless the retention time (RT) for each analyte at each concentration is within ±0.05 min of the retention time measured for that analyte in the stock standard.

9.3.3 The retention time (RT) of any sample analyte must be within ±0.05 min of the average RT of the analyte in the calibration standards for the analyte to be considered tentatively identified.

9.3.4 The GC system must be calibrated as specified in Section 10.2.

9.3.5 A one-point daily calibration check must be performed as specified in Section 10.3.

9.4 To establish the ability to generate results having acceptable accuracy and precision, the analyst must perform the following operations.

9.4.1 Prepare a quality control check standard (QCCS) containing each analyte expected in the coating samples at a concentration expected to result in a response between 25 percent and 75 percent of the limits of the calibration curve when the sample is prepared as described in Section 11.5. The QCCS may be prepared from reference standard materials or purchased as certified solutions. If prepared in the laboratory, the QCCS must be prepared independently from the calibration standards.

9.4.2 Analyze three aliquots of the QCCS according to the method beginning in Section 11.5.3 and calculate the weight percent of each analyte using Equation 1, Section 12.

9.4.3 Calculate the mean weight percent ($\bar{X}$) for each analyte from the three results obtained in Section 9.4.2.

9.4.4 Calculate the percent accuracy for each analyte using the known concentrations (Ti) in the QCCS using Equation 3, Section 12.

9.4.5 Calculate the percent relative standard deviation (percent RSD) for each analyte using Equation 7, Section 12, substituting the appropriate values for the relative response factors (RRF's) in said equation.

9.4.6 If the percent accuracy (Section 9.4.4) for all analytes is within the range 90 percent to 110 percent and the percent RSD (Section 9.4.5) for all analytes is ≤20 percent, system performance is acceptable and sample analysis may begin. If these criteria are not met for any analyte, then system performance is not acceptable for that analyte and the test must be repeated for those analytes only. Repeated failures indicate a general problem with the measurement system that must be located and corrected. In this case, the entire test, beginning at Section 9.4.1, must be repeated after the problem is corrected.

9.5 Great care must be exercised to maintain the integrity of all standards. It is recommended that all standards be stored at −10 °C to 0 °C in screw-cap amber glass bottles with Teflon liners.

9.6 Unless otherwise specified, all weights are to be recorded within 0.1 mg.

10. Calibration and Standardization.

10.1 Column Baseline Drift. Before each calibration and series of determinations and before the daily calibration check, condition the column using procedures developed by the laboratory or as specified by the column supplier. Operate the GC at initial (i.e., before sample injection) conditions on the lowest attenuation to be used during sample analysis. Adjust the recorder pen to zero on the chart and obtain a baseline for at least one minute. Initiate the GC operating cycle that would be used for sample analysis. On the recorder chart, mark the pen position at the end of the simulated sample analysis cycle. Baseline drift is defined as the absolute difference in the pen positions at the beginning and end of the cycle in the direction perpendicular to the chart movement. Calculate the percent baseline drift by dividing the baseline drift by the chart width representing full-scale deflection and multiply the result by 100.

10.2 Calibration of GC. Bring all stock standards and calibration standards to room temperature while establishing the GC at the determined operating conditions.

10.2.1 Retention Times (RT's) for Individual Compounds.

Note: The procedures of this subsection are required only for the initial calibration. However, it is good laboratory practice to follow these procedures for some or all analytes before each calibration. The procedures were written for chromatograms output to a strip chart recorder. More modern instruments (e.g., integrators and electronic data stations) determine and print out or display retention times automatically.

The RT for each analyte should be determined before calibration. This provides a positive identification for each peak observed from the calibration standards. Inject an appropriate volume (see Note in Section 11.5.2) of one of the stock reference standards into the gas chromatograph and record on the chart the pen position at the time of the injection (see Section 7.6.1). Dilute an aliquot of the stock reference standard as required in dimethylformamide to achieve a concentration that will result in an on-scale response. Operate the gas chromatograph according to the determined procedures. Select the peak(s) that correspond to the analyte(s) [and internal standard, if used] and measure the retention time(s). If a chart recorder is used, measure the distance(s) on the chart from the injection point to the peak maxima. These distances, divided by the chart speed, are defined as the RT's of the analytes in question. Repeat this process for each of the stock reference standard solutions.

Note: If gas chromatography with mass spectrometer detection (GC–MS) is used, a stock reference standard may contain a group of analytes, provided all analytes are adequately separated during the analysis. Mass spectral library matching can be used to identify the analyte associated with each peak in the gas chromatogram. The retention time for the analyte then becomes the retention time of its peak in the chromatogram.

10.2.2 Calibration. The GC must be calibrated using a minimum of three concentration levels of each potential analyte. (See Section 7.7 for instructions on preparation of the calibration standards.) Beginning with the lowest concentration level calibration standard, carry out the analysis procedure as described beginning in Section 11.7. Repeat the procedure for each progressively higher concentration level until all calibration standards have been analyzed.

10.2.2.1 Calculate the RT's for the internal standard and for each analyte in the calibration standards at each concentration level as described in Section 10.2.1. The RT's for the internal standard must not vary by more than 0.10 minutes. Identify each analyte by comparison of the RT's for peak maxima to the RT's determined in Section 10.2.1.

10.2.2.2 Compare the retention times (RT's) for each potential analyte in the calibration standards for each concentration level to the retention times determined in Section 10.2.1. The calibration is not valid unless all RT's for all analytes meet the criteria given in Section 9.3.2.

10.2.2.3 Tabulate the area responses and the concentrations for the internal standard and each analyte in the calibration standards. Calculate the response factor for the internal standard (RF_{is}) and the response factor for each compound relative to the internal standard (RRF) for each concentration level using Equations 5 and 6, Section 12.

10.2.2.4 Using the RRF's from the calibration, calculate the percent relative standard deviation (percent RSD) for each analyte in the calibration standard using Equation 7, Section 12. The percent RSD for each individual calibration analyte must be *less* than 15 percent. This criterion must be met in order for the calibration to be valid. If the criterion is met, the mean RRF's determined above are to be used until the next calibration.

10.3 Daily Calibration Checks. The calibration curve (Section 10.2.2) must be checked and verified at least once each day that samples are analyzed. This is

accomplished by analyzing a calibration standard that is at a concentration near the midpoint of the working range and performing the checks in Sections 10.3.1, 10.3.2, and 10.3.3.

10.3.1 For each analyte in the calibration standard, calculate the percent difference in the RRF from the last calibration using Equation 8, Section 12. If the percent difference for each calibration analyte is less than 10 percent, the last calibration curve is assumed to be valid. If the percent difference for any analyte is greater than 5 percent, the analyst should consider this a warning limit. If the percent difference for any one calibration analyte exceeds 10 percent, corrective action must be taken. If no source of the problem can be determined after corrective action has been taken, a new three-point (minimum) calibration must be generated. This criterion must be met before quantitative analysis begins.

10.3.2 If the RF_{is} for the internal standard changes by more than ±20 percent from the last daily calibration check, the system must be inspected for malfunctions and corrections made as appropriate.

10.3.3 The retention times for the internal standard and all calibration check analytes must be evaluated. If the retention time for the internal standard or for any calibration check analyte changes by more than 0.10 min from the last calibration, the system must be inspected for malfunctions and corrections made as required.

11. Procedure

11.1 All samples and standards must be allowed to warm to room temperature before analysis. Observe the given order of ingredient addition to minimize loss of volatiles.

11.2 Bring the GC system to the determined operating conditions and condition the column as described in Section 10.1.

Note: The temperature of the injection port may be an especially critical parameter. Information about the proper temperature may be found on the CPDS.

11.3 Perform the daily calibration checks as described in Section 10.3. Samples are not to be analyzed until the criteria in Section 10.3 are met.

11.4 Place the as-received coating sample on a paint shaker, or similar device, and shake the sample for a minimum of 5 minutes to achieve homogenization.

11.5 Note: The steps in this section must be performed rapidly and without interruption to avoid loss of volatile organics. These steps must be performed in a laboratory hood free from solvent vapors. All weights must be recorded to the nearest 0.1 mg.

11.5.1 Add 16 g of dimethylformamide to each of two tared vials (A and B) capable of being septum sealed.

11.5.2 To each vial add a weight of coating that will result in the response for the major constituent being in the upper half of the linear range of the calibration curve.

Note: The magnitude of the response obviously depends on the amount of sample injected into the GC as specified in Section 11.8. This volume must be the same as used for preparation of the calibration curve, otherwise shifts in compound retention times may occur. If a sample is prepared that results in a response outside the limits of the calibration curve, new samples must be prepared; changing the volume injected to bring the response within the calibration curve limits is not permitted.

11.5.3 Add a weight of internal standard to each vial (A and B) that will result in the response for the internal standard being between 25 percent and 75 percent of the linear range of the calibration curve.

11.5.4 Seal the vials with crimp-on or Mininert® septum seals.

11.6 Shake the vials containing the prepared coating samples for 60 seconds. Allow the vials to stand undisturbed for ten minutes. If solids have not settled out on the bottom after 10 minutes, then centrifuge at 1,000 rpm for 5 minutes. The analyst also has the option of injecting the sample without allowing the solids to settle.

11.7 Analyses should be conducted in the following order: daily calibration check sample, method blank, up to 10 injections from sample vials (*i.e.*, one injection each from up to five pairs of vials, which corresponds to analysis of 5 coating samples).

11.8 Inject the prescribed volume of supernatant from the calibration check sample, the method blank, and the sample vials onto the chromatographic column and record the chromatograms while operating the system under the specified operating conditions.

Note: The analyst has the option of injecting the unseparated sample.

12. Data Analysis and Calculations

12.1 Qualitative Analysis. An analyte (e.g., those cited in Section 1.1) is considered tentatively identified if two criteria are satisfied: (1) elution of the sample analyte within ±0.05 min of the average GC retention time of the same analyte in the calibration standard; and (2) either (a) confirmation of the identity of the compound by spectral matching on a gas chromatograph equipped with a mass selective detector or (b) elution of the sample analyte within ±0.05 min of the average GC retention time of the same analyte in the calibration standard analyzed on a dissimilar GC column.

12.1.1 The RT of the sample analyte must meet the criteria specified in Section 9.3.3.

12.1.2 When doubt exists as to the identification of a peak or the resolution of two or more components possibly comprising one peak, additional confirmatory techniques (listed in Section 12.1) must be used.

12.2 Quantitative Analysis. When an analyte has been identified, the quantification of that compound will be based on the internal standard technique.

12.2.1 A single analysis consists of one injection from each of two sample vials (A and B) prepared using the same coating. Calculate the concentration of each identified analyte in the sample as follows:

$$HAP_{wt\%} = 100 \times \frac{(A_x)(W_{is})}{(A_{is})(\overline{RRF_x})(W_x)} \qquad \text{Eq. (1)}$$

where:

$HAP_{wt\%}$ = weight percent of the analyte in coating.
A_x = Area response of the analyte in the sample.
W_{is} = Weight of internal standard added to sample, g.
A_{is} = Area response of the internal standard in the sample.
$\overline{RRF_x}$ = Mean relative response factor for the analyte in the calibration standards.
W_x = Weight of coating added to the sample solution, g.

12.2.2 Report results for duplicate analysis (sample vials A and B) without correction.

12.3 Precision Data. Calculate the percent difference between the measured concentrations of each analyte in vials A and B as follows.

12.3.1 Calculate the weight percent of the analyte in each of the two sample vials as described in Section 12.2.1.

12.3.2 Calculate the percent difference for each analyte as:

$$\%Dif_i = 100 \times \frac{|A_i - B_i|}{\frac{(A_i + B_i)}{2}} \qquad \text{Eq. (2)}$$

where A_i and B_i are the measured concentrations of the analyte in vials A and B.

12.4 Calculate the percent accuracy for analytes in the QCCS (See Section 9.4) as follows:

$$\%\ \text{Accuracy}_x = 100 \times \frac{\overline{X}_x}{T_x} \qquad \text{Eq. (3)}$$

where X_x is the mean measured value and T_x is the known true value of the analyte in the QCCS.

12.5 Obtain retention times (RT's) from data station or integrator or, for chromatograms from a chart recorder, calculate the RT's for analytes in the calibration standards (See Section 10.2.2.2) as follows:

$$RT = \frac{\text{Distance from injection to peak maximum}}{\text{Recorder chart speed}} \qquad \text{Eq. (4)}$$

12.6 Calculate the response factor for the internal standard (See Section 10.2.2.3) as follows:

$$RF_{is} = \frac{A_{is}}{C_{is}} \qquad \text{Eq. (5)}$$

where:

A_{is} = Area response of the internal standard.

C_{is} = Weight percent of the internal standard.

12.7 Calculate the relative response factors for analytes in the calibration standards (See Section 10.2.2.3) as follows:

$$RRF_x = \frac{A_x}{RF_{is}\ C_x} \qquad \text{Eq. (6)}$$

where:

RRF_x = Relative response factor for an individual analyte.

A_x = Area response of the analyte being measured.

C_x = Weight percent of the analyte being measured.

12.8 Calculate the percent relative standard deviation of the relative response factors for analytes in the calibration standards (See Section 10.2.2.4) as follows:

$$\%RSD = 100 \times \frac{\sqrt{\dfrac{\sum_{i=1}^{n}\left(RRF_x - \overline{RRF_x}\right)^2}{n-1}}}{\overline{RRF_x}} \qquad \text{Eq. (7)}$$

where:

n = Number of calibration concentration levels used for an analyte.

RRF_x = Individual RRF for an analyte.

$\overline{RRF_x}$ = Mean of all RRF's for an analyte.

12.9 Calculate the percent difference in the relative response factors between the calibration curve and the daily calibration checks (See Section 10.3) as follows:

$$\%\ \text{Difference} = \frac{\left|\overline{RRF_x} - RRF_c\right|}{\overline{RRF_x}} \times 100 \qquad \text{Eq. (8)}$$

where:

$\overline{RRF}$ = mean relative response factor from last calibration.

RRF = relative response factor from calibration check standard.

13. *Measurement of Reaction Byproducts That are HAP. [Reserved]*

14. *Method Performance. [Reserved]*

15. *Pollution Prevention. [Reserved]*

16. *Waste Management*

16.1 The coating samples and laboratory standards and reagents may contain compounds which require management as hazardous waste. It is the laboratory's responsibility to ensure all wastes are managed in accordance with all applicable laws and regulations.

16.2 To avoid excessive laboratory waste, obtain only enough sample for laboratory analysis.

16.3 It is recommended that discarded waste coating solids, used rags, used paper towels, and other nonglass or nonsharp waste materials be placed in a plastic bag before disposal. A separate container, designated ''For Sharp Objects Only,'' is recommended for collection of discarded glassware and other sharp-edge items used in the laboratory. It is recommended that unused or excess samples and reagents be placed in a solvent-resistant plastic or metal container with a lid or cover designed for flammable liquids. This container should not be stored in the area where analytical work is performed. It is recommended that a record be kept of all compounds placed in the container for identification of the contents upon disposal.

17. References

1. Clean Air Act Amendments, Public Law 101–549, Titles I–XI, November, 1990.

2. Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph. ASTM Designation D3792–79.

3. Standard Practice for Sampling Liquid Paints and Related Pigment Coatings. ASTM Designation D3925–81.

4. Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph. ASTM Designation D4457–85.

5. Standard Test Method for Determining the Unreacted Monomer Content of Latexes Using Capillary Column Gas Chromatography. ASTM Designation D4827–93.

6. Standard Test Method for Determining Unreacted Monomer Content of Latexes Using Gas-Liquid Chromatography. ASTM Designation D 4747–87.

7. Method 301—''Field Validation of Pollutant Measurement Methods from Various Waste Media,'' 40 CFR 63, Appendix A.

8. ''Reagent Chemicals, American Chemical Society Specifications,'' American Chemical Society, Washington, DC. For suggestions on the testing of reagents not listed by the American Chemical Society, see ''Reagent Chemicals and Standards'' by Joseph Rosin, D. Van Nostrand Co., Inc., New York, NY and the ''United States Pharmacopeia.''

18. Tables, Diagrams, Flowcharts, and Validation Data

Agency: _____
Inspector: _____
Date/Time: _____
Sample ID#: _____
Source ID: _____
Coating Name/Type: _____
Plant Witness: _____
Type Analysis Required: _____
Special Handling: _____

Sample Container Label

Coating Data

Date: _____
Source: _____

Data	Sample ID No.	Sample ID No.
Coating:		
Supplier Name		
Name and Color of Coating		
Type of Coating (primer, clearcoat, etc.)		
Identification Number for Coating		
Coating Density (lbs/gal)		
Total Volatiles Content (wt percent)		
Water Content (wt percent)		
Exempt Solvents Content (wt percent)		
VOC Content (wt percent)		
Solids Content (vol percent)		
Diluent Properties:		
Name.		
Identification Number		
Diluent Solvent Density (lbs/gal)		
VOC Content (wt percent)		
Water Content (wt percent)		
Exempt Solvent Content (wt percent)		
Diluent/Solvent Ratio (gal diluent solvent/gal coating)		

Stock Reference Standard

Name of Reference Material: _____
Supplier Name: _____
Lot Number: _____
Purity: _____
Name of Solvent Material: *Dimethylformamide* _____
Supplier Name: _____
Lot Number: _____
Purity: _____
Date Prepared: _____
Prepared By: _____
Notebook/page no.: _____

PREPARATION INFORMATION

1. Weight Empty Flask ..... _____,g
2. Weight Plus DMF ..... _____,g

PREPARATION INFORMATION—Continued

3. Weight Plus Reference Material. _____,g
4. Weight After Made to Volume. _____,g
5. Weight DMF (lines 2–1+3–4). _____,g
6. Weight Ref. Material (lines 3–2). _____,g
7. Corrected Weight of Reference Material (line 6 times purity). _____,g
8. Fraction Reference Material in Standard (Line 7 ÷ Line 5) soln. _____,g/g
9. Total Volume of Standard Solution. _____, ml
10. Weight Reference Material per ml of Solution (Line 7 ÷ Line 9). _____,g/ml

PREPARATION INFORMATION—Continued

Laboratory ID No. for this Standard. _____
Expiration Date for this Standard. _____

CALIBRATION STANDARD

Date Prepared: _____
Date Expires: _____
Prepared By: _____
Notebook/page: _____
Calibration Standard Identification No.: _____

Final Weight Flask Plus Reagents. _____, g
Weight Empty Flask ..... _____, g
Total Weight Of Reagents . _____, g

Analyte name [a]	Stock reference standard ID No.	Amount of stock reference standard added (by volume or by weight)				Calculated weight analyte added, g	Weight percent analyte in calibration standard [b]
		Volume added, ml	Amount in standard, g/ml	Weight added, g	Amount in standard, g/g soln		

[a] Include internal standard(s).
[b] Weight percent = weight analyte added ÷ total weight of reagents.

Quality Control Check Standard

Date Prepared: _____

Date Expires: _____

Prepared By: _____

Notebook/page: _____

Quality Control Check Standard Identification No.:

_____

PREPARATION INFORMATION

Final Weight Flask Plus Reagents. _____,g

Weight Empty Flask ..... _____,g

Total Weight Of Reagents . _____,g

Analyte name [a]	Stock reference standard ID No.	Amount of stock reference standard added (by volume or by weight)				Calculated weight analyte added, g	Weight percent analyte in QCC standard [b]
		Volume added, ml	Amount in standard, g/ml	Weight added, g	Amount in standard, g/g soln		

[a] Include internal Standard(s).
[b] Weight percent=weight analyte added ÷ total weight of reagents.

Quality Control Check Standard Analysis

Date OCCS Analyzed: _____

OCCS Identification No. _____

Analyst: _____

QCC Expiration Date: _____

ANALYSIS RESULTS

Analyte	Weight percent determined			Mean Wt percent	Percent accuracx	Percent RSD	Meets criteria in Section 9.4.6	
	Run 1	Run 2	Run 3				Percent accuracy	Percent RSD

Calibration of Gas Chromatograph Calibrated By: _____

Calibration Date: _____

PART 1.—RETENTION TIMES FOR INDIVIDUAL ANALYTES

Analyte	Stock standard. ID No.	Recorder chart speed		Distance from injection point to peak maximum		Retention time, minutes [a]
		Inches/min.	cm/min.	Inches	Centimeters	

[a] Retention time=distance to peak maxima÷chart speed.

CALIBRATION OF GAS CHROMATOGRAPH Calibrated By: _____

Calibration Date: _____

PART 2.—ANALYSIS OF CALIBRATION STANDARDS

Analyte	Calib. STD ID No.	Calib. STD ID No.	Calib. STD ID No.
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Internal Standard Name:			
Conc. in STD			
Area Response			
RT			

Calibration of Gas Chromatograph Calibrated By: _____

Calibration Date: _____

PART 3.—DATA ANALYSIS FOR CALIBRATION STANDARDS

Analyte	Calib. STD ID	Calib. STD ID	Calib. STD ID	Mean	percent RSD of RF	Is RT within ±0.05 min of RT for stock? (Y/N)	Is percent RSD <30% (Y/N)
Name:							
RT	.....	.....	.....	.....	.....	.....	.....
RF	.....	.....	.....	.....	.....	.....	.....
Name:							
RT	.....	.....	.....	.....	.....	.....	.....
RF	.....	.....	.....	.....	.....	.....	.....
Name:							
RT	.....	.....	.....	.....	.....	.....	.....
RF	.....	.....	.....	.....	.....	.....	.....
Name:							
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Daily Calibration Check

Date: _____

Analyst: _____

Calibration Check Standard ID No.: _____

Expiration Date: _____

Analyte	Retention Time (RT)			Response Factor (RF)		
	Last	This	Difference [a]	Last	This	Difference [b]
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[a] Retention time (RT) change (difference) must be less than ±0.10 minutes.
[b] Response factor (RF) change (difference) must be less than 20 percent for each analyte and for the internal standard.

Sample Analysis

Vial A ID No.: _____

Vial B ID No.: _____

Analyzed By: _____

Date: _____

Sample preparation information	Vial A (g)	Vial B (g)
Measured:		
wt empty vial		
wt plus DMF		
wt plus sample		
wt plus internal		
standard		
Calculated:		
wt DMF		
wt sample		
wt internal standard		

ANALYSIS RESULTS: DUPLICATE SAMPLES

Analyte	Area response		RF	Wt percent in sample		
	Vial A	Vial B		Vial A	Vial B	Average
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Internal Standard						

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December 7, 1995

Part III

Department of Labor

Office of Labor-Management Programs

29 CFR Part 215

Guidelines, Section 5333(b), Federal Transit Law; Final Rule

DEPARTMENT OF LABOR

Office of Labor-Management Programs

29 CFR Part 215

RIN 1294–AA14

Guidelines, Section 5333(b), Federal Transit Law

AGENCY: Office of Labor-Management Programs, Office of the American Workplace, Labor.

ACTION: Final guidelines.

SUMMARY: The Federal Transit law, Title 49 U.S.C., Chapter 53, provides, in general, at Section 5333(b) (commonly referred to as ''Section 13(c)'', that, as a condition of certain Federal financial assistance by the Department of Transportation's Federal Transit Administration (FTA) in financing mass transportation systems, fair and equitable arrangements must be made, as determined by the Department of Labor (the Department), to protect the interests of employees affected by such assistance. In conjunction with the Department's role in making such determinations, the Department is providing information concerning its procedures for processing applications for assistance under the Federal Transit Law, and certification by the Department of acceptable protective arrangements.

DATES: These Guidelines become effective January 8, 1996.

FOR FURTHER INFORMATION CONTACT: Kelley Andrews, Director, Statutory Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5411, Washington, DC 20210, (202) 219–4473.

SUPPLEMENTARY INFORMATION:

I. Background

Section 5333(b) of the Federal Transit law requires that arrangements be made to protect certain rights of mass transit employees affected by grants of Federal funds for the acquisition, improvement, or operation of a transit system. These rights include the preservation of rights, privileges, and benefits under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions related to employment, assurances of employment to employees of acquired mass transportation systems, priority of reemployment, and paid training or retraining. In administering this program, the Department notifies relevant unions, if any, in the area of the proposed project and provides the grant applicant and the affected union(s) an opportunity to develop the terms and conditions of the protections. The Department provides technical and mediation assistance to the parties during the negotiations. These new guidelines replace guidelines which have been in effect since May 1, 1978.

The Department's Office of Labor-Management Programs' Notice of Proposed Rulemaking (NPRM), issued June 29, 1995 (FR Vol. 60, No. 125, pg. 34072), proposed to change the procedures for certifying employee protective arrangements which are required as a condition of assistance under the Federal Transit law, in order to expedite the process and make it more predictable to the parties.

Approximately 85% of the Department's certifications in the past five years have been issued within 90 days of the date they were received from FTA. The processing time for the remaining 15%, however, has been less predictable. The Department's objective in revising its procedures is to enhance the efficiency and predictability of the certification process for *all* transit grant applications while assuring that the required employee protections are in place. Where comments were submitted which supported this objective, the guidelines have been revised, as appropriate, to reflect the comments, and are discussed under Section II, Summary and Discussion of Comments.

Numerous comments were submitted which relate in a general way to the Department's administration of this employee protection program. The guidelines were said to contain loopholes which would undermine the effort to establish and meet deadlines for certification, create new legal standards resulting in a more arbitrary and time-consuming process, and establish protections and confer authority on the Department which exceed the statute.

The Department has carefully reviewed the new guidelines with these comments very much in mind to assure that its appropriate statutory mandate will be fulfilled, without creating unnecessary ''loopholes'' or legal standards which would result in a more arbitrary or time consuming process. Because the statute itself requires the Department to exercise discretion and flexibility in determining what is fair and equitable, the guidelines must also provide an appropriate level of flexibility. Where appropriate, the guidelines have been changed to reflect these concerns and in other instances, where no change was deemed necessary, the specific points raised are also discussed in Section II, Summary and Discussion of Comments.

The Department has also made a minor adjustment of a technical nature to § 215.2. This section, which addresses the required documentation to be included in the grant application, has been modified to reflect that the content of the grant application is as determined by the FTA. The Department is not requesting any information for processing of the grant that is not required by the FTA.

The new guidelines differ from the previous guidelines and the Department's practice by establishing strict time frames for the certification of protections in a more expeditious and predictable manner. The procedures established by these guidelines will assure that the required protections can be certified, within sixty days after the initiation of processing by the Department, permitting the release of the Federal transit grant funds.

The new guidelines continue to encourage local negotiations or discussions for the development of employee protection terms. The guidelines, in recognition of the fact that there are some states where bargaining is prohibited for public employees, allow for ''discussion'' where necessary to satisfy the Federal Transit law in a manner that does not violate state or local law.

The guidelines also eliminate referral of applications when the grant is for routine replacement of equipment and/or facilities of like kind and character. In cases where referral to the unions is appropriate, the referral will include the intended terms of certification. The parties will be given 15 days from the date of the referral to submit objections, if any, to the referral terms. The Department will Determine within 10 days thereafter whether objections are sufficient. Should the Department find that the objections are not sufficient, the Department will issue its certification on the terms specified in the referral. When objections are found to be sufficient, negotiations may proceed and the Department may provide technical and mediatory assistance where appropriate. In the event the protections cannot be agreed to within 60 days from the original referral date, the Department will issue an interim certification, permitting the release of Federal transit grant funds. In the event that the parties are still not able to resolve their differences within 60 days after the Department has issued the interim certification, the Department will set forth the protective terms in a final certification.

Finally, it seems clear from the comments received that several parties are concerned about and wish to discuss and resolve a number of substantive issues relating to this program. While this is an important matter, these are procedural guidelines and thus not the appropriate forum for the resolution of such substantive rather than procedural issues. The Department's policies on substantive issues are generally addressed through certifications and are discussed in the Department's determination letters.

II. Summary and Discussion of the Comments

Twenty comments were submitted and considered, including one from a private individual.

Two comments were received from the following public transit authorities and planning organizations:

—Northern Illinois Regional Transportation Authority
—Metropolitan Transit Commission, Oakland, CA

Twelve comments were received from the following public transit providers:

—Central Arkansas Transit Authority
—New York City Department of Transportation
—Metropolitan Transit Authority, New York, NY
—Triangle Transit Authority, Research Triangle Park, NC
—Public Works Office/Transit, Johnson County KS
—StarTran, Lincoln, NE
—Washington Metropolitan Area Transit Authority
—Los Angeles County Metropolitan Transit Authority
—Regional Transportation Commission, Clark County, NV
—New Jersey Transit Corporation
—North County Transit District, Oceanside, CA
—Metropolitan Atlanta Rapid Transit Authority

One comment was received from a state department of transportation:

—State of Michigan, Department of Transportation

Three labor organizations provided comments:

—Amalgamated Transit Union
—Transportation Trades Department, AFL-CIO
—Transport Workers Union of America

Finally, one public transit association provided comments:

—American Public Transit Association

The Department has carefully reviewed and considered all of the comments in developing these guidelines. The following provides a summary of the comments and the Department's response.

A. Definition of ''Irreparable Harm''

One comment indicated that the safeguard against irreparable harm to employees in § 215.3(d)(8) pending completion of the special dispute resolution process is an essential protection which should be included in the guidelines. Others, however, suggested that the language concerning irreparable harm would add a new substantive protection under section 5333(b), which they view as providing a ''remedial scheme to provide compensation'' when employees are affected by a project.

Section 5333(b), requires more than providing compensation for impacts upon employees. It is also intended to minimize the impact of Federal projects on employees. The restriction against causing ''irreparable harm'' in § 215.3(d)(8), however, is limited solely to any action which would ''result in irreparable harm to employees *if such action concerns matters subject to the steps set forth* in paragraph (e) of this section.'' (Emphasis added.) In specifying that no action may be taken which would result in irreparable harm, the Department intends for the recipient of funds to be able to take any necessary action that will not irreparably harm employees while allowing a project to move forward. The minimal restriction would remain in effect only until final terms and conditions are determined and certified.

B. Definition of ''Material Effect''

The § 215.3(b)(1) provision with respect to ''material effect'' states that the procedural requirements of § 215.3(b)(2) through § 215.3(h) will not apply ''absent a potentially material effect on employees.'' One comment indicated that the phrase ''material effect on employees'' should be limited in its scope to material adverse effects on employees so that if a project for routine replacement of equipment and/or facilities of like kind and character has a positive effect on employees, no referral would be required. Impacts, however, may be viewed by some individuals as positive while others view the same effect as contrary to their interests. Therefore, no adjustment need be made to accommodate this concern.

One comment noted that ''[i]t is not clear whether the substantive determination of materiality (material effect on employees) is to be a subjective judgment of the Department or a legal determination based on specific standards or precedents.'' The Department, however, will consult with FTA, where necessary, and will determine which projects have a ''potentially material effect on employees'' based on available applicable precedent and policy.

C. Definition of the Phrase ''Where Circumstances So Warrant''

Several comments were made indicating that the phrase ''where circumstances so warrant'' in § 215.3(h) enables the Department to retain the right to withhold certification at its discretion. One saw this as an expansion of the language of the law which would give the Department ''veto authority over the release of grant funds.'' The Department intends the phrase ''where circumstances so warrant'' to mean that certification will not be issued where circumstances inconsistent with the statute prevent the Department from certifying. For instance, in a situation involving the Metropolitan Atlanta Rapid Transit Authority (MARTA) in Georgia, the Department was unable to certify grants for a short time because state law prohibited MARTA from providing the requisite protections. Accordingly, given that at least one comment indicated this is an expansion of the current law, the Department will clarify the intent of this language by amending § 215.3(h) of the guidelines to read: ''Notwithstanding the foregoing, the Department retains the right to withhold certification where circumstances inconsistent with the statute so warrant until such circumstances have been resolved.''

D. Definition of ''Sufficient'' as Applied to Objections to Certification

In § 215.3(d)(2)(i), the guidelines provide that the Department will ''determine whether the objections raised are sufficient'' when one party objects to terms and conditions proposed by the Department as the basis for certification of a project. In § 215.3(d)(3), the guidelines set forth the criteria which the Department will consider in determining whether an objection will be considered sufficient.

Comments indicated concern that the transit agencies would not be given the same opportunity as would be provided to the employees to object to the referred terms and conditions, citing as an example where it believed that existing protections include provisions that are no longer legally required or that are burdensome. Such objections, if raised by the transit agencies, would require the Department to make a determination as to whether they are sufficient. The definition does not favor either party over the other.

Another comment indicated that, in order to avoid challenges as to whether legal or factual circumstances have changed, the Department should modify § 215.3(d)(3) so that it will consider an objection to be sufficient when: (ii) the objection ''concerns legal or factual issues relating to the terms proposed to be certified that *may* materially affect the rights or interests of employees.'' The current proposed language requires that the Department consider an objection to be sufficient when: (ii) the objection concerns changes in legal or factual circumstances that materially affect the rights or interests of employees.

In response to this comment, the Department has determined that there is a need to clarify § 215.3(d)(3)(ii) and accordingly we have added the word ''may'' before ''materially affect.''

E. Definition of the Term ''Appropriate'' in § 215.3(b)(3)

One comment noted that this section sets forth procedures where there is a new applicant or where the previous arrangements are ''not appropriate to the current projects'' without providing guidance as to what would be considered ''appropriate.'' This section further specifies that the Department will refer such grants to the parties based on terms and conditions similar to either the Model Agreement for operating projects or the Special Warranty for capital projects.

There are several situations in which it would not be appropriate to refer a project on the basis of previously certified arrangements. It is not possible to anticipate all the factual circumstances where the current terms would no longer be appropriate. However, referral on the basis of existing arrangements is not appropriate in a situation where the Department is aware that the terms and conditions of the existing arrangements do not satisfy the conditions of the statute in the circumstances presented, perhaps because of a change in the state law or a change in the manner in which the transit system is operated (*e.g.,* the public body decides to operate services previously provided through a management company drawing into question how specific protections required by the statute will be provided). Another situation might be one in which the parties have, for instance, negotiated a capital agreement, but have not developed an agreement for application to operating assistance projects.

F. Standards for Operating and Capital Grants Where Protections Do Not Already Exist

One comment noted that the ''Model Agreement was developed to provide a template for parties who wished to use it, but was never intended to be a 'standard' or 'default' option.'' It was further suggested that the details of the protective arrangements should be largely left to the parties. Another comment noted that the proposed § 215.3(b)(3)(i) references ''terms and conditions similar to those of the Model Agreement,'' and questioned which ''similar'' terms and conditions would be specified by the Department. Other questions included: Will the parties be given the opportunity to negotiate? Will the Department abrogate a party's right to withdraw from the Model Agreement?

Although the Model Agreement was not originally developed for application to all operating assistance grants, the agreement has been certified as meeting the requirements of the statute, and is applied with the agreement of the parties in the majority of operating assistance projects. The Department intends to expedite the certification process by basing its initial referral of operating assistance grants on terms and conditions similar to those of the Model Agreement when no other existing arrangement is applicable. As with referrals for applicants with previously certified arrangements, the parties will have 15 days from the date of the referral and notification letters to submit objections to the referred terms. The parties will be afforded the opportunity to negotiate alternative terms if the Department determines an objection to be sufficient in accordance with § 215.3(d)(3).

The Department will not ''abrogate'' the right of any party to withdraw from the Model Agreement in a timely manner. However, if a party withdraws from the Model Agreement, referral of the next operating project involving that party, in accordance with § 215.3(b)(3)(i), will be based on terms and conditions ''similar'' to the Model Agreement because there will be no previously certified arrangements ''appropriate to the current project.'' The parties will then need to negotiate terms and conditions, under the procedures and timeframes outlined in the guidelines, to substitute for those which they object to from the Model Agreement.

Another comment suggested that, in order to make the standards for protections required under capital grants and operating grants conform with each other, § 215.3(b)(3)(i) should be redrafted to require that for operating grants, the terms and conditions will be based on arrangements no less protective than those of the Model Agreement. The Department has concluded that such consistency could more appropriately be obtained by including language in § 215.3(b)(3)(ii), which indicates that ''for capital grants, the terms and conditions will be based on arrangements similar to those of the Special Warranty applied pursuant to section 5311.'' This language affords the Department greater latitude in incorporating the language of prior Departmental determinations into referrals.

One comment noted that ''one of the paragraphs ((b)(3)(ii)) cited as being applicable to (b)(1) projects specifically states that it applies to grants other than those referenced in (b)(1).'' We have deleted the phrase ''other than those for replacement equipment or facilities referenced in paragraph (b)(1) of this section,'' from § 215.3(b)(3)(ii) to clarify that the Special Warranty will be used for new applicants which apply for routine replacement of equipment and/or facilities of like kind and character.

Comments also questioned using the Special Warranty as the basis for certification of capital grants. As with the Model Agreement, the Special Warranty has been previously certified by the Department as meeting the requirements of the statute and will serve as a starting point for the parties to develop protections should sufficient objections be submitted to the proposed terms. This will expedite the processing of section 5333(b) certifications while continuing to ensure the right of the parties to negotiate appropriate protective arrangements.

G. Interim Certifications Under § 215.3(d)(7)

Several comments noted that the court has held that the Department does not have the statutory authority to issue conditional certifications. These comments suggest that the proposed interim certification would be a conditional certification. The conditional certifications rejected by the courts in *Amalgamated Transit Union* v. *Donovan,* 767 F.2d 939 (D.C. Cir. 1985), however, were not statutorily sufficient because they did not ensure that all requirements of the statute were satisfied prior to certification. In those instances, the Department had issued certifications which were lacking mandatory terms and conditions. The interim certification provided for in these guidelines will fully satisfy the requirements of the statute based upon

the information available at the time of certification. Because the terms of an interim certification will meet all the requirements of the statute, the interim certification does not constitute a ''conditional'' certification.

Other comments suggested that the receipt of Federal funds may affect a transit system's ability to later challenge different certification arrangements if such are subsequently imposed on it by the Department or that a system may prefer not to accept an interim certification because different arrangements could later be imposed. In the Department's view, the vast majority of applicants will benefit from the expedited certification procedure. The interim certification allows the transit authority to execute its grant contract with the FTA, thus avoiding, in certain instances, a potential lapse of funds. Moreover, the applicants will be aware of the disputed issues and thus be able to judge any potential liability if a project is implemented and the Department imposes language in the final certification that differs from that in the interim certification. In any event, under the guidelines, final certification will be issued within 60 days of the interim certification, thus limiting any period of uncertainty for transit systems.

H. Time Limits Under § 215.3(d)(1) for the Parties To Submit Objections

Several comments indicated support for the Department's ''progress towards procedural reform'' and noted that strict time limits for processing and issuance of certifications ''would truly expedite the grant application and approval process for many grantees. Still others commented that ''the proposed changes are consistent with the basic purposes of 13(c).''

Comments also suggested that there should be consequences if the Department or the parties fail to act within established timeframes. The Department recognizes the need to ensure compliance with the deadlines established in these guidelines. Funding cannot be released in the absence of a certification that employee protections are in place since the statute mandates the Department's certification as a precondition to the release of Federal funds.

If objections by the parties are not timely, the Department will proceed with certification on the basis proposed in the referral. To accommodate objections from multiple parties, however, the Department has made a technical correction to § 215.3(d)(2) to indicate that a determination regarding the sufficiency of objections will be made within 10 days of the date for submitting objections.

I. Procedures Under § 215.3(b)(1) for Routine Replacement of Equipment and/or Facilities of Like Kind and Character Exempting These From Referral

Section 215.3(b)(1) of the proposed guidelines specifies that grants for routine replacement of equipment and/or facilities of like kind and character will be certified without a referral to labor organizations absent a potentially material effect on employees. Several comments were made in support of this proposal. One comment indicated that eliminating the referral of applications for grants for routine replacement of equipment and/or facilities ''would benefit our agency immediately if approved and implemented.''

One comment ''strongly object[ed] to exempting capital grants for routine replacement of equipment of like kind and character and/or facilities of like kind and character from the modified procedural requirements.'' The comment requested that this exclusion be removed from the final guidelines and that routine replacement grants be processed under the modified grant procedures applicable to all other projects.

Three comments indicated that the proposed guidelines failed to establish a procedure for the parties to provide positions on the issue of ''material effect on employees'' to the Department and, also, that the proposed guidelines did not establish a time frame for the Department's determination of whether a referral would be made.

It is not necessary for labor organizations to receive referrals of grants for ''routine replacement'' projects. In instances where no referral is made, the Department will apply existing protective arrangements which have been deemed satisfactory for similar projects in the past. For new applicants seeking ''routine replacement'' capital items, the Department will apply protections based upon the Special Warranty. The Department will only proceed with a certification in such instances where all capital items are clearly ''routine replacement'' items of like kind and character. The Department will consult with the FTA if necessary to determine whether a grant includes only routine replacement items.

No opportunity has been provided in the guidelines for input from the parties with regard to any ''potentially material effect'' on employees. However, where there is routine replacement of capital items, which will be used in the same locations and in the same manner as the original capital items, it is unlikely that there will be an impact upon employees which would not be covered by the existing protective arrangements.

Routinely seeking input on this issue from the parties in advance of the Department's determination would require nearly as much time as a routine referral. Should the Department deem it necessary, however, the Department could seek the input of the parties on the issue of ''potentially material effect.''

It is not necessary for the guidelines to include a time frame for the Department's determination of whether a referral would be made. FTA is responsible for identifying in its transmittal to the Department that a grant application is for the purpose of purchasing routine replacement equipment and/or facilities of like kind and character. If the information in the grant application is sufficient for the Department to concur in this designation, the Department will promptly proceed with its certification, absent a finding of ''potentially material effect'' pursuant to § 215.3(b)(1). If the information in the grant application does not support a conclusion that the project is for routine replacement equipment and/or facilities of like kind and character, the Department will refer the project to the appropriate parties in accordance with the procedures in § 215.3(b) within 5 days of receipt from the FTA.

For information purposes only, applications for ''routine replacement'' items will continue to be transmitted to the labor organizations representing employees in the service area of the projects.

J. Procedures for Protective Arrangements as to States That Pass Through Funds to Subrecipients

Two comments indicate that the Department has previously introduced policies and procedures for processing of statewide grant applications which are not reflected in its earlier guidelines. They further suggest that procedures recently developed by the Department for processing of grants to States which pass through funds to subrecipients, particularly to small urban and rural recipients, be reflected in the new guidelines in a separate section. In response to these comments, the Department has determined that it would be appropriate to add a new § 215.3(a)(3) to clarify that protections generally will be provided by the subrecipients which receive funds through a State administrative agency.

Accordingly, the following section has been added:

215.3(a)(3) If an application involves a grant to a state administrative agency which will pass through assistance to subrecipients, the Department of Labor will refer and process each subrecipient's respective portion of the project in accordance with this section. If a state administrative agency has previously provided employee protections on behalf of subrecipients, the referral will be based on those terms and conditions. These procedures are not applicable to grants under section 5311.

It was also suggested that the Department should automatically certify section 5309 (formerly section 3) projects for rural providers on the basis of the Special Warranty. Under the guidelines, referrals for rural providers receiving funds under section 5309 will be based upon terms and conditions similar to those of the Special Warranty, unless there are previously certified arrangements which have been applied to the section 5309 projects. However, although the guidelines at § 215.3(b)(3)(iii) indicated that referrals for projects under section 5311 (formerly section 18) will be made on the basis of the Special Warranty, the Department will amend the proposed guidelines to continue to provide for automatic certification of applications pursuant to section 5311 for rural providers.

K. Procedure for Dispute Resolution to Determine Terms and Conditions of Final Certifications, § 215.3(e)(4)

One comment stated that ''[t]he regulations explicitly decline to establish the manner of dispute resolution by the Department of Labor.'' Another indicated that § 215.3(e)(4) appears to give the Department the authority to utilize alternative methods of dispute resolution, noting that the statute does not allow the Department to delegate this authority to a third party. Section 215.3(e)(4) specifically reserves to the Department the sole authority to render the final determination. The statute does not mandate that the Department use a specific dispute resolution procedure.

L. Protections for Employees Not Represented by a Labor Organization

One comment indicated that § 215.4 improperly expands the protections afforded to employees not represented by a labor organization by affording such employees ''the same protections'' as those afforded to employees represented by a labor organization rather than ''substantially the same protections.''

The concerns raised by this comment that rights have been expanded have been clarified by amending the language in § 215.4(b) to eliminate any reference to the terms and conditions authorized in § 215.3(b). Instead, § 215.4(b) will provide, as in the prior guidelines, that the protective terms and conditions in the letter of certification will be set forth by the Department. There is no expansion of rights provided in these guidelines.

M. Procedures for Processing Amendatory Grant Applications

One comment suggested that ''[t]he special processing exemption for 'amendatory applications' in § 215.3(c) as amplified in § 215.5 should be eliminated in its entirety.'' It argued that, since all grants are subject to only a 15 day review period for the purpose of filing any objections, and any grant amendment which revises a project in only ''immaterial respects'' would not give rise to an objection considered sufficient under the new procedures, turnaround is expedited and employee representatives should have the opportunity ''to provide their views within the narrow time frame specified to ensure that the agency is fully informed regarding the potential effects of each project.''

The automatic certification of amendatory grants is limited to those where changes are immaterial. If there is a change in the scope of a project, amendatory grants should not and will not be processed under this expedited procedure. The revised procedures for processing other grants should not give rise to new procedures for processing of amendatory grants containing immaterial changes which would have the potential for delaying their approval. Thus, the suggested changes to the proposed guidelines are not necessary.

N. Other Comments

1. One comment suggested that the proposed guidelines be withdrawn because they appear to draw substantial content from union proposed reforms. Another comment indicated that the ''proposed rule has been undertaken without the input of the transit industry'' and that State and local public body transit systems were not involved in the development of the NPRM. Several comments suggested that the regulations be withdrawn and that the rulemaking process be undertaken with greater consideration for the procedures set forth in Executive Order 12866 which ''provides that interested parties should be involved prior to issuance of a proposed rule.'' The Department's decision to provide 30 days rather than 60 days for a comment period was also raised.

The Department developed language based on concepts favored by both unions and transit management. As demonstrated by the numerous comments received from interested parties from across the country, the rulemaking process in this instance has afforded all the interested parties with ample opportunity to provide comments and input on the procedural issues which are the subject of these guidelines.

2. One comment noted that the Department may view these procedures as ''guidelines'' rather than ''rules.'' The comment further notes that ''rules are binding on parties, including Federal agencies, and subject to specific rulemaking procedures; in contrast, ''guidelines'' are generally considered informal in nature and presumably are not binding on parties.'' There is no statutory authority to issue regulations under section 5333(b). The guidelines, however, are intended to be binding in administering this employee protection program.

3. Numerous comments addressed administrative processes followed by the Department and raised matters concerning the Administrative Procedures Act. It was suggested that procedural safeguards against what the parties characterize as ''*ex parte* contacts'' with labor representatives in pending matters should be addressed in the guidelines. Similarly, comments proposed that the guidelines address how final decisions on disputed issues would be made available under § 215.3(e)(5) and address the matter of the procedural ability to have access to and to rely on matters previously ruled upon by the Department. Finally, comments indicated that the proposed guidelines did not require the Department to ''articulate the underlying legal rationale for its decisions'' nor did they provide for meaningful judicial review for parties who receive an adverse ruling from the Department.

The Department does not believe that it is appropriate to restrict contacts with individual parties in the processing of certifications of employee protections. In processing FTA grant applications, the Department's role includes providing technical and mediatory assistance to the parties. As contemplated by the legislative history, the efforts of the Department are directed toward facilitating an agreement between the transit authority and the union in order to ensure that the requirements of the statute are satisfied. During mediation the Department's

representative may discuss issues separately with each party, suggest bases for settlement in an effort to resolve the dispute, and respond to requests for technical assistance. If the parties do not reach an agreement and the Department must make a determination of the terms and conditions upon which a certification will be based, the standard for communications with the parties shifts to a more formal process, where outstanding issues are specified and schedules for briefs and counterbriefs are committed to written instructions. No exploration of options or issues occurs at this time absent the initiation or consent of the other party.

Under the guidelines, the Department will take steps pursuant to § 215.3(e)(5) to assure the parties' access to the final decisions it renders on disputed issues. The Department will continue to send copies of its final decisions to the FTA and the affected applicant and labor organizations. Similarly, the guidelines address the matter of access to Departmental decisions by making available the Department's final determinations on disputed issues. In fact, during efforts to facilitate agreement, these decisions are regularly provided to parties involved in negotiations when their negotiations have addressed related subjects.

The parties will continue to be able to rely on previously issued determinations to the extent that circumstances are similar to those in the prior determinations. Certifications will continue to be developed on a case by case basis to ensure that protections are statutorily sufficient in the circumstances presented by the specific project and under any applicable state law.

In establishing ''fair and equitable'' protections under the statute in those circumstances where the parties are unable to reach agreement, the Department provides the underlying rationale for the terms and conditions upon which certification is based. The Department will continue to provide the rationale in these cases to explain the basis of its decisions to the parties and to facilitate other parties' efforts to reach agreement in cases where the circumstances are comparable. In addition, judicial review of the Department's certification is available to the parties. See, *e.g., Amalgamated Transit Union* v. *Donovan,* 767 F.2d 939 (D.C. Cir. 1985).

4. One comment indicated that the guidelines do not define whether the ''days'' referred to in the various deadlines means calendar or business days. The Department intends for the term ''days'' to refer to calendar days. When a deadline expires on a date that is not a business day, the deadline will then be considered to be the next business day.

5. One comment suggests that, to minimize legal expenses, the briefing schedule, if one is adopted, should be shortened and a one-step process instituted rather than requiring reply briefs. The guidelines at § 215.3(e)(3) provide for some flexibility in determining the briefing schedule. In the past, the Department has typically provided up to 30 days for briefs and for reply briefs, which were routinely required, up to 10 days. The proposed guidelines specify ''*no more than* twenty (20) days for opening briefs and *no more than* ten (10) days for reply briefs, *when the Department deems reply briefs to be beneficial.*'' (Emphasis added.) The guidelines, therefore, already provide for an expedited process which the Department can accelerate when appropriate. The guidelines balance the need for an expedited process with the need for a full disclosure of pertinent information to facilitate the determination process.

6. One comment requested that the Department address the procedures for processing claims determinations under the statute. This is not an appropriate issue to be addressed under these guidelines. These are procedural guidelines and thus not the appropriate forum for resolution of such issues.

III. Administrative Notices

A. Executive Order 12866

These guidelines have been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

B. Regulatory Flexibility Act

The Agency Head has certified that these guidelines are not expected to have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

C. Paperwork Reduction Act

These guidelines contain no information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 29 CFR Part 215

Grant administration; Grants—transportation; Labor-management relations; Labor unions; Mass transportation.

Signed at Washington, DC this ——— day of ————————, 1995.

Charles L. Smith,

Deputy Assistant Secretary.

Accordingly, 29 CFR Chapter II is amended by revising Part 215 to read as follows:

PART 215—GUIDELINES, SECTION 5333(b), FEDERAL TRANSIT LAW

Sec.
215.1 Purpose.
215.2 General.
215.3 Employees represented by a labor organization.
215.4 Employees not represented by a labor organization.
215.5 Processing of amendatory applications.
215.6 The Model Agreement.
215.7 The Speciality Warranty.
215.8 Department of Labor contact.

Authority: Secretary's Order No. 2–93, 58 FR 42578, August 10, 1993.

§ 215.1 Purpose.

(a) The purpose of these guidelines is to provide information concerning the Department of Labor's administrative procedures in processing applications for assistance under the Federal Transit law, as codified at 49 U.S.C. chapter 53.

(b) Section 5333(b) of title 49 of the United States Code reads as follows:

Employee protective arrangements.—(1) As a condition of financial assistance under sections 5307–5312, 5318(d), 5323 (a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307–5312, 5318(d), 5323 (a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) shall specify the arrangements.

(2) Arrangements under this subsection shall include provisions that may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of individual employees against a worsening of their positions related to employment;

(D) assurances of employment to employees of acquired mass transportation systems;

(E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(F) paid training or retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.

§ 215.2 General.

Upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b), together with a request for the certification of employee protective arrangements from the Department of Transportation, the Department of Labor will process those applications, which may be in either preliminary or final form. The Federal Transit Administration will provide the Department with the information necessary to enable the Department to certify the project.

§ 215.3 Employees represented by a labor organization.

(a)(1) If affected employees are represented by a labor organization, it is expected that where appropriate, protective arrangements shall be the product of negotiation/discussion, pursuant to these guidelines.

(2) In instances where states or political subdivisions are subject to legal restrictions on bargaining with employee organizations, the Department of Labor will utilize special procedures to satisfy the Federal statute in a manner which does not contravene state or local law. For example, employee protective terms and conditions, acceptable to both employee and applicant representatives, may be incorporated into a resolution adopted by the involved local government.

(3) If an application involves a grant to a state administrative agency which will pass assistance through to subrecipients, the Department of Labor will refer and process each subrecipient's respective portion of the project in accordance with this section. If a state administrative agency has previously provided employee protections on behalf of subrecipients, the referral will be based on those terms and conditions. These procedures are not applicable to grants under section 5311.

(b) Upon receipt of an application involving affected employees represented by a labor organization, the Department of Labor will refer a copy of the application to that organization and notify the applicant of referral.

(1) If an application involves only a capital grant for routine replacement of equipment of like kind and character and/or facilities of like kind and character, the procedural requirements set forth in §§ 215.3(b)(2) through 215.3(h) of these guidelines will not apply absent a potentially material effect on employees. Where no such effect is found, the Department of Labor will certify the application based on the terms and conditions as referenced in §§215.3(b)(2) or 215.3(b)(3)(ii).

(2) For applicants with previously certified arrangements, the referral will be based on those terms and conditions.

(3) For new applicants and applicants for which previously certified arrangements are not appropriate to the current project, the referral will be based on appropriate terms and conditions specified by the Department of Labor, as follows:

(i) for operating grants, the terms and conditions will be based on arrangements similar to those of the Model Agreement (referred to also as the National Agreement);

(ii) for capital grants, the terms and conditions will be based on arrangements similar to those of the Special Warranty applied pursuant to section 5311.

(c) Following referral and notification under paragraph (b) of this section, and subject to the exceptions defined in § 215.5, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through negotiation/discussion within the timeframes designated under paragraphs (d) and (e) of this section.

(d) As part of the Department of Labor's review of an application, a time schedule for case processing will be established by the Department of Labor and specified in its referral and notification letters under paragraph 215.3(b) or subsequent written communications to the parties.

(1) Parties will be given fifteen (15) days from the date of the referral and notification letters to submit objections, if any, to the referred terms. The parties are encouraged to engage in negotiations/discussions during this period with the aim of arriving at a mutually agreeable solution to objections any party has to the terms and conditions of the referral.

(2) Within ten (10) days of the date for submitting objections, the Department of Labor will:

(i) Determine whether the objections raised are sufficient; and

(ii) Take one of the two steps described in paragraphs (d)(5) and (6) of this section, as appropriate.

(3) The Department of Labor will consider an objection to be sufficient when:

(i) The objection raises material issues that may require alternative employee protections under 49 U.S.C. 5333(b); or

(ii) The objection concerns changes in legal or factual circumstances that may materially affect the rights or interests of employees.

(4) The Department of Labor will consult with the Federal Transit Administration for technical advice as to the validity of objections.

(5) If the Department of Labor determines that there are no sufficient objections, the Department will issue its certification to the Federal Transit Administration.

(6) If the Department of Labor determines that an objection is sufficient, the Department, as appropriate, will direct the parties to commence or continue negotiations/discussions, limited to issues that the Department deems appropriate and limited to a period not to exceed thirty (30) days. The parties will be expected to negotiate/discuss expeditiously and in good faith. The Department of Labor may provide mediation assistance during this period where appropriate. The parties may agree to waive any negotiations/discussions if the Department, after reviewing the objections, develops new terms and conditions acceptable to the parties. At the end of the designated negotiation/discussion period, if all issues have not been resolved, each party must submit to the Department its final proposal and a statement describing the issues still in dispute.

(7) The Department will issue a certification to the Federal Transit Administration within five (5) days after the end of the negotiation/discussion period designated under paragraph (d)(6) of this section. The certification will be based on terms and conditions agreed to by the parties that the Department concludes meet the requirements of 49 U.S.C. 5333(b). To the extent that no agreement has been reached, the certification will be based on terms and conditions determined by the Department which are no less protective than the terms and conditions included in the referral pursuant to §§ 215.3(b)(2) and 215.3(b)(3).

(8) Notwithstanding that a certification has been issued to the Federal Transit Administration pursuant to paragraph (d)(7) of this section, no action may be taken which would result in irreparable harm to employees if such action concerns matters subject to the steps set forth in paragraph (e) of this section.

(e) If the certification referred to in paragraph (d)(7) of this section is not based on full mutual agreement of the parties, the Department of Labor will take the following steps to resolve outstanding differences:

(1) The Department will set a schedule that provides for final resolution of the disputed issue(s) within sixty (60) days of the certification referred to in paragraph (d)(7) of this section.

(2) Within ten (10) days of the issuance of the certification referred to in paragraph (d)(7) of this section, and after reviewing the parties' descriptions of the disputed issues, the Department will define the issues still in dispute and set a schedule for final resolution of all such issues.

(3) The Department may establish a briefing schedule, usually allowing no more than twenty (20) days for opening briefs and no more than ten (10) days for reply briefs, when the Department deems reply briefs to be beneficial. In either event, the Department will issue a final certification to the Federal Transit Administration no later than thirty (30) days after the last briefs are due.

(4) The Department of Labor will decide the manner in which the dispute will be resolved. In making this decision, the Department may consider the form(s) of dispute resolution employed by the parties in their previous dealings as well as various forms of third party dispute resolution that may be appropriate. Any dispute resolution proceedings will normally be expected to commence within thirty (30) days of the certification referred to in paragraph (d)(7) of this section, and the Department will render a final determination, including the bases therefor, within thirty (30) days of the commencement of the proceedings.

(5) The Department will make available final decisions it renders on disputed issues.

(f) Nothing in these guidelines restricts the parties from continuing to negotiate/discuss over final terms and conditions and seeking a final certification of an agreement that meets the requirements of the Act prior to the issuance of a final determination by the Department.

(g) If, subsequent to the issuance of the certification referred to in paragraph (d)(7) of this section, the parties reach an agreement on one or more disputed issues that meets the requirements of the Act, and/or the Department of Labor issues a final decision containing revised terms and conditions, the Department will take appropriate steps to substitute the new terms and conditions for those previously certified to the Federal Transit Administration.

(h) Notwithstanding the foregoing, the Department retains the right to withhold certification where circumstances inconsistent with the statute so warrant until such circumstances have been resolved.

§ 215.4 Employees not represented by a labor organization.

(a) The certification made by the Department of Labor will afford the same level of protection to those employees who are not represented by labor organizations.

(b) If there is no labor organization representing employees, the Department of Labor will set forth the protective terms and conditions in the letter of certification.

§ 215.5 Processing of amendatory applications.

When an application is supplemental to or revises or amends in immaterial respects an application for which the Department of Labor has already certified that fair and equitable arrangements have been made to protect the interests of mass transit employees affected by the subject project the Department of Labor will on its own initiative apply to the supplemental or other amendatory application the same terms and conditions as were certified for the subject project as originally constituted. The Department of Labor's processing of these applications will be expedited.

§ 215.6 The Model Agreement.

The Model (or National) Agreement mentioned in paragraph (b)(3)(i) of § 215.3 refers to the agreement executed on July 23, 1975 by representatives of the American Public Transit Association and the Amalgamated Transit Union and Transport Workers Union of America and on July 31, 1975 by representatives of the Railway Labor Executives' Association, Brotherhood of Locomotive Engineers, Brotherhood of Railway and Airline Clerks and International Association of Machinists and Aerospace Workers. The agreement is intended to serve as a ready-made employee protective arrangement for adoption by local parties in specific operating assistance project situations. The Department has determined that this agreement provides fair and equitable arrangements to protect the interests of employees in general purpose operating assistance project situations and meets the requirements of 49 U.S.C. 5333(b).

§ 215.7 The Special Warranty.

The Special Warranty mentioned in paragraph (b)(3)(ii) of § 215.3 refers to the protective arrangements developed for application to the small urban and rural program under section 5311 of the Federal Transit statute. The warranty arrangement represents the understandings of the Department of Labor and the Department of Transportation, reached in May 1979, with respect to the protections to be applied for such grants. The Special Warranty provides fair and equitable arrangements to protect the interests of employees and meets the requirements of 49 U.S.C. 5333(b).

§ 215.8 Department of Labor contact.

Questions concerning the subject matter covered by this part should be addressed to Statutory Programs, U.S. Department of Labor, Suite N5411, 200 Constitution Avenue, NW., Washington, DC 20210; phone number 202–219–4473. (Secretary's Order 2–93, 58 FR 42578, August 10, 1993.)

[FR Doc. 95–29752 Filed 12–6–95; 8:45 am]

BILLING CODE 4510–86–P

federal register

Thursday
December 7, 1995

Part IV

Department of Agriculture

Agricultural Marketing Service
Office of Transportation

7 CFR Parts 29, 60, 81, et al.
Removal of Selected Regulations; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 29, 60, 81, 99, 100, 101, and 202

Office of Transportation

7 CFR Part 3305

[Docket Number TB–95–17]

Removal of Selected Regulations

AGENCY: Agricultural Marketing Service and Office of Transportation, USDA.

ACTION: Final rule.

SUMMARY: This rule will remove several miscellaneous regulations covering a number of agricultural commodities and services (cotton, tobacco, fresh and processed fruits and vegetables, meats and meat products, eggs, and poultry products). They represent an accumulation of regulations which were originally enacted to administer specific programs and which, upon review, have either been found to be obsolete, no longer are administered by the Agricultural Marketing Service (AMS), or duplicate existing regulations. This action will eliminate recurring Code of Federal Regulations (CFR) printing costs.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Larry L. Crabtree 202–205–0235.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have preemptive effect. This rule will not preempt any State or local laws, regulation, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Regulatory Impact Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionally burdened.

Since this action is administrative in nature, the Administrator of AMS determined that this action will have no significant economic impact on small entities because the changes remove obsolete and duplicative material.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained in the provisions to be amended have been previously approved by the Office of Management and Budget.

No additional recordkeeping requirements are imposed as a result of this rule.

Background

The Secretary of Agriculture is authorized under various statutes to develop and establish efficient marketing methods and practices of agricultural commodities. This has usually been accomplished by promulgating and codifying regulations in the CFR.

Rapid changes in consumer preferences, together with associated changes in commodity characteristics, processing technology, and marketing practices have out paced the revision of regulations. As a result, industry and the marketplace have been in some instances burdened with outdated and unnecessary regulatory language. The President's regulatory review initiative has provided an impetus to develop new approaches to meet more effectively the needs of U.S. industry, government agencies, and consumers and still reduce the regulatory burden. To meet this initiative, any regulations currently listed in the CFR which could be maintained and administered under the authorities of the AMS are being removed from the CFR and incorporated into AMS directives. Additionally, any regulations which are deemed outdated and which should be abolished, will be removed and considered obsolete once removed from the CFR. This rule eliminates selected regulations which encompass approximately 24 pages of the CFR.

The regulations at 7 CFR part 60 and 7 CFR 29.131 describe procedures for subscribing to printed Market News Reports. These sections are being eliminated because sufficient authority already exists in current statues and information for obtaining such publications by mail is readily available through a variety of public sources.

The regulations at 7 CFR part 81 Section 32 Diversion Programs describe procedures to administer the Fresh Apples Diversion Program for 1988 crop apples. This part is being eliminated because the program is no longer in existence.

The regulations at part 99, Statistical Science Program; part 100, National Laboratory Accreditation Program; concerning laboratory services, statistical science support, and Part 101, Pesticide Data Program will be removed because they are either reserved or contain only informational text.

The regulations at 7 CFR part 202, subpart B, Rules applicable to Cease and Desist Proceedings; relate to rules of practice for administering the Federal Seed Act (FSA). This part is being eliminated because 7 CFR 1.130, *Rules of Practice Governing Formal Adjudicatory Procedures*, is now used in enforcing the FSA.

The regulations at 7 CFR part 3305 describe the organization and functions of the Office of Transportation and the methods by which the public may obtain information about the Office. This part is being eliminated because the Office of Transportation was abolished January 1, 1991.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedures prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register for the following reasons: (1) The sections being removed are either duplicative unnecessary or obsolete, (2) removal will not alter any aspect of an existing program; and (3) no useful purpose would be served by a delay of the effective date.

List of Subjects

7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 60

Government publications, Market news reports, Subscription fees.

7 CFR Part 81

Animal feeds, Apples, Grant programs—agriculture, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 99

Agricultural commodities, Statistics.

7 CFR Part 100

Agricultural commodities, Statistics

7 CFR Part 101

Agricultural commodities, Laboratories.

7 CFR Part 202

Administrative practice and procedure, Advertising, Agricultural commodities, Imports, Labeling, Seeds, Vegetables.

7 CFR Part 3305

Freedom of information, Organization and functions.

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for 7 CFR part 29, subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

§ 29.13 [Removed and reserved]

2. In part 29, subpart B, § 29.131 is removed and reserved.

PARTS 60, 81, 99, 100, 101, and— [REMOVED AND RESERVED]

PART 202—[AMENDED]

§ 202.10—202.29 (Subpart B) [Removed and reserved]

1. Accordingly, under the authority of 7 U.S.C. 1621–1627, 2242a and 4403, 7 CFR Parts 60, 81, 99, 100, 101, 202 (subpart B), are removed and reserved.

PART 3305—[REMOVED AND RESERVED]

1. For the reasons set forth in the preamble and under the authority of 5 U.S.C. 552, part 3305 is removed and reserved.

Dated: December 1, 1995

Lon Hatamiya,

Administrator.

[FR Doc. 95–29792 Filed 12–06–95; 8:45 am]

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federal register

Thursday
December 7, 1995

Part V

The President

Proclamation 6855—Human Rights Day, Bill of Rights Day, and Human Rights Week, 1995

Federal Register
Vol. 60, No. 235
Thursday, December 7, 1995

Presidential Documents

Title 3—

The President

Proclamation 6855 of December 5, 1995

Human Rights Day, Bill of Rights Day, and Human Rights Week, 1995

By the President of the United States of America

A Proclamation

More than 200 years ago, America's founders adopted the Bill of Rights to ensure the protection of our individual liberties. Enshrined in our Constitution are the fundamental guarantees to freedom of conscience, religion, expression, and association, as well as the rights to due process and a fair trial. Our Nation was formed on the principle that the protection and promotion of these rights are essential to a free and democratic society.

Peoples throughout the world look to the United States for leadership on human rights. In the aftermath of the Holocaust and the devastation of two world wars, our country led the international effort toward adoption of the Universal Declaration of Human Rights. For the nearly 50 years since December 10, 1948, this document has served as the standard for internationally accepted behavior by nations toward their citizens.

This year, our work to promote peace in areas of conflict and to support human rights, democracy, and the rule of law have continued to make a difference around the globe. Most recently, our efforts to foster a settlement to the terrible conflict in Bosnia resulted in an agreement that contains clear protections for human rights and humanitarian principles.

In Bosnia, and throughout the world, we have paid special attention to the most vulnerable victims of abuse—women and children. At the Fourth World Conference on Women in September of this year, the First Lady underscored our commitment to defending the rights of women and families, and we have undertaken a range of initiatives to raise awareness of child exploitation, to oppose child labor, and to assist young victims of war.

We live in an era of great advances for freedom and democracy. Yet, sadly, it also remains a time of ongoing suffering and hardship in many countries. As a Nation long committed to promoting individual rights and human dignity, let us continue our efforts to ensure that people in all regions of the globe enjoy the same freedoms and basic human rights that have always made America great.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 1995, as Human Rights Day, December 15, 1995, as Bill of Rights Day, and December 10 through December 16, 1995, as Human Rights Week. I call upon the people of the United States to celebrate these observances with appropriate programs, ceremonies, and activities that demonstrate our national commitment to the Constitution and the promotion of human rights for all people.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–30014
Filed 12–5–95; 4:35 pm]
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REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Agricultural commodities and services; Federal regulatory review; published 12-7-95
Okra (frozen); grade standards; published 12-7-95
Peas, field and black-eye (frozen); grade standards; published 12-7-95
AGRICULTURE DEPARTMENT
Transportation Office, Agriculture Department
Organization, functions, and authority delegations; CFR part removed; published 12-7-95
ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste program authorizations:
Oregon; published 11-28-95
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Frame relay service; tariff filing; published 11-7-95
FEDERAL MARITIME COMMISSION
Ocean freight forwarders, marine terminal operations, and passenger vessels:
Automated Tariff Filing and Information System (ATFI); electronic filing, processing and retrieval of tariff data; published 11-7-95
JUSTICE DEPARTMENT
Search warrants issuance; Federal law enforcement officers authorization to request; published 12-7-95
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness standards:
Special conditions--
Beech model 200 airplane, etc.; published 12-7-95

Comments Due Next Week

AGRICULTURE DEPARTMENT
Consolidated Farm Service Agency
North American Free Trade Agreement (NAFTA):
End-use certificate program; comments due by 12-14-95; published 11-14-95
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Pacific Coast groundfish; comments due by 12-13-95; published 11-28-95
EDUCATION DEPARTMENT
Bilingual education:
Graduate fellowship program; comments due by 12-11-95; published 11-9-95
ENVIRONMENTAL PROTECTION AGENCY
Clean Air Act:
State operating permits programs--
Puerto Rico; comments due by 12-14-95; published 11-14-95
Hazardous waste:
Identification and listing--
Dye and pigment production; comments due by 12-15-95; published 11-30-95
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities; exemptions:
1,2-ethanediamine, polymer with oxirane and methyloxirane; comments due by 12-15-95; published 11-15-95
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole (propiconazole); comments due by 12-15-95; published 11-15-95
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Public mobile services--
Enhanced 911 services compatibility with wireless services; comments due by 12-15-95; published 11-28-95
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Adhesive coatings and components--
Silver chloride-coated titanium dioxide; comments due by 12-

15-95; published 11-15-95

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Bruneau hot springsnail

Comment period extension; comments due by 12-15-95; published 11-13-95

JUSTICE DEPARTMENT

Executive Office for Immigration Review:

Representation and appearance, nominal fees requirement; and free legal services lists; comments due by 12-14-95; published 11-14-95

LABOR DEPARTMENT

Mine Safety and Health Administration

Metal and nonmetal mine safety and health:

First aid safety standards; comments due by 12-11-95; published 10-27-95

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act; implementation; comments due by 12-15-95; published 11-15-95

PERSONNEL MANAGEMENT OFFICE

Prevailing rate systems; comments due by 12-14-95; published 11-14-95

SECURITIES AND EXCHANGE COMMISSION

Securities:

Ownership reports and trading by officers, directors, and principal security holders (insider trading)

Correction; comments due by 12-15-95; published 10-26-95

STATE DEPARTMENT

Visas; immigrant documentation:

Diversity immigrant visa program; requirements to prevent fraudulent practices; comments due by 12-13-95; published 11-13-95

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class C airspace; comments due by 12-15-95; published 11-1-95

Class E airspace; comments due by 12-11-95; published 11-1-95

TREASURY DEPARTMENT

Fiscal Service

Financial management services:

Federal process agents of surety companies; comments due by 12-11-95; published 11-9-95

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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