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WHAT: Free public briefings (approximately 3 hours) to present:

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

WASHINGTON, DC

[Two Sessions]

WHEN:	January 9, 1996 at 9:00 am and January 23, 1996 at 9:00 am
WHERE:	Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS:	202–523–4538

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Separate Parts In This Issue

Reader Aids

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

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.

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 60, No. 239
Wednesday, December 13, 1995

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150–AD83

Revision of Specific Exemptions Under the Privacy Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add exemptions authorized by subsections (j)(2) and (k)(5) of the Privacy Act of 1974, as amended (Privacy Act), to those currently in place for System of Records NRC–18, ''Office of the Inspector General (OIG) Investigative Records—NRC,'' under subsections (k)(1), (k)(2), and (k)(6). The additional exemptions for NRC–18 are necessary to maintain the integrity and confidentiality of these records, to protect the privacy of third parties, and to avoid interference with law enforcement activities. The final rule also updates the list of exemptions that apply to specific NRC systems of records and is necessary to eliminate any confusion regarding the exemption(s) applicable to each system.

EFFECTIVE DATE: January 12, 1996.

FOR FURTHER INFORMATION CONTACT: Jona L. Souder, Privacy Act Program Manager, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7170.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1995 (60 FR 38282), the NRC published a proposed rule in the Federal Register that would amend NRC's Privacy Act regulations contained in 10 CFR part 9, subpart B. The proposed amendments would add subsections (j)(2) and (k)(5) exemptions to Privacy Act System of Records NRC–18, ''Office of the Inspector General (OIG) Investigative Records—NRC,'' and update the list of exemptions that apply to specific NRC systems of records. On July 26, 1995 (60 FR 38379), the NRC published revisions to NRC–18 that would, among other things, add subsections (j)(2) and (k)(5) exemptions and two new routine uses, revise existing routine uses, and permit disclosures to consumer reporting agencies. The public was provided 40 days in which to comment on the two notices. No comments have been received. In addition, as required by 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–130, a report on the proposed revisions to the system of records and 10 CFR Part 9 was sent to the Committee on Government Reform and Oversight, U.S. House of Representatives, the Committee on Governmental Affairs, U.S. Senate, and OMB.

Under subsection (j)(2) of the Privacy Act, the head of an agency may issue rules to exempt any system of records within that agency from certain provisions of the Privacy Act if the system is maintained by an agency component whose principal function pertains to the enforcement of criminal laws and if the system of records consists of information compiled for a criminal law enforcement purpose. NRC–18 is maintained by the OIG, a component of NRC which performs, as one of its principal functions, investigations into violations of criminal law in connection with NRC's programs and operations in accordance with the Inspector General Act of 1978, as amended, and contains criminal law enforcement information. Therefore, pursuant to subsection (j)(2), NRC–18 is exempt from all provisions of the Privacy Act except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), (e)(11), and (i).

The disclosure of information contained in NRC–18, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of these investigations could enable suspects to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants and witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel, and their families. The imposition of certain restrictions on the way investigative information is collected, verified, or retained would significantly impede the effectiveness of OIG investigatory activities and could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity. The exemption is needed to maintain the integrity and confidentiality of criminal investigations, to protect individuals from harm, and for the following specific reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at the individual's request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and that they are subjects of the investigation. The release of this information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform outside parties of correction of and notation of disputes about information in a system in accordance with subsection (d) of the Privacy Act. Because this system of records is being exempted from subsection (d) concerning access to records, this section is inapplicable to the extent that the system of records will be exempted from subsection (d) of the Privacy Act.

(3) 5 U.S.C. 552a(d) and (f) require an agency to provide access to records, make corrections and amendments to

records, and notify individuals of the existence of records upon their request. Providing individuals with access to records of an investigation, the right to contest the contents of those records, and the opportunity to force changes to be made to the information in those records would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Permitting the access normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate with investigators; lead to suppression, alteration, fabrication, or destruction of evidence; endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claims growing out of the investigation.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in agency records only ''relevant and necessary'' information about an individual. This provision is inappropriate for investigations because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation.

In addition, during the course of an investigation, the investigator may obtain information that relates primarily to matters under the investigative jurisdiction of another agency, and that information may not be reasonably segregated. In the interest of effective law enforcement, OIG investigators should retain this information because it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual, when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The general rule that information be collected ''to the greatest extent practicable'' from the target individual is not appropriate in investigations. OIG investigators should be authorized to use their professional judgment as to the appropriate sources and timing of an investigation. It is often necessary to conduct an investigation so the target does not suspect that he or she is being investigated. The requirement to obtain the information from the targeted individual may put the suspect on notice of the investigation and thwart the investigation by enabling the suspect to destroy evidence and take other action that would impede the investigation. This requirement may also prevent an OIG investigator from gathering information and evidence before interviewing an investigative target to maximize the value of the interview by confronting the target with the evidence or information. In certain circumstances, the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. It is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

In addition, the statutory term ''to the greatest extent practicable'' is a subjective standard. It is impossible to define the term adequately so that individual OIG investigators can consistently apply it to the many fact patterns present in OIG investigations.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information on a form that can be retained by the person of the authority under which the information is sought and whether disclosure is mandatory or voluntary, of the principal purposes for which the information is intended to be used, of the routine uses that may be made of the information, and of the effects on the person, if any, of not providing all or some part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation that could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, investigators, and their families, by revealing their identities.

(7) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a Federal Register notice concerning its procedures for notifying an individual at his or her request, if the system of records contains a record pertaining to him or her, how to gain access to such a record, and how to contest its content. Because this system of records is being exempted from subsections (d) and (f) of the Privacy Act concerning access to records and agency rules, respectively, these requirements are inapplicable to the extent that the system of records will be exempted from these requirements. However, OIG has published some information concerning its notification, access, and contest procedures. Under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his or her records in the system.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish notice of the categories of sources of records in the system of records. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information, to protect privacy and physical safety of witnesses and informants, and to avoid the disclosure of investigative techniques and procedures. OIG will continue to publish such a notice in broad generic terms as is its current practice.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual. Much the same rationale is applicable to this exemption as that set out previously in item (4) (duty to maintain in agency records only ''relevant and necessary'' information about an individual). Although the OIG makes every effort to maintain records that are accurate, relevant, timely, and complete, it is not always possible in an investigation to determine with certainty that all of the information collected is accurate, relevant, timely, and complete. During a thorough investigation, a trained investigator would be expected to collect allegations, conflicting information, and information that may not be based upon the personal knowledge of the provider. When OIG decides to refer the matter to a prosecutive agency, for example, that information would be in the system of records and it may not be possible to determine the accuracy, relevance, and completeness of some information until further investigation is conducted, or indeed in many cases until after a trial (if at all). This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to

affected individuals is ensured by the due process they are accorded in any trial or other proceeding resulting from the OIG investigations.

(10) 5 U.S.C. 552a(e)(8) requires that an agency make reasonable efforts to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Exemption from this requirement is needed to avoid revealing investigative techniques and procedures outlined in those records and to avoid prematurely revealing an ongoing criminal investigation to the subject of the investigation.

(11) 5 U.S.C. 552a(g) provides for civil remedies if any agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Privacy Act, maintenance of records under subsection (e)(5) of the Privacy Act, and any other provision of the Privacy Act, or any rule issued thereunder, in such a way as to have an adverse effect on an individual. Allowing civil lawsuits for alleged Privacy Act violations by OIG investigators would compromise OIG investigations by subjecting the sensitive and confidential information in the OIG system of records to the possibility of inappropriate disclosure under the liberal civil discovery rules. That discovery may reveal confidential sources, the identity of informants, and investigative procedures and techniques, to the detriment of the particular criminal investigation as well as other investigations conducted by OIG.

The pendency of such a suit would have a chilling effect on investigations, given the possibility of discovery of the contents of the investigative case file. A Privacy Act lawsuit could become a strategic weapon used to impede OIG investigations. Because the system would be exempt from many of the Privacy Act's requirements, it is unnecessary and contradictory to provide for civil remedies from violations of those specific provisions.

Under subsection (k)(5) of the Privacy Act, the head of an agency may, by rule, exempt any system of records within the agency from certain provisions of the Privacy Act if the system of records contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. However, these records would be exempt only to the extent that the disclosure of this material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

NRC–18 contains information of the type described above. Therefore, in accordance with subsection (k)(5), NRC–18 is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act to honor promises of confidentiality should the data subject request access to or amendment of the records, or access to the accounting of disclosure of the records for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to grant access to the accounting of disclosures including the date, nature, and purpose of each disclosure, and the identity of the recipient. The release of this information to the record subject could alert them to the existence of the investigation or prosecutive interest by NRC or other agencies. This could seriously compromise case preparation by prematurely revealing the existence and nature of the investigation; compromise or interfere with witnesses, or make witnesses reluctant to cooperate; and could lead to suppression, alteration, or destruction of evidence.

(2) 5 U.S.C. 552a(d) and (f) require an agency to provide access to records, make corrections and amendments to records, and notify individuals of the existence of records upon their request. Providing individuals with access to records of an investigation, the right to contest the contents of those records, and the opportunity to force changes to be made to the information in the records would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claims growing out of the investigation or proceeding.

(3) 5 U.S.C. 552a(e)(1) requires agencies to maintain only ''relevant and necessary'' information about an individual in agency records. This provision is inappropriate for investigations because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(4) Because NRC–18 is being exempted from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information under subsections (d) and (f) of the Privacy Act, the requirements of 5 U.S.C. 552a(e)(4) (G) and (H) are inapplicable.

(5) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish notice of the categories of sources of records in the system of records. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants. However, the OIG will continue to publish such a notice in broad generic terms as is its current practice.

In addition, 10 CFR 9.95 is being amended to update the list of exemptions that apply to specific systems of records. The list includes NRC–23, ''Office of Investigations Indices, Files, and Associated Records—NRC,'' and NRC–35, ''Drug Testing Program Records—NRC,'' for which corresponding Part 9 amendments were not previously prepared when each new system was established. NRC–40 has been deleted from this list because a review of the system revealed that the subsections (k)(5) and (k)(6) exemptions of the Privacy Act were no longer needed. This amendment will eliminate any confusion regarding the specific exemption(s) applicable to each system of records.

Environmental Impact—Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0043.

Regulatory Analysis

This final rule adds exemption (j)(2) of the Privacy Act to the NRC regulations that describe exempt systems of records. This is an administrative regulatory action that would make NRC's regulations consistent with the regulations applicable to the majority of statutorily appointed Inspectors General. The rule also adds the (j)(2) and (k)(5) exemptions to the system of records maintained by OIG and clearly links each NRC system of records to the specific exemption(s) of the Privacy Act under which the system is exempt. The rule does not have an economic impact on any class of licensee or the NRC. By more clearly indicating the exemptions under which a system is exempt and by conforming NRC's regulations to those of the majority of statutorily appointed Inspectors General, the rule may provide some benefit to those who may be required to use these regulations.

The alternative to the rule would be to refrain from adopting the identified exemptions. As discussed in this document, failure to adopt the rule could have detrimental effects on the OIG's investigative program and its ability to obtain and protect information.

This constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The amendments to 10 CFR part 9 are procedural in nature and will aid an NRC office to perform its criminal law enforcement functions. In addition, the amendments will eliminate any confusion regarding specific exemptions available to each affected Privacy Act system of records notice.

Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109 does not apply to this final rule and, therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 9

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570. Subpart B also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.52, paragraph (b)(4) is revised to read as follows:

§ 9.52 Types of requests.

* * * * *

(b) *Requests for accounting of disclosures.* * * * (4) Disclosures expressly exempted by NRC regulations from the requirements of 5 U.S.C. 552a(c)(3) pursuant to 5 U.S.C. 552a(j)(2) and (k).

3. In § 9.61, current paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added to read as follows:

§ 9.61 Procedures for processing requests for records exempt in whole or in part.

* * * * *

(b) *General exemptions.* Generally, 5 U.S.C. 552a(j)(2) allows the exemption of any system of records within the NRC from any part of section 552a except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) of the act if the system of records is maintained by an NRC component that performs as one of its principal functions any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crimes, or to apprehend criminals, and consists of—

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole, and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

* * * * *

4. In § 9.80, paragraphs (a)(6), (10), and (11) are revised and a new paragraph (a)(12) is added to read as follows:

§ 9.80 Disclosure of record to persons other than the individual to whom it pertains.

(a) * * *

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or to the Archivist of the United States or designee for evaluation to determine whether the record has such value;

* * * * *

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

5. Section 9.95 is revised to read as follows:

§ 9.95 Specific exemptions.

The following records contained in the designated NRC Systems of Records (NRC–5, NRC–9, NRC–11, NRC–18, NRC–22, NRC–23, NRC–28, NRC–29, NRC–31, NRC–33, NRC–35, NRC–37, and NRC–39) are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) in accordance with 5 U.S.C. 552a(k). In addition, the records contained in NRC–18 are exempt from the provisions of 5 U.S.C. 552a and the regulations in this part, under 5 U.S.C. 552a(j)(2), except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). Each of these systems of records is subject to the provisions of § 9.61:

(a) Contracts Records Files, NRC–5 (Exemptions (k)(1) and (k)(5));

(b) Equal Employment Opportunity Discrimination Complaint Files, NRC–9 (Exemption (k)(5));

(c) General Personnel Records (Official Personnel Folder and Related Records), NRC–11 (Exemptions (k)(5) and (k)(6));

(d) Office of the Inspector General (OIG) Investigative Records, NRC–18 (Exemptions (j)(2), (k)(1), (k)(2), (k)(5), and (k)(6));

(e) Personnel Performance Appraisals, NRC–22 (Exemptions (k)(1) and (k)(5));

(f) Office of Investigations Indices, Files, and Associated Records, NRC- 23 (Exemptions (k)(1), (k)(2), and (k)(6));

(g) Recruiting, Examining, and Placement Records, NRC–28 (Exemption (k)(5));

(h) Nuclear Documents System (NUDOCS), NRC–29 (Exemption (k)(1));

(i) Correspondence and Records, Office of the Secretary, NRC–31 (Exemption (k)(1));

(j) Special Inquiry File, NRC–33 (Exemptions (k)(1), (k)(2), and (k)(5));

(k) Drug Testing Program Records, NRC–35 (Exemption (k)(5));

(l) Information Security Files and Associated Records, NRC–37 (Exemptions (k)(1) and (k)(5)); and

(m) Personnel Security Files and Associated Records, NRC–39 (Exemptions (k)(1), (k)(2), and (k)(5)).

Dated at Rockville, MD., this 1st day of December, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–30173 Filed 12–12–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–120; Special Conditions No. 25–ANM–110]

Special Conditions: Jetstream Aircraft Limited Model 4101 Series Airplanes; Automatic Takeoff Thrust Control System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions, request for comments.

SUMMARY: These special conditions are issued to Jetstream Aircraft Limited for the Jetstream Model 4101 series airplanes. This airplane will have an unusual design feature for which the applicable airworthiness regulations do not contain appropriate safety standards. The unusual design feature is an Automatic Takeoff Thrust Control System (ATTCS) that resets power on the operating engine for compliance with the approach climb performance requirements in § 25.121(d). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 6, 1995. Comments must be received on or before January 29, 1996.

ADDRESSES: Comments on these final special conditions, request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–120, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked ''Docket No. NM–120.'' Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 and 4:00 p.m.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, 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 persons, 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 submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–120.'' The postcard will be date stamped and returned to the commenter.

Background

On May 24, 1989, British Aerospace Public Limited Company (BAe) (currently Jetstream Aircraft Ltd.) applied for a type certificate for the BAe Model 4100 (currently Jetstream Model 4101) airplane in the transport airplane category. The Jetstream Model 4101 is a transport category airplane powered by two Garrett TPE331–14GR/HR Series turbo-propeller engines mounted on the wing. McCauley Model B/C 5JFR36C1101/2 or 3/4–/L114 G/H CA–0 five-blade propellers are installed. The airplane is type certificated with two flight crewmembers and up to 30 passengers.

The Jetstream Model 4101 will incorporate an unusual design feature, the Automatic Takeoff Thrust Control System (ATTCS), referred to by Jetstream as Automatic Power Reserve or APR, to show compliance with the approach climb requirements of § 25.121(d). Appendix I to part 25 limits the application of performance credit for ATTCS to takeoff only. Since the airworthiness regulations do not contain appropriate safety standards for approach climb performance using ATTCS, special conditions are required to ensure a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.101, Jetstream must show that the Model 4101 series airplanes, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A41NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A41NM are as follows:

Based on §§ 21.29 and 21.17 and the type certification application date, the applicable U.S. type certification basis for the Model 4101 was established as follows:

—Part 25 of the FAR dated February 1, 1965, as amended by Amendments 25–1 through 25–66 (all based on BAe application date to CAA), and

—Part 25 of the FAR, Amendments 25–67, 25–68, 25–69, 25–70, 25–71, and

—Part 25 of the FAR, §§ 25.361 and 25.729 and paragraphs 25.571(e)(2), 25.773(b)(2) and 25.905(d), all as amended by Amendment 25–72, and

—Section 25.1419 as amended by Amendments 25–1 through 25–66, and

—Special Conditions (SC) as follows:

—Special Conditions No. 25–ANM–48 issued August 29, 1991, Lightning and High Intensity Radiated Fields (HIRF)

—Special Conditions No. 25–ANM–45 issued July 9, 1991, Cabin Aisle Width, and

—The following exemptions were petitioned for and granted:

—FAA Exemption No. 5587 issued January 13, 1993, Head Impact Criteria (25.562(c)(5)) for the three most forward passenger seats in passenger cabin, and

—Equivalent safety findings as follows:

—25.349 of the FAR, Rolling Conditions

—25.729(e)(2) of the FAR, Landing Gear Aural Warning
—25.811(d)(2) of the FAR, Emergency Exit Marking, Over Wing Exits
—25.1182 of the FAR, Nacelle areas behind firewalls, and
—Part 34 of the FAR effective September 10, 1990, and
—Part 36 of the FAR effective December 1, 1969, including Amendments 36–1 through 36–18, including Appendices A, B, and C.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for Jetstream Model 4101 series airplanes because of a novel or unusual design feature, 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, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Novel or Unusual Design Features

The Jetsteam 4101 is a twin turbopropeller airplane equipped with electronic engine controls that protect against exceeding the engine temperature and torque limits. It also incorporates an ATTCS system that can automatically add power to the operating engine in the event one engine fails. This system benefits engine life by allowing the normal all-engines-operating power to be set at less than the maximum available power when the airplane operation is limited only by one-engine-inoperative performance considerations. If an engine fails, the ATTCS is armed and the operating engine is above 65% torque, the ATTCS automatically increases the Exhaust Gas Temperature (EGT) limit by 40° C and the torque by 11%, but does not allow the torque to exceed either the 100% torque limit or the higher EGT limit. Therefore, the Jetstream 4101 ATTCS only provides an increase in power at temperatures above the normal flat rate limit temperature.

The part 25 standards for ATTCS, contained in § 25.904 and Appendix I, specifically restrict performance credit for ATTCS to takeoff. Expanding the scope of the standards to include other phases of flight, including go-around, was considered at the time the standards were issued, but flightcrew workload issues precluded further consideration. As stated in the preamble to Amendment 25–62:

In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb (§ 25.121(d)) than for the landing climb (§ 25.119). The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase. (52 FR 43153, November 9, 1987)

The ATTCS incorporated on the Jetstream 4101 allows the pilot to use the same power setting procedure during a go-around regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by advancing the power levers until reaching either 100% torque or the EGT limit. If ATTCS is operating (i.e., one engine is inoperative), the EGT limit computed by the electronic engine control and displayed to the pilot is 40° C higher than when all engines are operating. For a go-around in which an engine fails after go-around power has been set, the ATTCS operates exactly as it does during takeoff to automatically boost power.

The definition of a critical time interval for the approach climb case, during which time it must be extremely improbable to violate a flight path based on the § 25.121(d) gradient requirement is of primary importance. The § 25.121(d) gradient requirement implies a minimum one-engine-inoperative flight path capability with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

As discussed above, these special conditions are applicable to the Jetstream Model 4101. Should Jetstream Aircraft Limited apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the Federal Register, however, as the certification date for the Jetstream Model 4101 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain design features on the Jetsteam Model 4101 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subject to the notice and public comment procedure in a recent instance with no comment. For this reason 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 good cause exists for adopting these special conditions without notice. Therefore, special conditions are being issued for this airplane and made effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

According, 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 Jetstream Model 4101 airplane.

(a) *General:* An ATTCS is defined as the entire automatic system, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers, or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and furnish cockpit information on system operation.

(b) *Automatic takeoff thrust control system (ATTCS).* The engine power control system that automatically resets the power or thrust on the operating engine (following engine failure during the approach for landing) must comply with the following requirements:

(1) *Performance and System Reliability Requirements.* The probability analysis must include consideration of ATTCS failure occurring after the time at which the fightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

(2) *Thrust Setting.* The initial takeoff thrust set on each engine at the beginning of the takeoff roll or go-around may not be less than:

(i) Ninety (90) percent of the thrust level set by the ATTCS (the maximum takeoff thrust or power approved for the airplane under existing ambient conditions);

(ii) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; and

(iii) That shown to be free of hazardous engine response characteristics when thrust is advanced from the initial takeoff thrust or power to the maximum approved takeoff thrust or power.

(3) *Powerplant Controls.* In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety. The ATTCS must be designed to:

(i) Apply thrust or power on the operating engine(s), following any one engine failure during takeoff or go-around, to achieve the maximum approved takeoff thrust or power without exceeding engine operating limits; and

(ii) Provide a means to verify to the flightcrew before takeoff and before beginning an approach for landing that the ATTCS is in a condition to operate.

(c) *Critical Time Interval.* The definition of the Critical Time Interval in Appendix I, § I25.(b) shall be expanded to include the following:

(1) When conducting an approach for landing using ATTCS, the critical time interval is defined as follows:

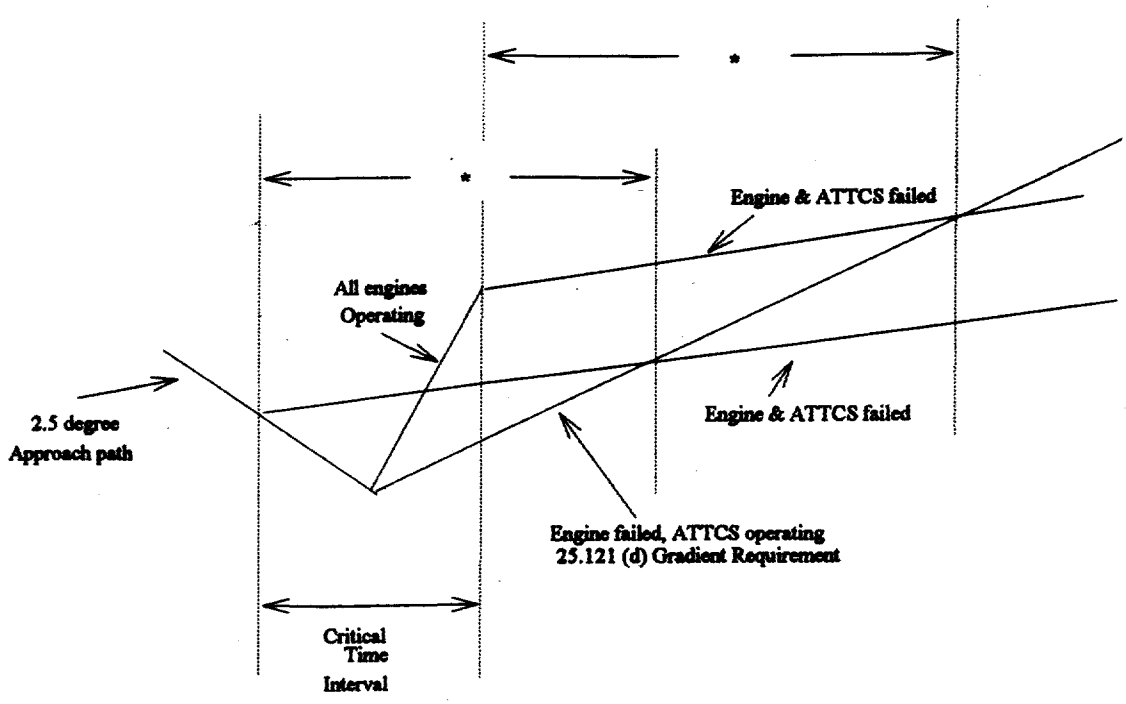
(i) The critical time interval *begins* at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the Part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff beginning from the point of simultaneous engine and ATTCS failure and ending up reaching a height of 400 feet.

(ii) The critical time interval *ends* at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the Part 25 minimum one-engine-inoperative approach climb gradient. The all-engines-operating go-around flight path and the Part 25 one-engine-inoperative approach climb gradient flight path originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) the critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the Airplane Flight Manual.

(3) The critical time interval is illustrated in the following figure:

BILLING CODE 4910–12–M



*The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with I25.2(b) for ATTCS use during takeoff.

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

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, AMN–100.

[FR Doc. 95–30366 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28390; Amdt. No. 1695]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

The Rule

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

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

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on November 17, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * *Effective January 4, 1996*

Key West, FL, Key West Intl, VOR/DME or GPS RWY 27, Amdt 2
Key West, FL, Key West Intl, NDB or GPS–A, Amdt 14
Key West, FL, Key West Intl, RADAR-1, Amdt 4
Tecumseh, MI, Al Meyers, VOR OR GPS–A, Amdt 7
Fairmont, NE, Fairmont State Airfield, NDB RWY 17, Orig
Fairmont, NE, Fairmont State Airfield, NDB OR GPS RWY 35, Amdt 1
Hartington, NE, Hartington Muni, VOR/DME RWY 31, Orig
Nebraska City, NE, Nebraska City Muni, NDB RWY 15, Orig
Nebraska City, NE, Nebraska City Muni, NDB RWY 33, Orig
Scribner, NE, Scribner State, VOR RWY 35, Orig
Lexington, TN, Franklin-Wilkins, VOR or GPS RWY 33, Amdt 10
Louisa, VA, Louisa County-Freeman Field, LOC RWY 27, Orig

* * * *Effective February 1, 1996*

Baltimore, MD, Martin State, ILS RWY 33, Amdt 5
Millville, NJ, Millville Muni, VOR–A, Orig
Millville, NJ, Millville Muni, VOR OR GPS RWY 19, Amdt 3A
CANCELLED

* * * *Effective February 29, 1996*

Bastrop, LA, Morehouse Memorial, GPS RWY 16, Orig
St. Charles, MO, St. Charles County Smartt, GPS RWY 18, Orig
Blacksburg, VA, Virginia Tech, LOC RWY 12, Amdt 4

[FR Doc. 95–30369 Filed 12–12–95; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28402; Amdt. No. 1698]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria was applied to only these specified conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public

procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on December 1, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
11/16/95	IA	Pella	Phella Muni	FDC 5/6269	NDB or GPS RWY 34, AMDT 6...
11/16/95	SC	Columbia	Columbia Metropolitan	FDC 5/6251	ILS RWY 29 AMDT 3B...
11/17/95	CA	Placerville	Placerville	FDC 5/6284	GPS RWY 5, ORIG...
11/21/95	VT	Morrisville	Morrisville-Stowe State	FDC 5/6339	NDB or GPS–B AMDT 1...
11/22/95	AR	Little Rock	Adams Field	FDC 5/6366	ILS RWY 4R, ORIG...
11/28/95	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 5/6438	ILS RWY 29L AMDT 41...

[FR Doc. 95–30367 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28401; Amdt. No. 1697]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

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

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

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

For Purchase

Individual SIAP copies may be obtained from:

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

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

By Subscription

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

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

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

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

The Rule

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

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

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on December 1, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

** * * Effective January 4, 1996*

Jacksonville, FL, Jacksonville Intl, ILS RWY 13, Amdt 5
Olive Branch, MS, Olive Branch, LOC/DME RWY 18, Orig
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 16L, Amdt 9
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 16R, Amdt 1
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 34L, Amdt 1
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 34R, Amdt 1
Superior, WI, Richard I. Bong, GPS RWY 13, Orig
Superior, WI, Richard I. Bong, GPS RWY 31, Orig

** * * Effective February 1, 1996*

Syracuse, NY, Syracuse Hancock Intl, VOR or GPS RWY 14, Amdt 21

** * * Effective February 29, 1996*

Crossett, AR, Z M Jack Stell Field, GPS RWY 23, Orig
De Kalb, IL, De Kalb Taylor Muni, GPS RWY 9, Orig
Indianapolis, IN, Indianapolis Metropolitan, GPS RWY 33, Orig
New Castle, IN, New Castle-Henry Co Muni, VOR OR GPS RWY 27, Amdt 9
New Castle, IN, New Castle-Henry Co Muni, NDB OR GPS RWY 9, Amdt 5
New Castle, IN, New Castle-Henry Co Muni, NDB RWY 27, Amdt 5
Ames, IA, Ames Muni, GPS RWY 31, Orig
Fairfield, IA, Fairfield Muni, GPS RWY 36, Orig
Houma, LA, Houma-Terrebonne, GPS RWY 12, Orig
New Orleans, LA, Lakefront, GPS RWY 18R, Orig
Bar Harbor, ME, Hancock County-Bar Harbor, GPS RWY 4, Orig
Sullivan, MO, Sullivan Regional, GPS RWY 24, Orig
Woodbine, NJ, Woodbine Muni, VOR–A, Orig
Woodbine, NJ, Woodbine Muni, VOR or GPS–A, Amdt 2 Cancelled
Silver City, NM, Grant County, GPS RWY 26, Orig
Ponca City, OK, Ponca City Muni, NDB OR GPS RWY 17, Amdt 4
Ponca City, OK, Ponca City Muni, NDB RWY 35, Amdt 3
Ponca City, OK, Ponca City Muni, GPS RWY 35, Orig

[FR Doc. 95–30368 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Ethics Training for Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On July 22, 1994, the Commodity Futures Trading Commission (Commission) published for comment proposed amendments to Rule 3.34, which governs ethics training for Commission registrants. 59 FR 37446. Based upon its review of the comments received and its own reconsideration of the proposed amendments, the Commission has determined to adopt the rule amendments as proposed, with certain modifications discussed herein.

EFFECTIVE DATE: These rule amendments will become effective January 12, 1996. However, with respect to existing ethics training providers, the provision of § 3.34(b)(5) relating to promotional and instructional materials, including videotape and computer presentations, will become applicable March 12, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Myra R. Silberstein,

Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Background

Section 210 of the Futures Trading Practices Act of 1992 added a new paragraph (b) to Section 4p of the Commodity Exchange Act (Act), mandating ethics training for all persons registered under the Act.[1] On April 15, 1993, the Commission adopted Rule 3.34 to implement this Congressional mandate.[2] By Federal Register release issued on September 13, 1993, the Commission provided further guidance with respect to the contents of applications to be submitted by persons seeking to provide ethics training to registrants.[3]

Proposed amendments to Rule 3.34, published in July 1994, would: (1) require a certification by persons seeking to provide ethics training that they would not be disqualified from registration under the Act; (2) limit certain representations that ethics training providers may make concerning their status as such; (3) facilitate the use of videotape and electronic presentations; and (4) enhance the ability of a registered futures association to track the ethics training attendance dates of registrants. The Commission received four comment letters on the proposed rule amendments. The commenters included a registered futures association, a computer-based ethics training provider and two other ethics training providers. The commenters generally supported, or acknowledged their understanding of, the objectives of the proposed rule amendments. Some commenters, however, criticized the scope of the proposed rule amendments. Further, one of the ethics training providers who submitted comments requested additional time to update its program materials to comply with the changes that would be required by the rule amendments. Comments addressed to specific provisions of the proposed rule amendments and the Commission's resolution of the issues raised therein are discussed below in the context of the relevant rule provision.

Based upon its review of the comments received on the proposed amendments and in light of its experience in administering this program, the Commission has adopted amendments to Rule 3.34 regarding ethics training providers. The provisions of Rule 3.34 relating to the topics to be covered in ethics training and the minimum requirements for attendance at such training remain unchanged. The amendments adopted herein will, subject to proposed amendments to Rule 3.34 published in this edition of the Federal Register, permit a person to be included by a registered futures association on a list of authorized providers of such training upon filing of a notice with a registered futures association certifying that: (1) he is not subject to a statutory disqualification from registration under the Act; [4] (2) barred from service on self-regulatory organization (SRO) governing boards or committees pursuant to Commission Rule 1.63 or SRO rules; or (3) subject to a pending proceeding with respect to possible violations of the Act or rules or orders promulgated thereunder. These amendments will also prohibit certain representations with respect to a person's status as an ethics training provider; allow wider use of ethics training presentations by videotape and computer; and require ethics training providers to furnish records of attendees to a registered futures association upon request.

By separate release published in this edition of the Federal Register, the Commission is proposing several additional amendments to Rule 3.34 to address certain further issues relating to ethics training providers. These amendments would require ethics training providers other than SROs: (1) To satisfy the same proficiency testing requirements as registrants; and (2) have at least three years of pedagogical or relevant industry experience.

II. Amendments to Commission Rule 3.34

A. Required Certifications by Applicants to Become Ethics Training Providers

Currently, three categories of persons may provide ethics training to Commission registrants pursuant to Rule 3.34: (1) SROs; (2) entities accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics; or (3) any other person whose program ''is approved by the Commission for this purpose.'' [5] The amendments to Rule 3.34 proposed in July 1994 would have continued to permit SROs and state-accredited continuing education providers to act as ethics training providers without compliance with any additional requirements. With respect to persons other than SROs or state-accredited entities, the proposed amendments would permit such persons to provide ethics training upon filing of a notice with a registered futures association certifying that the person, all principals thereof (as defined in Commission Rule 3.1(a)) [6] and any individuals who, on behalf of such person, conduct in-person ethics training sessions or prepare ethics training videotape or electronic presentations,[7] are not subject to: (1) any statutory disqualification from registration under Sections 8a(2) or (3) of the Act; [8] (2) a bar from service on SRO governing boards or committees arising from relevant disciplinary history, as specified in Commission Rule 1.63 [9] or any SRO rule adopted thereunder; or (3) a pending adjudicatory proceeding under Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or

[1] This provision of the Act is codified at 7 U.S.C. 6p(b)(1994) and states that:

The Commission shall issue regulations to require new registrants, within 6 months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable Federal or state law, rule or regulation.

[2] 58 FR 19575, 19584–19587, 19593–19594 (April 15, 1993).

[3] 58 FR 47890 (September 13, 1993). The Commission has reviewed applications from more than twenty-five persons seeking to provide ethics training to registrants.

[4] Sections 8a (2) and (3) of the Act, 7 U.S.C. 12a (2) and (3) (1994).

[5] 17 CFR 3.34(b)(3)(1995).

[6] 17 CFR 3.1(a)(1995).

[7] Thus, if an entity organizes a corporation to offer ethics training and hires an instructor to conduct the lectures, the notice must include within its coverage the entity, the corporation and the instructor. Such notice must also be amended as necessary to cover any additional instructors required to handle the number of persons enrolling in the ethics training program.

[8] 7 U.S.C. 12a(2) or (3)(1994). The Act specifies several grounds for disqualification from registration including, among others, a prior revocation of registration, felony conviction, and an injunction relating to futures or securities activities.

[9] Pursuant to Rule 1.63, each SRO must maintain in effect rules which render a person ineligible to serve on its governing boards, disciplinary committees, or arbitration panels who, among other things, has been found within the prior three years to have committed a disciplinary offense or entered into a settlement agreement where the charge involved a ''disciplinary offense,'' is currently suspended from trading on any contract market, is suspended or expelled from membership in any SRO, or is currently subject to an agreement with the Commission or an SRO not to apply for registration or membership. A ''disciplinary offense'' for these purposes means any violation of the Act or the rules promulgated thereunder or SRO rules other than those relating to (1) decorum or attire, (2) financial requirements, or (3) reporting or recordkeeping, unless resulting in fines aggregating more than $5,000 in a calendar year, provided such SRO rule violations did not involve fraud, deceit or conversion, or result in a suspension or expulsion. 17 CFR 1.63 (1995).

Commission Rules 3.55, 3.56 or 3.60.[10] This certification procedure will replace the existing application procedure for entities that are not SROs or state-accredited providers of continuing education in the fields of law, finance, accounting or economics.

The Commission believes that it is appropriate to require persons seeking to act as ethics trainers to provide a certification of the nature outlined above in order to assure a minimum level of fitness to act as ethics trainers.[11] The statutory requirement for ethics training is intended ''to ensure that registrants understand their responsibilities to the public under [the] Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rules of any appropriate contract market, registered futures association, or other self-regulatory organization or any other applicable Federal or State law, rule or regulation.'' [12] The Commission believes that, generally, it would be inconsistent with this Congressional mandate and contrary to the public interest for a person to instruct others about their responsibilities under the Act and other applicable requirements if such person has a disciplinary history that reflects a failure to comply with such provisions.

The Commission has used several objective, established benchmarks to identify persons with disciplinary histories that call into question their suitability to provide ethics training. Disqualifying disciplinary histories for this purpose would be those which constitute disqualifications from registration under the Act or bars from service on SRO governing boards or committees, pending adjudicatory proceedings, including disqualification proceedings relating to possible violations of the Act or Commission rules. The Commission has also provided in the final rules, as in the proposed rules, that the certification requirement imposes a continuing duty; consequently, if the certification becomes inaccurate, the provider must so inform the registered futures association, which shall then refuse to include such person on, or remove such person from, the list of ethics training providers.[13]

One effect of these amendments is to permit the National Futures Association (NFA), currently the only registered futures association, to maintain a list of eligible ethics training providers for purposes of Commission Rule 3.34. In its comment letter on the proposed amendments, NFA recommended that the rule amendments provide procedural protection for ethics training providers who are either rejected or removed from the list by NFA. In particular, NFA recommended that providers rejected or removed from the list be afforded a hearing before NFA with an opportunity to appeal to the Commission. The Commission believes such a procedure to be appropriate and, accordingly, has incorporated it in the final rules as subparagraph 3.34(b)(3)(v). The Commission contemplates that the hearing before NFA in these circumstances could be limited to written submissions and that any subsequent appeal to the Commission would be based on the record before NFA.

NFA also stated in its comment letter that it was uncertain how information regarding statutory disqualifications could be verified, particularly if it could not require that fingerprints be provided and thus would be unable to access the Federal Bureau of Investigations criminal records database. Although cognizant of this limitation, the Commission believes that, in the first instance, NFA should employ the other existing databases that it uses to verify applications of registrants, including the Clearinghouse of Disciplinary Information which NFA maintains with respect to futures industry data and the Securities and Exchange Commission database on securities industry violations.

Another commenter stated that all ethics training providers, including state-accredited continuing education entities and SROs, should be subject to prior approval by the Commission. The Commission's ethics training rule has not previously required state-accredited entities and SROs to file an application before providing ethics training to registrants. When the Commission originally adopted Rule 3.34(b), it did not require applications for authorization to provide ethics training by SROs and state-accredited entities because SROs are subject to the Commission's regulatory framework and oversight, while state-accredited entities are subject to certification and review by the relevant state. However, in the proposed rule amendments published elsewhere in this edition of the Federal Register, the Commission is now proposing that state-accredited entities be subject to certification and monitoring applicable to other ethics training providers, as discussed above. The Commission believes that in the absence of such compliance, given the lack of uniformity in state continuing education accreditation requirements, it will not have sufficient assurance that such providers have a minimum level of knowledge of relevant statutory and regulatory requirements or of fitness to provide ethics training.[14]

One commenter stated that those ethics training providers whose applications to provide ethics training have already been granted by the Commission should be exempt from the certification process set forth in the proposed amendments to Rule 3.34. The Commission agrees with this view and will provide NFA with the current list of authorized ethics training providers for inclusion in the list of authorized providers. However, NFA will be expected to monitor existing providers as well as new providers and may remove any provider for cause as contemplated by subparagraph (b)(3)(iv). As noted above, if circumstances change such that an ethics provider's certification becomes inaccurate, the provider must so inform the NFA. Upon such notice from the provider (or otherwise), NFA shall refuse to include such person on or remove such person from the list of authorized providers.

B. Delegation of Authority

The purposes of subparagraphs (b)(3)(iii) through (b)(3)(v) of Rule 3.34 are to permit NFA to maintain a list of eligible ethics training providers.

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[10] A pending proceeding is a basis to bar a person whose registration has expired within the preceding sixty days from obtaining a temporary license upon mailing a new registration application (see 17 CFR 3.11(c)(1)(i)(B), 3.11(c)(1)(ii)(B), 3.12(d)(1)(iv), and 3.12(i)(1)(iv)(1995)), to bar a person from serving as a sponsor or special supervisor of a conditioned or restricted registrant (see 17 CFR 3.60(b)(2)(i)(A)(1995)), and to prevent withdrawal from registration (see 17 CFR 3.33(f)(1) (1995)).

[11] The requirements discussed above apply to a certification from any ethics training provider. As discussed below, if the ethics training provider will offer training by means of videotape or electronic presentation, the provider's certification would also be required to include a statement with respect to verification of registrants' attendance.

[12] Section 4p(b) of the Act.

[13] However, if a firm is subject to a pending adjudicatory proceeding as described above, the firm may submit a certification to a registered futures association with an explanation describing the circumstances of the proceeding, particularly with respect to the scope and nature of the proceeding in relation to the size of the firm. For example, a proceeding that is limited to a single branch office of a firm and that does not involve fraud or failure to supervise might be treated differently than a proceeding involving allegations extending to the overall operations of the firm or making claims of fraud. The Commission would expect the registered futures association to consult the Commission concerning specific certifications in cases involving an ethics provider that is or becomes subject to a proceeding.

[14] In the proposing release, the Commission also is inviting comments concerning the continued appropriateness of permitting SROs to offer ethics training without qualifying to do so in the same manner as other providers.

Therefore, the Commission hereby delegates authority to NFA: (1) To maintain the list of eligible ethics training providers for purposes of Commission Rule 3.34, including the authority to refuse to include persons on such list pursuant to the criteria set forth in Rule 3.34(b)(3)(iii) or criteria established by NFA and approved by the Commission; (2) to establish guidelines as to the required proficiency and experience of ethics training providers; (3) to receive and evaluate complaints concerning such providers and conduct other appropriate reviews of providers' operations, subject to Commission oversight; (4) to develop appropriate procedures to verify certifications filed by potential ethics training providers; and (5) to require that such certifications be updated periodically. NFA's procedures must be submitted to the Commission for review pursuant to Section 17(j) of the Act,[15] which governs Commission review and approval of registered futures association rules.

In its comment letter on the proposed amendments to Rule 3.34, NFA supported the Commission's proposal to delegate responsibility to NFA for the processing and review of applications of prospective ethics training providers and confirmed its willingness to assume this responsibility. However, NFA suggested that the Commission establish objective standards for NFA to follow in discharging these responsibilities. NFA expressed the view that ethics training providers should satisfy a proficiency standard that is objective, readily measurable and would assure that providers possess a working knowledge of the industry and its regulations.

As noted above, the Commission is proposing, by separate Federal Register release, certain minimum requirements with respect to proficiency testing and experience to be applicable to ethics training providers other than SROs. These proposals include a requirement that ethics training providers be subject to the same proficiency testing requirements as the registrants they propose to instruct. This proficiency test will generally be the National Commodity Futures Examination (Series 3 Exam).

The Commission is also proposing to require that ethics training providers other than SROs demonstrate that they have at least three years of pedagogical or relevant industry experience. The Commission's delegation of authority to NFA includes authority to establish guidelines concerning the specific types of pro-ficiency tests and experience necessary to satisfy these requirements.[16] Of course, NFA may submit to the Commission for decision any specific matters which have been delegated to it and Commission staff will be available to discuss with NFA staff issues relating to the implementation of these rules, including the review of operations of ethics training providers.

C. Permissible Representations

To date, in granting the applications of persons seeking to provide ethics training, the Commission has made clear that it is not approving the specific content of the proposed ethics training program or expressing any opinion as to the program's quality or accuracy. The Commission believes that it is appropriate to clarify by rule the effect of authorization to provide ethics training under Rule 3.34 for all providers. Accordingly, the Commission proposed in Rule 3.34(b)(5) to prohibit any representation or implication that an ethics training provider has been sponsored, recommended or approved, or the provider's abilities or qualifications or the content, quality or accuracy of the training program provided, has in any respect been passed upon or endorsed by the Commission, a registered futures association, or any representative thereof.

The commenters voiced no objections to this proposed provision. However, one commenter requested that the effective date of these rule amendments be delayed for ninety days for existing ethics training providers to enable them to modify their presentations and materials to comply with the adopted changes. The Commission believes that all providers should be given ninety days in which to comply with the requirement to include the specified statement in promotional and instructional material. Therefore, the effective date of Rule 3.34(b)(5) will be ninety days following publication, rather than thirty days following publication, which is the effective date for all other provisions.

Accordingly, the Commission has adopted Rule 3.34(b)(5) to provide that no SRO, state-accredited continuing education entity or other person included on a list of ethics training providers ''may represent or imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that such person's abilities or qualifications, the content, quality or accuracy of his training program, or the positions taken in the course of resolving any actual or hypothetical situations presenting ethical or legal issues,[17] have in any respect been passed upon or endorsed, by the Commission or a registered futures association.'' Rule 3.34(b)(5) further provides that any promotional or instructional material used in connection with ethics training ''must prominently state that the Commission and any registered futures association have not reviewed or approved the specific content of the training program and do not recommend the provider of such training.'' [18]

In the July 1994 release, the Commission also proposed to limit the use an ethics training provider may make of that status in certain adjudicatory proceedings. As stated in the proposing release, the Commission did not believe that a person should be able to use his or her status as an ethics training provider to qualify as an expert witness or to present expert testimony in an adjudicatory proceeding before the Commission or to which the Commission is a party. While the commenters voiced no objections to this provision, the Commission, upon reconsideration of this issue, has determined that the prohibitions of the representations specified in paragraph (b)(5) should suffice to bar inappropriate use of status as an ethics training provider. Therefore, the Commission has not adopted proposed paragraphs (b)(5)(ii) and (b)(5)(iii) of Rule 3.34, which would have limited certain uses of status as an ethics training provider. However, the Commission emphasizes that inclusion on the list of authorized ethics training providers should not be viewed as a warranty of expertise and that in its view such status should not be accorded weight in determinations of the provider's qualifications as an expert witness.

D. Videotape and Electronic Presentations

Commission Rule 3.34(b)(3) provides that a program of ethics training may be

[15] 7 U.S.C. 21(j)(1994).

[16] In comparable areas, such as registration and review of promotional material, the Commission has delegated authority to NFA to develop and implement specific standards and, in those instances, NFA has established standards above the minimum levels previously established by the Commission or set forth in the Act. *See, e.g.*, NFA Rule 2–8(d) (minimum experience requirements for an associated person to exercise discretion over an account).

[17] This additional language has been added to clarify the proposal and is consistent with the intent of Rule 3.34.

[18] Rule 3.34(b)(5) also contains a proviso that it ''shall not be construed to prohibit a statement that a person is included on a list of ethics training providers maintained by a registered futures association if such statement is true in fact and if the effect of such a listing is not misrepresented.''

offered by videotape or electronic presentation. In adopting Rule 3.34, the Commission initially provided that videotape or computer training, in lieu of in-person ethics training, should only be available when geographical inconven-ience or other factors made in-person training impracticable.[19] However, in proposing amendments to Rule 3.34 in July 1994, the Commission indicated that any registrant may meet his ethics training requirement through in-person courses or through the use of videotape or computer presentations regardless of circumstances.[20]

The Commission also wishes to make clear, however, that if videotape or electronic training is offered, the provider must be able to verify that the video has been viewed or the electronic training completed by the registrant before the provider issues a certificate of attendance to the registrant.[21] Therefore, Rule 3.34(b)(3)(iii)(B), as revised by the amendments adopted herein, requires that, if a provider will conduct training by means of videotape or electronic presentations, either exclusively or in addition to in-person training, the provider's certification required under Rule 3.34(b)(3)(iii) must be supplemented to include a representation that the provider will maintain documentation reasonably designed to verify that registrants have properly completed ethics training for the minimum time required (one, two or four hours).

The Commission envisages that an appropriate verification regime for a provider would include procedures such as the following. The provider would maintain a list of the computer-based ethics program purchasers and match each completed program with a record of purchase. Registrants would be required to enter identifying information, such as name, firm's name, business address, telephone number, date of birth, NFA and/or Social Security number, on the control disk and return a signed statement with the completed computer disk certifying that he did in fact complete the ethics training course in the manner set out in the instructions.

With respect to the fulfillment of the minimum time requirements and verification of the registrants' participation in the program, the ethics training provider could use a computer-based test to assure that the registrant has attained a minimum level of understanding of the materials covered, drawing upon matters covered in video and written materials, as well as the computer program, to the extent applicable. To assure that each section of the program is completed, registrants would be required to pass each section of the test prior to answering questions in later sections of the test. While those who fail the test would be required to retake it until it is successfully completed, only the time spent on the first test could be credited toward the ethics training time required by Rule 3.34. Registrants answering quickly would be given additional questions to answer, and the program would cease recording elapsed time for those slow to answer questions. Thus, registrants would be monitored both as to time spent and material covered. If a provider wished to follow a different verification regime, he could do so if such steps had been submitted to and not found objectionable by a registered futures association.

The Commission contemplates that an ethics training provider would be able to document that a registrant had undertaken the various steps required for the provider to verify completion. The provider would be required under revised Rule 3.34(b)(4) to maintain documentation substantiating its determination that ethics training has been properly completed by a registrant and to support its issuance of a certificate of attendance.[22]

As noted above with respect to the limitations upon representations concerning authorization to provide ethics training, certain commenters requested that the effective date of the rule amendments be delayed for ninety days for existing ethics training providers to enable the providers to modify their video or electronic presentations and materials to comply with the rule amendments. Since new paragraph (b)(5) of Rule 3.34 concerning permissible representations applies to all promotional or instructional materials, that provision encompasses videotape and electronic presentations. Accordingly, the deferred effective date for the provision discussed above should accommodate any concerns of these commenters with respect to videotape or electronic presentations and materials.

E. Recordkeeping

Rule 3.34(b)(4), which governs recordkeeping by an ethics training provider, requires ethics training providers to maintain records of materials used in and attendees at such training in accordance with Commission Rule 1.31, *i.e.*, for a five-year period.[23] The Commission proposed to add a provision to these recordkeeping requirements to require providers of ethics training to furnish records of attendees at such training to a registered futures association in such format as the registered futures association may request. As noted in the proposing release, NFA is willing to compile information on ethics training attendance for inclusion in the registration database and believes that ethics training providers should cooperate with NFA requests for the information which providers are already required to maintain. In its comment letter, NFA stated that it was confident that the Commission's amendment to Rule 3.34(b), requiring providers to furnish a list of ethics training attendees to NFA, will streamline the recordkeeping needed in this area. Further, NFA believes that this requirement will reduce the burden borne by registrant firms in determining whether a prospective employee has satisfied his ethics training requirement. The Commission believes compilation of ethics training attendance data by NFA (or other registered futures associations) will produce a central repository of such information, which should benefit all registrants and facilitate oversight of compliance with the ethics training requirement. To facilitate NFA's incorporation of this data in the registration database, ethics training providers should include appropriate identifiers of registrants, such as NFA identification number, and follow other format conventions requested by NFA.

One commenter requested that ethics training providers be permitted to use identifiers other than NFA identification numbers, *e.g.*, name, date of birth or social security number, in reporting attendees to NFA. While this comment may have merit, the final rule amendments require providers to respond to NFA requests for information and to furnish to NFA the information that providers are already required to maintain. The specific data needed by NFA to maintain and compile its database may be decided by NFA. The Commission does not believe that it should be unduly burdensome for ethics training providers to obtain NFA identification numbers from attendees, unless such persons have not yet registered or filed an application for

[19] 58 FR 19575, 19586–19587.

[20] 59 FR 37446, 37448.

[21] 58 FR 19575, 19586–19587.

[22] Revised Rule 3.34(b)(4) also requires that records of trainer evaluations be maintained.

[23] 17 CFR 1.31 (1995). When the Commission adopted Rule 3.34, it stated that it would monitor the effectiveness of the requirement for maintaining a record of ethics training attendance and might reconsider the issue at a later date if appropriate. 58 FR 19575, 19587.

registration.[24] However, NFA should arrange with providers to accomplish this task by the most efficient means for all concerned.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein will affect only those ethics training providers that are not SROs or entities accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics. The Commission believes that the impact of these rule amendments on other providers of ethics training or persons seeking to become providers of ethics training should be minimal. The procedure for becoming an ethics training provider will be simplified. The restrictions upon permissible representations by ethics training providers concerning their status as such essentially codify conditions already imposed by the Commission to date in granting applications of individual ethics training providers. Finally, since ethics training providers are already required to maintain records of attendees, furnishing such information to NFA upon request should not be unduly burdensome. Therefore, these rules will not have significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has previously submitted this rule and its associated information collection requirements to the Office of Management and Budget. While the amendments adopted herein have no burden, Rule 3.34 is a part of a group of rules which has the following burden:

Rules 3.16, 3.32 and 3.34 (3038–0023, approved June 2, 1993):

Average Burden Hours Per Response—1.13

Number of Respondents—60,980

Frequency of Response—On Occasion and Triennially

Persons wishing to comment on the information which will be required by these rules as amended should contact Jeff Hill, Office of Management and Budget, room 3228, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 1155 21st St. N.W., Washington, D.C. 20581, (202) 418–5170.

List of Subjects in 17 CFR Part 3

Registration, Ethics training

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 1a, 4d, 4e, 4g, 4m, 4p, 8a and 17 thereof (7 U.S.C. 1a, 6d, 6e, 6g, 6m, 6p, 12a and 21 (1994)), hereby amends Part 3 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

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

Authority: 7 U.S.C. 1a, 2, 4, 4a, 6, 6b, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21 and 23; 5 U.S.C. 552, 552b.

2. Section 3.34 is amended by revising paragraphs (b)(3) and (b)(4) and by adding paragraph (b)(5) to read as follows:

§ 3.34 Mandatory ethics training for registrants.

* * * * *

(b) * * *

(3) The training required by this section must be provided by or pursuant to a program of training (including videotape or electronic presentation) sponsored by:

(i) A self-regulatory organization;

(ii) An entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics; or,

(iii) A person included on a list maintained by a registered futures association who has filed a notice with the registered futures association certifying that:

(A) Such person, any principals thereof (as defined in § 3.1(a)) and any individuals, on behalf of such person, who present ethics training or who prepare an ethics training videotape or electronic presentation are not subject to:

(*1*) Statutory disqualification from registration under Sections 8a(2) or (3) of the Act;

(*2*) A bar from service on self-regulatory organization governing boards or committees based on disciplinary histories pursuant to § 1.63 of this chapter or any self-regulatory organization rule adopted thereunder; or

(*3*) A pending adjudicatory proceeding under Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act, or §§ 3.55, 3.56 or 3.60; and

(B) If the person will conduct training via videotape or electronic presentation, either exclusively or in addition to in-person training, he will maintain documentation reasonably designed to verify the attendance of registrants at such videotape or electronic presentation for the minimum time required.

(iv) The certification required by paragraph (b)(3)(iii) of this section is continuous and if circumstances change which result in the certification becoming inaccurate, the person must promptly so inform the registered futures association. Upon notice of such inaccuracy, the registered futures association shall refuse to include such person on or remove such person from the list referred to in paragraph (b)(3)(iii) of this section.

(v) The registered futures association shall develop and submit to the Commission in accordance with Section 17(j) of the Act rules to provide reasonable procedures for making determinations not to include or to remove persons from the list referred to in paragraph (b)(3)(iii) of this section. Such rules shall permit a hearing before the registered futures association with an opportunity for appeal to the Commission. Such appeal shall consist solely of consideration of the record before the registered futures association and the opportunity for the presentation of supporting reasons to affirm, modify, or set aside the decision of the registered futures association.

(4) Any person providing ethics training under this section must maintain records of the materials used in such training, and of the attendees at such training, documentation to verify completion by a registrant of training through videotape or electronic presentation and evaluations of trainers in accordance with § 1.31 of this chapter. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice and persons providing ethics training shall be subject to audit by any representative of the Commission. Records of attendees at such training shall be provided upon request to a registered futures association in such format as specified by the registered futures association.

(5) No person referred to in paragraph (b)(3) of this section may represent or

[24] Ethics training may be taken up to six months prior to the date of application for registration. *See* 58 FR 19575, 19585.

imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that such person's abilities or qualifications, the content, quality or accuracy of his training program, or the positions taken in the course of resolving any actual or hypothetical situations presenting ethical or legal issues, have in any respect been passed upon or endorsed, by the Commission, a registered futures association, or any representative thereof. Any promotional or instructional material used in connection with the training required by this section must prominently state that the Commission and any registered futures association have not reviewed or approved the specific content of the training program and do not recommend the provider of such training: *Provided, however,* that this paragraph shall not be construed to prohibit a statement that a person is included on a list of ethics training providers maintained by a registered futures association if such statement is true in fact and if the effect of such a listing is not misrepresented.

* * * * *

Issued in Washington, D.C. on December 7, 1995, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–30358 Filed 12–12–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[TD 8630]

RIN 1545–AR56

Actuarial Tables Exceptions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final income, estate, and gift tax regulations relating to exceptions to the use of the valuation tables in the regulations for valuing annuities, interests for life or a term of years, and remainder or reversionary interests, the valuation of which was the subject of final regulations published on June 10, 1994. These regulations are necessary in order to provide guidance consistent with court decisions concluding that the valuation tables are not to be used in certain situations.

EFFECTIVE DATE: These regulations are effective December 13, 1995.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, telephone (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1994, the IRS published in the Federal Register (59 FR 30100) final income tax regulations under sections 170, 642, 664 and 7520 of the Internal Revenue Code (Code), and final estate and gift tax regulations under sections 2031, 2512 and 7520 of the Code providing actuarial tables to be used in valuing annuities, interests for life or a term of years, and remainder or reversionary interests under section 7520. On June 10, 1994, the IRS also published in the Federal Register (59 FR 30180) proposed amendments to the income, estate, and gift tax regulations prescribing circumstances when the published actuarial tables cannot be used to value interests. This regulation finalizes those amendments.

Written comments responding to the notice of proposed rulemaking were received. Requests for a public hearing were also received but were subsequently withdrawn. After consideration of all the comments received, those amendments are revised and adopted by this Treasury decision.

Explanation of Provisions

Section 7520(a), which is effective for transfers after April 30, 1989, provides that the value of annuities, interests for life or a term of years, and remainder or reversionary interests is to be determined under tables published by the IRS. Section 7520(e) provides that, for purposes of section 7520, the term *tables* includes formulas. Section 7520(b) provides that section 7520 shall not apply for purposes of any provision specified in regulations. The Conference Report accompanying the Technical and Miscellaneous Revenue Act of 1988, H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 113 (1988) (1988–3 C.B. 603), states that section 7520 does not apply in ''situations specified in Treasury regulations.'' A summary of the principal comments received and revisions made in the final regulations in response to those comments is provided below.

1. Valuation of Annuities, Income Interests, etc.

Under the proposed regulations, the tables cannot be used if the instrument of transfer does not provide the beneficiary of the annuity, income interest, or remainder interest with the degree of beneficial enjoyment that is consistent with the traditional character of that property interest under applicable local law. One comment letter suggested that, as a result of enactment of section 2702, it may no longer be necessary to prescribe special rules in the case of a trust corpus consisting of nonproductive property. It was decided to retain these rules because this issue will continue to arise in certain situations where section 2702 does not apply; e.g., the valuation of a gift of an income interest for purposes of determining the section 2503(b) gift tax exclusion; the valuation of the bequest of an income interest for purposes of the section 2013 estate tax credit.

In response to comments, the final regulations provide additional guidance for determining under what circumstances a life tenant or term certain beneficiary of tangible property possesses adequate beneficial use such that the tables would be used to value the interest.

A number of comments were received on the valuation of an annuity that is payable from a trust corpus that will exhaust prior to the annuitant reaching the presumed terminal age prescribed by the tables (age 110). Under the proposed regulations, the interest would be valued, not as a right to receive the annuity for the life of the annuitant, but rather as the right to receive the annuity for the shorter of the life of the annuitant or the date on which the corpus will exhaust. One commentator agreed that the possibility of exhaustion of corpus should be taken into account in cases of relatively severe underfunding of the trust. However, it was suggested that, if the underfunding was relatively less severe, it should be disregarded. After further consideration of this issue, the IRS has concluded that the method described in the proposed regulations for determining the value of the annuity is consistent with fundamental principles for determining present value and long-standing IRS position. See, Rev. Rul. 77–454 (1977–2 C.B. 351); Rev. Rul. 70–452 (1970–2 C.B. 199); *Moffett* v. *Commissioner,* 269 F.2d 738 (4th Cir. 1959); *United States* v. *Dean,* 224 F.2d 26 (1st Cir. 1955). However, in response to requests, the explanation of the methodology and computation has been amplified.

2. Terminal Illness

Under the proposed regulations, the tables cannot be used if the individual, who is the measuring life with respect to the property interest, is terminally ill. Under the proposed regulations, the individual is terminally ill if that individual was known to have an incurable illness or deteriorating physical condition such that there is at

least a 50 percent probability that the individual will die within one year.

One commentator suggested that the value of a property interest that is dependent upon a measuring life should be determined in all events based on the mortality component contained in Table 80CNSMT (which is based on the life experience of the general population), rather than a mortality component that reflects the actual terminally ill condition of the individual. The commentator also suggested that if departure from the actuarial tables is deemed appropriate in the case of terminally ill individuals, then the standard in Rev. Rul. 80–80 (1980–1 C.B. 194), which is not explicitly expressed in the form of a percentage probability of survival (as is the standard in the proposed regulations), adequately differentiates between individuals that should not be considered terminally ill and those that should. This commentator also questioned whether a percentage probability standard, such as the one used in the proposed regulations, would be feasible to administer.

The IRS continues to believe that mortality tables such as Table 80CNSMT should not be used to predict the survival probabilities of an individual whose time of death is reasonably predictable based on the facts presented. To determine whether the proposed test for classifying an individual as terminally ill would be feasible, the IRS consulted with a number of medical specialists. Medical experts called upon to assess the probability of survival of a terminally ill individual base their assessment on statistical compilations of the percentage of individuals who survive for a specified period of time when suffering with a particular disease. Thus, the IRS believes that a test for classifying an individual as terminally ill can reasonably be based upon the probability of survival for a specified period of time.

One commentator suggested that the mortality test should take into account the actual period of survival after the transfer. For example, if the individual actually survived for one year, that individual should not be deemed to have been terminally ill. Although post-transaction events are not ordinarily determinative for valuation purposes, such events may provide evidence of value as of the valuation date. Accordingly, the final regulations provide a presumption that if the individual who is the measuring life survives for eighteen months or longer after the transfer, that individual shall be presumed to have not been terminally ill on the date of the transfer unless the contrary is established by clear and convincing evidence.

The commentator also questioned whether the proposed test for classifying an individual as terminally ill would result in the classification of elderly people suffering from the general infirmities of old age as ''terminally ill.'' The IRS continues to believe that the test should be consistently applied to people of all ages. Under the regulations, the individual must be inflicted with an incurable illness or other deteriorating physical condition that is life threatening. Thus, elderly people suffering from the general infirmities of old age, but not from a specific incurable life-threatening illness, would not be considered terminally ill under the test. Consequently, if an elderly person has one or more illnesses, none of which, standing alone or considered together, is life-threatening, that person would not be considered to be terminally ill.

The same commentator suggested that ''knowledge'' of the terminal illness should be limited to actual knowledge by the taxpayer or the decedent, rather than to ''knowledge'' by any of the parties involved. However, limitation of the requisite ''knowledge'' to the taxpayer or decedent would present a significant burden to the IRS regarding proof and would present opportunities for easy circumvention. Thus, the IRS believes that the requirement that the condition of the individual be ''known,'' although not necessarily by the taxpayer or decedent, is reasonable.

Commentators suggested that the regulations should make it clear that a special actuarial factor taking into account a transferor's terminal illness may be used in valuing a transfer to a pooled income fund. The final regulations incorporate that suggestion.

Comments were received that the language in § 20.7520–3(b)(3)(ii) of the proposed regulations regarding the valuation of a property interest that is based upon a terminally ill measuring life, for purposes of determining the applicable credit for tax on prior transfers under section 2013, was ambiguous. Generally, if the final determination of the estate tax liability in the transferor's estate was dependent on the valuation of the life interest received by the transferee, then the value of the property transferred, for purposes of determining the credit allowable for the transferee's estate, is the value determined previously for the transferor's estate. Section 20.7520–3(b)(3)(ii) of the final regulations clarifies this rule. The IRS invites comments on whether the value of a reversionary interest under section 673 should be determined without regard to the physical condition of the decedent immediately before death, a related issue that was raised by commentators.

3. Application of Actuarial Tables

One commentator suggested that the tables prescribed by the regulations must be used for valuing all interests transferred between April 30, 1989 (the effective date of section 7520) and December 13, 1995 (the effective date of the regulations). However, these regulations generally adopt principles established in case law and published IRS positions. See, e.g., *O'Reilly* v. *Commissioner*, 973 F.2d 1403 (8th Cir. 1992), *rem'd*, T.C.M. 1994–61 (underproductive income interest); *Estate of McLendon* v. *Commissioner*, T.C.M. 1993–459; Rev. Rul. 80–80 (1980–1 C.B. 194) (terminal illness of measuring life); *Moffett* v. *Commissioner*, 269 F.2d 738 (4th Cir. 1959); Rev. Rul. 77–454 (1977–2 C.B. 351) (exhausting corpus). There is no indication that Congress intended to supersede this well-established case law and administrative ruling position when it enacted section 7520. Consequently, in the case of transfers prior to the effective date of these regulations, the question of whether a particular interest must be valued based on the tables will be resolved based on applicable case law and revenue rulings.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is William L. Blodgett, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20 and 25 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

PAR. 2. Section 1.7520–3 is amended by revising paragraph (b) and adding a sentence at the end of paragraph (c) to read as follows:

§ 1.7520–3 Limitation on the application of section 7520.

* * * * *

(b) *Other limitations on the application of section 7520*—(1) *In general*—(i) *Ordinary beneficial interests.* For purposes of this section:

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity interest represents the present worth of the right to receive $1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from, or the use of, property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income interest represents the present worth of the right to receive the use of $1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or some other defined period. A standard section 7520 remainder factor for an ordinary remainder or reversionary interest represents the present worth of the right to receive $1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests.* A *restricted beneficial interest* is an annuity, income, remainder, or reversionary interest that is subject to a contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is caused by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See paragraph (b)(4) *Example 2* of this section, which illustrates a situation where a special section 7520 actuarial factor is needed to take into account the shorter life expectancy of the terminally ill measuring life. See § 1.7520–1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of this paragraph (b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Internal Revenue Code provision applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment*—(i) *Annuities.* A standard section 7520 annuity factor may not be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate at the valuation date of the transfer, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110. For example, for a fixed annuity payable annually at the end of each year, if the amount of the annuity payment (expressed as a percentage of the initial corpus) is less than or equal to the applicable section 7520 interest rate at the date of the transfer, the corpus is assumed to be sufficient to make all payments. If the percentage exceeds the applicable section 7520 interest rate and the annuity is for a definite term of years, multiply the annual annuity amount by the Table B term certain annuity factor, as described in § 1.7520–1(c)(1), for the number of years of the defined period. If the percentage exceeds the applicable section 7520 interest rate and the annuity is payable for the life of one or more individuals, multiply the annual annuity amount by the Table B annuity factor for 110 years minus the age of the youngest individual. If the result exceeds the limited fund, the annuity may exhaust the fund, and it will be necessary to calculate a special section 7520 annuity factor that takes into account the exhaustion of the trust or fund. This computation would be modified, if appropriate, to take into account annuities with different payment terms. See § 25.7520–3(b)(2)(v) *Example 5* of this chapter, which provides an illustration involving an annuity trust that is subject to exhaustion.

(ii) *Income and similar interests*—(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest may not be used to determine the present value of an income or similar interest in trust for a term of years or for the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present

value of the right to use tangible property (whether or not in trust) for one or more measuring lives or for some other specified period of time, the interest rate component prescribed under section 7520 and § 1.7520–1 may not be used unless, during the specified period, the effect of the trust, will or other governing instrument is to provide the beneficiary with that degree of use, possession, and enjoyment of the property during the term of interest that applicable state law accords to a person who is unqualifiedly designated as a life tenant or term holder for a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest may not be used to value an income interest or similar interest in property for a term of years or for one or more measuring lives if—

(*1*) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(*2*) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit during the income beneficiary's term of enjoyment without the consent of and accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest may not be used to determine the present value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property will be adequately preserved and protected (e.g., from erosion, invasion, depletion, or damage) until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is provided only if it was the transferor's intent, as manifested by the provisions of the arrangement and the surrounding circumstances, that the entire disposition provide the remainder or reversionary beneficiary with an undiminished interest in the property transferred at the time of the termination of the prior interest.

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed in § 1.642(c)–6 and, when applicable, the rules set forth in paragraph (b)(3) of this section, if the individual who is the measuring life is terminally ill at the time of the transfer.

(3) *Mortality component.* The mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life is terminally ill at the time of the transaction. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die within 1 year. However, if the individual survives for eighteen months or longer after the date of the transaction, that individual shall be presumed to have not been terminally ill at the time of the transaction unless the contrary is established by clear and convincing evidence.

(4) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

Example 1. Annuity funded with unproductive property. The taxpayer transfers corporation stock worth $1,000,000 to a trust. The trust provides for a 6 percent ($60,000 per year) annuity in cash or other property to be paid to a charitable organization for 25 years and for the remainder to be distributed to the donor's child. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. The section 7520 interest rate for the month of the transfer is 8.2 percent. The corporation has paid no dividends on this stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. Therefore, the trust's sole investment in this corporation is not expected to adversely affect the interest of either the annuitant or the remainder beneficiary. Considering the 6 percent annuity payout rate and the 8.2 percent section 7520 interest rate, the trust corpus is considered sufficient to pay this annuity for the entire 25-year term of the trust, or even indefinitely. Although it appears that neither beneficiary would be able to compel the trustee to make the trust corpus produce investment income, the annuity interest in this case is considered to be an ordinary annuity interest, and the standard section 7520 annuity factor may be used to determine the present value of the annuity. In this case, the section 7520 annuity factor would represent the right to receive $1.00 per year for a term of 25 years.

Example 2. Terminal illness. The taxpayer transfers property worth $1,000,000 to a charitable remainder unitrust described in section 664(d)(2) and § 1.664–3. The trust provides for a fixed-percentage 7 percent unitrust benefit (each annual payment is equal to 7 percent of the trust assets as valued at the beginning of each year) to be paid quarterly to an individual beneficiary for life and for the remainder to be distributed to a charitable organization. At the time the trust is created, the individual beneficiary is age 60 and has been diagnosed with an incurable illness and there is at least a 50 percent probability of the individual dying within 1 year. Assuming the presumption in paragraph (b)(3) of this section does not apply, because there is at least a 50 percent probability that this beneficiary will die within 1 year, the standard section 7520 unitrust remainder factor for a person age 60 from the valuation tables may not be used to determine the present value of the charitable remainder interest. Instead, a special unitrust remainder factor must be computed that is based on the section 7520 interest rate and that takes into account the projection of the individual beneficiary's actual life expectancy.

(5) *Additional limitations.* Section 7520 does not apply to the extent as may otherwise be provided by the Commissioner.

(c) * * * The provisions of paragraph (b) of this section are effective with respect to transactions after December 13, 1995.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 20.7520–3 is amended by revising paragraph (b) and adding a sentence at the end of paragraph (c) to read as follows:

§ 20.7520–3 Limitation on the application of section 7520.

* * * * *

(b) *Other limitations on the application of section 7520*— (1) *In general*—(i) *Ordinary beneficial interests.* For purposes of this section:

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity

interest represents the present worth of the right to receive $1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from or the use of property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income interest represents the present worth of the right to receive the use of $1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or some other defined period. A standard section 7520 remainder factor for an ordinary remainder or reversionary interest represents the present worth of the right to receive $1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests.* A *restricted beneficial interest* is an annuity, income, remainder, or reversionary interest that is subject to any contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is caused by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See paragraphs (b)(2)(v) *Example 4* and (b)(4) *Example 1* of this section, which illustrate situations where special section 7520 actuarial factors are needed to take into account limitations on beneficial interests. See § 20.7520–1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of this paragraph (b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Internal Revenue Code provision applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment*—(i) *Annuities.* A standard section 7520 annuity factor may not be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate at the valuation date of the transfer, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110. For example, for a fixed annuity payable annually at the end of each year, if the amount of the annuity payment (expressed as a percentage of the initial corpus) is less than or equal to the applicable section 7520 interest rate at the date of the transfer, the corpus is assumed to be sufficient to make all payments. If the percentage exceeds the applicable section 7520 interest rate and the annuity is for a definite term of years, multiply the annual annuity amount by the Table B term certain annuity factor, as described in § 20.7520–1(c)(1), for the number of years of the defined period. If the percentage exceeds the applicable section 7520 interest rate and the annuity is payable for the life of one or more individuals, multiply the annual annuity amount by the Table B annuity factor for 110 years minus the age of the youngest individual. If the result exceeds the limited fund, the annuity may exhaust the fund, and it will be necessary to calculate a special section 7520 annuity factor that takes into account the exhaustion of the trust or fund. This computation would be modified, if appropriate, to take into account annuities with different payment terms. See § 25.7520–3(b)(2)(v) *Example 5* of this chapter, which provides an illustration involving an annuity trust that is subject to exhaustion.

(ii) *Income and similar interests*—(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest may not be used to determine the present value of an income or similar interest in trust for a term of years, or for the life of one or more individuals, unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present value of the right to use tangible property (whether or not in trust) for one or more measuring lives or for some other specified period of time, the interest rate component prescribed under section 7520 and § 1.7520–1 of this chapter may not be used unless, during the specified period, the effect of the trust, will or other governing instrument is to provide the beneficiary with that degree of use, possession, and enjoyment of the property during the term of interest that applicable state law accords to a person who is unqualifiedly designated as a life tenant or term holder for a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest may not be used to value an income interest or similar interest in property for a term of years, or for one or more measuring lives, if—

(*1*) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(*2*) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit without the consent of the income beneficiary during the income beneficiary's term of enjoyment and without accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest may not be used to determine the present

value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property will be adequately preserved and protected (e.g., from erosion, invasion, depletion, or damage) until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is provided only if it was the transferor's intent, as manifested by the provisions of the arrangement and the surrounding circumstances, that the entire disposition provide the remainder or reversionary beneficiary with an undiminished interest in the property transferred at the time of the termination of the prior interest.

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed in § 1.642(c)–6 of this chapter and, when applicable, the rules set forth under paragraph (b)(3) of this section if the individual who is the measuring life is terminally ill at the time of the transfer.

(v) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following examples:

Example 1. Unproductive property. A died, survived by B and C. B died two years after A. A's will provided for a bequest of corporation stock in trust under the terms of which all of the trust income was paid to B for life. After the death of B, the trust terminated and the trust property was distributed to C. The trust specifically authorized, but did not require, the trustee to retain the shares of stock. The corporation paid no dividends on this stock during the 5 years before A's death and the 2 years before B's death. There was no indication that this policy would change after A's death. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. The facts and circumstances, including applicable state law, indicate that B did not have the legal right to compel the trustee to make the trust corpus productive in conformity with the requirements for a lifetime trust income interest under applicable local law. Therefore, B's life income interest in this case is considered nonproductive. Consequently, B's income interest may not be valued actuarially under this section.

Example 2. Beneficiary's right to make trust productive. The facts are the same as in *Example 1,* except that the trustee is not specifically authorized to retain the shares of stock. Further, the terms of the trust specifically provide that B, the life income beneficiary, may require the trustee to make the trust corpus productive consistent with income yield standards for trusts under applicable state law. Under that law, the minimum rate of income that a productive trust may produce is substantially below the section 7520 interest rate for the month of A's death. In this case, because B has the right to compel the trustee to make the trust productive for purposes of applicable local law during the beneficiary's lifetime, the income interest is considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 life income interest factor may be used to determine the present value of B's income interest.

Example 3. Discretionary invasion of corpus. The decedent, A, transferred property to a trust under the terms of which all of the trust income is to be paid to A's child for life and the remainder of the trust is to be distributed to a grandchild. The trust authorizes the trustee without restriction to distribute corpus to A's surviving spouse for the spouse's comfort and happiness. In this case, because the trustee's power to invade trust corpus is unrestricted, the exercise of the power could result in the termination of the income interest at any time. Consequently, the income interest is not considered an ordinary income interest for purposes of this paragraph, and may not be valued actuarially under this section.

Example 4. Limited invasion of corpus. The decedent, A, bequeathed property to a trust under the terms of which all of the trust income is to be paid to A's child for life and the remainder is to be distributed to A's grandchild. The trust authorizes the child to withdraw up to $5,000 per year from the trust corpus. In this case, the child's power to invade trust corpus is limited to an ascertainable amount each year. Annual invasions of any amount would be expected to progressively diminish the property from which the child's income is paid. Consequently, the income interest is not considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 income interest factor may not be used to determine the present value of the income interest. Nevertheless, the present value of the child's income interest is ascertainable by making a special actuarial calculation that would take into account not only the initial value of the trust corpus, the section 7520 interest rate for the month of the transfer, and the mortality component for the child's age, but also the assumption that the trust corpus will decline at the rate of $5,000 each year during the child's lifetime. The child's right to receive an amount not in excess of $5,000 per year may be separately valued in this instance and, assuming the trust corpus would not exhaust before the child would attain age 110, would be considered an ordinary annuity interest.

Example 5. Power to consume. The decedent, A, devised a life estate in 3 parcels of real estate to A's surviving spouse with the remainder to a child, or, if the child doesn't survive, to the child's estate. A also conferred upon the spouse an unrestricted power to consume the property, which includes the right to sell part or all of the property and to use the proceeds for the spouse's support, comfort, happiness, and other purposes. Any portion of the property or its sale proceeds remaining at the death of the surviving spouse is to vest by operation of law in the child at that time. The child predeceased the surviving spouse. In this case, the surviving spouse's power to consume the corpus is unrestricted, and the exercise of the power could entirely exhaust the remainder interest during the life of the spouse. Consequently, the remainder interest that is includible in the child's estate is not considered an ordinary remainder interest for purposes of this paragraph and may not be valued actuarially under this section.

(3) *Mortality component*—(i) *Terminal illness.* Except as provided in paragraph (b)(3)(ii) of this section, the mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life is terminally ill at the time of the decedent's death. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die within 1 year. However, if the individual survives for eighteen months or longer after the date of the decedent's death, that individual shall be presumed to have not been terminally ill at the date of death unless the contrary is established by clear and convincing evidence.

(ii) *Terminal illness exceptions.* In the case of the allowance of the credit for tax on a prior transfer under section 2013, if a final determination of the federal estate tax liability of the transferor's estate has been made under circumstances that required valuation of the life interest received by the transferee, the value of the property transferred, for purposes of the credit allowable to the transferee's estate, shall be the value determined previously in the transferor's estate. Otherwise, for purposes of section 2013, the provisions of paragraph (b)(3)(i) of this section shall govern in valuing the property transferred. The value of a decedent's reversionary interest under sections 2037(b) and 2042(2) shall be determined without regard to the physical condition, immediately before the decedent's death, of the individual who is the measuring life.

(iii) *Death resulting from common accidents.* The mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if the decedent, and the individual who is the measuring life, die as a result of a common accident or other occurrence.

(4) *Examples.* The provisions of paragraph (b)(3) of this section are illustrated by the following examples:

Example 1. Terminal illness. The decedent bequeaths $1,000,000 to a trust under the terms of which the trustee is to pay $103,000 per year to a charitable organization during the life of the decedent's child. Upon the death of the child, the remainder in the trust is to be distributed to the decedent's grandchild. The child, who is age 60, has been diagnosed with an incurable illness, and there is at least a 50 percent probability of the child dying within 1 year. Assuming the presumption provided for in paragraph (b)(3)(i) of this section does not apply, the standard life annuity factor for a person age 60 may not be used to determine the present value of the charitable organization's annuity interest because there is at least a 50 percent probability that the child, who is the measuring life, will die within 1 year. Instead, a special section 7520 annuity factor must be computed that takes into account the projection of the child's actual life expectancy.

Example 2. Deaths resulting from common accidents, etc. The decedent's will establishes a trust to pay income to the decedent's surviving spouse for life. The will provides that, upon the spouse's death or, if the spouse fails to survive the decedent, upon the decedent's death the trust property is to pass to the decedent's children. The decedent and the decedent's spouse die simultaneously in an accident under circumstances in which it was impossible to determine who survived the other. Even if the terms of the will and applicable state law presume that the decedent died first with the result that the property interest is considered to have passed in trust for the benefit of the spouse for life, after which the remainder is to be distributed to the decedent's children, the spouse's life income interest may not be valued by use of the mortality component described under section 7520. The result would be the same even if it was established that the spouse survived the decedent.

(5) *Additional limitations.* Section 7520 does not apply to the extent as may otherwise be provided by the Commissioner.

(c) * * * The provisions of paragraph (b) of this section are effective with respect to estates of decedents dying after December 13, 1995.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 6. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
25.2522(c)–3(c)(2)(i) 6th sentence	(e)(2) (ii), (iii), and (iv)	(c)(2) (ii), (iii), and (iv).
25.2522(c)–3(c)(2) (vi)(*a*) 2nd sentence	Subdivision (v)	Paragraph (c)(2)(vi).
25.2522(c)–3(c)(2) (vii)(*a*) 2nd sentence	Subdivision (vi)	Paragraph (c)(2)(vii).
25.2522(c)–3(d)(2) introductory text	Subdivision (iv), (v), or (vi) of paragraph (c)(2)	Paragraph (c)(2) (v), (vi), or (vii).
25.2522(c)–3(d)(2) (iv) 1st sentence	Paragraph (c)(2)(v)	Paragraph (c)(2)(vi).
25.2522(c)–3(d)(2)(iv), *Example (1)* 1st sentence.	Paragraph (c)(2)(v)	Paragraph (c)(2)(vi).
25.2522(c)–3(d)(2)(iv), *Example (2)* 1st sentence.	Paragraph (c)(2)(v)	Paragraph (c)(2)(vi).
25.2522(c)–3(d)(2)(iv), *Example (3)* 1st sentence (each place it appears).	Paragraph (c)(2)(v)	Paragraph (c)(2)(vi).
25.2522(c)–3(d)(2)(iv), *Example (4)* last sentence.	Paragraph (c)(2)(v)(*e*)	Paragraph (c)(2)(vi)(*e*)
25.2522(c)–3(d)(2)(v)	Paragraph (c)(2)(vi)	Paragraph (c)(2)(vii).

Par. 7. Section 25.7520–3 is amended by revising paragraph (b) and adding a sentence at the end of paragraph (c) to read as follows:

§ 25.7520–3 Limitation on the application of section 7520.

* * * * *

(b) *Other limitations on the application of section 7520*—(1) *In general*—(i) *Ordinary beneficial interests.* For purposes of this section:

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity interest represents the present worth of the right to receive $1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from or the use of property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income interest represents the present worth of the right to receive the use of $1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. However, in the case of certain gifts made after October 8, 1990, if the donor does not retain a qualified annuity, unitrust, or reversionary interest, the value of any interest retained by the donor is considered to be zero if the remainder beneficiary is a member of the donor's family. See § 25.2702–2.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or some other defined period. A standard section 7520 remainder factor for an ordinary remainder or reversionary interest represents the present worth of the right to receive $1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests.* A *restricted beneficial interest* is an annuity, income, remainder, or reversionary interest that is subject to any contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is caused by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See paragraphs

(b)(2)(v) *Example 5* and (b)(4) of this section, which illustrate situations in which special section 7520 actuarial factors are needed to take into account limitations on beneficial interests. See § 25.7520–1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of this paragraph (b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Internal Revenue Code provision applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment*—(i) *Annuities.* A standard section 7520 annuity factor may not be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate on the valuation date of the transfer, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110. For example, for a fixed annuity payable annually at the end of each year, if the amount of the annuity payment (expressed as a percentage of the initial corpus) is less than or equal to the applicable section 7520 interest rate at the date of the transfer, the corpus is assumed to be sufficient to make all payments. If the percentage exceeds the applicable section 7520 interest rate and the annuity is for a definite term of years, multiply the annual annuity amount by the Table B term certain annuity factor, as described in § 25.7520–1(c)(1), for the number of years of the defined period. If the percentage exceeds the applicable section 7520 interest rate and the annuity is payable for the life of one or more individuals, multiply the annual annuity amount by the Table B annuity factor for 110 years minus the age of the youngest individual. If the result exceeds the limited fund, the annuity may exhaust the fund, and it will be necessary to calculate a special section 7520 annuity factor that takes into account the exhaustion of the trust or fund. This computation would be modified, if appropriate, to take into account annuities with different payment terms.

(ii) *Income and similar interests*—(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest is not to be used to determine the present value of an income or similar interest in trust for a term of years or for the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present value of the right to use tangible property (whether or not in trust) for one or more measuring lives or for some other specified period of time, the interest rate component prescribed under section 7520 and § 1.7520–1 of this chapter may not be used unless, during the specified period, the effect of the trust, will or other governing instrument is to provide the beneficiary with that degree of use, possession, and enjoyment of the property during the term of interest that applicable state law accords to a person who is unqualifiedly designated as a life tenant or term holder for a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest may not be used to value an income interest or similar interest in property for a term of years, or for one or more measuring lives, if—

(*1*) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(*2*) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit without the consent of the income beneficiary during the income beneficiary's term of enjoyment and without accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest may not be used to determine the present value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property will be adequately preserved and protected (e.g., from erosion, invasion, depletion, or damage) until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is provided only if it was the transferor's intent, as manifested by the provisions of the arrangement and the surrounding circumstances, that the entire disposition provide the remainder or reversionary beneficiary with an undiminished interest in the property transferred at the time of the termination of the prior interest.

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed in § 1.642(c)-6 of this chapter and, when applicable, the rules set forth under paragraph (b)(3) of this section if the individual who is the measuring life is terminally ill at the time of the transfer.

(v) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following examples:

Example 1. Unproductive property. The donor transfers corporation stock to a trust under the terms of which all of the trust income is payable to A for life. Considering the applicable federal rate under section 7520 and the appropriate life estate factor for a person A's age, the value of A's income interest, if valued under this section, would

be $10,000. After A's death, the trust is to terminate and the trust property is to be distributed to B. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. The corporation has paid no dividends on this stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. The facts and circumstances, including applicable state law, indicate that the income beneficiary would not have the legal right to compel the trustee to make the trust corpus productive in conformity with the requirements for a lifetime trust income interest under applicable local law. Therefore, the life income interest in this case is considered nonproductive. Consequently, A's income interest may not be valued actuarially under this section.

Example 2. Beneficiary's right to make trust productive. The facts are the same as in *Example 1,* except that the trustee is not specifically authorized to retain the shares of corporation stock. Further, the terms of the trust specifically provide that the life income beneficiary may require the trustee to make the trust corpus productive consistent with income yield standards for trusts under applicable state law. Under that law, the minimum rate of income that a productive trust may produce is substantially below the section 7520 interest rate on the valuation date. In this case, because A, the income beneficiary, has the right to compel the trustee to make the trust productive for purposes of applicable local law during A's lifetime, the income interest is considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 life income factor may be used to determine the value of A's income interest. However, in the case of gifts made after October 8, 1990, if the donor was the life income beneficiary, the value of the income interest would be considered to be zero in this situation. See § 25.2702–2.

Example 3. Annuity trust funded with unproductive property. The donor, who is age 60, transfers corporation stock worth $1,000,000 to a trust. The trust will pay a 6 percent ($60,000 per year) annuity in cash or other property to the donor for 10 years or until the donor's prior death. Upon the termination of the trust, the trust property is to be distributed to the donor's child. The section 7520 rate for the month of the transfer is 8.2 percent. The corporation has paid no dividends on the stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. Therefore, the trust's sole investment in this corporation is not expected to adversely affect the interest of either the annuity beneficiary or the remainder beneficiary. Considering the 6 percent annuity payout rate and the 8.2 percent section 7520 interest rate, the trust corpus is considered sufficient to pay this annuity for the entire 10-year term of the trust, or even indefinitely. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. Although it appears that neither beneficiary would be able to compel the trustee to make the trust corpus produce investment income, the annuity interest in this case is considered to be an ordinary annuity interest, and a section 7520 annuity factor may be used to determine the present value of the annuity. In this case, the section 7520 annuity factor would represent the right to receive $1.00 per year for a term of 10 years or the prior death of a person age 60.

Example 4. Unitrust funded with unproductive property. The facts are the same as in *Example 3,* except that the donor has retained a unitrust interest equal to 7 percent of the value of the trust property, valued as of the beginning of each year. Although the trust corpus is nonincome-producing, the present value of the donor's retained unitrust interest may be determined by using the section 7520 unitrust factor for a term of years or a prior death.

Example 5. Eroding corpus in an annuity trust. (i) The donor, who is age 60 and in normal health, transfers property worth $1,000,000 to a trust. The trust will pay a 10 percent ($100,000 per year) annuity to a charitable organization for the life of the donor, payable annually, and the remainder will be distributed to the donor's child. The section 7520 rate for the month of the transfer is 6.8 percent. First, it is necessary to determine whether the annuity may exhaust the corpus before all annuity payments are made. Because it is assumed that any measuring life may survive until age 110, any life annuity could require payments until the measuring life reaches age 110. Based on a section 7520 interest rate of 6.8 percent, the determination of whether the annuity may exhaust the corpus before the annuity payments are made is computed as follows:

Age to which life annuity may continue	110
Less: Age of measuring life at date of transfer	60
Number of years annuity may continue	50
Annual annuity payment	$100,000.00
Times: Table B annuity factor for 50 years	14.1577
Present value of term certain annuity	1,415,770.00

(ii) Since the present value of an annuity for a term of 50 years exceeds the corpus, the annuity may exhaust the trust before all payments are made. Consequently, the annuity must be valued as an annuity payable for a term of years or until the prior death of the annuitant, with the term of years determined by when the fund will be exhausted by the annuity payments.

(iii) Using factors based on Table 80CNSMT at 6.8 percent, it is determined that the fund will be sufficient to make 17 annual payments, but not to make the entire 18th payment. Specifically, the initial corpus will be able to make payments of $67,287.26 per year for 17 years plus payments of $32,712.74 per year for 18 years. The annuity is valued by adding the value of the two separate temporary annuities.

(iv) Based on Table H of Publication 1457 (a copy of this publication may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402), the present value of an annuity of $67,287.26 per year payable for 17 years or until the prior death of a person aged 60 is $579,484.61 ($67,287.26 × 8.6121). The present value of an annuity of $32,712.74 per year payable for 18 years or until the prior death of a person aged 60 is $287,731.45 ($32,712.74 × 8.7957). Thus, the present value of the charitable annuity interest is $867,216.06 ($579,484.61 + $287,731.45).

(3) *Mortality component.* The mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life dies or is terminally ill at the time the gift is completed. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die within 1 year. However, if the individual survives for eighteen months or longer after the date the gift is completed, that individual shall be presumed to have not been terminally ill at the date the gift was completed unless the contrary is established by clear and convincing evidence.

(4) *Example.* The provisions of paragraph (b)(3) of this section are illustrated by the following example:

Example. Terminal illness. The donor transfers property worth $1,000,000 to a child in exchange for the child's promise to pay the donor $103,000 per year for the donor's life. The donor is age 60 but has been diagnosed with an incurable illness and has at least a 50 percent probability of dying within 1 year. The section 7520 interest rate for the month of the transfer is 10.6 percent, and the standard annuity factor at that interest rate for a person age 60 in normal health is 7.4230. Thus, if the donor were not terminally ill, the present value of the

annuity would be $764,569 ($103,000 × 7.4230). Assuming the presumption provided in paragraph (b)(3) of this section does not apply, because there is at least a 50 percent probability that the donor will die within 1 year, the standard section 7520 annuity factor may not be used to determine the present value of the donor's annuity interest. Instead, a special section 7520 annuity factor must be computed that takes into account the projection of the donor's actual life expectancy.

(5) *Additional limitations.* Section 7520 does not apply to the extent as may otherwise be provided by the Commissioner.

(c) * * * The provisions of paragraph (b) of this section are effective with respect to gifts made after December 13, 1995.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: October 29, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30272 Filed 12–12–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–024–FOR]

Texas 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 Texas regulatory program (hereinafter referred to as the ''Texas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed revisions to its regulations pertaining to self-bonding. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations, provide additional safeguards, and improve operational efficiency.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas 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 Texas Program

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

II. Submission of the Proposed Amendment

By letter dated August 11, 1995 (Administrative Record No. TX–593), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposed to revise 16 Texas Administrative Code 11.221, Texas Coal Mining Regulations (TCMR) at subsection 806.309(j)(2)(C)(iv) concerning alternative criteria for acceptance of self-bonds to ensure reclamation performance.

OSM announced receipt of the proposed amendment in the September 12, 1995, Federal Register (60 FR 47316), 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 would have closed on October 12, 1995.

During its review of the amendment, OSM identified a concern relating to TCMR 806.309(j)(2)(C)(iv)(II)(C). Specifically OSM needed clarification on what effect, if any, Texas' existing 25 percent net worth limitation provision at TCMR 806.309(j)(5)(A) would have on the proposed 16⅔ percent net worth limitation provision at TCMR 806.309(j)(2)(C)(iv)(II)(C). OSM notified Texas of this concern by telephone on September 23, 1995 (Administrative Record No. TX–593.03).

By letter dated September 25, 1995 (Administrative Record No. TX–593.02), Texas responded to OSM's concern by submitting a revision to its proposed program amendment. Texas proposed an additional revision to TCMR 806.309(j)(2)(C)(iv) by adding the following clarification provision.

The limitation contained in subparagraph (II)(C) of this section applies to applicants or guarantors qualifying pursuant to subparagraph (II) only and does not affect the limitation set out in Section 806.309(j)(5)(A) for applicants or guarantors seeking acceptance of a self-bond pursuant to paragraphs i–iii or subparagraph (I) of this section.

Based upon the additional explanatory revision to the proposed program amendment submitted by Texas, OSM reopened the public comment period in the October 16, 1995, Federal Register (60 FR 53567). The public comment period closed on October 31, 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.

TCMR 806.309(j)(2)(C)(iv) Self-Bonding: Requirements for a Business and Governmental Entities, Alternative Financial Eligibility Criteria

1. Existing State Regulation Requirements

Like the Federal self-bonding regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii), Texas has standard financial criteria for self-bonding at § 806.309(j)(2)(C) (i), (ii), and (iii) that are substantively identical to the corresponding Federal regulations. Under the State's standard criteria, an applicant can qualify for self-bonding by meeting one of three criteria that pertain to having either a bond rating of A or higher; or $10 million net worth and certain financial ratio values; or having fixed assets of $20 million and certain financial ratio values.

To provide additional flexibility to financially strong firms, Texas proposed an alternative four-part test at § 806.309(j)(2)(C)(iv) that was approved by OSM on February 19, 1992, as an alternative test under the Texas self-bonding program (57 FR 5983). Texas' alternative test allows an applicant to qualify if it meets four criteria in combination. Specifically, an applicant applying for self-bonding under § 806.309(j)(2)(C)(iv) must have an investment-grade bond rating (§ 806.309(j)(2)(C)(iv)(I)); tangible net worth of at least $10 million and fixed assets in the United States of $20 million (§ 806.309(j)(2)(C)(iv)(II)); a ratio of total liabilities to net worth that is equal to or less than the industry median (§ 806.309(j)(2)(C)(iv)(III)); and a ratio of current assets to current liabilities that is equal to or greater than the industry median or a current credit

rating of 4A2 or higher from Dun and Bradstreet Corporation (§ 806.309)(j)(2)(C)(iv)(IV)).

There is no direct Federal counterpart regulation to Texas' alternative test for self-bonding. However, as explained in the February 19, 1992, Federal Register (57 FR 5983), the Director found that when an applicant for self-bonding in Texas meets the combined requirements of the alternative test at § 806.309(j)(2)(C)(iv), the applicant is complying with financial strength and solvency requirements that are no less effective than the standard financial safeguards of the Federal regulations at 30 CFR 800.23(b)(3).

2. Proposed State Regulation Requirements

On its own initiative, Texas proposes to recodify and expand the existing alternative financial criteria at § 806.309(j)(2)(C)(iv) to provide applicants a choice between two, four-part financial tests. The State's intention is to maintain consistency with the Federal regulations while providing flexibility to financially strong applicants who apply for self-bonding under its alternative eligibility criteria.

Texas proposes to recodify its existing regulations at § 806.309(j)(2)(C)(iv) (I)–(IV) as § 806.309(j)(2)(C)(iv)(I) (A), (B), and (C). This remodified section serves as the first optional financial test under the State's proposed alternative tests for self-bonding. Texas proposes to add § 806.309(j)(2)(C)(iv)(II) (A), (B), and (C). This new section constitutes the second optional financial test under the State's proposed alternative tests for self-bonding.

The State's proposal allows applicants the option of qualifying for self-bonding by meeting the combined requirements of either subparagraph (I) or subparagraph (II) of § 806.309(j)(2)(C)(iv). These proposed requirements are further discussed below:

a. *Investment-Grade Bond Rating (Applicable to both Alternative Test I and Test II). TCMR § 806.309(j)(2)(C)(iv).* First, an applicant applying for self-bonding under either of the two proposed alternative financial tests at § 806.309(j)(2)(C)(iv) (I) or (II) must have an investment-grade rating for its most recent bond issuance (Baa3 or higher from Moody's Investor Service and BBB– or higher from Standard and Poor's Corporation). This requirement is identical to the existing criteria at § 806.309(j)(2)(C)(iv)(I).

In the preamble to the final Federal self-bonding regulations (48 FR 36418, August 10, 1983), OSM stated that ''The services [bond rating services] are relied upon heavily by creditors and maintain a high rate of predictive success [about a bond issuer's ability to re-pay bond issues].'' OSM's allowance of a bond rating of ''A or higher'' in the Federal regulations as a stand-alone test for self-bonding is based on reliance on the expertise of the rating service to evaluate the financial position of a firm. In determining the rating of a bond issue, rating services conduct an in-depth financial analysis of the issuer. Using Standard and Poor's rating of bonds issued by public utilities as an example, some factors that it considers include: (1) Legal considerations such as the rate covenant (which defines the size and source of the utility's financial reserve); the flow of funds (or the priority of claims on the revenue stream); and the legal implications of energy sales contracts (the company's potential liabilities); (2) economic considerations such as income trends; diversification of the employment base (analysis of key local industries); and growth trends; and (3) systems considerations such as projected energy growth; generating capacity and fuel sources; and whether customer profiles indicate that end-users are balanced in terms of including residential, commercial and industrial customers. Also considered are the company's capital improvement and financing plans; the stability and predictability of the revenue stream pledged to pay debt service; the liquidity position and equity position of the company; and the financial implications of the regulatory environment.

In the preamble to OSM's final self-bonding regulations, OSM also explained that since it was allowing a self-bonding applicant to qualify by meeting one financial test (unlike EPA that requires more than one test, and thus allows a lower, investment-grade bond rating), an applicant that selected the bond rating test would have to have bonds rated ''A or higher.'' This is because the bond rating of ''A or higher'' is a stand-alone test in the Federal regulations. While not specifically addressed by OSM in its final regulations on self-bonding, it follows that a State's self-bonding program that requires an applicant to meet multiple financial criteria in addition to having an investment-grade bond rating is no less effective than the Federal regulations that allow a bond rating of ''A or higher'' as a stand-alone financial test.

As an additional safeguard, Texas is requiring applicants to notify the Commission of any rating change to a lower bond rating than the applicant had at the time the self-bond was approved. If an applicant's rating is down-graded, then the Commission will immediately hold a hearing to decide whether the applicant may remain in the self-bonding program. This requirement is in addition to the existing requirement at § 806.309(j)(8) for applicants to notify the Commission if it no longer meets the criteria at (2)(C) and (2)(D) of the self-bonding regulations.

b. *Alternative Test I. TCMR 806.309(j)(2)(C)(iv)(I)(A).* Under subparagraph (I)(A), Texas proposes to recodify the exiting requirements at § 806.309(j)(2)(C)(iv)(II) [wherein an applicant must demonstrate that it has a tangible net worth of at least $10 million and fixed assets in the United States totaling at least $20 million]. Other than recodifying this section, no changes are proposed; therefore, the requirements at § 806.308(j)(2)(C)(iv)(I)(A) are no less effective than the Federal self-bonding requirements at 30 CFR 800.23(b)(3).

TCMR 806.309(j)(2)(C)(iv)(I)(B). Texas is revising requirements at § 806.309(j)(2)(C)(iv)(III) to provide flexibility under the recodified subparagraph at § 806.309(j)(2)(C)(iv)(I)(B). The State is revising this sub-part to provide an optional test whereby an applicant must demonstrate that it has either a ratio of total liabilities to net worth of 2.5 or less or a ratio of total liabilities to net worth that is equal to or less than the industry median reported by Dun and Bradstreet Corporation for the applicant's primary SIC code. A ratio value of 2.5 or less is the current standard test in the State's self-bonding program at § 806.309(j)(2)(C) (ii) and (iii), and in the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii). Therefore, allowing applicants the option of meeting either the standard ratio value of 2.5 or less, or having a ratio value that is equal to or less than the industry median is no less effective than the Federal regulations for reasons further explained below.

The rationale for comparing an applicant's ratio of total liabilities to net worth to the industry median was discussed in detail in the preamble to the final Texas rule (57 FR 5983, February 19, 1992). Industry medians reflect the relative financial status of firms within an industry classified by net worth. Comparing a firm with current industry medians is more meaningful than comparing it with static values for financial ratios that represent the conditions of an industry at an historical point in time. OSM determined that ratio values that are keyed to an applicant's industry

medians are an appropriate measure of how the applicant performs financially in comparison to the rest of its industry. On this basis, OSM approved the use of industry median values in lieu of the standard value of 2.5 or less. However, since OSM's approval of Texas' alternative self-bonding test on February 19, 1992, changes have occurred in general financial accounting requirements resulting in industry median values that do not consistently reflect the true comparative financial strength of applicants for self-bonding.

For example, the Financial Accounting Standards Board (FASB) has issued new accounting standards that firms must follow in order to be in compliance with Generally Accepted Accounting Principles (GAAP). One such standard is the ''Statement of Financial Accounting Standards No. 109, 'Accounting for Income Taxes' '' (SFAS 109) issued in 1991. The effects of SFAS 109 and another accounting standard, ''Employer's Accounting for Postretirement Benefits Other than Pensions'' (SFAS 106), are complex and affect both sides of a firm's balance sheet in a variety of ways.

Upon review, ratio values for a firm that has adopted SFAS 106 (post-retiree health benefits) may not compare well with ratio values for a firm that has not yet adopted the standard or a firm that is on different implementation schedule. On the other hand, a firm that has adopted SFAS 109 (accounting for deferred income taxes) may appear financially stronger than it actually is. Accounting for deferred tax assets is an example. In an article entitled ''Evaluating Deferred-Tax Assets: Some Guidance for Lenders'' (Commercial Lending Review, July 1994, pp. 12–25), Eugene Comiskey and Charles Mulford state that ''deferred tax assets result in increases to earnings, assets, and shareholders' equity which in essence do not increase the financial strength of the firm from that before adoption of FASB 109 [SFAS 109].'' The authors advise that deferred tax assets ''especially those recorded for various tax carryforwards, share features with intangible assets—assets that are often deducted from equity in the measurement of tangible net worth in debt covenants.'' These examples illustrate the many complexities involved in analyzing the interdependent effects that recent FASB standards have had on the financial status of self-bonding applicants. Therefore, Texas proposes to revise its alternative test to allow financially strong applicants the flexibility of qualifying by either having a ratio of total liabilities to net worth that meets the standard criteria (2.5 or less) or a ratio value that meets the industry median test.

Changes to accounting standards notwithstanding, ratio analysis based on industry medians, (industry norms) has merit when comparing firms with similar conditions (net worth and asset size) in the same industry. However, not all firms are adopting the FASB financial accounting standards during the same accounting year and/or in the same manner; so the industry medians do not always reflect a level financial playing field for the purpose of comparing a firm to its industry.

Under the State's proposal, an applicant that meets the standard criterion, 2.5 or less for the ratio of total liabilities to net worth, satisfies the Federal ceiling for this ratio under the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii). In addition, the ratio criterion based on comparison with the industry median is an approved financial test in the State's existing alternative criteria for self-bonding. Therefore, Texas' proposed revision at § 806.309(j)(2)(C)(iv)(I)(B) that allows an applicant the option of qualifying under either of these two ratio criteria is no less effective than the Federal regulations.

TCMR 806.309(j)(2)(C)(iv)(I)(C). Under subparagraph (I)(C), Texas proposes to recodify the existing State requirement at § 806.309(j)(2)(iv)(IV). Other than recodifying this section, no changes are proposed. Therefore, the State's proposed requirements at § 806.309(j)(2)(iv)(I)(C) are no less effective than the Federal regulations.

c. *Alternative Test II. TCMR 806.309(j)(2)(C)(iv)(II).* Applicants applying for self-bonding under the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii) and under the State's standard self-bonding test at § 806.309(j)(2)(C) (ii) and (iii) are required to have certain financial ratio values that indicate solvency and a reasonable liquidity position. Rather than measuring an applicant's liquidity position by requiring certain values for the ratio of current assets to current liabilities and the ratio of total liabilities to net worth, Texas is proposing alternative criteria to demonstrate financial strength.

In OSM's final self-bonding rules (48 FR 36418, August 10, 1983), OSM indicated that the self-bonding program was established at 30 CFR 800.23 for firms that could demonstrate a low likelihood of bankruptcy, debts that are not disproportionate to assets, and reasonable liquidity. OSM also stated that the ''New § 800.23 allows a State to develop a comprehensive self-bonding program to balance the risk of forfeiture versus the benefits to financially sound operators of a self-bonding program,'' and that . . . ''These final rules [Federal regulations] contain standards general enough to take into account state-specific conditions.'' To recognize variability among financially strong industries mining coal in Texas, the State proposes to add a second set of alternative criteria to provide financially strong applicants an additional option for demonstrating liquidity and financial strength. This proposed alternative test will provide flexibility and increase the availability of the self-bonding program without jeopardizing the level of reclamation assurance.

Texas' new proposed alternative test at § 806.309(j)(2)(C)(iv)(II), consists of three subparagraphs. All financial criteria (including the investment-grade bond rating discussed above) must be met in combination in order for an applicant to qualify for self bonding under this proposed alternative test.

TCMR 806.309(j)(2)(C)(iv)(II)(A). Texas is proposing that an applicant applying for self-bonding have a net worth of at least $100 million and fixed assets in the United States totaling at least $200 million. These proposed levels of net worth and fixed assets are ten times greater than the $10 and $20 million respective levels required by the standard self-bonding criteria at § 806.309(j)(2)(C) (i), (ii), and (iii), and the counterpart Federal regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii). Intangible assets such as goodwill, patents, royalties, and trademarks (if any) are included in the calculation of net worth in this proposal; whereas in the existing approved alternative test and standard criteria, intangible assets are not counted in the calculation of net worth. However, the Director finds that a tenfold increase in the required level of net worth from $10 million to $100 million provides assurance, no less effective than the Federal regulations, that sufficient assets should be available to conduct reclamation and avoid bankruptcy. Since the levels of net worth and fixed assets under this proposal require financial strength levels that are higher than the existing levels in the Federal counterpart regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii), the State's requirements at § 806.309(j)(2)(C)(IV)(II)(A) are no less effective than the Federal regulations.

TCMR 806.309(j)(2)(C)(IV)(II)(B). Under subparagraph (II)(B), the Texas proposal requires the applicant to have issued securities in accordance with the requirements of the Securities Act of 1933, and that the applicant is subject to the periodic financial reporting

requirements established by the Securities and Exchange Act of 1934. To protect investors, the Securities and Exchange Commission (SEC) has stringent financial disclosure and reporting requirements for issuers of securities.

Annual reports filed with the SEC are readily available public filings that require disclosure of detailed financial and business information that exceeds the level of detail usually found in a firm's annual report to its stockholders. Like the Federal self-bonding program, whether or not Texas accepts a qualified applicant's self-bond is discretionary with the State. In making this decision, the State is not limited to the materials filed by an applicant. In its analysis of an applicant's qualifications, Texas can calculate financial ratios from the applicant's balance sheet data, compare an applicant's ratios to industry norms, and conduct any number of other financial tests to determine whether an applicant is a good candidate for self-bonding. Having an applicant's SEC financial information at its disposal places the State in a position to make an informed decision about a self-bonding applicant's qualifications. For example, in addition to requiring that financial statements be prepared in conformance with GAAP, Section 78m.(b)(2)(B) of the Securities and Exchange Act requires firms to assure that safeguards are present to protect assets. Protecting assets helps assure reasonable liquidity which is one of the requirements for qualifying under the Federal and Texas self-bonding programs.

In lieu of using financial ratios to measure liquidity, Texas is proposing that under this alternative test applicants meet a combination of requirements including: stringent SEC financial reporting, an investment-grade bond rating, and net worth that is six times the total amount of the applicant's outstanding and proposed self-bonds. Meeting the combined financial requirements of Texas' proposed alternative test will assure that an applicant has reasonable liquidity and a low risk of bankruptcy. The requirement for net worth that is six times the total self-bonded amount is further discussed under subparagraph (C) below.

TCMR 806.309(j)(2)(C)(iv)(II)(C). Like the Federal self-bonding regulations at 30 CFR 800.23, an applicant applying for self-bonding under Texas' standard test at § 806.309(j)(2)(C) (i), (ii), and (iii) and an applicant applying for self-bonding under the first of Texas' alternative tests at § 806.309(j)(2)(C)(iv)(I) may not have outstanding and proposed self-bonds that are greater than 25 percent of the applicant's tangible net worth in the United States. In other words, tangible net worth must be four times the outstanding and proposed self-bonded amount. Tangible net worth is used as the basis for comparison with the amount of proposed and outstanding self-bonds because intangible assets such as goodwill, patents, royalties, and trademarks are difficult to evaluate and liquidate. Under the new alternative at § 806.309(j)(2)(C)(iv)(II)(C), Texas is proposing that an applicant's total outstanding and proposed self-bond amount not exceed 16⅔ percent of the applicant's net worth in the United States. In other words, net worth [including intangible assets] must be six times the amount of outstanding and proposed self-bonds. Under this proposal, Texas is allowing the basis of comparison to be total net worth including the calculation for intangible assets. However, the Director finds that the inclusion of intangible assets in this calculation is offset by the State's proposal to increase the ratio of net worth to self-bond amount to six times rather than four times. This proposed increase to the required level of net worth should provide assurance that a self-bonded permittee has sufficient assets to perform reclamation and stave off bankruptcy. Therefore, under this proposed second alternative test at § 806.309(j)(2)(C)(iv)(II), Texas is requiring that an applicant have a greater financial cushion to protect the State should it be required to attempt to recover self-bonded amounts from the applicant's assets in the event the applicant files for bankruptcy.

In the preamble to the final Federal self-bonding regulations (48 FR 36418, August 10, 1983), OSM responded to a commenter who recommended a 6 to 1 ratio of net worth to self-bonded amount in the Federal regulations ''to be more in keeping with the rates used by the surety industry.'' OSM responded by saying that ''Although the requirements of these rules are such that only well-established, financially solvent business entities will qualify for self-bonding, there is always an element of risk involved in underwriting the obligations for such companies. The 25 percent restriction provides a financial cushion, in the event that a self-bonded entity should fail, to allow the regulatory authority to attempt to recoup self-bonded amounts from the assets of the bankrupt entity. A 6 to 1 ratio is considered overly restrictive, especially in light of other required financial tests [at 30 CFR 800.23(b)(3)].'' The State's proposal for a 6 to 1 ratio of net worth to self-bonded amount plus meeting a combination of three additional financial tests (investment-grade bond rating, $100 million net worth plus $200 million domestic fixed assets, and SEC financial reporting) is no less effective than the Federal regulations that require a 4 to 1 ratio of tangible net worth to self-bonded amount plus meeting one of three stand-alone financial tests (bond rating of A or higher; or $10 million tangible net worth plus 1.2 or greater current ratio of assets to liabilities plus 2.5 or less ratio of total liabilities to net worth; or $20 million domestic fixed assets plus the same ratio values as stated above).

d. Based on the above discussions, the Director finds that Texas' proposed financial criteria at TCMR 806.309(j)(2)(C)(iv) (I) and (II) are either already contained in Texas' existing approved alternative test for self-bonding or provide financial options for the new proposed alternative test that are no less effective at measuring financial strength and reasonable liquidity than the Federal self-bonding regulations at 30 CFR 800.23(b)(3).

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. No one requested an opportunity to speak at a public hearing; therefore, no hearing was held.

Texas Utilities Services Inc. provided written support for the proposed amendment (Administrative Record No. TX–593.07).

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11((i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. 593.01).

On September 15, 1995 (Administrative Record No. TX–593.06), the U.S. Bureau of Land Management commented that the revised regulations addressed by the documents appear to exceed Federal coal standards. On September 18, 1995 (Administrative Record No. TX–593.04), the U.S. Army Corps of Engineers acknowledged that the revisions were satisfactory. On October 2, 1995 (Administrative Record No. TX–593.08), the Natural Resources Conservation Services responded without comment.

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,*). However, none of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comment on the proposed amendment from EPA (Administrative Record No. TX–593.01). EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. TX–593.01). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Texas on August 11, 1995, and as revised on September 25, 1995, concerning self-bonding alternative financial requirements for a business and governmental entities.

The Director approves the rules as proposed by Texas with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR 943, codifying decisions concerning the Texas 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 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.

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 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 1, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent 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 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

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

2. Section 943.15 is amended by adding paragraph (1) to read as follows:

§ 943.15 Approval of regulatory program amendments.

* * * * *

(1) The revisions to the following regulations at 16 Texas Administrative Code 11.221, the Coal Mining Regulations of the Railroad Commission of Texas, as submitted to OSM on August 11, 1995, and as revised on September 25, 1995, are approved effective December 13, 1995.

TCMR 806.309(j)(2)(C)(iv)(I)(A), (B), and (C).	Self-bonding: financial requirements for a business and governmental entities, Alternative Financial Eligibility Criteria Test I.
TCMR 806.309(j)(2)(C)(iv)(II)(A), (B), and (C).	Self-bonding: financial requirements for a business and governmental entities, Alternative Financial Eligibility Criteria Test II.

[FR Doc. 95–30330 Filed 12–12–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AE28

Confidentiality of Certain Medical Records

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes Department of Veterans Affairs (VA) regulations to implement specific provisions of the Veterans Omnibus Health Care Act of 1976 and the Veterans' Benefits and Services Act of 1988 concerning the confidentiality of certain medical records. These regulations protect the confidentiality of VA records pertaining to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), and sickle cell anemia.

EFFECTIVE DATE: January 12, 1996.

FOR FURTHER INFORMATION CONTACT: Celia Winter, Program Specialist, Veterans Health Administration (161F), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6274.

SUPPLEMENTARY INFORMATION: On July 26, 1993, at 58 FR 39703, VA published a notice of proposed rulemaking (NPRM) concerning the confidentiality of VA records pertaining to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV) and sickle cell anemia treatment, rehabilitation, education, training, evaluation and research information. Interested parties were invited to submit written comments on or before August 25, 1993. Two comments were received.

Background

VA was mandated by the Veterans Omnibus Health Care Act of 1976 and the Veterans' Benefits and Services Act of 1988 to publish its own regulations relative to the confidentiality of medical records relating to drug abuse, alcoholism or alcohol abuse, infection with the HIV, and sickle cell anemia. VA, generally, has been following the Department of Health and Human Services' regulations on drug and alcohol abuse which were published in the Federal Register, July 1, 1975. The Department of Health and Human Services (HHS) regulations (42 CFR §§ 2.1–2.67) were promulgated with the enactment of legislation specific to alcohol and drug abuse programs and confidentiality of records. The regulations take into consideration the existing HHS regulations in implementing the confidentiality section of the Veterans Omnibus Health Care Act of 1976. Editorial and substantive changes were made to the HHS regulations which were published in the Federal Register, June 9, 1987.

The historical development of the regulations begins with Pub. L. 93–282, ''Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1974,'' which provided that the then Administrator of Veterans Affairs, through the then Chief Medical Director, consistent with responsibilities under Title 38, United States Code, prescribe regulations applicable to the confidentiality of medical records maintained in connection with the provision of hospital care, nursing home care, domiciliary care and medical services under Title 38 to patients suffering from alcohol abuse, alcoholism, and drug abuse. In prescribing and implementing these regulations, the Secretary of Veterans Affairs was required to consult with the Secretary of HHS in order to achieve the maximum possible coordination of the regulations.

Congress, recognizing that the particular problems of confidentiality of records in the VA health care system would best be handled by placing applicable provisions in Title 38, United States Code, added a new § 4132, now § 7332, to Title 38, United States Code, with the enactment of Pub. L. 94–581, Veterans Omnibus Health Care Act of 1976. The intent of this legislation was to ensure confidentiality of certain medical records by establishing sanctions for unauthorized disclosure of information, while at the same time, meeting the legitimate needs for disclosure under certain conditions. As part of this legislation, Congress imposed upon VA requirements similar to those of Pub. L. 93–282 noted above (38 U.S.C. § 7334, formerly § 4134).

Section 111 of Pub. L. 94–581 replaced, for VA purposes, the provisions of Sections 122(a) and 303 of Pub. L. 93–282 (21 U.S.C.§ 1175, for drug records; 42 U.S.C. § 4582, for alcohol records) as the statutory base for confidentiality of drug and alcohol abuse records for those patients treated by VA medical facilities. Additionally, it replaced Section 109 of Pub. L. 93–82 (38 U.S.C. § 1753(b), formerly § 653(b)) which provided for confidentiality of sickle cell anemia records and required VA to promulgate regulations. Pub. L. 94–581, Veterans Omnibus Health Care Act of 1976, addressed all three subjects—drug abuse, alcoholism and sickle cell anemia records—in its confidentiality mandate. Section 121 of Pub. L. 100–322 provided for the confidentiality of records relating to infection with the HIV. Accordingly, drug and alcohol abuse, infection with the HIV, and sickle cell anemia records are included in these regulations.

VA has followed regulations on the confidentiality of patients' records related to drug and alcohol abuse as prescribed in 1975 by the Secretary of HHS. Certain provisions of the HHS regulations are inconsistent with VA requirements and these new VA regulations address those inconsistencies. Staff at HHS reviewed a draft of the regulations prior to publication and changes were made based on the comments where there was statutory authority for the change.

The HHS regulations as revised in 1987 and further amended on May 5, 1995, cover only alcohol and drug abuse information that is obtained by a specialized program or specific provider whose primary function is the provision of alcohol or drug abuse diagnosis, treatment, or referral for treatment. The 1987 regulations do not cover alcohol and drug abuse information obtained by health care facilities which provide alcohol and drug abuse care only as an incident to the provision of general medical care. The VA regulations include *all* records which are maintained in connection with the performance of any VA program or activity (including education, training, evaluation, treatment, rehabilitation or research) relating to drug abuse, alcoholism, infection with the HIV, or sickle cell anemia in order to provide greater confidentiality for patients who are provided care for these conditions. On May 5, 1995, HHS published a final rule in 60 FR 22296, amending its confidentiality regulations with regard to the definition of ''program.'' HHS's final rule was in direct response to the holding made by the Ninth Circuit in a case involving the VA, *United States* v. *Eide*, 875 F.2d 1429, 1438 (9th Cir. 1989). There the court held the VAMC's (VA medical center) general emergency room to be a ''program'' as defined by the HHS regulations, upon which VA's policy is based. In its final rule, HHS limited the definition of ''program'' to: (1) an individual or entity, or an identified unit within a medical care facility, who holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment, or (2) medical personnel or other staff in a general medical care facility, whose primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment and who are identified as such providers. VA's final regulations DO NOT reflect the same regulatory language concerning the definition of a ''program'' as the HHS regulations due to the VA's treatment of the encompassed conditions as an integral part of the VA medical health care system and not a separate program

isolated from other Department functions. VA believes, as does HHS, that clarification of this point is necessary to help prevent other courts from ruling as the Ninth Circuit did in *Eide*, even as to the VA version of these regulations. Therefore, a specific example has been added to § 1.460(k)(2) to reflect that one-time emergency room care, where neither treatment or referral for treatment of the underlying drug or alcohol abuse condition is offered or sought, does not fall within the purview of these regulations. It was determined that a specific example was necessary to distinguish between those instances where an individual is brought into an emergency room for a potential drug overdose, receives one-time treatment and is released, from those instances where an individual enters an emergency room with, or acquires while there, the purpose of seeking treatment for his or her drug addiction, or VA offers treatment for such condition.

Discussion of Comments

A total of two comments were received—one from a national medical specialty society and the other from a not-for-profit public interest law firm that specializes in legal and policy issues related to substance abuse and HIV/AIDS. One of the commenters suggested that the regulations be revised to include a requirement that patients be given written notice and summary of the confidentiality protections of the subject records by §§ 1.460 through 1.499. This provision is included in the HHS regulations at 42 CFR 2.22. The HHS regulations provide confidentiality protections for drug or alcohol abuse information that is obtained by a specialized program or specific provider whose primary function is the provision of alcohol or drug abuse diagnosis, treatment, or referral for treatment. Consequently, the patients are easily identified at the initiation of treatment and can be provided the written notice and summary. The VA regulations, however, provide for the confidentiality of all records which are maintained in connection with the performance of any VA program or activity. Consequently, medical care may be given for drug or alcohol abuse, sickle cell anemia, or infection with the HIV in conjunction with, and after the initiation of medical care for other conditions. These patients are not as readily recognized as an individual who should be provided with the written notice and summary of the confidentiality protections. While VA will take efforts to notify patients of these provisions through notices in patient information handouts, handbooks, etc., it would not be possible to positively assure every patient will receive the notification as would be required if provided for in the regulations. Thus, we have not adopted this suggestion.

The same commenter suggested the addition of a provision that would provide for limitations on court-ordered disclosure of confidential communications. They suggested that disclosure of confidential communications that a patient provides to a treatment service be limited to those situations where a serious crime is reported or threatened, or where the patient has already testified about confidential communications in a formal proceeding, such as is provided for by HHS at 42 CFR 2.63. The final regulations have been revised to include the suggested provision. This is consistent with 38 U.S.C. 7334 which requires that the VA regulations follow the HHS regulations as far as possible. Accordingly, it has been added at § 1.491. The provisions previously published at § 1.491 and following have been renumbered following the newly inserted provision.

Another commenter addressed § 1.489(c) which provides for the release of identifiable patient records to ''congressional committees or subcommittees for program oversight and evaluation if such records pertain to any matter within the jurisdiction of such committee or subcommittee.'' The commenter did not understand the necessity for a broad based authorization for the release of individually identifiable patient records for program oversight and evaluation and assumed that Congressional committees would not have a need for individual records, but rather a compilation of information without patient identifiers. It was further stated that the standards of disclosure to Congress of individually identifiable patient records for these diagnoses should be the same as for other Federal and State entities. We do not agree with this suggestion. As part of their oversight responsibilities, Congressional committees do review individual patient treatment issues as well as overall program issues. In order to carry out this function, they need access to treatment information concerning directly affected individuals. These responsibilities are not shared nor are they the responsibility of other Federal and State entities. For these reasons, the provision was not revised.

The same commenter recommended a revision of section 1.487 which provides for the notification of information related to infection with the human immunodeficiency virus to the spouse or sexual partner of a patient. Disclosure may be made only after the patient's physician or counselor, after making reasonable efforts to counsel and encourage the patient to provide the information to the spouse or sexual partner, reasonably believes that the patient will not provide the information and that the disclosure is necessary to protect the health of the spouse or sexual partner. The commenter recommended that the provision be refined to include a focus on risk behavior modification. No changes were made based on the comment. The regulation addresses the issue of confidentiality and the disclosure, under certain conditions, of the information to individuals who are at risk. The issue of risk behavior modification is best addressed in treatment and therapeutic publications, policies, guidelines, etc.

These regulations are not intended to direct the manner in which substantive functions, such as research, treatment, and evaluation should be carried out, but rather to define the minimum requirements for the protection of confidentiality of patient records which must be satisfied in connection with the conduct of those functions in order to carry out the purposes of the authorizing legislation.

An additional, clarifying change to the regulations has been made concerning internal non-patient investigations and healthcare inspections conducted by the Office of Inspector General (OIG). During the internal review process, a question was raised by the VA's OIG as to whether OIG would be prohibited access to records protected by the regulations in cases involving healthcare inspections or criminal investigations of non-patients. Because the statute prohibits access to such records only where the patient is the subject of an investigation, and because the OIG would have a need for the information in connection with their duties, we have included language in § 1.461(c) that explicitly extends the exception of coverage of the regulations to healthcare inspections and non-patient investigations conducted by OIG. We have also added language clarifying that confidential information obtained by VA components, including OIG, who have a need for the information in connection with their duties, may not be redisclosed except in accordance with the regulations. These clarifications from the proposed rule merely reflect our interpretation of statutory authority.

Other nonsubstantive changes have been added for purposes of clarity.

Executive Order 12866

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 600–612. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Paperwork Reduction Act

Section 1.475 of this regulation contains an information collection requirement that has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act and has been assigned OMB Control No. 2900–0544 (expiration date is October 31, 1996). The Department of Veterans Affairs estimates that it will take an average of five minutes per respondent to provide the required information for the consent form and there will be approximately 20,640 such requests made per year.

List of Subjects in 38 CFR Part 1

Administrative procedures, Privacy Act, Recordkeeping.

Approved: August 24, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

In consideration of the foregoing, the Department of Veterans Affairs amends 38 CFR part 1, General Provisions, as follows:

PART 1—GENERAL

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Sections 1.460 through 1.499, an undesignated center heading, note, and authority citation preceding § 1.460, and undesignated center headings preceding §§ 1,475, 1,475 and 1,485 and 1,490 are added to read as follows:

Release of Information from Department of Veterans Affairs (VA) Records Relating to Drug Abuse, Alcoholism or Alcohol Abuse, Infection with the Human Immunodeficiency Virus (HIV), or Sickle Cell Anemia

Sec.

Release of Information From Department of Veterans Affairs Records Relating to Drug Abuse, Alcoholism or Alcohol Abuse, Infection With the Human Immunodeficiency Virus (HIV), or Sickle Cell Anemia

Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974).

The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94–581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100–322, the Veterans' Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93–82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751–1754).

Authority: 38 USC 1751–1754 and 7331–7334.

§ 1.460 Definitions.

For purposes of §§ 1.460 through 1.499 of this part, the following definitions apply:

Alcohol abuse. The term ''alcohol abuse'' means the use of an alcoholic beverage which impairs the physical, mental, emotional, or social well-being of the user.

Contractor. The term ''contractor'' means a person who provides services to VA such as data processing, dosage preparation, laboratory analyses or medical or other professional services. Each contractor shall be required to enter into a written agreement subjecting such contractor to the provisions of §§ 1.460 through 1.499 of this part; 38 U.S.C. 5701 and 7332; and 5 U.S.C. 552a and 38 CFR 1.576(g).

Diagnosis. The term ''diagnosis'' means any reference to an individual's alcohol or drug abuse or to a condition which is identified as having been caused by that abuse or any reference to sickle cell anemia or infection with the human immunodeficiency virus which is made for the purpose of treatment or

referral for treatment. A diagnosis prepared for the purpose of treatment or referral for treatment but which is not so used is covered by §§ 1.460 through 1.499 of this part. These regulations do not apply to a diagnosis of drug overdose or alcohol intoxication which clearly shows that the individual involved is not an alcohol or drug abuser (e.g., involuntary ingestion of alcohol or drugs or reaction to a prescribed dosage of one or more drugs).

Disclose or disclosure. The term ''disclose'' or ''disclosure'' means a communication of patient identifying information, the affirmative verification of another person's communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.

Drug abuse. The term ''drug abuse'' means the use of a psychoactive substance for other than medicinal purposes which impairs the physical, mental, emotional, or social well-being of the user.

Infection with the human immunodeficiency virus (HIV). The term ''infection with the human immunodeficiency virus (HIV)'' means the presence of laboratory evidence for human immunodeficiency virus infection. For the purposes of §§ 1.460 through 1.499 of this part, the term includes the testing of an individual for the presence of the virus or antibodies to the virus and information related to such testing (including tests with negative results).

Informant. The term ''informant'' means an individual who is a patient or employee or who becomes a patient or employee at the request of a law enforcement agency or official and who at the request of a law enforcement agency or official observes one or more patients or employees for the purpose of reporting the information obtained to the law enforcement agency or official.

Patient. The term ''patient'' means any individual or subject who has applied for or been given a diagnosis or treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia and includes any individual who, after arrest on a criminal charge, is interviewed and/or tested in connection with drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in order to determine that individual's eligibility to participate in a treatment or rehabilitation program. The term patient includes an individual who has been diagnosed or treated for alcoholism, drug abuse, HIV infection, or sickle cell anemia for purposes of participation in a VA program or activity relating to those four conditions, including a program or activity consisting of treatment, rehabilitation, education, training, evaluation, or research. The term ''patient'' for the purpose of infection with the human immunodeficiency virus or sickle cell anemia, includes one tested for the disease.

Patient identifying information. The term ''patient identifying information'' means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a treatment program, if that number does not consist of, or contain numbers (such as social security, or driver's license number) which could be used to identify a patient with reasonable accuracy and speed from sources external to the treatment program.

Person. The term ''person'' means an individual, partnership, corporation, Federal, State or local government agency, or any other legal entity.

Records. The term ''records'' means any information received, obtained or maintained, whether recorded or not, by an employee or contractor of VA, for the purpose of seeking or performing VA program or activity functions relating to drug abuse, alcoholism, tests for or infection with the human immunodeficiency virus, or sickle cell anemia regarding an identifiable patient. A program or activity function relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia includes evaluation, treatment, education, training, rehabilitation, research, or referral for one of these conditions. Sections 1.460 through 1.499 of this part apply to a primary or other diagnosis, or other information which identifies, or could reasonably be expected to identify, a patient as having a drug or alcohol abuse condition, infection with the human immunodeficiency virus, or sickle cell anemia (e.g., alcoholic psychosis, drug dependence), but only if such diagnosis or information is received, obtained or maintained for the purpose of seeking or performing one of the above program or activity functions. Sections 1.460 through 1.499 of this part do not apply if such diagnosis or other information is not received, obtained or maintained for the purpose of seeking or performing a function or activity relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia for the patient in question. Whenever such diagnosis or other information, not originally received or obtained for the purpose of obtaining or providing one of the above program or activity functions, is subsequently used in connection with such program or activity functions, those original entries become a ''record'' and §§ 1.460 through 1.499 of this part thereafter apply to those entries. Segregability: these regulations do not apply to records or information contained therein, the disclosure of which (the circumstances surrounding the disclosure having been considered) could not reasonably be expected to disclose the fact that a patient has been connected with a VA program or activity function relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia.

(1) The following are examples of instances whereby records or information related to alcoholism or drug abuse are covered by the provisions of §§ 1.460 through 1.499 of this part:

(i) A patient with alcoholic delirium tremens is admitted for detoxification. The patient is offered treatment in a VA alcohol rehabilitation program which he declines.

(ii) A patient who is diagnosed as a drug abuser applies for and is provided VA drug rehabilitation treatment.

(iii) While undergoing treatment for an unrelated medical condition, a patient discusses with the physician his use and abuse of alcohol. The physician offers VA alcohol rehabilitation treatment which is declined by the patient.

(2) The following are examples of instances whereby records or information related to alcoholism or drug abuse are not covered by the provisions of §§ 1.460 through 1.499 of this part:

(i) A patient with alcoholic delirium tremens is admitted for detoxification, treated and released with no counseling or treatment for the underlying condition of alcoholism.

(ii) While undergoing treatment for an unrelated medical condition, a patient informs the physician of a history of drug abuse fifteen years earlier with no ingestion of drugs since. The history and diagnosis of drug abuse is documented in the hospital summary and no treatment is sought by the patient or offered or provided by VA during the current period of treatment.

(iii) While undergoing treatment for injuries sustained in an accident, a patient's medical record is documented

to support the judgment of the physician to prescribe certain alternate medications in order to avoid possible drug interactions in view of the patient's enrollment and treatment in a non-VA methadone maintenance program. The patient states that continued treatment and follow-up will be obtained from private physicians and VA treatment for the drug abuse is not sought by the patient nor provided or offered by the staff.

(iv) A patient is admitted to the emergency room suffering from a possible drug overdose. The patient is treated and released; a history and diagnosis of drug abuse may be documented in the hospital summary. The patient is not offered treatment for the underlying conditions of drug abuse, nor is treatment sought by the patient for that condition.

Third party payer. The term ''third party payer'' means a person who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of his or her family or on the basis of the patient's eligibility for Federal, State, or local governmental benefits.

Treatment. The term ''treatment'' means the management and care of a patient for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia, or a condition which is identified as having been caused by one or more of these conditions, in order to reduce or eliminate the adverse effects upon the patient. The term includes testing for the human immunodeficiency virus or sickle cell anemia.

Undercover agent. The term ''undercover agent'' means an officer of any Federal, State, or local law enforcement agency who becomes a patient or employee for the purpose of investigating a suspected violation of law or who pursues that purpose after becoming a patient or becoming employed for other purposes.

(Authority: 38 U.S.C. 7334)

§ 1.461 Applicability.

(a) *General.*

(1) *Restrictions on disclosure.* The restrictions on disclosure in these regulations apply to any information whether or not recorded, which:

(i) Would identify a patient as an alcohol or drug abuser, an individual tested for or infected with the human immunodeficiency virus (HIV), hereafter referred to as HIV, or an individual with sickle cell anemia, either directly, by reference to other publicly available information, or through verification of such an identification by another person; and

(ii) Is provided or obtained for the purpose of treating alcohol or drug abuse, infection with the HIV, or sickle cell anemia, making a diagnosis for that treatment, or making a referral for that treatment as well as for education, training, evaluation, rehabilitation and research program or activity purposes.

(2) *Restriction on use.* The restriction on use of information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any information, whether or not recorded, which is maintained for the purpose of treating drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, making a diagnosis for that treatment, or making a referral for that treatment as well as for education, training, evaluation, rehabilitation, and research program or activity purposes.

(b) *Period covered as affecting applicability.* The provisions of §§ 1.460 through 1.499 of this part apply to records of identity, diagnosis, prognosis, or treatment pertaining to any given individual maintained over any period of time which, irrespective of when it begins, does not end before March 21, 1972, in the case of diagnosis or treatment for drug abuse; or before May 14, 1974, in the case of diagnosis or treatment for alcoholism or alcohol abuse; or before September 1, 1973, in the case of testing, diagnosis or treatment of sickle cell anemia; or before May 20, 1988, in the case of testing, diagnosis or treatment for an infection with the HIV.

(c) *Exceptions.*

(1) *Department of Veterans Affairs and Armed Forces.* The restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications of information between or among those components of VA who have a need for the information in connection with their duties in the provision of health care, adjudication of benefits, or in carrying out administrative responsibilities related to those functions, including personnel of the Office of the Inspector General who are conducting audits, evaluations, healthcare inspections, or non-patient investigations, or between such components and the Armed Forces, of information pertaining to a person relating to a period when such person is or was subject to the Uniform Code of Military Justice. Information obtained by VA components under these circumstances may be disclosed outside of VA to prosecute or investigate a non-patient only in accordance with § 1.495 of this part. Similarly, the restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications of information to the Department of Justice or U.S. Attorneys who are providing support in civil litigation or possible litigation involving VA.

(2) *Contractor.* The restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications between VA and a contractor of information needed by the contractor to provide his or her services.

(3) *Crimes on VA premises or against VA personnel.* The restrictions on disclosure and use in §§ 1.460 through 1.499 of this part do not apply to communications from VA personnel to law enforcement officers which:

(i) Are directly related to a patient's commission of a crime on the premises of the facility or against personnel of VA or to a threat to commit such a crime; and

(ii) Are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, that individual's name and address to the extent authorized by 38 U.S.C. 5701(f)(2), and that individual's last known whereabouts.

(4) *Undercover agents and informants.*

(i) Except as specifically authorized by a court order granted under § 1.495 of this part, VA may not knowingly employ, or admit as a patient, any undercover agent or informant in any VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program.

(ii) No information obtained by an undercover agent or informant, whether or not that undercover agent or informant is placed in a VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program pursuant to an authorizing court order, may be used to criminally investigate or prosecute any patient unless authorized pursuant to the provisions of § 1.494 of this part.

(iii) The enrollment of an undercover agent or informant in a treatment unit shall not be deemed a violation of this section if the enrollment is solely for the purpose of enabling the individual to obtain treatment for drug or alcohol abuse, HIV infection, or sickle cell anemia.

(d) *Applicability to recipients of information.*

(1) *Restriction on use of information.* In the absence of a proper § 1.494 court order, the restriction on the use of any information subject to §§ 1.460 through 1.499 of this part to initiate or

substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any person who obtains that information from VA, regardless of the status of the person obtaining the information or of whether the information was obtained in accordance with §§ 1.460 through 1.499 of this part. This restriction on use bars, among other things, the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute a patient with respect to a suspected crime. Information obtained by undercover agents or informants (see paragraph (c) of this section) or through patient access (see § 1.469 of this part) is subject to the restriction on use.

(2) *Restrictions on disclosures—third-party payers and others.* The restrictions on disclosure in §§ 1.460 through 1.499 of this part apply to third-party payers and persons who, pursuant to a consent, receive patient records directly from VA and who are notified of the restrictions on redisclosure of the records in accordance with § 1.476 of this part.

(Authority: 38 U.S.C. 7332(e) and 7334)

§ 1.462 Confidentiality restrictions.

(a) *General.* The patient records to which §§ 1.460 through 1.499 of this part apply may be disclosed or used only as permitted by these regulations and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority. Any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure.

(b) *Unconditional compliance required.* The restrictions on disclosure and use in §§ 1.460 through 1.499 of this part apply whether the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by §§ 1.460 through 1.499 of this part. These provisions do not prohibit VA from acting accordingly when there is no disclosure of information.

(c) *Acknowledging the presence of patients: responding to requests.*

(1) The presence of an identified patient in a VA facility for the treatment or other VA program activity relating to drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia may be acknowledged only if the patient's written consent is obtained in accordance with § 1.475 of this part or if an authorizing court order is entered in accordance with §§ 1.490 through 1.499 of this part. Acknowledgment of the presence of an identified patient in a facility is permitted if the acknowledgment does not reveal that the patient is being treated for or is otherwise involved in a VA program or activity concerning drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia.

(2) Any answer to a request for a disclosure of patient records which is not permissible under §§ 1.460 through 1.499 of this part must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia. These regulations do not restrict a disclosure that an identified individual is not and never has been a patient.

(Authority: 38 U.S.C. 7334)

§ 1.463 Criminal penalty for violations.

Under 38 U.S.C. 7332(g), any person who violates any provision of this statute or §§ 1.460 through 1.499 of this part shall be fined not more than $5,000 in the case of a first offense, and not more than $20,000 for a subsequent offense.

(Authority: 38 U.S.C. 7332(g))

§ 1.464 Minor patients.

(a) *Definition of minor.* As used in §§ 1.460 through 1.499 of this part the term ''minor'' means a person who has not attained the age of majority specified in the applicable State law, or if no age of majority is specified in the applicable State law, the age of eighteen years.

(b) *State law not requiring parental consent to treatment.* If a minor patient acting alone has the legal capacity under the applicable State law to apply for and obtain treatment for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, any written consent for disclosure authorized under § 1.475 of this part may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. Sections 1.460 through 1.499 of this part do not prohibit a VA facility from refusing to provide nonemergent treatment to an otherwise ineligible minor patient until the minor patient consents to the disclosure necessary to obtain reimbursement for services from a third party payer.

(c) *State law requiring parental consent to treatment.*

(1) Where State law requires consent of a parent, guardian, or other person for a minor to obtain treatment for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, any written consent for disclosure authorized under § 1.475 of this part must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor's behalf.

(2) Where State law requires parental consent to treatment, the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf only if:

(i) The minor has given written consent to the disclosure in accordance with § 1.475 of this part; or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the appropriate VA facility director under paragraph (d) of this section.

(d) *Minor applicant for service lacks capacity for rational choice.* Facts relevant to reducing a threat to the life or physical well being of the applicant or any other individual may be disclosed to the parent, guardian, or other person authorized under State law to act in the minor's behalf if the appropriate VA facility director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under § 1.475 of this part to his or her parent, guardian, or other person authorized under State law to act in the minor's behalf, and

(2) The applicant's situation poses a substantial threat to the life or physical well-being of the applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf.

(Authority: 38 U.S.C. 7334)

§ 1.465 Incompetent and deceased patients.

(a) *Incompetent patients other than minors.* In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his or her own affairs, any consent which is required under §§ 1.460 through 1.499 of this part may be given by a court appointed legal guardian.

(b) *Deceased patients.*

(1) *Vital statistics.* Sec. 1.460 through 1.499 of this part do not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

(2) *Consent by personal representative.* Any other disclosure of information identifying a deceased patient as being treated for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia is subject to §§ 1.460 through 1.499 of this part. If a written consent to the disclosure is required, the Under Secretary for Health or designee may, upon the prior written request of the next of kin, executor/executrix, administrator/administratrix, or other personal representative of such deceased patient, disclose the contents of such records, only if the Under Secretary for Health or designee determines such disclosure is necessary to obtain survivorship benefits for the deceased patient's survivor. This would include not only VA benefits, but also payments by the Social Security Administration, Worker's Compensation Boards or Commissions, or other Federal, State, or local government agencies, or nongovernment entities, such as life insurance companies.

(3) *Information related to sickle cell anemia.* Information related to sickle cell anemia may be released to a blood relative of a deceased veteran for medical follow-up or family planning purposes.

(Authority: 38 U.S.C. 7332(b)(3))

§ 1.466 Security for records.

(a) Written records which are subject to §§ 1.460 through 1.499 of this part must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use. Access to information stored in computers will be limited to authorized VA employees who have a need for the information in performing their duties. These security precautions shall be consistent with the Privacy Act of 1974 (5 U.S.C. 552a).

(b) Each VA facility shall adopt in writing procedures related to the access to and use of records which are subject to §§ 1.460 through 1.499 of this part.

(Authority: 38 U.S.C. 7334)

§ 1.467 Restrictions on the use of identification cards and public signs.

(a) No facility may require any patient to carry on their person while away from the facility premises any card or other object which would identify the patient as a participant in any VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program. A facility may require patients to use or carry cards or other identification objects on the premises of a facility. Patients may not be required to wear clothing or colored identification bracelets or display objects openly to all facility staff or others which would identify them as being treated for drug or alcohol abuse, HIV infection, or sickle cell anemia.

(b) Treatment locations should not be identified by signs that would identify individuals entering or exiting these locations as patients enrolled in a drug or alcohol abuse, HIV infection, or sickle cell anemia program or activity.

(Authority: 38 U.S.C. 7334)

§ 1.468 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.

(a) *Research privilege description.* There may be concurrent coverage of patient identifying information by the provisions of §§ 1.460 through 1.499 of this part and by administrative action taken under Sec. 303(a) of the Public Health Service Act (42 U.S.C. 241(d) and the implementing regulations at 42 CFR Part 2a); or Sec. 502(c) of the Controlled Substances Act (21 U.S.C. 872(c) and the implementing regulations at 21 CFR 1316.21). These ''research privilege'' statutes confer on the Secretary of Health and Human Services and on the Attorney General, respectively, the power to authorize researchers conducting certain types of research to withhold from all persons not connected with the research the names and other identifying information concerning individuals who are the subjects of the research.

(b) *Effect of concurrent coverage.* Sections 1.460 through 1.499 of this part restrict the disclosure and use of information about patients, while administrative action taken under the research privilege statutes and implementing regulations protects a person engaged in applicable research from being compelled to disclose any identifying characteristics of the individuals who are the subjects of that research. The issuance under §§ 1.490 through 1.499 of this part of a court order authorizing a disclosure of information about a patient does not affect an exercise of authority under these research privilege statutes. However, the research privilege granted under 21 CFR 291.505(g) to treatment programs using methadone for maintenance treatment does not protect from compulsory disclosure any information which is permitted to be disclosed under those regulations. Thus, if a court order entered in accordance with §§ 1.490 through 1.499 of this part authorizes a VA facility to disclose certain information about its patients, the facility may not invoke the research privilege under 21 CFR 291.505(g) as a defense to a subpoena for that information.

(Authority: 38 U.S.C. 7334)

§ 1.469 Patient access and restrictions on use.

(a) *Patient access not prohibited.* Sections 1.460 through 1.499 of this part do not prohibit a facility from giving a patient access to his or her own records, including the opportunity to inspect and copy any records that VA maintains about the patient, subject to the provisions of the Privacy Act (5 U.S.C. 552a(d)(1)) and 38 CFR 1.577. If the patient is accompanied, giving access to the patient and the accompanying person will require a written consent by the patient which is provided in accordance with § 1.475 of this part.

(b) *Restrictions on use of information.* Information obtained by patient access to patient record is subject to the restriction on use of this information to initiate or substantiate any criminal charges against the patient or to conduct any criminal investigation of the patient as provided for under § 1.461(d)(1) of this part.

(Authority: 38 U.S.C. 7334)

§§ 1.470–1.474 [Reserved]

Disclosures With Patient's Consent

§ 1.475 Form of written consent.

(a) Required elements. A written consent to a disclosure under §§ 1.460 through 1.499 of this part must include:

(1) The name of the facility permitted to make the disclosure (such a designation does not preclude the release of records from other VA health care facilities unless a restriction is stated on the consent).

(2) The name or title of the individual or the name of the organization to which disclosure is to be made.

(3) The name of the patient.

(4) The purpose of the disclosure.

(5) How much and what kind of information is to be disclosed.

(6) The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under § 1.464 of this part; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under § 1.465 of this part in lieu of the patient.

(7) The date on which the consent is signed.

(8) A statement that the consent is subject to revocation at any time except to the extent that the facility which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.

(9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

(b) *Expired, deficient, or false consent.* A disclosure may not be made on the basis of a consent which:

(1) Has expired;

(2) On its face substantially fails to conform to any of the requirements set forth in paragraph (a) of this section;

(3) Is known to have been revoked; or

(4) Is known, or through a reasonable effort could be known, by responsible personnel of VA to be materially false.

(c) *Notification of deficient consent.* Other than the patient, no person or entity may be advised that a special consent is required in order to disclose information relating to an individual participating in a drug abuse, alcoholism or alcohol abuse, HIV, or sickle cell anemia program or activity. Where a person or entity presents VA with an insufficient written consent for information protected by 38 U.S.C. 7332, VA must, in the process of obtaining a legally sufficient consent, correspond only with the patient whose records are involved, or the legal guardian of an incompetent patient or next of kin of a deceased patient, and not with any other person.

(d) It is not necessary to use any particular form to establish a consent referred to in paragraph (a) of this section, however, VA Form 10–5345, titled Request for and Consent to Release of Medical Records Protected by 38 U.S.C. 7332, may be used for such purpose.

(Authority: 38 U.S.C. 7332(a)(2) and (b)(1))

§ 1.476 Prohibition on redisclosure.

Each disclosure under §§ 1.460 through 1.499 of this part made with the patient's written consent must be accompanied by a written statement similar to the following:

This information has been disclosed to you from records protected by Federal confidentiality rules (38 CFR Part 1). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 38 CFR Part 1. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient or patient with sickle cell anemia or HIV infection.

(Authority: 38 U.S.C. 7334)

§ 1.477 Disclosures permitted with written consent.

If a patient consents to a disclosure of his or her records under § 1.475 of this part, a facility may disclose those records in accordance with that consent to any individual or organization named in the consent, except that disclosures to central registries and in connection with criminal justice referrals must meet the requirements of §§ 1.478 and 1.479 of this part, respectively.

(Authority: 38 U.S.C. 7332(b)(1))

§ 1.478 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs; not applicable to records relating to sickle cell anemia or infection with the HIV.

(a) *Definitions.*

For purposes of this section:

(1) *Central registry* means an organization which obtains from two or more member programs patient identifying information about individuals applying for maintenance treatment or detoxification treatment for the purpose of avoiding an individual's concurrent enrollment in more than one program.

(2) *Detoxification treatment* means the dispensing of a narcotic drug in decreasing doses to an individual in order to reduce or eliminate adverse physiological or psychological effects incident to withdrawal from the sustained use of a narcotic drug.

(3) *Maintenance treatment* means the dispensing of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

(4) *Member program* means a non-VA detoxification treatment or maintenance treatment program which reports patient identifying information to a central registry and which is in the same State as that central registry or is not more than 125 miles from any border of the State in which the central registry is located.

(b) *Restrictions on disclosure.* VA may disclose patient records to a central registry which is located in the same State or is not more than 125 miles from any border of the State or to any non-VA detoxification or maintenance treatment program not more than 200 miles away for the purpose of preventing the multiple enrollment of a patient only if:

(1) The disclosure is made when:

(i) The patient is accepted for treatment;

(ii) The type or dosage of the drug is changed; or

(iii) The treatment is interrupted, resumed or terminated.

(2) The disclosure is limited to:

(i) Patient identifying information;

(ii) Type and dosage of the drug; and

(iii) Relevant dates.

(3) The disclosure is made with the patient's written consent meeting the requirements of § 1.475 of this part, except that:

(i) The consent must list the name and address of each central registry and each known non-VA detoxification or maintenance treatment program to which a disclosure will be made; and

(ii) The consent may authorize a disclosure to any non-VA detoxification or maintenance treatment program established within 200 miles after the consent is given without naming any such program.

(c) *Use of information limited to prevention of multiple enrollments.* A central registry and any non-VA detoxification or maintenance treatment program to which information is disclosed to prevent multiple enrollments may not redisclose or use patient identifying information for any purpose other than the prevention of multiple enrollments unless authorized by a court order under §§ 1.490 through 1.499 of this part.

(Authority: 38 U.S.C. 7334)

§ 1.479 Disclosures to elements of the criminal justice system which have referred patients.

(a) VA may disclose information about a patient from records covered by §§ 1.460 through 1.499 of this part to those persons within the criminal justice system which have made participation in a VA treatment program a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody if:

(1) The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress (e.g., a prosecuting attorney who is withholding charges against the patient, a court granting pretrial or posttrial release, probation or parole officers responsible for supervision of the patient); and

(2) The patient has signed a written consent as a condition of admission to the treatment program meeting the requirements of § 1.475 of this part (except paragraph (a)(8) which is

inconsistent with the revocation provisions of paragraph (c) of this section) and the requirements of paragraphs (b) and (c) of this section.

(b) *Duration of consent.* The written consent must state the period during which it remains in effect. This period must be reasonable, taking into account:

(1) The anticipated length of the treatment recognizing that revocation of consent may not generally be effected while treatment is ongoing;

(2) The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when the final disposition will occur; and

(3) Such other factors as the facility, the patient, and the person(s) who will receive the disclosure consider pertinent.

(c) *Revocation of consent.* The written consent must state that it is revocable upon the passage of a specified amount of time or the occurrence of a specified, ascertainable event. The time or occurrence upon which consent becomes revocable may be no earlier than the individual's completion of the treatment program and no later than the final disposition of the conditional release or other action in connection with which consent was given.

(d) *Restrictions on redisclosure and use.* A person who receives patient information under this section may redisclose and use it only to carry out that person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given, including parole.

(Authority: 38 U.S.C. 7334)

§§ 1.480–1.484 [Reserved]

Disclosures Without Patient Consent

§ 1.485 Medical emergencies.

(a) *General rule.* Under the procedures required by paragraph (c) of this section, patient identifying information from records covered by §§ 1.460 through 1.499 of this part may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.

(b) *Special rule.* Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.

(c) *Procedures.* Immediately following disclosure, any VA employee making an oral disclosure under authority of this section shall make an accounting of the disclosure in accordance with the Privacy Act (5 U.S.C. 552a(c) and 38 CFR 1.576(c)) and document the disclosure in the patient's records setting forth in writing:

(1) The name and address of the medical personnel to whom disclosure was made and their affiliation with any health care facility;

(2) The name of the individual making the disclosure;

(3) The date and time of the disclosure;

(4) The nature of the emergency (or error, if the report was to FDA);

(5) The information disclosed; and

(6) The authority for making the disclosure (§ 1.485 of this part).

(Authority: 38 U.S.C. 7332(b)(2)(A))

§ 1.486 Disclosure of information related to infection with the human immunodeficiency virus to public health authorities.

(a) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the HIV, information may be disclosed to a Federal, State, or local public health authority, charged under Federal or State law with the protection of the public health, and to which Federal or State law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law. In the case of a State law, such law must, in order for VA to be able to release patient name and address information in accordance with 38 U.S.C. 5701(f)(2), provide for a penalty or fine or other sanction to be assessed against those individuals who are subject to the jurisdiction of the public health authority but fail to comply with the reporting requirements.

(b) A person to whom a record is disclosed under this section may not redisclose or use such record for a purpose other than that for which the disclosure was made.

(Authority: 38 U.S.C. 7332(b)(2)(C))

§ 1.487 Disclosure of information related to infection with the human immunodeficiency virus to the spouse or sexual partner of the patient.

(a) Subject to paragraph (b) of this section, a physician or a professional counselor may disclose information or records indicating that a patient is infected with the HIV if the disclosure is made to the spouse of the patient, or to an individual whom the patient has, during the process of professional counseling or of testing to determine whether the patient is infected with such virus, identified as being a sexual partner of such patient.

(b) A disclosure under this section may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient to provide the information to the spouse or sexual partner, reasonably believes that the patient will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner.

(c) A disclosure under this section may be made by a physician or counselor other than the physician or counselor referred to in paragraph (b) of this section if such physician or counselor is unavailable by reason of extended absence or termination of employment to make the disclosure.

(Authority: 38 U.S.C. 7332(b))

§ 1.488 Research activities.

Subject to the provisions of 38 U.S.C. 5701, 38 CFR 1.500–1.527, the Privacy Act (5 U.S.C. 552a), 38 CFR 1.575–1.584 and the following paragraphs, patient medical record information covered by §§ 1.460 through 1.499 of this part may be disclosed for the purpose of conducting scientific research.

(a) Information in individually identifiable form may be disclosed from records covered by §§ 1.460 through 1.499 of this part for the purpose of conducting scientific research if the Under Secretary for Health or designee makes a determination that the recipient of the patient identifying information:

(1) Is qualified to conduct the research.

(2) Has a research protocol under which the information:

(i) Will be maintained in accordance with the security requirements of § 1.466 of this part (or more stringent requirements); and

(ii) Will not be redisclosed except as permitted under paragraph (b) of this section.

(3) Has furnished a written statement that the research protocol has been reviewed by an independent group of three or more individuals who found that the rights of patients would be adequately protected and that the potential benefits of the research outweigh any potential risks to patient confidentiality posed by the disclosure of records.

(b) A person conducting research may disclose information obtained under paragraph (a) of this section only back to VA and may not identify any individual patient in any report of that research or otherwise disclose patient identities.

(Authority: 38 U.S.C. 7332(b)(2)(B))

§ 1.489 Audit and evaluation activities.

Subject to the provisions of 38 U.S.C. 5701, 38 CFR 1.500–1.527, the Privacy Act (5 U.S.C. 552a), 38 CFR 1.575–1.584, and the following paragraphs, patient medical records covered by §§ 1.460 through 1.499 of this part may be disclosed outside VA for the purposes of conducting audit and evaluation activities.

(a) *Records not copies.* If patient records covered by §§ 1.460 through 1.499 of this part are not copied, patient identifying information may be disclosed in the course of a review of records on VA facility premises to any person who agrees in writing to comply with the limitations on redisclosure and use in paragraph (d) of this section and:

(1) Where audit or evaluation functions are performed by a State or Federal governmental agency on behalf of VA; or

(2) Who is determined by the VA facility director to be qualified to conduct the audit or evaluation activities.

(b) *Copying of records.* Records containing patient identifying information may be copied by any person who:

(1) Agrees in writing to:

(i) Maintain the patient identifying information in accordance with the security requirements provided in § 1.466 of this part (or more stringent requirements);

(ii) Destroy all the patient identifying information upon completion of the audit or evaluation; and

(iii) Comply with the limitations on disclosure and use in paragraph (d) of this section.

(2) The VA medical facility director determines to be qualified to conduct the audit or evaluation activities.

(c) *Congressional oversight.* Records subject to §§ 1.460 through 1.499 of this part upon written request may be released to congressional committees or subcommittees for program oversight and evaluation if such records pertain to any matter within the jurisdiction of such committee or subcommittee.

(d) *Limitation on disclosure and use.* Records containing patient identifying information disclosed under this section may be disclosed only back to VA and used only to carry out an audit or evaluation purpose, or, to investigate or prosecute criminal or other activities as authorized by a court order entered under § 1.494 of this part.

(Authority: 38 U.S.C. 7332(b)(2)(B))

Court Orders Authorizing Disclosures and Use

§ 1.490 Legal effect of order.

The records to which §§ 1.460 through 1.499 of this part apply may be disclosed if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore. In assessing good cause the court is statutorily required to weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, is required by statute to impose appropriate safeguards against unauthorized disclosure. An order of a court of competent jurisdiction to produce records subject to §§ 1.460 through 1.499 of this part will not be sufficient unless the order reflects that the court has complied with the requirements of 38 U.S.C. 7332(b)(2)(D). Such an order from a Federal court compels disclosure. However, such an order from a State court only acts to authorize the Secretary to exercise discretion pursuant to 38 U.S.C. 5701(b)(5) and 38 CFR 1.511 to disclose such records. It does not compel disclosure.

(Authority: 38 U.S.C. 7332(b)(2)(D))

§ 1.491 Confidential communications.

(a) A court order under §§ 1.490 through 1.499 of this part may authorize disclosure of confidential communications made by a patient to a treatment program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

(Authority: 38 U.S.C. 7334)

§ 1.492 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.

A court order under §§ 1.460 through 1.499 of this part may not authorize qualified personnel, who have received patient identifying information from VA without consent for the purpose of conducting research, audit or evaluation, to disclose that information or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under § 1.495 of this part may authorize disclosure and use of records to investigate or prosecute VA personnel.

(Authority: 38 U.S.C. 7334)

§ 1.493 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

(a) *Application.* An order authorizing the disclosure of patient records covered by §§ 1.460 through 1.499 of this part for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given a written consent (meeting the requirements of § 1.475 of this part) to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice.* The patient and VA facility from whom disclosure is sought must be given:

(1) Adequate notice in a manner which will not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on whether the statutory and regulatory criteria for the issuance of the court order are met.

(c) *Review of evidence: Conduct of hearing.* Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party

to the proceeding, the patient, or VA, unless the patient requests an open hearing in a manner which meets the written consent requirements of § 1.475 of this part. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria for entry of order.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) *Content of order.* An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(Authority: 38 U.S.C. 7334)

§ 1.494 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.

(a) *Application.* An order authorizing the disclosure or use of patient records covered by §§ 1.460 through 1.499 of this part to criminally investigate or prosecute a patient may be applied for by VA or by any person conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice and hearing.* Unless an order under § 1.495 of this part is sought with an order under this section, VA must be given:

(1) Adequate notice (in a manner which will not disclose patient identifying information to third parties) of an application by a person performing a law enforcement function;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order; and

(3) An opportunity to be represented by counsel.

(c) *Review of evidence: Conduct of hearings.* Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or VA. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria.* A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including, but not limited to, homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of VA to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a person performing a law enforcement function, VA has been represented by counsel independent of the applicant.

(e) *Content of order.* Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crime or suspected crime specified in the applications; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment on only that public interest and need found by the court.

(Authority: 38 U.S.C. 7332(c))

§ 1.495 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute VA or employees of VA.

(a) *Application.*

(1) An order authorizing the disclosure or use of patient records covered by §§ 1.460 through 1.499 of this part to criminally or administratively investigate or prosecute VA (or employees or agents of VA) may be applied for by an administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over VA activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against VA (or agents or employees of VA) in which it appears that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has given a written consent (meeting the requirements of § 1.475 of this part) to that disclosure.

(b) *Notice not required.* An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to VA or to any patient whose records are to be disclosed, upon implementation of an order so granted VA or the patient must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Requirements for order.* An order under this section must be entered in accordance with, and comply with the requirements of, § 1.493(d) and (e) of this part.

(d) Limitations on disclosure and use of patient identifying information.

(1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under § 1.494 of this part.

(Authority: 38 U.S.C. 7334)

§ 1.496 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of VA.

(a) *Application.* A court order authorizing the placement of an undercover agent or informant in a VA drug or alcohol abuse, HIV infection, or sickle cell anemia treatment program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the VA treatment program are engaged in criminal misconduct.

(b) *Notice.* The VA facility director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order), unless the application asserts a belief that:

(1) The VA facility director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The VA facility director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) *Criteria.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of a VA treatment program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the VA treatment program outweigh the potential injury to patients of the program, physician-patient relationships and the treatment services.

(d) *Content of order.* An order authorizing the placement of an undercover agent or informant in a VA treatment program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the VA treatment program; and

(4) Include any other measures which are appropriate to limit any potential disruption of the program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(e) *Limitation on use of information.* No information obtained by an undercover agent or informant placed under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under § 1.494 of this part.

(Authority: 38 U.S.C. 7334)

§ 1.497–1.499 [Reserved]

§ 1.513 [Amended]

3. In § 1.513(b)(2) remove the words ''Post Office Department'' and add in their place, ''U.S. Postal Service''.

§ 1.513a [Removed]

4. Section § 1.513a is removed.

[FR Doc. 95–30138 Filed 12–12–95; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 081–4012a; FRL–5326–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Stage II Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision supplements the approved Pennsylvania Stage II regulation by establishing and requiring appropriate testing and certification of Stage II vapor recovery equipment for affected sources in Pennsylvania. The intended effect of this action is to approve these requirements as a supplement to the Pennsylvania Stage II vapor recovery regulation, Chapter 129.82. Final approval of these supplemental provisions to the Stage II regulation will stop the sanctions clock that was started on June 13, 1994.

DATES: This action will become effective January 22, 1996 unless notice is received on or before January 12, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On October 26, 1995, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of sections 6.7(b), (c), (h) and section 17(2) of the Pennsylvania Air Pollution Control Act, as amended on June 29, 1992 and effective on July 9, 1992. These provisions are meant to supplement the existing Pennsylvania Stage II vapor recovery regulation, Chapter 129.82. EPA approved the Stage II regulations in a final limited approval/disapproval rulemaking notice on June 13, 1994 (59 FR 30302). These supplemental provisions correct the deficiencies identified in that rulemaking notice and the proposal, which was published on November 29, 1993 (58 FR 62560). The June 13, 1994 final limited approval/disapproval rulemaking started a sanctions clock that allowed Pennsylvania 18 months to submit material that would correct the deficiencies in the Stage II regulation. This 18 month period ends on January 14, 1996. Final approval of the Stage II regulations will stop this sanctions clock. The submittal of the supplemental provisions that correct the existing deficiency in the Pennsylvania Stage II regulation allows EPA to convert the limited approval/disapproval of the Pennsylvania Stage II regulation to a full approval; thereby halting the sanctions clock.

Summary of SIP Revision

Section 17(2) establishes the effective date of the Pennsylvania Stage II vapor recovery regulations as November 12, 1992. This effective date is consistent with the requirements of section 182 of

the Clean Air Act and the EPA Stage II guidance developed under that section. Sections 6.7(b) and (c) establish the effective date for affected sources based on their gasoline throughput or construction date. Section 6.7(h) establishes that the testing and certification required for all affected sources must be conducted in accordance with the Stage II guidance issued by EPA. EPA has determined that each of these provisions is consistent with the Clean Air Act and EPA's Stage II guidance.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 22, 1996 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 22, 1996.

Final Action

EPA is approving sections 6.7(b), (c), (h) and section 17(2) of the Pennsylvania Air Pollution Control Act, as amended on June 29, 1992, as these provisions correct the deficiencies in the Stage II requirements in Pennsylvania Chapter 129.82, which were approved in a limited fashion by EPA on June 13, 1994. An interim final determination published elsewhere in this Federal Register stops the sanctions clock that was started when the final limited approval/disapproval action was published on June 13, 1994 until EPA's full approval of the Pennsylvania Stage II regulation becomes effective.

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

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). SIP approval actions

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

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)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the approval of supplemental Stage II provisions in Pennsylvania, must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: October 31, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraphs (c)(106) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(106) Revisions to the Pennsylvania Regulations, Chapter 129.82 pertaining to Stage II Vapor Recovery and the associated definition of gasoline dispensing facilities originally submitted on March 4, 1992 and supplemented on October 26, 1995 by the Pennsylvania Department of Environmental Protection (formerly known as the Department of Environmental Resources):

(i) Incorporation by reference.

(A) Letter of October 26, 1995 from the Pennsylvania Department of Environmental Protection transmitting sections 6.7 (b), (c), (h) and section 17(2) of the Pennsylvania Air Pollution Control Act as amended on June 29, 1992.

(B) Sections 6.7 (b), (c), (h), and section 17(2) of the Pennsylvania Air Pollution Control Act, amended June 29, 1992 and effective on July 9, 1992.

[FR Doc. 95–30109 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[PA 081–4012c; FRL–5343–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Interim Final Determination That Pennsylvania has Corrected the Deficiency in the Stage II Vapor Recovery Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's Federal Register, EPA has published a direct final rulemaking fully approving the Commonwealth of Pennsylvania's submittal of its Stage II Vapor Recovery requirements. The EPA has also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's proposed action, EPA will withdraw its direct final action and will consider any comments received before taking final action on the State's submittal. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiency for which a sanctions clock began on July 13, 1994. This action will defer the application of the offset sanction and defer the application of the highway sanction. Although this action is effective upon publication, EPA will take comment on this interim final determination as well as EPA's proposed approval of the State's submittal. If no comments are received on EPA's proposed approval of the State's submittal, the direct final action published in today's Federal Register will also finalize EPA's determination that the State has corrected the deficiency that started the sanctions clock. If comments are received on EPA's proposed approval and this interim final action, EPA will publish a final rule taking into consideration any comments received.

DATES: *Effective date.* December 13, 1995.

Comment date. Comments must be received by January 12, 1996.

ADDRESSES: Comments should be sent to Marcia L. Spink, Associate Director, Air Programs, (3AT00), Air, Radiation and Toxics Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19103. The state submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address and at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above of via e-mail at stahl.cynthia@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1992, the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, submitted a Stage II vapor recovery regulation, Chapter 129.82, which EPA disapproved in a limited fashion on June 13, 1994 (59 FR 30302). The EPA's disapproval action started an 18-month clock for the application of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act) and a 24-month clock for promulgation of a Federal implementation plan under section 110(c)(1) of the Act. The State subsequently submitted a revised program on October 27, 1995, correcting the deficiencies in the original submittal. The EPA has taken direct final action on this submittal pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of today's Federal Register, EPA has issued a direct final full approval of the Commonwealth of Pennsylvania's submittal of its Stage II vapor recovery regulation. In addition, in the Proposed Rules section of today's Federal Register, EPA has proposed full approval of the State's submittal.

II. EPA Action

Based on the proposed full approval set forth in today's Federal Register, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiency that started the sanction clock and, therefore, EPA is taking this interim final action finding that the State has corrected the disapproval deficiency, effective on publication. This action does not stop the sanction clock that started under section 179 for this area on July 13, 1994. However, this action will defer the application of the offset sanction and will defer the application of the highway sanction. See 59 FR 39832 (Aug. 4, 1994) to be codified at 40 CFR 52.31. If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanction clock and will permanently lift any applied, stayed or deferred sanctions.

Today EPA is also providing the public with an opportunity to comment on this interim final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will take further action to disapprove the State's submittal and to find that the State has not corrected the original disapproval deficiency. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiency has not been corrected. In addition, the sanctions consequences described in the sanctions rule will also apply. See 59 FR 39832.

III. Administrative Requirements

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] 5 U.S.C. 553(b)(B). The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through its proposed and direct final action, is indicating that it is more likely than not that the State has corrected the deficiency that started the sanctions clock. Therefore, it is not in the public interest to initially apply sanctions or to keep applied sanctions in place when the State has most likely done all that it can to correct the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

finding that the State has corrected the deficiency prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. In addition, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

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.

This action, pertaining to the interim final approval of corrections to the Pennsylvania Stage II vapor recovery regulation, temporarily relieves sources of an additional burden potentially placed on them by the sanction provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, and Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 27, 1995.

Stanley Laskowski,

Acting Regional Administrator.

[FR Doc. 95–30111 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 140

[FRL–5345–4]

RIN 2040–AC51

Marine Sanitation Devices; Final Regulation to Establish Drinking Water Intake Zones in Two Sections of the Hudson River, New York State

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is establishing two Drinking Water Intake Zones in the Hudson River, in response to an application received by the New York State Department of Environmental Conservation (NYSDEC). Establishment of a Drinking Water Intake Zone serves to completely *prohibit the discharge of vessel sewage,* treated or untreated, to waters contained in that zone. Zone 1 is bounded by the northern confluence of the Mohawk River on the south and Lock 2 on the north. It is approximately 8 miles long. Zone 2 is bounded on the south by the Village of Roseton on the western shore and bounded on the north by the southern end of Houghtaling Island. Zone 2 is approximately 60 miles long.

EFFECTIVE DATES: The final rule will take effect April 11, 1996. In accordance with 40 CFR 23.2, these amendments to the regulation shall be considered issued for purposes of judicial review at 1 p.m. eastern time, two weeks after publication.

ADDRESSES: Patrick M. Durack, Chief, Water Permits and Compliance Branch (25th Floor), U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, New York, 10007–1866.

FOR FURTHER INFORMATION CONTACT: Philip Sweeney, 212–637–3765.

SUPPLEMENTARY INFORMATION:

I. Background

In July 1992 the New York State Department of Environmental Conservation (NYSDEC) submitted an application for two reaches of the Hudson River to be designated by EPA as Drinking Water Intake Zones. Section 312(f)(4)(B) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4, (the ''Clean Water Act''), states, ''Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone. ''Region II requested that authority for taking action in response to this application be delegated from the Administrator to the Regional Administrator. That authority was delegated on November 16, 1992.

Zone 1 is in the Hudson River/ Champlain Canal and is bounded by an east-west line through the most northern confluence of the Mohawk River which will be designated by the Troy-Waterford Bridge (126th Street Bridge) on the south and Lock 2 on the north. It is approximately 8 miles long. This zone is classified in the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 941.6, Item Number 1, as one Class A segment. This classification was assigned in February 1967. Class A is the standard given to waters of New York for the protection of a source of water supply for drinking, culinary, or food processing purposes. There is one drinking water intake located in Zone 1, authorized for 2.0 million gallons per day, which serves the Town and Village of Waterford, Saratoga County, New York. This portion of the Hudson River adjoins Saratoga County on the west and Rensselaer County on the east.

Zone 2 is also in the Hudson River and is bounded on the south by the Village of Roseton on the western shore and Low Point on the eastern shore in the vicinity of Chelsea, and on the north by the southern end of Houghtaling Island. This zone is classified in 6 NYCRR as two segments, both Class A. The northern segment, which stretches from the southern end of Houghtaling Island (at light #72) to the southern end of Esopus Island (at light #28), was classified as Class B in 1966 and reclassified by the State of New York as Class A in 1969. The southern segment of Zone 2 stretches from the southern end of Esopus Island (at light #28) to the line formed by Roseton on the west shore and Low Point on the east shore in the vicinity of Chelsea, New York. This southern segment of Zone 2 was classified on October 15, 1966 as Class A. There are six authorized drinking water intakes in Zone 2. They are listed below:

Community served	Authorized taking in million gallons per day
Rhinebeck Village and Hamlet of Rhinecliff	1.0
Hyde Park Fire and Water District, Town of Hyde Park	6.0
City and Town of Poughkeepsie	16.0
New York City, Chelsea Emergency Pump Station	100.0
Port Ewan Water District, Town of Esopus	1.0
Highland Water District	3.0

Authority to enforce the prohibition of vessel sewage discharges lies with the U.S. Coast Guard, which may by agreement utilize enforcement officers of the U.S. Environmental Protection Agency, other Federal agencies, or States, in accordance with § 312(k) of the Clean Water Act.

Both the Federal and New York State governments will take a role in implementation and enforcement of the prohibition in the two drinking water

intake zones. The prohibition will take effect one hundred and twenty (120) days after this notice. A major focus of the implementation plan for this prohibition will be public education, specifically boater education. For the purposes of boater understanding and compliance, it is worthwhile to note landmarks which approximate the boundaries of the drinking water intake zones, which are in view of the Hudson River boater. For Zone 1, the Troy-Waterford Bridge (126th Street Bridge) and Lock #2 are visible landmarks. For Zone 2, the northern border is at the southern end of Houghtaling Island. The Newburgh-Beacon Bridge, which is south of the southern zone border, is an obvious landmark for the southern end of Zone 2. All of Zone 2 lies between Houghtaling Island and the Newburgh-Beacon Bridge, and these landmarks are therefore useful markers for boaters.

II. Public Comments and Response to Most Significant Comments

On July 5, 1995, EPA noticed the proposed regulation in the Federal Register, which regulation would establish drinking water intakes zones in two sections of the Hudson River. Upon publication of the proposed regulation, a sixty day public comment period commenced and was closed on September 5, 1995. During the comment period, two public hearings were held at the following locations:

1. August 9, 1995 at the offices of the NYSDEC, 21 South Putt Corners Road, New Paltz, New York from 6:30 p.m. to 8:30 p.m.

2. August 10, 1995 at the Town of Waterford Civic Center, 35 Third Street, Waterford, New York from 6:30 p.m. to 8:30 p.m.

Written and/or oral statements were received by six individuals. One individual represented the association of towboat operators. Another individual represented the shipping operations for a major petroleum company. Two individuals represented two citizens group interested in the Hudson River. The comments of each individual are summarized and responded to below:

Comment 1: One individual asserted that the proposed rule goes beyond the proscriptions [sic] of the U.S. Coast Guard by effectively mandating that commercial vessels which operate on the Hudson River install a Type III marine sanitation device (MSD). She contended further that while Section 312(f)(4)(B) of the Clean Water Act (CWA) permits the establishment of a ''no discharge zone'' once a state submits an application to EPA, the statute does not limit the options which may be considered nor empower EPA to contravene federal regulations promulgated by the U.S. Coast Guard which address MSDs aboard vessels. The individual argued that the proposed rule ''oversteps the bounds of established international and domestic statutes related to the discharge of sewage.''

Response 1: Section 312 of the CWA requires the Administrator, in conjunction with the U.S. Coast Guard, to promulgate performance standards for MSDs and requires the U.S. Coast Guard to promulgate regulations governing the design, construction, installation and operation of MSDs. Section 312(f)(4)(B) of the CWA, however, addresses an issue other than performance standards, design, construction, installation or operation of MSDs. This subsection of the CWA provides that ''[u]pon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone.'' The rule, which designates two drinking water intake zones, is, therefore, not inconsistent with Coast Guard regulation and is consistent with the CWA. The comment concerning international agreements and statutes is non-specific and as such cannot be addressed; moreover, the Hudson River is considered domestic waters.

Comment 2: The individual maintained that by proposing to ''prohibit the discharge of treated sewage, vessels with Type II MSDs will be rendered non-operational in the winter months and only operational at other times of the year.''

Response 2: EPA maintains that vessel operators may operate in compliance with the no discharge requirements by utilizing permanently-installed Type III systems; using portable Type III systems; or by discharging treated waste outside the zone. However, EPA acknowledges that certain circumstances (e.g. winter operation in Zone 2) could preclude the ''discharge outside the zone'' option for certain vessels. In these circumstances, vessel owners may find it necessary to use either permanent or portable Type III systems. In response to the concern about complying with no discharge requirements during winter months without retrofitting with a permanent Type III system, EPA is delaying the effective date of the rule to 120 days after final notice. This change will allow additional time to retrofit and will allow operators additional time to plan for the more challenging winter operational period.

Comment 3: The two alternatives offered to vessel owners with Type II MSDs is to either install a Type III MSD or discharge treated sewage outside the no discharge zones. An individual argued that the off-loading of sewage at a pump-out station located in the no discharge zone is not a viable option for some vessel operators given the physical dimensions, geographic location and depth of water at many of the pump-out facilities on the Hudson River.

Response 3: Many vessel owners currently operating on the Hudson River use Type III MSDs and are off-loading sewage. The fact that these vessels commonly off-load sewage demonstrates that this is a viable alternative for many other vessel operators, as well. While applications made pursuant to section 312(f)(3) of the CWA must show that adequate facilities for the safe and sanitary removal and treatment of sewage are reasonably available, this is not a criterion for applications or determinations made pursuant to section 312(f)(4)(B) of the CWA.

Comment 4: One individual declared that the proposed regulation will have a detrimental operational and economic impact on commercial vessels which have a Type II marine sanitation device on-board. She criticized that the proposed rule characterizes the costs associated with the purchase of Type III marine sanitation devices as ''nominal'' and explained that the actual cost associated with the purchase and installation of a holding tank aboard a tugboat can be tens of thousands of dollars depending upon the configuration of the vessel. She concluded that the installation and utilization of a Type III MSD is not a viable alternative for many tug/barge units transporting petroleum products on the Hudson River.

Response 4: Retrofitting is not the only option available and some vessel owners will choose not to retrofit, but will use portable toilets or discharge outside the zones instead. EPA, however, recognizes that some vessels will retrofit with a Type III MSD to comply with the regulation and that there will be a cost associated with retrofitting. EPA—s original cost estimates were based on equipment costs and did not include installation costs. The individual points out that cost estimates should include installation of the equipment as well as the purchase price of the equipment. During the public hearing on August 9, 1995, an individual stated that the cost to retrofit would be between $10,000 and $75,000 and impact 100 tugboats and 40 to 75 barges (a total of 140 to 175 vessels). Employing the numbers

provided by the industry representative, the most expensive estimates would result in costs of approximately $13 million to the industry. This dollar amount is well below the $100 million annual cost ceiling imposed by Congress in the Unfunded Mandates Reform Act of 1995, which amount can be used as a guide in determining what is, in the view of Congress, a substantial cost.

Comment 5: One person commented that the second alternative outlined in the proposed rulemaking is for vessels with a Type II MSD to simply treat and discharge the sewage outside the no discharge zone. She stated that the fact that EPA and DEC are suggesting that vessels discharge outside the proposed sixty-eight mile no discharge zone is disingenuous.

Response 5: Vessels which discharge treated sewage outside of the drinking water intakes zones are in compliance with the regulation. This rule, promulgated to protect specific drinking water intakes, regulates discharges inside the delineated zones as a means of protecting these intakes and does not attempt to control the discharge or prohibit the discharge of treated sewage outside the zones.

Comment 6: One individual speculated that the entire Hudson River would soon be designated as a no discharge zone. She made this speculation because based on her information and belief, the southern segment of Zone 2, from Esopus Island to Chelsea, New York also has drinking water intake valves with the cumulative capacity of 127 millions gallons per day.

Response 6: To date, no other applications have been made by NYSDEC or discussed with EPA. EPA will act on the facts before it and will not act on mere speculation.

With regard to the Chelsea water intake, that intake is included in Zone 2, which is bounded on the south by the Village of Roseton on the western shore and on the north by the southern end of Houghtaling Island. This zone is classified in 6 NYCRR as two segments, both Class A. The northern segment, which stretches from the southern end of Houghtaling Island (at light #72) to the southern end of Esopus Island (at light #28). The southern segment of Zone 2 stretches from the southern end of Esopus Island (at light #28) to the line formed by Roseton on the west shore and Low Point on the east shore in the vicinity of Chelsea, New York.

Comment 7: An individual questioned the beneficial results of designated no discharge zones if the Hudson River continues to be contaminated by combined sewer outfalls and storm water run-off.

Response 7: The prohibition of the discharge of vessel sewage from MSDs is not the only NYSDEC program to protect the drinking water sources of several communities and to improve the water quality in the Hudson River. There are programs in place to reduce and better manage the discharge of storm water and non-point pollution. Combined sewer overflows are regulated through the NYSDEC State Pollutant Discharge Elimination System permitting program. This final rule is in addition to programs already in place and will serve to enhance the Hudson River water quality.

Comment 8: Another individual representing a shipping operations for a major petroleum company provided a letter that reiterated the comments submitted by the association representing the tow boat industry. See comments and responses 1 through 7.

Comment 9: An individual entered an oral statement into the record at the public hearing held on August 10, 1995. This individual expressed his support of the regulation. He also stated that EPA should consider regulations which parallel the Lake Champlain regulations which require that all vessels with a marine toilet on-board must be equipped with a holding tank.

Response 9: EPA acknowledges this support for the proposal. With regard to mandating installation of holding tanks, EPA does not have the authority to prescribe the method of compliance with the rule. EPA expects to address operational procedures in the implementation plan which is to be developed following promulgation.

Comment 10: This individual also named four Class A water segments (a 30-mile stretch in the Mohawk River, the Seneca River, Cayuga Lake and Seneca Lake) as classified by NYSDEC which are navigable and not among the waters which are no discharge zones. These are waters which he feels need to be designated as no discharge zones. He recognized that EPA could not act on this suggestion unless NYSDEC applied for such designation.

Response 10: No response needed.

Comment 11: Another individual commented during the public hearing on August 10, 1995 that he wondered what part of the Mohawk River served as the southern boundary of Zone 1. He recommended that the Green Island-Troy dam be designated as the landmark for the southern boundary. He also stated his support for the regulation.

Response 11: EPA concurs that the description in the proposed rule is ambiguous and needs clarification. The final rule will clarify that the southern border of Zone 1 is the northernmost confluence of the Mohawk River with the Hudson River; the Troy-Waterford Bridge (126th Street Bridge) will serve as the line delineating the southern boundary of Zone 1. The confluence is not a landmark which is readily apparent to a vessel operator on the water. The Troy-Waterford Bridge (126th Street Bridge) will serve as a landmark which is easily recognized by an operator on the water. EPA considers this clarification to be a minor modification which results in the boundary line being moved approximately 3–4 city blocks to the north of the original boundary. Upon reevaluation of all the boundary delineations, EPA discovered that the description of the southern boundary to Zone 2 may not be easily understood by the public. The final regulation will add the phrase ''in the vicinity of Chelsea.''

Comment 12: A citizens group through its representative stated its support for the regulation in a letter dated August 25, 1995.

Response 12: EPA acknowledges this support for this proposal.

Comment 13: Another representative of a citizens group provided a comment on September 27, 1995, after the public comment period closed. The comment stated support for the proposed rule.

Response 13: No response required.

III. Compliance with Other Acts and Orders

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 6501 *et seq.*, whenever an agency is developing regulations, it must prepare and make available for public comment the impact of the regulations on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required if the head of the agency certifies that the rule will not have significant economic effect on a substantial number of small entities. EPA policy dictates that an Initial Regulatory Flexibility Analysis (IRFA) be prepared if the action will have any effect on any small entity. An

abbreviated IRFA can be prepared depending on the severity of the economic impact and the relevant statute's allowance of alternatives.

The Agency has prepared an IRFA for this final rule. In summary, the IRFA describes that a prohibition of vessel sewage discharge in these two zones will apply to any commercial or recreational vessel with on-board toilet facilities that navigates the Hudson River in the described areas. Only commercial vessels are considered small entities with respect to the Regulatory Flexibility Act. All vessels are already subject to the EPA Marine Sanitation Device Standards at 40 CFR Part 140 and the U.S. Coast Guard Marine Sanitation Device Standards at 33 CFR Part 159. These standards prohibit the overboard discharge of vessel sewage in any freshwater lakes, freshwater reservoirs, or other freshwater impoundments whose inlet or outlet is such as to prevent the ingress or egress by vessel traffic subject to this regulation, or in rivers not capable of being navigated, (40 CFR 140.3). In other waters, including the Hudson River, vessels with on-board toilets shall have U.S. Coast Guard certified marine sanitation devices which either retain sewage or treat sewage to the applicable standards. There are three types of marine sanitation devices certified by the U.S. Coast Guard. Type I and Type II devices are both flow-through devices that treat sewage through maceration and disinfection. Type III devices are holding tanks. Vessel sewage is held in tanks until it can be properly disposed of at a pump-out facility, or it may be discharged untreated outside of U.S. territorial waters. Most Type III devices are equipped with a discharge option, in the form of a Y-valve, which allows the boater to discharge the sewage directly overboard, which is legal only outside of U.S. territorial waters. Since the Hudson River is a U.S. territorial water, the discharge of untreated vessel sewage is prohibited under the existing regulations. Today's rule, therefore, will not change the legal requirements for boats with Type III devices. Consequently, the only small entities affected by this rule will be commercial boats with on-board toilets with a Type I or II marine sanitation device which use these approximately 68 miles of the Hudson River. The rule will affect these vessels by requiring retention and pump-out of their sewage, or discharge outside of the designated zones. This rule requires no reporting or record keeping activity on the part of small entities. Because of the cost associated with purchase of portable Type III devices and use of pump-out facilities, and the option to discharge sewage in accordance with Federal standards outside of the zones, this final rule imposes no significant economic impact on a substantial number of small entities.

As mentioned above, NYSDEC submitted the application for these Drinking Water Intake Zones under Section 312(f) of the Clean Water Act—the section that sets national standards for discharges of vessel sewage and prohibits the states or political subdivision thereof from adopting or enforcing any other regulation or standard for vessel sewage discharges. There are several exceptions to this prohibition. Section 312(f)(4)(B) is one of these exceptions. This section was added to the Clean Water Act in 1977 in order to provide the states with an opportunity to have a more stringent standard (i.e., a prohibition) for drinking water intake areas. The Act states, ''Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone.'' EPA wishes to correct its interpretation of CWA section 312(f)(4)(B), as stated in the preamble of the proposed rule at 60 FR 34942. EPA interprets CWA Section 312(f)(4)(B) to give EPA discretion upon application by a state to establish a drinking water intake zone, both with respect to the timing of EPA action on such an application and the substance of such action. There is no mandatory duty for EPA to act upon such an application, as the CWA specifies no date certain for such action. Further, EPA interprets the requirement for states to apply to EPA for the flexibility to promulgate a drinking water intake zone different from that applied for, if EPA believes that a different zone is warranted.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record keeping burden on the regulated community, as well as minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record keeping requirements affecting 10 or more non-Federal respondents be approved by the Office of Management and Budget. Since today's rule would not establish or modify any information and record keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

D. Unfunded Mandates Reform Act of 1995

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), P.L. 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 Act 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 Act 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.

EPA has determined that this rule does not include a Federal mandate that may result in estimated annualized costs of $100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector. All vessels that are equipped with marine sanitation devices and that navigate the Hudson River are already subject to the EPA Marine Sanitation Device Standards at 40 CFR Part 140 and the U.S. Coast Guard Marine Sanitation Device Standards at 33 CFR Part 159. These standards prohibit the overboard discharge of untreated vessel sewage in the Hudson River and require that vessels with on-board toilets shall have U.S. Coast Guard certified marine sanitation devices which either retain sewage or treat sewage to the applicable standards. There are three types of marine sanitation devices certified by the U.S. Coast Guard. Only those vessels that have either one of the two types of certified flow-through devices will be affected by this rule. Those vessels affected by this rule will either retain and pump out treated sewage or discharge outside of the designated zones. It is therefore estimated that the annualized costs to State, local and

tribal governments in the aggregate, or to the private sector, will not be or exceed $100 million. Thus, today's rule is not subject to the requirements of Section 202 and 205 of the Act. Because the rule contains no regulatory requirements that might significantly or uniquely affect small governments, it also is not subject to the requirements of Section 203 of the Act. Small governments are subject to the same requirements as other entities whose duties result from this rule and they have the same ability as other entities to retain and pump out treated sewage or discharge outside of the designated zones.

List of Subjects in 40 CFR Part 140

Environmental protection, Sewage disposal, Vessels.

Dated: December 5, 1995.

Jeanne M. Fox,

Regional Administrator.

For the reasons set out in the preamble, 40 CFR Part 140 is amended as follows:

PART 140—[AMENDED]

1. The authority citation for Part 140 continues to read as follows:

Authority: Sec. 312, as added Oct. 18, 1972, Pub. L. 92–500, Sec. 2, 86 Stat. 871. Interpret or apply Sec. 312(b)(1), 33 U.S.C. 1322(b)(1).

2. In § 140.4 paragraph (b)(1) is amended by designating the undesignated text after the colon as paragraph (b)(1)(i) and by adding paragraph (b)(1)(ii) to read as follows:

§ 140.4 Complete prohibition.

* * * * *

(b) * * *

(1) * * *

(ii) Two portions of the Hudson River in New York State, the first is bounded by an east-west line through the most northern confluence of the Mohawk River which will be designated by the Troy-Waterford Bridge (126th Street Bridge) on the south and Lock 2 on the north, and the second of which is bounded on the north by the southern end of Houghtaling Island and on the south by a line between the Village of Roseton on the western shore and Low Point on the eastern shore in the vicinity of Chelsea, as described in Items 2 and 3 of 6 NYCRR Part 858.4.

[FR Doc. 95–30406 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 3F4222/R2192; FRL–4989–4]

RIN 2070–AB78

Tebuconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the raw agricultural commodities cherries at 4.0 parts per million (ppm) and peaches (includes nectarines) at 1.0 ppm. Miles, Inc. (now Bayer Corp.) submitted a petition pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) for the regulation to establish these maximum permissible levels for residues of the fungicide.

EFFECTIVE DATE: The effective date of this rule is November 22, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4222/R2192], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled Tolerance Petition Fees and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P. O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of any objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the document number [PP 3F4222/R2192]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6226; e-mail: welch.connie@.epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of August 17, 1995 (60 FR 42885), which announced that Miles, Inc., Agricultural Division (formerly Mobay Corp., Agricultural Chemicals Division, now Bayer Corp.), P.O. Box 4913, Kansas City, MO 64120-0013, had submitted pesticide petition (PP) 3F4222 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for residues of the fungicide tebuconazole (*alpha*-(4-chlorophenyl)ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the raw agricultural commodities cherries at 4.0 parts per million (ppm) and peaches (includes nectarines per 40 CFR 180.1(h)) at 1.0 ppm.

There were no comments received in response to the notice of filing. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 34.8 milligrams per kilogram of body weight per day (mg/kg bw/day) (400 ppm) and a lowest-effect-level (LEL) of 171.7 mg/kg bw/day (1,600 ppm) in males, based on decreased body weight gains and histological changes in the adrenals. For females, the NOEL was 10.8 mg/kg bw/day (100 ppm) and the LEL was 46.5 mg/kg bw/day (400 ppm) based on decreased body weights, decreased body weight gains, and histological changes in the adrenals.

2. A 90-day dog-feeding study with a NOEL of 200 ppm (73.7 mg/kg bw/day in males and 73.4 mg/kg bw/day in females) and an LEL of 1,000 ppm (368.3 mg/kg bw/day in males and 351.8 mg/kg bw/day in females). The LEL was

based on decreases in mean body weights, body weight gains, and food consumption, and an increase in liver *N*-demethylase activity.

3. A 1-year dog feeding study with a NOEL of 1 mg/kg bw/day (40 ppm) and an LEL of 5 mg/kg bw/day (200 ppm), based on lenticular and corneal opacity and hepatic toxicity in either sex (the current Reference Dose was determined based on this study). A subsequent 1-year dog feeding study, using lower doses to further define the NOEL for tebuconazole, defines a systemic LOEL of 150 ppm (based on adrenal effects in both sexes) and a systemic NOEL of 100 ppm.

4. A 2-year rat chronic feeding study defined, a NOEL of 7.4 mg/kg bw/day (100 ppm), and an LEL of 22.8 mg/kg bw/day (300 ppm) based on body weight depression, decreased hemoglobin, hematocrit, MCV and MCHC, and increased liver microsomal enzymes in females. Tebuconazole was not oncogenic at the dose levels tested (0, 100, 300, and 1,000 ppm).

5. A rat oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day based on elevation of absolute and relative liver weights. For developmental toxicity, a NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day was determined, based on delayed ossification of thoracic, cervical and sacral vertebrae, sternum, fore and hind limbs and increase in supernumerary ribs.

6. A rabbit oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day based on depression of body weight gains and food consumption. A developmental NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day were based on increased post-implantation losses, from both early and late resorptions and frank malformations in eight fetuses of five litters.

7. A mouse oral developmental toxicity study with a maternal NOEL of 10 mg/kg bw/day and an LEL of 20 mg/kg bw/day based on a supplementary study indicating reduction in hematocrit and histological changes in liver. A developmental NOEL of 10 mg/kg bw/day and an LEL of 30 mg/kg bw/day based on dose-dependent increases in runts/dam at 30 and 100 mg/kg bw/day.

8. A mouse dermal developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day based on a supplementary study indicating increased liver microsomal enzymes and histological changes in liver. The NOEL for developmental toxicity in the dermal study in the mouse is 1,000 mg/kg bw/day, the highest dose tested (HDT).

9. A two-generation rat reproduction study with a dietary maternal NOEL of 15 mg/kg bw/day (300 ppm) and an LEL of 50 mg/kg bw/day (1,000 ppm) based on depressed body weights, increased spleen hemosiderosis, and decreased liver and kidney weights. A reproductive NOEL of 15 mg/kg bw/day (300 ppm) and an LEL of 50 mg/kg bw/day (1,000 ppm) were based on neonatal birth weight depression.

10. An Ames mutagenesis study in *Salmonella* that showed no mutagenicity with or without metabolic activation.

11. A micronucleus mutagenesis assay study in mice that showed no genotoxicity.

12. A sister chromatid exchange mutagenesis study using CHO cells that was negative at dose levels 4 to 30 *u*g/mL without activation or 15 to 120 *u*g/mL with activation.

13. An unscheduled DNA synthesis (UDS) study that was negative for UDS in rat hepatocytes.

Additionally, a mouse oncogenicity study at dietary levels of 0, 20, 60, and 80 ppm for 21 months did not reveal any oncogenic effect for tebuconazole at any dose tested. Because the maximum-tolerated-dose (MTD) was not reached in this study, the study was classified as supplementary. A followup mouse study at higher doses (0, 500, and 1,500 ppm in the diet), with an MTD at 500 ppm, revealed statistically significant incidences of hepatocellular adenomas and carcinomas in males and carcinomas in females. The initial and followup studies, together with supplementary data submitted by Miles, Inc., were classified as core minimum.

The Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee (CPRC) has classified tebuconazole as a Group C carcinogen (possible human carcinogen). This classification is based on the Agency's ''Guidelines for Carcinogen Risk Assessment'' published in the Federal Register of September 24, 1986 (51 FR 33992). The Agency has chosen to use the reference dose calculations to estimate human dietary risk from tebuconazole residues. The decision supporting classification of tebuconazole as a possible carcinogen (Group C) rather than a probable carcinogen (Group B) was primarily based on the statistically significant increase in the incidence of hepatocellular adenomas, carcinomas, and combined adenomas/carcinomas in both sexes of NMRI mice both by positive trend and pairwise comparison at the HDT, and the structural correlation with at least six other related triazole pesticides that produce liver tumors.

The Reference Dose (RfD) is established at 0.01 mg/kg of body weight (bwt)/day, based on a no-observed-effect level (NOEL) of 1.00 mg/kg bwt/day and an uncertainty factor of 100. The NOEL is based on a 1-year dog-feeding study that demonstrated lenticular and corneal opacity and hepatic toxicity as an endpoint effect. A chronic exposure analysis was performed using tolerance level residues and 100 percent crop-treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups.

The Theoretical Maximum Residue Contribution (TMRC) from the published uses is estimated at 0.000008 mg/kg bwt/day and utilizes 0.075% of the RfD for the general population of the lower 48 States. The proposed use on peaches, cherries, and necatrines contributes 0.000377 mg/kg bwt/day (3.8% of the RfD) which raises the TMRC to 0.000385 mg/kg bwt/day or 3.9% of the RfD.

The TMRC for the most highly exposed subgroup, nonnursing infants (less than 1-year old) is 0.000003 mg/kg bwt/day which represents 0.03% of the RfD. The proposed use on peaches, cherries, and nectarines for nonnursing infants (less than 1-year old) raises the TMRC to 0.002525 or 25.3% of the RfD.

The nature of the residue in cherries, peaches, and nectarines is adequately understood. An adequate analytical method using gas chromatography is available for enforcement purposes.

The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Volume II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry since there are no livestock feed items associated with this action.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [PP 3F4222/R2192] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as (CBI), is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

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

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

Under Executive Order 12866, EPA must judge whether a rule is ''major'' and therefore requires a Regulatory Impact Analysis. This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

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.*

List of Subjects in 40 CFR Part 180

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

Dated: November 22, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.474, by amending the table therein by adding and alphabetically inserting new entries for cherries and peaches (includes nectarines), to read as follows:

§ 180.474 Tebuconazle (alpha-[2-(4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole); tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Cherries	4.0
* * * * *	
Peaches (includes necatrines)	1.0
* * * * *	

[FR Doc. 95–29986 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5E4540/R2186; FRL–4985–7]

RIN 2070–AB78

α-Alkyl(C_{21}-C_{71})-ω-Hydroxypoly (Oxyethylene); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document exempts α-alkyl(C_{21}-C_{71})-ω-hydroxypoly (oxyethylene) from the requirement of a tolerance when used at levels not to exceed 10% as a wetting agent or granule coating in pesticide formulations. Petrolite Corp. requested this regulation under the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective December 13, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5E4540/R2186], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2,

1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 5E4540/R2186]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8375; e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 29, 1995 (60 FR 50514), EPA issued a proposed rule that gave notice that the Petrolite Corp., Polymers Division, 6910 East 14th St., Tulsa, OK 74112, had submitted pesticide petition (PP) 5E4540 to EPA requesting that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for α-alkyl (C_{21}-C_{71})-ω-hydroxypoly (oxyethylene) when used at levels not to exceed 10% as a wetting agent or granule coating in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceouse earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

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

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

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 5E4540/R2186] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 5E4540/R2186], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

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

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

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

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

Pursuant to the terms of the Executive Order, EPA has determined that this

rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: November 3, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient entry, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredient	Limits	Uses
* * * * * * *		
α-Alkyl (C_{21}-C_{71})-ω-hydroxypoly (oxyethylene) in which the poly(oxyethylene) content is 2 to 91 moles and molecular weight range from 390 to 5,000..	Not to exceed 10%	Wetting agent or granule coating
* * * * * * *		

* * * * *

[FR Doc. 95–29988 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5E4464/R2185; FRL–4985–5]

RIN 2070–AB78

Linuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document increases the established tolerance for residues of the herbicide linuron in or on the raw agricultural commodity asparagus. The regulation to increase the maximum permissible level for residues of linuron was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4) pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective December 13, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5E4464/R2185], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 5E4464/R2185]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 29, 1995 (60 FR 50510), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a pesticide petition (PP 5E4464) to EPA on behalf of the IR-4 Agricultural Experiment Stations of California, Indiana, Michigan, and New Jersey. The petition requested that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), amend 40 CFR 180.184 by increasing the established tolerance for residues of the herbicide linuron [3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea] in or on the raw agricultural commodity asparagus from 3.0 parts per million (ppm) to 7.0 ppm. IR-4 proposed the increased tolerance for asparagus in response to the reregistration eligibility review and decisions on the pesticide case linuron, which was completed by EPA on April 28, 1995. The Reregistration Eligibility Decision (RED) requires that the established tolerance for linuron on asparagus be increased to 7.0 ppm.

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

The data submitted with the proposal and other relevant material have been evaluated and discussed in the

proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 5E4464/R2185] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 5E4464/R2185], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

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

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

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

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: November 21, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.184, paragraph (a) is amended in the table therein by revising the entry for asparagus, to read as follows:

§ 180.184 Linuron; tolerances for residues.

* * * * *

(a) * * *

Commodity	Parts per million
Asparagus	7.0
* * * * *	

* * * * *

[FR Doc. 95–29989 Filed 12–12–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5F4467/R2193; FRL–4990–8]

RIN 2070–AB78

Neem Oil; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of clarified hydrophobic extract of neem oil when used according to good agricultural practice as a broad-spectrum fungicide/insecticide/miticide on all greenhouse and terrestrial food crops. A request for an exemption from the requirement of a tolerance was submitted by W.R. Grace Co.-Conn. This regulation eliminates the need to establish a maximum

permissible level for residues of this broad-spectrum fungicide/insecticide/miticide on all greenhouse and terrestrial food crops when used according to good agricultural practice.

EFFECTIVE DATE: This rule becomes effective on December 13, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5F4467/R2193], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 5F4467/R2193]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Paul Zubkoff, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th Floor, CS #1, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8694; e-mail: zubkoff.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of September 29, 1995 (60 FR 50582), which announced that W.R. Grace Co.-Conn., 7379 Route 32, Columbia, MD 21044, had submitted a pesticide petition (PP) 5F4467 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish an exemption from the requirement of a tolerance for the use of clarified hydrophobic extract of neem oil on all greenhouse and terrestrial food crops when used according to good agricultural practice. There were no adverse comments or requests for referral to an advisory committee received in response to the notice of filing of PP 5F4467.

Existing Food Clearances

The clarified hydrophobic extract is prepared from the crude botanical extract of the seed kernels of the neem tree, *Azadiracta indica*. The constituents of clarified hydrophobic extract of neem oil are long-chain fatty acids and glycerides. Long-chain fatty acids and glycerides are Generally Recognized As Safe (GRAS) for use in foods by the U.S. Food and Drug Administration (FDA). Under title 21 of the Code of Federal Regulations (CFR) (21 CFR 172.860), oleic acid derived from tall oil fatty acids (21 CFR 172.862), and linoleic acid (21 CFR 184.1065), glyceryl monooleate (21 CFR 184.1323), glyceryl monostearate (21 CFR 184.1324), and mono- and diglycerides (21 CFR 184.1505) are considered as GRAS.

Natural Occurrence

Long-chain fatty acids and glycerides are readily synthesized by most forms of life and are common constituents of human, avian, and other mammalian diets. In most soil and aquatic environments, these constituents of clarified hydrophobic extract of neem oil would be readily metabolized by endemic microbial populations and should not accumulate. Because clarified hydrophobic extract of neem oil is a naturally occurring compound which displays a nontoxic mode of action to the target pest, the Agency classified the active ingredient as a biochemical pesticide.

Toxicology Assessment

All studies submitted for acute mammalian toxicology support the registration of the technical manufacturing product (Reg. No. 11688-8) and the end-use product for use on all terrestrial and greenhouse food crops. Summarized below are data and information for the registration of clarified hydrophobic extract of neem oil. EPA has examined the acute mammalian toxicology data related to human health submitted for clarified hydrophobic extract of neem oil. The mammalian toxicology data for clarified hydrophobic extract of neem oil indicate low acute toxicity following all routes of exposure. With the exceptions of the primary eye irritation study (toxicity category III) and the acute dermal study (toxicity category III), all other acute studies (oral, dermal irritation, and inhalation toxicity) were classified toxicity category IV. Based on the results from the sensitization test (Buehler), the clarified hydrophobic extract of neem oil is considered to be a mild (minimal) contact sensitizer. In addition, clarified hydrophobic extract of neem oil was shown not to be cytotoxic or mutagenic via the Ames test (Salmonella/reverse mutation assay). Further genotoxicity tests to address structural chromosomal aberrations and forward mutations have been waived based on the known composition (fatty acids and glycerides) and GRAS status of the technical manufacturing product (clarified hydrophobic extract of neem oil, the lack of mammalian and avian toxicity, and the negative results observed in the Ames tests). Consequently, at levels used on plants, human exposure is expected to be negligible and acute toxicity from such exposure is not expected.

Tolerance exemptions are usually, in part, based on the results of subchronic (90-day) feeding and developmental toxicity studies submitted to support registration. However, these studies were waived for clarified hydrophobic extract of neem oil because of the low demonstrated acute toxicity, the GRAS nature of the naturally occurring components (saturated fatty acids and glycerides) of the active pesticidal ingredient, and the negligible exposure to humans and the environment owing to the low use rates. Such use rates would not significantly increase dietary intake over routine exposure from general consumption of fatty acids in foods. Moreover, the Agency knows of no reported cases of adverse effects from exposure to low amounts of fatty acids.

Residue Chemistry Data

Residue chemistry data are usually required for biochemical pesticides only if the submitted mammalian toxicology studies indicate that additional Tier II or Tier III toxicology data would be required as specified in 40 CFR 158.165(e). The submitted toxicology data for this use indicate that the product is of low mammalian toxicity; it has naturally occurring components in many food plants and, therefore, it is

a component of the normal human diet. Therefore, Tier II or Tier III data are not required. Based on the information considered, the Agency concludes that the establishment of a tolerance for the active ingredient, clarified hydrophobic extract of neem oil, is not necessary to protect the public health from food residues expected from the use of clarified hydrophobic extract of neem oil. Since this rule establishes an exemption from the requirement of a tolerance, the Agency has concluded that an analytical method is not required for enforcement purposes for clarified hydrophobic extract of neem oil.

Metabolism

Clarified hydrophobic extract of neem oil consists of naturally occurring fatty acids and glycerides that are considered GRAS by the FDA. The oxidative degradation of fatty acids is a central metabolic pathway in animals, plants, and microbes. Glycerides are degraded into glycerol and fatty acids of varying chain lengths. Glycerol is readily metabolized or used as an energy source or as a precursor to other carbohydrates, lipids, or amino acids. Fatty acids are metabolized into two-carbon fragments through a sequence of enzyme-catalyzed reactions. The metabolic products are then incorporated into fats, carbohydrates, and amino acids.

Conclusion

Based on the information considered, the Agency concludes that establishment of a tolerance for clarified hydrophobic extract of neem oil (Reg. No. 11688-8) is not necessary to protect the public health. Therefore, the exemption from tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rule-making. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, a summary of any evidence relied upon by the objector as well as the other materials required by 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 5F4467/R2193] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 5F4467/R2193], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

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

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: November 30, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In subpart D, by adding new § 180.1161, to read as follows:

§ 180.1161 Clarified hydrophobic extract of neem oil; exemption from the requirement of a tolerance.

Clarified hydrophobic extract of neem oil (Reg. No. 11688-8) is exempt from the requirement of a tolerance on all raw agricultural commodities when used as a botanical fungicide/insecticide/miticide.

[FR Doc. 95–29991 Filed 12–12–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 8E3574/R2165; FRL–4973–5]

RIN 2070–AB78

Terbufos; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document extends the time-limited tolerance for combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity (RAC) green coffee beans for an additional 2 years. American Cyanamid Co. submitted a petition under the Federal Food, Drug and Cosmetic Act (FFDCA) requesting the regulation to establish a maximum permissible level for combined residues of the insecticide/nematicide in or on the commodity.

EFFECTIVE DATE: This regulation becomes effective December 13, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 8E3574/R2165], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 8E3574/R 2165]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600; e-mail: forrest.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 2, 1995 (60 FR 39299), EPA issued a proposed rule (FRL-4963-5) that gave notice that the American Cyanamid Co. had submitted data and a request under the FFDCA that a time-limited tolerance for residues of the insecticide/nematicide terbufos on coffee beans be changed to permanent status. The Agency proposed an extension of the time-limited tolerance to allow it to complete its in-depth reassessment of the current established tolerances for terbufos.

The following comments were received from the petitioner, American Cyanamid.

1. American Cyanamid believes that since the acceptance of the new rat metabolism study fulfills the condition of the time-limited coffee bean tolerance, it is sufficient to establish the regulation as permanent, regardless of any on-going analysis of tolerances for reregistration purposes.

2. Additionally, American Cyanamid believes that ''the toxicological end-point of a no-observable-effect level (NOEL) based upon plasma cholinesterase (ChE) inhibition, as mentioned in the proposed rule, is of equivocal value when used in risk assesments'' and that ''A NOEL based upon alternative tox endpoints such as red blood cell ChE inhibition, brain ChE inhibition, or clinical signs would be more appropriately used to establish reference dose for regulatory purposes.''

American Cyanamid has requested a reevaluation of plasma cholinesterase as a suitable endpoint.

The Agency acknowledges that the condition upon which the initial time-limited tolerance was based, i.e., the lack of an acceptable guideline rat metabolism study, has now been fulfilled.

However, as described in the proposed rule referenced above, the Agency currently has concern over the potential acute dietary risk posed by the current established tolerances based on the estimated margins of exposure (MOE). In light of this concern, the Agency believes that it is prudent to limit the period of time in which the coffee bean tolerance is in effect pending the Agency reassessment of the tolerances.

The Agency will take American Cyanamid's comments relative to the toxicological endpoint into consideration in its reassessment of the established tolerances.

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

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

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

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

A record has been established for this rulemaking under docket number [PP 8E3574/R2165] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 8E3574/R2165], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

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

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

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: November 28, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.352, by revising paragraph (b), to read as follows:

§ 180.352 Terbufos; tolerances for residues.

* * * * *

(b) A time-limited tolerance to expire December 15, 1997 is established for combined residues of the insecticide/nematicide terbufos (*S*-[[1,1-dimethyl)thio] methyl] *O,O*-diethyl phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the following raw agricultural commodity:

Commodity	Parts per million
Coffee beans, green[1]	0.05

[1]There are no U.S. registrations as of August 2, 1995, for the use of terbufos on the growing crop, coffee.

[FR Doc. 95–29990 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5F4584/R2190; FRL–4988–4]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes time-limited tolerances for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine (also known as imidacloprid) and its metabolites in or on barley forage, straw, and grain with an expiration date of 3 years after its effective date. Gustafson, Inc., submitted a petition under the Federal Food, Drug and Cosmetic Act (FFDCA) that requested this regulation to establish these maximum permissible levels for residues of the insecticide.

EFFECTIVE DATES: This effective date of this regulation is November 28, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5F4584/R2190], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

Comments and data may also be submitted electronically by sending

electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 5F4584/R2190]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386; e-mail: edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of November 2, 1994 (59 FR 54907), which announced that Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, had submitted a pesticide petition (PP 4F4337) to amend 40 CFR part 180 by establishing a regulation to permit residues of the insecticide 1-[6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine in or on the raw agricultural commodities wheat, forage at 7.0 ppm, wheat, straw at 0.3 ppm, wheat, grain at 0.1 ppm; barley, forage at 1.2 ppm, barley, straw at 0.2 ppm, and barley, grain at 0.1 ppm; sorghum, forage at 0.2 ppm, sorghum, straw at 0.1 ppm, and sorghum, grain at 0.1 ppm; and beet, sugar (roots) at 0.1 pm and beets, sugar (tops) at 0.1 ppm. Gustafson, Inc., later withdrew the proposed sorghum tolerances and resubmitted them in a separate petition. On June 15, 1995, Gustafson amended this petition to request a feed additive tolerance of 0.5 ppm on sugarbeets and molasses. (See the Federal Register of June 15, 1995 (60 FR 31467)).

On August 14, 1995, Gustafson submitted a revised Section F deleting barley from this petition and stating it would be resubmitted in a separate petition. EPA issued a notice in the Federal Register of October 25, 1995 (60 FR 54691), which announced that Gustasfson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, had submitted a tolerance petition for premitting residues of insecticide imidacloprid in or the raw agriculture commodites barley, forage at 1.5 ppm, barley, straw at 0.2 ppm, and barley, grain at 0.05 ppm.

These tolerances are being established as 3-year time-limited tolerances to enable Gustafson to complete additional residue trials and present a final report. On June 2, 1994, the Agency issued a guidance document on crop residue trials. Among other things, this document provided guidance on the number and location of domestic crop field trials for establishment of pesticide residue trials. Based on this guidance document, the Agency determined that additional field trials are needed for barley. However, the Agency does not believe that this data will significantly change its risk assessment.

All relevant materials have been evaluated. The toxicology data considered in support of the tolerance include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt); rat and rabbit teratology studies were negative at doses up to 30 mg/kg/ bwt and 24 mg/kg/bwt, respectively.

2. A 2-year rat feeding/carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in males and 7.6 mg/kg/bwt in females) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm.

3. A 1-year dog-feeding study with a NOEL of 1,250 ppm (41/mg/kg/bwt).

4. A 2-year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm (208/mg/kg/day).

There is no cancer risk associated with exposure to this chemical. Imidacloprid has been classified under ''Group E'' (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RFD) Committee.

The reference dose (RfD) based on the 2-year rat feeding/ carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainity factor is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from published uses is .000817 mg/kg/bwt/day utilizing 14.377% of the RFD. The proposed tolerance will not significantly increase the TMRC. For exposure of the most highly exposured subgroups in the population, children (ages 1 to 6 years), the TMRC for the published and proposed tolerances is 0.016934 mg/kg/day. This is equal to 29.709% of the RfD. Dietary exposure from the existing uses and proposed use will not exceed the reference dose for any subpopulation (including infants and children) based on the information available from EPA's Dietary Risk Evaluation System.

The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridiyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. Imidacloprid and its metabolites are stable in the commodities when frozen for at least 24 months. There are adequate amounts of geographically representative crop field trial data to show that combined residues of imidacloprid and its metabolites, all calculated as imidacloprid, will not exceed the proposed tolerance when use as directed.

There are currently no actions pending against the continued registration of this chemical.

The pesticide is considered useful for the purposes for which the tolerance is sought and capable of achieving the intended physical or technical effect. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A

request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 5F4584/R2190] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

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

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

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: November 28, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.472, paragraph (e) is amended by redesignating the existing text as paragraph (e)(1), by revising the table therein, and by adding paragraph (e)(2) to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl) methyl]-N-2-imidazolidinimine; tolerances for residues.

* * * * *

(e) * * *

Commodity	Parts per million	Expiration date
Barley, forage ...	1.5	Nov. 28, 1998
Barley, grain	0.05	Do.
Barley, straw	0.2	Do.
Beets, sugar (roots)	0.05	August 24, 1998
Beets, sugar (tops)	0.1	Do.
Wheat, forage ...	7.0	Do.
Wheat, grain	0.05	Do.
Wheat, straw	0.3	Do.

(2) Residues in the commodities listed in paragraph (e)(1) of this section not in excess of the established tolerances resulting from the uses described in this paragraph (e) remaining after expiration of the time-limited tolerances will not be considered to be actionable if the insecticide is applied during the term of and in accordance with the provisions of the above regulation in this paragraph (e).

[FR Doc. 95–29987 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 1E3979/R2187; FRL–4985–8]

RIN 2070–AB78

Clopyralid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the herbicide clopyralid in or on the raw agricultural commodity asparagus. The regulation to establish a maximum permissible level for residues of the herbicide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4) pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective December 13, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 1E3979/R2187], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public

Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 1E3979/R2187]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 29, 1995 (60 FR 50512), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a pesticide petition (PP 1E3979) to EPA on behalf of the IR-4 Agricultural Experiment Stations of Arkansas, California, Maryland, Michigan, Minnesota, and Washington. The petition requests that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), amend 40 CFR 180.431 by establishing a tolerance for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the raw agricultural commodity asparagus at 1.0 part per million (ppm).

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

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

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 1E3979/R2187] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 1E3979/R2187], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

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

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

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

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance

requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: November 21, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.431 is amended in paragraph (a) in the table therein by adding and alphabetically inserting an entry for the commodity asparagus, to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

* * * * *

(a) * * *

Commodity	Parts per million
Asparagus	1.0

* * * * *

* * * * *

[FR Doc. 95–30113 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 2F4063/R2183; FRL–4984–7]

RIN 2070–AB78

Metalaxyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on grass forage at 10.0 parts per million (ppm) and grass hay at 25.0 ppm. Ciba-Geigy Corp. submitted a petition pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) for the regulation to establish a maximum permissible level for residues of the fungicide.

EFFECTIVE DATE: The effective date of this regulation is October 26, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 2F4063/R2183], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled Tolerance Petition Fees and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P. O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of any objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the document number [PP 2F4063/R2183]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-6226; e-mail: welch.connie@.epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice of filing, published in the Federal Register of June 15, 1995 (60 FR 31465), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition, PP 2F4063, to EPA requesting that the Administrator, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), establish tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on grass forage at 10.0 parts per million (ppm) and grass hay at 25.0 ppm.

There were no comments received in response to the notice of filing. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 17.5 milligrams per kilogram (mg/kg) body weight (bwt)/day (250 parts per million (ppm)).

2. A developmental toxicity study in rats with a NOEL of 50 mg/kg bwt for developmental toxicity and maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg bwt highest dose tested (HDT). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl was negative in bacterial and mammalian gene mutation. The fungicide also did not increase the frequency of reverse mutations in yeast. Metalaxyl was negative in an *in vivo* cytogenetics assay (hamsters) and a dominant-lethal assay (mice).

Metalaxyl did not increase unscheduled DNA synthesis in rat primary hepatocytes or in human fibroblasts. These results suggest that metalaxyl is not genotoxic.

5. A three-generation rat reproduction study with a NOEL of 63 mg/kg bwt/day (1,250 ppm).

6. A 6-month dog feeding study with a NOEL of 6.3 mg/kg bwt/day (250 ppm). Effects found at 25 mg/kg were increased serum alkaline phosphatase activity and increased liver weight and liver-to-brain weight ratios without histological changes.

7. A 2-year rat chronic feeding/carcinogenicity study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 13 mg/kg bwt/day (250 ppm). The lowest-observed-effect level (LOEL) is 63 mg/kg/day based upon slight increases in liver weight to body weight ratios and periacinar vacuolation of hepatocytes.

8. A 2-year mouse oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 190 mg/kg/day.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver and the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to the Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the carcinogenicity studies and related material was performed by the Peer Review Committee of the Toxicology Branch (TB) of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Perifollicular cell adenomas in the thyroid of female rats; (2) adrenal medullary tumors (pheochromocytomas) in male rats; (3) liver tumors in male mice; and (4) whether the HDT (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum-tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group concluded that the increased incidences of thyroid tumors in females of treated groups were not compound related. This conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no increase in hyperplastic changes; (3) there was no dose-response relationship; and (4) the two reevaluations of the microscopic slides by the pathologists at EPL and TB in OPP further did not confirm any apparent effects observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely, pheochromocytomas, in the male rat was also reassessed by both CAG and the Peer Review Committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidence of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissue slides reported an elevated increase of tumors in some treatment groups; however, these increases were not evident after a reevaluation of themicroscopic slides was performed by an independent pathologist at EPL and by the reading of a CAG pathologist. The Peer Review Committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence ofliver tumors in the mouse.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based upon compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indication of compound-related carcinogenic effects was noted at any of the treatment doses, sexes, or species.

The reference dose (RfD), anticipated residue contribution (ARC), and food additive regulations are covered by existing tolerances.

The nature of the residue is adequately understood. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Volume II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5232.

There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [PP 2F4063/R2183] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as (CBI), is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2,

1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

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

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

Under Executive Order 12866, EPA must judge whether a rule is ''major'' and therefore requires a Regulatory Impact Analysis.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: October 26, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.408, paragraph (a) is amended by revising the introductory text and by amending the table therein by revising the entry for grasses, forage and by adding and alphabetically inserting a new entry for grass, hay, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) Tolerances are established for the combined residues of the fungicide metalaxyl [*N*-(2,6-dmethylphyenyl)-*N*-(methoxyacetyl) alanine methylester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on the following raw agricultural commodities:

Commodity	Parts per million
* * * * *	
Grass, forage	10.0
Grass, hay	25.0
* * * * *	

* * * * *

[FR Doc. 95–30116 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 8F3607/R2184; FRL–4985–3]

RIN 2070–AB78

Glufosinate Ammonium; Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited tolerances for residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolite, 3-methylphosphinico-propionic acid, in or on various raw agricultural commodities (RAC's). AgrEvo USA Co. submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) requesting the tolerances. The document also conforms the chemical expression for the herbicide to Chemical Abstract nomenclature.

EFFECTIVE DATE: This regulation becomes effective December 13, 1995. The tolerances will expire on July 13, 1999.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 8F3607/R2184], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 8F3607/R2184]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 26, 1995 (60 FR 38334), EPA issued a notice announcing that AgrEvo USA Co., Little Falls One, 2711 Centerville Rd., Wilmington, DE 19808, had submitted an amendment to PP 8F3607 (published at 53 FR 18897, May 25, 1988) proposing to amend 40 CFR 180.473 by adding tolerances for residues of glufosinate ammonium and its metabolite, 3-methylphosphinico-propionic acid, in or on the following raw agricultural commodities: Tree nuts group at 0.10 ppm, almond hulls at 0.50 ppm, cattle fat at 0.05 ppm, cattle meat at 0.05 ppm, cattle meat byproducts (mbyp) at 0.10 ppm, eggs at 0.05 ppm,

goat fat at 0.05 ppm, goat meat at 0.05 ppm, goat mbyp at 0.10 ppm, hog fat at 0.05 ppm, hog meat at 0.05 ppm, hog mbyp at 0.10 ppm, horse fat at 0.05 ppm, horse meat at 0.05 ppm, horse mbyp at 0.10 ppm, milk at 0.02 ppm, poultry fat at 0.05 ppm, poultry meat at 0.05 ppm, poultry mbyp at 0.10 ppm, sheep fat at 0.05 ppm, sheep meat at 0.05 ppm, and sheep mbyp at 0.10 ppm. Almonds are not considered a poultry feed commodity under present EPA Guidelines, and AgrEvo USA Co. has requested that the proposed tolerances for secondary residues in eggs, poultry fat, meat, and meat byproducts be deleted from the tolerances requested. This document also amends 40 CFR 180.473 to change the chemical expression for the herbicide to that given above in conformity with Chemical Abstract nomenclature.

The chemical expression for glufosinate ammonium has been changed to follow that given by the Chemical Abstracts Index Name for this chemical. This action is taken in concert with the final rule for Premanufacture Notification; Revisions of Premanufacture Notification Regulations, published in the Federal Register of March 29, 1995 (60 FR 16298-16310). The proposed analytical method for determining residues is high-pressure liquid chromatography.

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

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. A battery of acute toxicity studies placing technical glufosinate-ammonium in Toxicity Categories II and III.

2. A 90-day feeding study in rats at dietary intakes of 0, 0.52, 4.1, 32, or 263 mg/kg/day with a no-observed-effect level (NOEL) of 4.1 mg/kg/day. The lowest-observed-effect level (LOEL) was established at 32 mg/kg/day based on increased absolute and relative kidney weights.

3. A 90-day feeding study in mice at dietary intakes of 0, 16.6, 67.1, or 278 mg/kg/day with a NOEL of 16.6 mg/kg/day and an LOEL of 67.1 mg/kg/day based on increased absolute and relative liver weights (both sexes) and an increase in serum potassium levels (males).

4. Three teratology studies in rats at doses from 0.5 to 250 mg/kg/day with no teratogenic effects occurring up to and including 250 mg/kg/day. A NOEL for developmental toxicity was 2.24 mg/kg/day, based upon an increase in the incidence of dilated renal pelvis with hydroureter in the fetuses at 10 mg/kg/day. The maternal NOEL was also 2.24 mg/kg/day.

5. A teratology study in rabbits at doses of 0, 2, 6.3, or 20 mg/kg/day with no teratogenic effects occurring up to and including 20 mg/kg/day, and a maternal NOEL of 6.3 mg/kg/day and a developmental NOEL of 20 mg/kg/day, the highest dose tested.

6. A two-generation reproduction study in rats at dietary concentrations of 0, 40, 120, or 360 ppm with an NOEL for reproductive effects at 120 ppm (equivalent to 12 mg/kg/day) based upon reduced number of pups in the high-dose group. The NOEL for parental toxicity was also 120 ppm based upon increased kidney weights in the high-dose group.

7. A 12-month feeding study in dogs at doses of 0, 2, 5, or 8.5 mg/kg/day. The NOEL was 5.0 mg/kg/day based upon the death of one male and one female dog at 8.5 mg/kg/day with no other treatment-related toxicity.

8. A mouse carcinogenicity study at doses of 0, 2.8, 10.8, or 22.7 mg/kg/day in males and 0, 4.2, 16.2, or 64.0 mg/kg/day in females for 104 weeks with no carcinogenic effects observed under the conditions of the study up to and including 64 mg/kg/day and a systemic NOEL of 10.8 and 16.2 for males and females, respectively, based on the dose-related increase in mortality.

9. A chronic feeding/carcinogenicity study in rats at dietary doses of 0, 2.5, 8.8, or 31.5 mg/kg/day (males) and 0, 2.4, 8.2, or 28.7 mg/kg/day (females) with an NOEL of 2.1 mg/kg/day for systemic effects based on an increase in mortality rate in females at the two higher doses. There were no treatment-related carcinogenic effects at any dose level.

10. Acceptable studies on gene mutation (*Salmonella*, *E coli*., and mouse lymphoma assays), structural chromosomal aberration (*in vivo* micronucleus assay in mice), and other genotoxic effects (unscheduled DNA synthesis assay with rat hepatocytes) yielded negative results.

11. Pharmacokinetic and metabolism studies in rats indicated that approximately 80 to 90 percent of the orally administered dose of glufosinate ammonium remained unabsorbed and was eliminated in the feces. Approximately 10 to 15 percent was eliminated in the urine. The major metabolic pathway is oxidative deamination yielding the metabolite, 3-methyl-phospinico propionic acid.

The chronic analysis used a Reference Dose (RfD) of 0.02 mg/kg/ body weight day, based on an NOEL of 2.1 mg/kg/day and an uncertainty factor of 100. The NOEL is based on a 2-year rat feeding study that demonstrated increased absolute and relative kidney weight in males as an endpoint effect.

Using tolerance-level residues and assumptions that 100 percent of every crop for which glufosinate-ammonium has a proposed use is treated, the total Theoretical Maximum Residue Contribution (TMRC) for the general population and the highest exposed subgroup in DRES are as follows (as percents of RFD): General population, 0.627 percent; nonnursing infants less than 1-year-old, 3.7 percent.

A data gap currently exists for a rat carcinogenicity study. All tolerances are time-limited because of this gap. The time limitation allows for development and review of the data.

The analysis for glufosinate-ammonium using tolerance level residues suggests that the proposed uses on apples, grapes, and tree nut group will not cause exposure to exceed the levels at which the Agency believes there is an appreciable risk. All DRES subgroups are below 100 of the RfD for chronic effects.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residues is adequately understood for the purpose of establishing these tolerances. Adequate analytical methodology (gas chromatography with flame photometric detection of phosphorus) is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5937.

Based on the information cited above, the Agency has determined that the establishment of the time-limited tolerances by amending 40 CFR 180.473 will protect the public health; therefore, the time-limited tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed

with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 8F3607/R2184] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 8F3607/R2184], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

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

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

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

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: November 30, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.473, by revising paragraph (a), to read as follows:

§ 180.473 Glufosinate ammonium; tolerances for residues.

(a)(1) Time-limited tolerances are established for residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolite, 3-methylphosphinico-propionic acid, in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration date
Almond hulls	0.50	July 13, 1999
Apples	0.05	Do.
Cattle, fat	0.05	Do.
Cattle, meat	0.05	Do.
Cattle, mbyp	0.10	Do.
Goats, fat	0.05	Do.
Goats, meat	0.05	Do.
Goats, mbyp	0.10	Do.
Grapes	0.05	Do.
Hogs, fat	0.05	Do.
Hogs, meat	0.05	Do.
Hogs, mbyp	0.10	Do.
Horses, fat	0.05	Do.
Horses, meat	0.05	Do.
Horses, mbyp ...	0.10	Do.
Milk	0.02	Do.
Sheep, fat	0.05	Do.
Sheep, meat	0.05	Do.
Sheep, mbyp	0.10	Do.
Tree nuts group	0.1	Do.

(2) Residues in these commodities not in excess of the established tolerances resulting from the uses described in paragraph (a)(1) of this section remaining after expiration of the time-limited tolerance will not be considered to be actionable if the herbicide is applied during the term of and in accordance with the provisions of paragraph (a)(1) of this section.

* * * * *

[FR Doc. 95–30117 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

45 CFR Part 1180

Institute of Museum Services: General Operating Support, Conservation Project Support, Museum Assessment Program, Conservation Assessment Program

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final rule.

SUMMARY: The Institute of Museum Services amends regulations relating to its General Operating Support, Conservation Project Support grant programs, the Museum Assessment Program and the Conservation Assessment Program. The regulations as amended implement the Museum Services Act. The amendments make technical and other changes in the eligibility conditions, use of funds, amount of awards, reporting requirements and remove unneeded provisions.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Program Director, Telephone: (202) 606–8539.

SUPPLEMENTARY INFORMATION:

General Background

The Museum Services Act (''the Act'') which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended in 1980, 1982, 1984, 1985, 1988, 1990, 1991, 1993 and 1994). The purpose of the Act is stated in section 202 as follows:

It is the purpose of the Museum Services Act to encourage and assist museums in their educational role in conjunction with formal systems of elementary, secondary, and post secondary education and with programs of non-formal education for all age groups: to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museums Services Board and Director.

The Act provides that the National Museum Services Board shall consist of fifteen members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from the appointed members. Members are broadly representative of various museum disciplines, including those relating to science, history, technology, art, zoos, and botanical gardens; of the curatorial, educational, and cultural resources of the United States; and of the general public. The Board has the responsibility for establishing the general policies of the Institute. The Director is authorized, subject to the policy direction of the Board, to make grants under the Act to museums.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). Pub. L 101–512, Nov. 5, 1990. The Act lists a number of illustrative activities for which grants may be made, including assisting museums to improve their operations and conservation.

The Need for the Amendment

The amendments to the regulations are intended to make the programs more responsive to the needs of applicants by increasing the maximum amount of conservation awards, by distributing general operating awards more broadly among high quality museums and by assisting in program evaluation.

Proposed Amendments and Public Comment

A notice of proposed rulemaking was published March 6, 1995, 60 Federal Register, 12186–12188. The preamble to the notice of proposed rulemaking contained an amendment-by-amendment analysis explaining the purpose of each amendment. The discussion is not repeated here. Public comment was invited on the proposed amendments to determine the necessity and appropriateness of the proposed changes.

General Operating Support

The Institute received 260 comments regarding § 1180.5 which would establish eligibility criteria for the General Operating Support program making museums that have not received two consecutive GOS awards eligible to apply and making museums that have received two consecutive GOS awards ineligible to apply in the immediately succeeding cycle. This criteria will be effective beginning with the 1996 competition. Therefore, the deadline for the fiscal year 2000 competition would be the first deadline for which this criteria would affect an institution's eligibility to compete for a General Operating Support award.

Of the commenters, 222 favored the proposed rule. Those who supported the change expressed the belief that many deserving, worthy museums compete for GOS awards without success. These commenters see broadening the distribution to make awards to more museums a highly desirable outcome of such a change. Supporters said this change would prevent museums from becoming dependent on the award. Some supporters believe, also, that the current status allows the ''rich to get richer'' and that receiving the award creates a perpetuating cycle of future awards. Some supporters said this change would help small museums. Others said it is a better way to broaden distribution of GOS funds than further reducing the amount of award.

Commenters opposing the change, said that it was inconsistent with the main role of GOS to reward and recognize the highest quality museums.

The Institute agrees that the issue of recognizing the high quality of museum operations is important. However, the Institute believes that many very high quality museums currently compete and do not receive awards. The Institute believes the broader distribution resulting from implementing the proposed criteria will not negatively affect recognition of high quality museums. The Institute further believes the change will encourage museums in aspiring to higher levels of operation in order to attain the award, as they will perceive that chances for receiving the award are greater.

Some commenters who opposed this change believe it is detrimental to small museums. The Institute believes the procedures established for the General Operating Support program ensure an equitable representation of small museums in the awards. The Institute does not anticipate that small museums will be negatively affected by this change. The Institute believes the change is equitable for museums of all sizes and types and applies equally to every institution.

Some commenters stated that this change is premature in relation to the other recent changes in GOS that reduce the maximum amount of the award and change to a two-year grant period. The Institute has received positive reaction to the previous changes in the grant period and the amount of the award. The Institute believes that this change reinforces the efforts by the Institute to broaden the distribution of these funds as was intended with the previous changes, and, therefore, is an appropriate action.

Conservation Project Support

The institute received five comments regarding §1180.20, which would

increase the maximum amount of an award generally made for the Conservation Project Support program. Four commenters supported the change by indicating that this change is an appropriate response to rising costs for conservation activities. The Institute agrees that the change is appropriate. The commenter opposing the change believes that research for species survival projects will be neglected by zoos, who may choose to use the larger amount for changing in-house environments. The Institute has no evidence that zoos will make this choice. Historically, the projects for species survival have been more numerous that any other type of project submitted by zoos.

Other

No comments were received regarding removing references to ''Special Project'' grants from the regulations or regarding the requirement of final reports on Museum Assessment Program grants or Conservation Assessment Program grants.

The Institute has considered all comments and has again reviewed the necessity and appropriateness of the proposed changes. In light of this consideration and review, following consultation with the National Museum Services Board, the Institute has determined that the amendments to regulations should be adopted as proposed in the March 6, 1995 notice. The final regulations set forth below reflect this determination.

Executive Order 12866

These amendments have been reviewed in accordance with Executive Order 12866. They are classified as non-major because they do not meet the criteria of major regulations established in the Order.

List of Subjects in 45 CFR Part 1180

Grant programs, Museums, National Boards.

Dated: December 4, 1995.

Mamie Bittner,

Director of Public and Legislative Affairs.

The Institute of Museum Services amends Part 1180 Subchapter E of Chapter XI of Title 45 of the Code of Federal Regulations as set forth below:

PART 1180—GRANTS REGULATIONS

1. The authority citation for part 1180 continues to read as follows:

Authority: 20 USC 960–968.

2. Section § 1180.5 is amended by adding a new paragraph (f):

§ 1180.5 Eligibility and burden of proof—Who may apply.

* * * * *

(f) In a given year, a museum that has not received two consecutive General Operating Support awards in the immediately preceding two-year cycles is eligible to apply for General Operating Support.

3. Section § 1180.20 is amended by revising paragraph (f)(1) to read as follows:

§ 1180.20 Guidelines and standards for conservation projects

* * * * *

(f) *Limits for Federal funding.* (1) The normal amount of a Conservation Project Support grant will be established through a notice published in the Federal Register. Beginning in FY 1996, the normal maximum amount is $50,000. Unless otherwise provided by law, if the Director determines that exceptional circumstance warrant, the Director, consistent with the policy direction of the Board, may award a conservation grant which obligates an amount in Federal funds in excess of the normal maximum award. IMS may establish a maximum award level for exceptional project grants for a particular fiscal year through information made available in guidelines or other material distributed to all applicants.

* * * * *

4. Section § 1180.17 is revised to read as follows:

§ 1180.17 Reports

In its final reports a grantee shall briefly detail how the expenditure of the grant funds has satisfied the proposed use of the funds as stated in its General Operating Support application or has accomplished the proposal as set forth in its application and has served the purpose of the Act as reflected in the applicable evaluation criteria in § 1180.13.

5. Section § 1180.35 is amended by revising its heading and paragraphs (a) and (b) to read as follows:

§ 1180.35 Group applications.

(a) Eligible museums may apply as a group for a project grant.

(b) If a group of museums applies for a grant, the members of the group shall either:

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity, consisting solely of the museum group, to apply for the grant.

* * * * *

§ 1180.40 [Removed and reserved]

6. Section 1180.40 is removed and reserved.

7. Section 1180.41 is revised to read as follows:

§ 1180.41 The cost analysis; basis for grant amount.

Before the Director sets the amount of a grant, a cost analysis of the project is made which involves an examination of:

(a) The cost data in the detailed budget for the project;

(b) Specific elements of cost; and

(c) The necessity, reasonableness, and allowability under applicable statutes and regulations.

8. Section 1180.45 is amended by revising paragraph (a) to read as follows:

§ 1180.45 Use of consultants.

(a) Subject to Federal statutes and regulations, a grantee shall adhere to its general policies and practices when it hires, uses, and pays a consultant as part of the staff.

* * * * *

9. Section 1180.48 is revised to read as follows:

§ 1180.48 General conditions on publications.

(a) Content of materials. Subject to any specific requirements that apply to its grant, a grantee may decide the format and content of materials that it publishes or arranges to have published.

(b) Required Statement. The grantee shall ensure that any publication that contains materials also contains the following statement:

> The contents of this (insert type of publication, e.g., book, report, film) were developed in whole or in part under a grant from the Institute of Museum Services. However, the contents do not necessarily represent the policy of the Institute, and endorsement by the Federal Government should not be assumed.

10. Section 1180.49 is revised to read as follows:

§ 1180.49 Copyright policy for grantees.

A grantee may copyright materials in accordance with government-wide policy applicable to copyright of publications developed under Federal grants.

11. Section 1180.50 is revised to read as follows:

§ 1180.50 Definition of ''materials.''

As used in §§ 1180.48 through 1180.49, materials means a copyrightable work developed in whole or in part with funds from a grant from the Institute.

12. Section 1180.58 is revised to read as follows:

§ 1180.58 Records related to performance.

(a) A grantee shall keep records revealing progress and results under the grant.

(b) The grantee shall use the records under paragraph (a) of this section to:

(1) Determine progress in accomplishing objectives; and

(2) Revise those objectives, if necessary and authorized under the grant.

13. Section 1180.59 is revised to read as follows:

§ 1180.59 Applicability.

Subparts B and C (§§ 1180.30 through 1180.58) apply to General Operating Support assistance, except as otherwise provided in these regulations.

14. Section 1180.75 is amended by revising paragraph (d) to read as follows:

§ 1180.75 Funding and award procedures.

* * * * *

(d) A museum receiving assistance under this subpart must submit a final financial and narrative report that evaluates the success of the assessment and actions taken by the museum as a result of the assessment. IMS may request that the report be submitted up to 12 months after the close of the grant period.

* * * * *

[20 U.S.C. 961–68]

[FR Doc. 95–30016 Filed 12–12–95; 8:45 am]

BILLING CODE 7036–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–29; Notice 7; Docket No. 93–06; Notice 4; Docket No. 93–07; Notice 4]

RIN 2127–AF96; 2127–AF97; 2127–AF98; 2127–AF99

Federal Motor Vehicle Safety Standards; Stability and Control of Medium and Heavy Vehicles During Braking; and Stopping Distance Requirements

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

ACTION: Final rule, petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of a final rule that amended Standard No. 105, *Hydraulic Brake Systems*, and Standard No. 121, *Air Brake Systems*, to require medium and heavy vehicles be equipped with an antilock brake system (ABS). This document also responds to petitions for reconsideration of final rules that established 60 mph stopping distance requirements for hydraulic-braked heavy vehicles and reinstated such requirements for air-braked heavy vehicles.

DATES: Effective Dates: The amendments to § 571.101 are effective January 12, 1996, the amendments to § 571.105 are effective March 1, 1999, and amendments to § 571.121 are effective March 1, 1997.

Compliance dates: Compliance with the amendments to 49 CFR 571.101 and 49 CFR 571.105 with respect to hydraulic-braked vehicles will be required on and after March 1, 1999. Compliance with 49 CFR 571.101 and 49 CFR 571.121 with respect to air-braked tractors will be required on and after March 1, 1997 and compliance with 49 CFR 571.101 and 49 CFR 571.121 with respect to air-braked trailers and single unit trucks and buses will be required on and after March 1, 1998.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than January 12, 1996.

ADDRESSES: Petitions for reconsideration of this rule should refer to the above referenced docket numbers and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. George Soodoo, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202) 366–5892.

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202) 366–2992.

SUPPLEMENTARY INFORMATION:

I. Background

On March 10, 1995, NHTSA published three final rules that amended the agency's brake standards for medium and heavy vehicles.[1] (60 FR 13216). One of those final rules requires heavy vehicles to be equipped with an antilock brake system (ABS) to improve the directional stability and control of these vehicles during braking.[2] The other two final rules announced NHTSA's decision to reinstate stopping distance requirements for air-braked heavy vehicles and to establish such requirements for hydraulic-braked heavy vehicles. (60 FR 13286, 13297)

As specified in the ABS final rule, in addition to the ABS requirement, truck tractors are required to comply with a 30-mph braking-in-a-curve test using a full brake application on a low coefficient of friction surface representing a wet surface. All powered heavy vehicles are also required to be equipped with an in-cab lamp to indicate ABS malfunctions. Truck tractors and other towing vehicles are required to be equipped with two separate in-cab lamps: one indicating malfunctions in the towing vehicle ABS and the other indicating malfunctions in the ABS on one or more towed trailers and/or dollies. Trailers (including dollies) produced during an initial eight-year period are also required to be equipped with an external malfunction

[1] Hereinafter referred to as ''heavy vehicles.''

[2] Hereinafter referred to as ''the ABS final rule.''

indicator that was to be visible to the driver through the rearview mirror of the towing vehicle.

NHTSA issued the ABS final rule pursuant to the Motor Carrier Act of 1991, a part of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Section 4012 of ISTEA directed the Secretary of Transportation to initiate rulemaking concerning methods for improving braking performance of new commercial motor vehicles,[3] including truck tractors, trailers, and their dollies. Congress specifically directed that such a rulemaking examine antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. The Act required that the rulemaking be consistent with the Motor Carrier Safety Act of 1984 (49 U.S.C. § 31147) and be carried out pursuant to, and in accordance with, the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act) (49 U.S.C. § 30101 *et seq.*).

II. Petitions for Reconsideration

NHTSA received petitions for reconsideration from the American Trucking Associations (ATA), the American Automobile Manufacturers Association (AAMA), the Truck Trailer Manufacturers Association (TTMA), the Heavy Duty Brake Manufacturers Council (HDBMC), the United Parcel Service (UPS), vehicle manufacturers, including Chrysler, Navistar, AM General, and brake or component manufacturers including Midland-Grau, Jenflo, AlliedSignal, Rockwell WABCO, Rockwell International, Kelsey-Hayes, and Ferodo America.

The petitioners generally agreed with NHTSA's decision to require all heavy vehicles to be equipped with ABS and to comply with the stopping distance requirements and to require truck tractors to comply with the braking-in-a-curve requirements. Nevertheless, they requested modifications of various aspects of those requirements. The issues raised by the petitioners include the definition of antilock brake systems and the wheels to which the ABS requirement applies, the ABS requirement's applicability to hydraulic-braked vehicles, the implementation schedule, certain aspects of the performance tests, certain aspects of the malfunction indicator requirements, and the requirements addressing trailer ABS powering. The agency responds to each of the issues raised by the petitioners throughout the remainder of the document.

[3] Vehicles with a gross vehicle weight rating (GVWR) of 26,001 pounds or greater.

III. Definitions Related to Antilock Brake Systems

A. Definition of Antilock Brake Systems

In the ABS final rule, NHTSA decided to require that each heavy vehicle be equipped with an antilock brake system that satisfies the following definition:

> ''*Antilock braking system*'' means a portion of a service brake system that automatically controls the degree of rotational wheel slip during braking by:
>
> (1) Sensing the rate of angular rotation of the wheels;
>
> (2) Transmitting signals regarding the rate of wheel angular rotation to one or more devices which interpret those signals and generate responsive controlling output signals; and
>
> (3) Transmitting those controlling signals to one or more devices which adjust brake actuating forces in response to those signals.

To meet this definition, an antilock braking system must be closed-loop.[4] With respect to the definition for ABS, the input is the act of sensing the rate of angular rotation of the wheels, which is typically done by a device known as a wheel speed sensor. The output is the act of transmitting responsive controlling output signals to a device or devices known as modulator valves that adjust brake actuating forces in response to those signals.

Jenflo petitioned the agency to amend the definition of an antilock braking system so that the definition did not refer to components such as wheel speed sensors, control units, and modulators. Jenflo believes that it is possible to control rotational wheel slip and impending wheel lockup without monitoring these conditions, while still providing controlled stops. In its petition for reconsideration, Jenflo submitted 56 pages of test data, but did not explain the relevance of the data to the vehicle's ABS performance.

NHTSA has decided to deny Jenflo's petition to amend the definition of ABS so as to permit open-loop systems. In previous notices, the agency discussed in extensive detail the reasons for requiring a ''closed-loop'' antilock system and for combining an equipment requirement with a dynamic test requirement for truck tractors. (60 FR 13224–13228) NHTSA's definition permits any ABS, provided that it is a closed-loop system that ensures feedback between what is actually happening at the tire-road surface interface and what the device is doing to respond to changes in wheel slip. As many brake and vehicle manufacturers commented on the September 1993 NPRM, a device that satisfies these criteria is necessary to prevent wheel lockup under a wide variety of real world conditions, thereby significantly improving safety. In contrast, a definition that permitted open-loop systems would allow systems that would not necessarily prevent wheel lockup.

NHTSA also stated that the desired safety benefits of ABS could currently be achieved only by means of both a specific equipment requirement for ABS and a dynamic performance test requirement applicable to truck tractors only. In its petition for reconsideration, Jenflo did not provide any information to support reliance solely on a dynamic performance requirement, or to support its statement that it is possible to control rotational wheel slip without monitoring wheel slip conditions. The agency therefore has decided to deny Jenflo's petition to amend the definition for antilock brake system.

B. Directly Controlled Wheel

In the ABS final rule, the agency defined ''directly controlled wheel'' to mean a wheel at which the degree of rotational wheel slip is sensed and corresponding signals are transmitted to one or more modulators that adjust the brake actuating forces at that wheel. (60 FR 13228–13230) The definition further stated that each modulator may also adjust the brake actuating forces at other wheels in response to the same signal or signals. NHTSA explained that, by ''directly controlled wheel,'' it meant that the signal provided at the wheel or on the axle of the wheel would directly modulate the braking forces of that wheel or axle.

AAMA, Chrysler, and Kelsey Hayes petitioned the agency to revise the definition of ''directly controlled wheel'' to allow the use of a single in-differential[5] or in-axle wheel speed sensor to control the rear wheel slip. Chrysler indicated that all of its pickup trucks in the 10,000–12,000 pound gross vehicle weight rating (GVWR) class now successfully use this type of sensor.

After reviewing the petitions for reconsideration regarding in-axle sensors, NHTSA has decided to revise the definition of ''directly controlled wheel'' to allow wheel speeds to be sensed at any point on the axle shaft of

[4] A closed loop control system is one which examines the output of the system and adjusts the input to the system in response to that output. This inclusion of the output (or some function of the output) as part of the input to such a system is referred to as feedback.

[5] A differential is comprised of a set of gears which establish a constant equilibrium of torques between the left-side and right-side driven wheels, and which allow the outer wheels of a vehicle to rotate at a higher speed than the inner wheels during cornering.

the wheel. This includes any point between the wheel hub and the point where the axle shaft mates with the differential output shaft. The agency believes that this modification to the definition will permit the manufacture of proven antilock systems, without any detriment to safety. This amendment is reflected in the revised definition for ''directly controlled wheel'' by adding the phrase ''either at that wheel or on the axle shaft for that wheel'' and allows two in-differential sensors to transmit corresponding signals to one or more modulators that adjust the brake actuating forces at the wheels on that axle.

NHTSA emphasizes that single in-differential sensors will only be allowed on light vehicles with GVWRs between 10,000 and 12,000 pounds. This limitation is reflected in S5.5.1 of Standard No. 105, which permits only vehicles with such GVWRs to provide direct wheel control by means of a single sensor in the drive line. The agency is concerned that sensing of rotational wheel slip at the ring gear or at other points on the driveline [6] forward of the drive axle, does not provide sufficiently precise measurements of wheel slip for effective ABS control on vehicles over 12,000 pounds. The braking distribution between the front and rear axles of heavy vehicles is different than on light vehicles, primarily because of the greater load-carrying capacity of heavy vehicles, which necessitates more braking at the rear wheels. As a result, greater braking efficiency is typically required at the rear wheels of heavy vehicles than on lighter vehicles. Based on the above considerations, the agency has decided to allow the use of a single in-axle or in-differential sensor, and include in-transmission sensors, for ABS control of rear wheel slip on vehicles with a GVWR between 10,000 and 12,000 pounds.

Rockwell WABCO requested that the agency change the definition of a ''directly controlled wheel'' to ensure that the modulator for controlling the wheels of the front axle is not used to control the wheels of the rear axle, and vice versa.

NHTSA has reviewed the definition of a ''directly controlled wheel'' and has concluded that it does not clearly state that, on single unit vehicles and full trailers, the same modulator should not be used to control both the front and rear axles. It is possible that the definition may be misinterpreted to allow a four sensor/one modulator (4S/1M) system on single unit vehicles and full trailers. As discussed in the final rule, it was the agency's intent to require at least one modulator for controlling the front axle(s) and at least one modulator for controlling the rear axle(s) of those vehicles. (60 FR 13230) In revising the definition, the agency has added the phrase ''that are on the same axle or in the same axle set,'' to make it clear that the modulator that controls a directly controlled wheel, can also control a wheel on the same axle or wheel(s) on other axles in the same tandem [7].

Based on the above considerations, NHTSA has decided to amend the definition of directly controlled wheel as follows:

> ''Directly Controlled Wheel'' means a wheel *for* which the degree of rotational wheel slip is sensed, *either at that wheel or on the axle shaft for that wheel,* and corresponding signals are transmitted to one or more modulators that adjust the brake actuating forces at that wheel. Each modulator may also adjust the brake actuating forces at other wheels *that are on the same axle or in the same axle set* in response to the same signal(s).
>
> (Italicized phrases are additions to the definition).

C. Independent Wheel Control

In the ABS final rule, NHTSA defined ''independently controlled wheel'' to mean a directly controlled wheel for which there is a modulator that adjusts the brake actuating forces at that wheel, but not at any other wheel on the same axle.

Jenflo petitioned the agency to delete the requirement for independent wheel control on truck tractors and issue what it called ''performance only'' requirements. That company stated that requiring independent wheel control is unreasonably design- restrictive and is not a performance requirement.

In the ABS final rule, NHTSA set forth the reasons for requiring independent control of at least one axle for truck tractors and the reasons for having more stringent requirements for truck tractors than for other types of vehicles. (60 FR 13230). The agency considers these reasons to be a sufficient basis for requiring independent control. Nevertheless, Jenflo has not addressed these reasons in the petition.

AAMA requested confirmation that the ABS rule requires a truck tractor to have an ABS with at least four sensors and three modulators (which are also known as channels of control)(4S/3M), a single unit vehicle to have an ABS with at least four sensors and two modulators (4S/2M), and a semitrailer to have an ABS with at least two sensors and one modulator (2S/1M). NHTSA confirms the AAMA's interpretation. In addition, the agency notes that a full trailer will be required to have an ABS with at least four sensors and two modulators (4S/2M), and a hydraulic-braked single unit vehicle with a GVWR between 10,000 lbs. and 12,000 lbs. will be required to have at least three sensors and two modulators (3S/2M).

IV. Overall Brake Test Sequence

A. Performance Test Sequence

In Table I of the stopping distance final rule for braked vehicles, NHTSA specified the sequence in which the brake tests are to be conducted for compliance testing, as follows:

(1) Burnish.

(2) Stops with vehicle at gross vehicle weight rating:

(a) Straight line stop at 60 mph on a peak friction coefficient surface of 0.9, for a truck tractor with a loaded unbraked control trailer, or for a single-unit vehicle (straight line stop).

(b) Braking-in-a-curve stop at 30 mph on a peak friction coefficient surface of 0.5, for a truck tractor with a loaded unbraked control trailer.

(c) Emergency brake stops at 60 mph on a peak friction coefficient surface of 0.9, for a single-unit vehicle. Truck tractors are not required to be tested in the loaded condition.

(3) Parking brake test with vehicle loaded to GVWR.

(4) Stops with vehicle at unloaded weight plus up to 500 lbs.

(a) Straight line stop at 60 mph on a peak friction coefficient surface of 0.9, for a truck tractor or for a single-unit vehicle.

(b) Braking-in-a-curve stop at 30 mph service brake stops on a peak friction coefficient surface of 0.5, for a truck tractor.

(c) Emergency brake stops at 60 mph on a peak friction coefficient surface of 0.9, for a truck tractor or for a single-unit vehicle.

5. Parking brake test with vehicle at unloaded weight plus up to 500 lbs.

6. Final inspection of service brake system for condition of adjustment. (60 FR 13297)

AAMA, HDBMC, Midland-Grau, and Navistar requested that the agency revise the performance test sequence in Standard No. 121 by placing both braking-in-a-curve tests for truck tractors immediately after the burnish. These petitioners stated that such a change would result in certain

[6] The driveline constitutes those parts of the vehicle that transfer power from the transmission to the drive wheels, including the drive shaft, differential, and axle shafts of the driven wheel.

[7] An arrangement of two or more axles placed in proximity one behind the other.

advantages, including (1) allowing test track wetting to be accomplished more efficiently; (2) minimizing ABS performance variability since the tires would not be previously subject to the high speed stopping distance tests on a high coefficient of friction surface; and (3) minimizing vehicle transfers for those manufacturers that use a different test site for their low coefficient of friction tests.

After reviewing the petitions, NHTSA has decided to amend the performance test sequence by placing both braking-in-a-curve tests immediately after the burnish. The agency believes that conducting the braking-in-a-curve tests at the beginning of the test sequence simplifies the procedure and reduces the testing burden without compromising safety. The agency has specified the GVWR loading condition first because it coincides with the GVWR/LLVW sequence of the other stopping performance tests. This decision is also supported by the fact that performance variability due to tire wear and flat-spotting will be minimized if the GVWR test runs are conducted first, since wheel lock is more likely to occur in the lightly-loaded condition.

B. Brake Adjustment During Test Sequence

AAMA, HDBMC, Midland-Grau, and Rockwell International petitioned NHTSA to permit manual brake adjustments to be made after each part of the test sequence in Standard No. 121. The petitioners are concerned about the potential for over-adjustment and the impact on the subsequent tests in the sequence, during testing with automatic brake adjusters. Standard No. 121 currently requires that air-braked vehicles be equipped with automatic brake adjusters. The standard allows three manual adjustments, at the manufacturer's recommended intervals, during the burnish sequence, but does not allow subsequent adjustments during the testing itself.

NHTSA agrees with the petitioners that there is a potential for over-adjustment by automatic brake adjusters during a series of full treadle brake applications, as is required for the braking-in-a-curve tests. The agency also believes that it is important to specify precisely where in the test sequence the manual adjustments are allowed, since this enhances uniformity of the test procedures. The agency nevertheless believes that adjusting the brakes as frequently as after each test sequence is inappropriate, because it would be less representative of real world braking conditions.

Based on the above considerations, NHTSA has decided to amend the test sequence in Standard No. 121 by allowing some adjustment during testing. It is allowing two manual brake adjustments for truck tractors - the first at the end of the braking-in-a-curve tests and the second at the end of the GVWR parking brake test. It is also allowing one manual brake adjustment for single unit trucks and buses, at the end of the GVWR parking brake test. The agency believes that allowing a limited number of additional adjustments during testing accommodates the petitioners' concerns, while preserving a well- defined test procedure that properly accounts for the newly adopted test procedures.

NHTSA believes that there is no need to allow additional brake adjustments in the test procedure for Standard No. 105 for hydraulic-braked heavy vehicles, since the brake test procedure currently specifies four burnishes (one burnish and three reburnishes) and a brake adjustment after each burnish. Moreover, hydraulic-braked vehicles are not subject to the braking-in-a-curve test.

C. Final Brake Inspection in Test Sequence

HDBMC and Rockwell International petitioned NHTSA to delete the final brake inspection requirement that is specified at the end of the stopping sequence in Table I of Standard No. 121. They claimed that there are no stated requirements necessary to satisfy the results of this inspection, and that the condition of the adjusters has little significance to the brake adjusters—condition after real world service.

NHTSA disagrees with the petitioners' claims that the final brake inspection provision is unnecessary. The agency notes that Standard No. 121 was amended to include the final brake inspection as part of the amendments for the rulemaking on automatic brake adjusters. This issue has never been included in any of the notices for the heavy vehicle ABS rulemaking. As a result, the agency cannot delete the requirement without giving the public an opportunity to comment on the issue. Moreover, the agency disagrees with the petitioners that there are no stated requirements by which a manufacturer can ensure that its vehicle complies with this inspection. Paragraph S5.9, *Final Inspection*, specifies that the inspection is conducted to determine the condition of adjustment and for the brake indicator display, in accordance with S5.1.8 and S5.2.2 (i.e., brake adjustment within the limits recommended by the vehicle manufacturer). Based on these considerations, the agency has decided to deny the petitioners' request to delete the provision regarding the final brake inspection.

V. Braking-In-A-Curve Test

A. General Considerations

Navistar requested that the agency eliminate the braking-in-a-curve test for ABS-equipped truck tractors. That company stated that such a test is redundant to the provision requiring ABS because the test would not cause any changes to the ABS equipment mandated by the ABS equipment requirement.

NHTSA disagrees with Navistar's claim that the braking-in-a-curve performance test is redundant. As explained in the ABS final rule, the braking-in-a-curve test provides an important check of ABS performance. Merely having the ABS definition does not ensure that an antilock system will provide an acceptable level of performance. The test serves to evaluate the basic performance of an antilock system. The agency notes that the industry, through the Motor Vehicle Safety Research Advisory Committee (MVSRAC), has previously endorsed and recommended to the agency essentially the same dynamic performance test that is contained in the ABS final rule. The agency further notes that Navistar provided no support for its claim that the braking-in-a-curve performance requirement for truck tractors is redundant. Based on the above considerations, the agency has decided to deny Navistar's request to delete the braking-in-a-curve test for truck tractors equipped with antilock systems.

ATA requested that the agency apply the braking-in-a-curve performance requirements to single unit vehicles and trailers. ATA also requested that the agency consider making the requirements less design-restrictive by permitting, for an interim period, the option of meeting either the equipment requirement or the performance requirement.

While NHTSA agrees with ATA's goal of having a performance test for all heavy duty vehicles and not just for tractors, the agency believes that it is premature to do so at this time.

Thus, NHTSA has decided to deny ATA's requests to apply the braking-in-a-curve test to single unit vehicles and trailers at this time. In the ABS final rule, the agency discussed in detail the reasons for including a performance test for truck tractors. (60 FR 13230–13232) One of those reasons was that extensive truck tractor testing conducted by the

agency and the industry indicated that the braking-in-a-curve test on a low mu surface is an objective, repeatable, and practicable procedure for evaluating a heavy vehicle's antilock braking system. However, for other heavy vehicles, the agency decided not to apply the braking-in-a-curve test at that time due to the need to conduct additional testing to ensure that these vehicles could be safely tested to the braking-in-a-curve maneuver. NHTSA is currently planning vehicle research to develop such a procedure for other vehicles and, should the research be successful, will consider adding performance tests for these vehicles to the standard.

As explained in the final rule, NHTSA regards the braking-in-a-curve requirement as a complement to the ABS equipment requirement, and not as an alternative to it. (60 FR 13231) The braking-in-a-curve test alone can neither evaluate the overall effectiveness of ABS nor ensure the use of a closed-loop system. Such an evaluation would require an array of performance tests such as split mu tests, surface transition tests, and stopping distance performance tests. However, as indicated above, the braking-in-a-curve test is an objective, repeatable, and practicable procedure for evaluating the performance of a vehicle's ABS, and will be used by the agency to complement the ABS equipment requirement. Based on these considerations, the agency has decided to deny ATA's request to allow vehicle manufacturers the option of complying either with the equipment requirement or with the braking-in-a-curve requirement.

B. Type of Brake Application

In the ABS final rule, NHTSA decided to specify that a driver conducting the braking-in-a-curve test must make a full treadle application, i.e., apply the brake at a rate sufficient to reach a pressure of 100 psi within 0.2 seconds, in at least one of the treadle valve's output circuits. The agency believed that these values properly represent full brake applications in terms of both the rate of application and level of output pressure. (60 FR 13234) This brake application is intended to evaluate worst case braking applications in an aggressive or ''hard'' stop.

AAMA, Allied Signal, HDBMC, and Midland-Grau petitioned NHTSA to change the definition of full-treadle brake application to allow treadle pressure of 60 psi in 0.2 seconds, or maximum treadle travel in 0.2 seconds. The petitioners claim that some pneumatic systems do not achieve 100 psi in 0.2 seconds, but that all systems can achieve 60 psi in that time. In support of its claim, Midland-Grau submitted data from testing performed on different antilock systems installed on various vehicles. The test data show that with the vehicles in the loaded condition, the full-treadle brake application pressures at the treadle valve were not consistently able to achieve 100 psi in 0.2 seconds. However, they were all able to achieve at least 85 psi within 0.2 seconds.

Based on NHTSA's analysis of the test data submitted by Midland-Grau, the agency has decided to amend the definition for ''full treadle brake application'' to mean a brake application in which the treadle pressure reaches 85 psi within 0.2 seconds * * * '' The agency agrees with the petitioners that not all pneumatic systems would have been able to achieve a treadle valve output pressure of 100 psi within 0.2 seconds and that such a high threshold is not necessary to represent an aggressive stop. Midland-Grau's data further indicate that the ABS would activate at brake chamber pressures below 60 psi on most heavy vehicles in the loaded condition on a test surface with a peak friction coefficient (PFC) 0.5. However, there are some systems that would need at least 60 psi at the brake chamber within 0.2 seconds to ensure sufficient air pressure availability for effective ABS control.

NHTSA has also decided to modify the definition for ''full-treadle brake application'' to include a reference to maximum treadle travel within 0.2 seconds. By ''maximum treadle travel,'' the agency means the distance that the treadle moves, from its position when no force is applied to its position when the treadle reaches a full stop. Allowing such an alternative is consistent with the agency's intent to require a brake application that simulates emergency braking. Moreover, this alternative may facilitate the introduction of certain future technologies such as electronic braking for which the pressure/time relationship at the treadle valve is not applicable.

Jenflo stated in its petition that NHTSA did not specify a duration for the full-treadle brake application. NHTSA agrees that such a duration should be specified to avoid misinterpretation of the brake application requirement. Accordingly, the agency has decided to amend S5.3.6.1 of Standard 121 to read as follows: ''using a full-treadle brake application *for the duration of the stop*, stop the vehicle * * *.'' (emphasis added)

C. Number of Test Stops for Certification

In the ABS final rule, NHTSA decided that requiring compliance with the braking-in-a-curve requirements during three consecutive stops is appropriate. The agency noted that specifying three consecutive full treadle test stops is consistent with both NHTSA's own testing at its Vehicle Research and Test Center (VRTC) and its testing in conjunction with the motor vehicle industry through the MVSRAC ABS Task Force. The agency further noted that because the ABS automatically modulates the brakes, using full treadle brake applications to test an ABS-equipped vehicle in the braking-in-a-curve maneuver requires less driver skill than using a driver-best-effort modulated brake application in the stopping distance performance tests. The agency further noted that the braking-in-a-curve test is easier to perform than the stopping distance test because it is not coupled with a stopping distance requirement. Therefore, NHTSA decided not to adopt the AAMA recommendation in the NPRM that manufacturers should be given the option of complying in only three of ten stops. Adopting that recommendation would have made the braking-in-a-curve requirement unreasonably lenient.

AlliedSignal, Rockwell WABCO, HDBMC, AAMA, and Navistar petitioned the agency to allow truck tractors to be regarded as complying with the braking-in-a-curve test if they make three successful test runs out of six attempts. The petitioners claimed that additional test runs should be permitted given that some variability may be caused by the driver's performance of braking and steering while conducting these stops. They further stated that all of the stopping distance tests of Standard No. 105, Standard No. 121, and Standard No. 135 recognize the significance of driver-best-effort variability by prescribing that just one of six attempts need to be successful to satisfy the requirement.

NHTSA believes that treating three successful runs out of six attempts as demonstrating compliance would not provide a sufficiently stringent test for antilock brake systems, whose technology has demonstrated remarkably consistent performance during vehicle testing conducted by the agency and by the motor vehicle industry. As the agency stated in the final rule, it is unlikely that driver influences will result in significant variability, since the driver does not have to modulate the brake pedal to

reduce wheel lockup and achieve the best stopping distance performance. (60 FR 13234) Nevertheless, since there may be some minor variability in the test driver's performance, the agency has decided to provide that compliance with the braking-in-a-curve test is demonstrated if a vehicle has three successful test runs out of four attempts. NHTSA believes that this number of test runs, which allows one failed test run, is appropriate for an antilock system tested to a braking-in-a-curve maneuver.

D. Initial Brake Temperature

In the March 1995 final rules, NHTSA concluded that an initial brake temperature range of between 150 °F and 200 °F is more appropriate than the proposed temperature range of 250 °F to 300 °F. The agency determined that testing using the 150 °F to 200 °F temperature range is more repeatable and results in less variation between test runs, compared to testing conducted at an initial brake temperature of 250 °F to 300 °F, particularly for the emergency brake stops.

Ferodo petitioned the agency to change the initial brake temperature to between 100 °F and 200 °F, claiming that this is a more practicable range.

NHTSA continues to believe that the initial brake temperature range of between 150 °F–200 °F is appropriate. It appears that Ferodo is not aware that broadening the initial brake temperature range makes the requirements more stringent, since the vehicle would have to comply with the requirements at any point within the specified range. The consensus of the comments received to the ABS and stopping distance NPRMs was that the agency should maintain the 150 °F–200 °F temperature range. In addition, the agency's vehicle research reached a similar conclusion. (60 FR 13235) Based on the above considerations, the agency has decided to deny Ferodo's petition to broaden the initial brake temperature to the range of 100 °F to 200 °F.

VI. Stopping Distance Performance

A. Stopping Distance Requirements for School Buses

AAMA and HDBMC petitioned the agency to allow manufacturers the option of certifying hydraulic-braked school buses to either the existing standard or the new standard with ABS, between now and March 1, 1999. They stated that, by being given such an option, manufacturers would have the incentive to offer ABS on hydraulic-braked school buses prior to 1999, and the vehicles would have to meet the more stringent second effectiveness test. HDBMC also petitioned the agency to immediately delete the first effectiveness test for school buses with a GVWR greater than 10,000 pounds.

NHTSA agrees with the petitioners' request to allow the option of meeting the new requirements, including the ABS requirements, prior to March 1, 1999. This amendment will facilitate the introduction of ABS equipped school buses. Nevertheless, the agency does not agree with HDBMC's request to immediately delete the first effectiveness test, since deleting this requirement prior to a vehicle being equipped with ABS might decrease the braking performance of school buses. NHTSA has modified S5.1.1(c) of Standard No. 105 to allow school bus manufacturers the option of certifying that their vehicles comply with the new requirements, beginning 30 days after this final rule is published.

B. Test Surface Specification

In the stopping distance final rule, NHTSA concluded that a PFC of 0.9 represents a typical dry surface and will not be a significant source of variability in the stopping distance tests. (60 FR 13289, 13290) The agency's conclusion was based on the industry-government cooperative testing to evaluate the effect of fluctuations of PFC on vehicle stopping performance.[8] Testing indicates that the expected minor variability of a high coefficient of friction surface appears to have a negligible impact on vehicle stopping distance performance. This testing led the agency to conclude that any variability in the stopping performance on a high coefficient of friction surface is more likely due to variation in the vehicle's performance than test surface variability. The agency further stated that a test surface specification of PFC 1.0 would result in practicability problems for the agency, since it would have problems finding such a surface and conducting compliance testing on such a surface.

Navistar petitioned NHTSA to specify a PFC of 1.0 instead of 0.9 for the high coefficient of friction surface on which the stopping distance performance tests are to be conducted. The petitioner claimed that the specification of PFC 0.9 will cause industry to incur costs for expensive equipment, maintenance, delays in testing and redeployment of scarce resources without any demonstrable safety improvement.

NHTSA has decided to continue to specify a PFC of 0.9 for high coefficient of friction surfaces, for the reasons set forth in the final rule. The agency notes that Navistar provided no additional information calling into question the agency's earlier conclusion that a test surface specification of PFC 1.0 would result in practicability problems for the agency. The agency therefore has decided to deny Navistar's petition.

AAMA petitioned the agency to allow the PFC of the curved test surface for the braking-in-a-curve test to be measured by the American Society for Testing and Materials (ASTM) trailer on a straight section of the curved test surface. Since the ASTM Method E1337–90 procedure specifies a straight line measurement, the agency agrees that measuring PFC on a curved road might introduce variability in the measurement as a result of lateral forces present at the tire. NHTSA therefore has decided to amend Standard No. 121 to allow the PFC of the 500-foot radius curved test surface to be measured by the ASTM skid trailer on a straight section of the test surface.

ATA requested that the agency amend S5.3.6.1 to specify that the ASTM Method E1337–90 be run either on a wet surface without further water delivery or on a dry surface with water delivery.

NHTSA believes that such an amendment about the test surface is not necessary. The agency's skid trailer measurements taken at VRTC show a negligible difference (i.e., less than 0.05) for PFC measurements for a surface that is ''double wetted'' as compared with an already wet surface. This is the same data variability that VRTC obtains from the skid trailer measurements of a wetted surface when one type of wetting is used. Therefore, if a wet test surface is wetted again just prior to skid trailer testing, the level of stringency of the test would be essentially the same as that for a ''single wetting'' condition.

C. Wheel Lockup Restrictions

AlliedSignal, AAMA, HDBMC, and Midland-Grau petitioned NHTSA to clarify the wording in S5.3.1 and S5.7.1 of Standard No. 121 to explicitly state that ''unlimited wheel lockup is allowed during partial failure stops,'' as is stated in S6.10.2(e) of Standard No. 105.

NHTSA has decided that it is appropriate to modify the regulatory language in S5.7.1 of Standard No. 121 to explicitly allow unlimited wheel lockup during emergency brake stops. The agency emphasizes that this amendment serves merely to make it clear that unlimited wheel lockup is allowed during emergency brake system performance tests. While the agency intends to allow unlimited wheel lockup during emergency brake stops, it does not intend to allow such unlimited wheel lockup for service brake stops in

[8] Public Files Docket PF88–01, MVSRAC ABS Task Force, Round Robin No. 1.

S5.3.1 of Standard No. 121. NHTSA notes that this is only a clarification and does not change the requirements that were adopted in the March 1995 final rules.

D. Burnish Procedure

On May 15, 1995, NHTSA issued a notice that terminated rulemaking to amend Standard No. 105 and Standard No. 121 with respect to the burnish procedures for medium and heavy vehicles. (60 FR 25880) The agency determined that it would be unnecessary to extend the period during which a manufacturer may choose between two burnish procedures. The agency reasoned that its decision was appropriate because manufacturers have been certifying compliance to the brake standards, based on the ''new'' more representative burnish procedure, since September 1994.

In response to the March 1995 final rules, Navistar petitioned the agency to allow, indefinitely, the option of using either the old or the new burnish procedure.

As explained in the May 1995 termination notice, the new burnish procedure is currently in effect. Therefore, the issue of allowing the option of using the old procedure is moot.

E. Definition of Nonsteerable Axle

In the stopping distance final rule, NHTSA stated that wheel lockup is permitted at certain wheels, including ''any wheel on a nonsteerable axle other than the two rearmost nonliftable, nonsteerable axles * * *, for any duration * * *.'' (see paragraph S5.3.1(a))

AAMA requested the agency to make it clear that a nonsteerable axle is an axle that does not steer by means of a driver-controlled mechanism, and that a self-steering axle would be considered a nonsteerable axle.

NHTSA considers a self-steering axle to be a nonsteerable axle in this context, since such an axle is not under the control of the driver. The pertinent criterion is that an axle is only considered ''steerable'' for purposes of this requirement, if the steerability of the wheels on that axle is controlled by the steering wheel of the vehicle. Since a self-steering axle is not under the control of the driver's steering wheel, it is not considered to be steerable.

VII. ABS Malfunction Indicator Lamps

A. In-Cab Malfunction Lamp for Trailer ABS

In the final rule, NHTSA decided to require lamps in the cab of truck tractors to indicate any malfunction with the ABS of any towed vehicles. (60 FR 13244, 13245) The agency also required trailers to supply trailer ABS malfunction signals to the tractor. This requirement is essentially the same as the one proposed prior to the March 1995 final rule.

ATA petitioned the agency to delete the provision requiring in-cab indication of trailer ABS malfunctions. That organization claimed both in its comments to the NPRM and in its petition for reconsideration that such a lamp is unnecessary. It also argued that such a requirement needlessly complicates the electrical system of the tractor and the electrical connector arrangement between tractors and trailers.

NHTSA disagrees with ATA that the in-cab trailer malfunction lamp is unnecessary. Studies have shown that an in-cab malfunction lamp is a more effective means of making the driver aware of an ABS malfunction, compared with an external malfunction lamp on the trailer.[9] The agency also disagrees with ATA's statement that having two malfunction indicators unreasonably complicates the electrical systems in combination vehicles. In their comments on the NPRM, several brake and vehicle manufacturers stated that it was appropriate to have two indicators. For instance, Midland-Grau strongly opposed having a single malfunction indicator, claiming that having a single lamp would make it difficult to identify which vehicle had a malfunction without using separate diagnostic equipment. Since this issue has been addressed in detail in previous notices, and since ATA has not submitted any additional data to substantiate its claim, the agency has decided to deny ATA's request to delete the in-cab malfunction lamp for the trailer ABS.

B. Trailer-Mounted ABS Malfunction Indicator

In the final rule, NHTSA decided to require an external ABS malfunction lamp on trailers and dollies for the eight-year period during which some non-ABS-equipped tractors will be towing ABS-equipped trailers. (60 FR 13244, 13245) The requirement specified that the external lamp ''be visible within the driver's forward field of view through rearview mirrors.''

ATA and UPS petitioned the agency to delete the requirements for an external trailer-mounted malfunction lamp. They claimed that the external malfunction lamp will lead to less safety because drivers will be looking in their mirrors during braking to see whether the ABS lamp is functioning, instead of looking at traffic conditions ahead of their vehicle.

NHTSA continues to believe that it is appropriate to require an external malfunction lamp on trailers and dollies for the eight-year period during which some non-ABS-equipped tractors will be towing ABS-equipped trailers. The external malfunction lamp will indicate trailer ABS malfunctions to the driver of a non-ABS tractor and will also assist Federal and State inspectors in determining the operational status of a trailer's antilock system. NHTSA disagrees with ATA's claim that the external malfunction lamp would create a less safe condition for drivers. The agency anticipates that most drivers will look through their mirrors to check the lamp infrequently, and only when the vehicle is stationary or the road ahead is clear. The agency therefore denies the petitions from ATA and UPS to delete the trailer-mounted ABS malfunction lamp.

Midland-Grau and TTMA petitioned the agency to delete the requirement in S5.2.3.3 that the external indicator on a trailer be visible from the driver's seating position ''through the rearview mirrors.'' Midland-Grau stated that since the truck tractor manufacturers cannot control where the external lamp would be located, requiring that the lamp be visible from the cab of the truck tractor is unreasonable. TTMA stated that since trailer manufacturers have no responsibility for the mirrors, requiring the ABS malfunction lamp on dollies and trailers to be visible ''through the rearview mirrors'' is not appropriate. They also stated that there is no good, practical location for such a lamp on a dolly.

Even though NHTSA believes that the external trailer malfunction lamp is appropriate, the agency agrees with Midland-Grau and TTMA that it is inappropriate to specify a location requirement for the external malfunction lamp that is based on what can be seen in a truck tractor's rearview mirror. Compliance with such a requirement would depend on factors that are not fully controlled by the trailer manufacturer. Rearview visibility of the ABS external malfunction lamp could vary based on truck tractor design and its aerodynamic fairings, the field of view provided by the rearview mirrors, and on the location of the lamp. Accordingly, the agency has decided to delete the requirement in S5.2.3.3 for rearview mirror visibility of the lamp on trailers and dollies.

[9] ''An In-Service Evaluation of the Performance, Reliability, Maintainability, and Durability of Antilock Braking Systems for Semitrailers,'' U.S. Department of Transportation/ NHTSA Report No. DOT HS 808 059, October 1993.

TTMA requested that if the agency retains the requirement for an external malfunction lamp on the trailer, then the location of the lamp, its color, and its intensity should be specified in Standard No. 108, *Lamps, reflective devices, and associated equipment.*

NHTSA emphasizes that it is important for the driver to see the trailer mounted malfunction lamp from his or her driving position. Therefore, the agency is issuing, simultaneously with this final rule, an NPRM that proposes a lamp location on the trailer and the dolly, but without stating any visibility requirements with reference to the tractor. The agency agrees with TTMA that it is appropriate to propose the location, color, and intensity of the trailer and dolly ABS external malfunction lamp. Specifically, the agency is proposing a location for the external ABS malfunction indicator on trailers, which is similar to the location proposed by the agency when it was considering requiring a low pressure warning lamp on trailers (55 FR 4453, February 8, 1995).

ATA and UPS petitioned the agency to only require that the ABS check lamp be visible for visual inspection during a walk-around of a vehicle.

NHTSA believes that only requiring a lamp for visual inspection during a vehicle walk-around is insufficient because current designs would require more than one person to conduct the inspection, if the trailer is powered through the stop lamp circuit. One person would have to apply the brake pedal to provide ABS power to the trailer, and another would need to be outside the vehicle to view the ABS lamp, if it is located somewhere on the trailer's chassis.

C. Activation Protocol for Malfunction Indicators

In the final rule, NHTSA decided to require the malfunction indicator lamp to activate when a problem exists and not activate when the system is functioning properly. (60 FR 13246) Under this requirement, the indicator lamp is required to provide a continuous indication until a function check of the ABS is completed. Under that format, the ABS malfunction lamp extinguishes after a function check, and before the vehicle is driven. The agency explained that this ABS malfunction lamp format, together with the requirement that the system stores malfunctions until the next key-on, is necessary to enable Federal and State inspectors to determine the operational status of an ABS without moving the vehicle. In support of its decision, the agency noted that this activation pattern is consistent with the one for light vehicle ABS and the one adopted by the Economic Commission for Europe (ECE).

Navistar petitioned NHTSA to allow the vehicle to be in motion at low vehicle speed during an ABS system check so that the sensor check could be included before the lamp extinguishes. Navistar stated that the benefits of a sensor check outweigh the convenience for use by Federal or State inspectors.

As explained in the final rule, NHTSA believes that the requirement that the system store malfunctions until the next key-on is necessary to enable Federal and State inspectors to determine the operational status of an ABS without moving the vehicle. On March 10, 1995, the Federal Highway Administration (FHWA) published a notice of intent to initiate rulemaking addressing requirements for motor carriers to maintain the ABS on those vehicles that are subject to NHTSA's final rule. These requirements could include inspecting the vehicle to determine whether ABS is operational. Navistar's request to allow the vehicle to be in motion before the lamp extinguishes would impede FHWA's inspection process to determine the operational status of ABS. The agency therefore has decided to deny Navistar's petition to amend the malfunction lamp protocol to allow the lamp to stay lit until the vehicle is driven.

AlliedSignal and TTMA requested that the check of lamp function on the external trailer ABS malfunction lamp would only activate when power is supplied to the ABS *and* the vehicle is stationary. They stated that such a requirement would prevent the ABS lamp from cycling on and off whenever power is supplied or with every brake application in cases where the trailer ABS is being powered through the stop lamp circuit.

NHTSA agrees with the petitioners that such a requirement reduces potential distractions to the driver or to drivers of other vehicles caused by the lamp cycling on and off with every brake application. The agency notes that this modification retains the requirement's primary purpose, which is to indicate an ABS malfunction to the driver or to Federal and State inspection personnel. The agency has therefore decided to amend paragraph S5.2.3.3 to specify that the check of lamp function will activate the trailer ABS malfunction lamp, whenever power is supplied to the ABS and there is an absence of wheel speed (i.e., that the vehicle is stationary).

TTMA stated that the final rule does not address the operation of the ABS malfunction lamp in the event of a total loss of electrical power. That organization requested that the agency explicitly state that neither the external trailer lamp nor the in-cab lamp is required to be activated if there is a total loss of electrical power to the trailer.

A total loss of power causes the control unit to be incapable of sending a malfunction signal to the indicator lamp, since the control unit for an electronic ABS requires electrical power for operation. NHTSA notes that no vehicle system is capable of indicating a warning or malfunction in the event of a total loss of electrical power. The agency therefore believes that there is no need to specify regulatory language about the operation of the ABS malfunction lamp in the event of a total loss of electrical power.

D. Signal Storage

In the final rule, NHTSA decided to require that the ABS indicator lamp system be capable of storing information regarding any malfunction that existed when the ignition was last turned to the ''off'' position or in the case of towed vehicles, when power was last received by the ABS. (60 FR 13246, 13247) The agency explained that the malfunction storage requirement is necessary to ensure that relief drivers and Federal and State inspectors are advised about any malfunctions in a vehicle's ABS without having to move the vehicle.

Rockwell WABCO, Midland-Grau, AAMA, TTMA, and ATA requested that the agency define a pre-existing malfunction as a malfunction that existed when the ignition switch was last turned to the ''off'' position. These petitioners argued that such a definition is necessary to clarify that malfunctions that no longer exist are to be cleared and do not need to be indicated.

After reviewing the petitions, NHTSA had decided to amend S5.3.3(b) of Standard No. 105, and S5.1.6.2 (a) and (b) and S5.2.3.2 of Standard No. 121 to clarify that a pre-existing malfunction is a malfunction that existed when the ignition switch was last turned to the ''off'' position. The agency never intended to require the indication of malfunctions that have been corrected but still remain in the long-term memory of the electronic control unit.

E. ABS Failed System Requirements

In the final rule, NHTSA decided to revise Standard No. 121 to prohibit any change in brake timing in the event of ABS malfunctions that affect the generation or transmission of response or control signals. The agency explained that this modification will ensure that the brake system reverts to normal

braking without antilock control, in the event of such a malfunction in the antilock system.

AlliedSignal, HDBMC, and Midland-Grau petitioned the agency to amend S5.5.1 to require each vehicle to meet the emergency brake stopping requirements but not the service brake, actuation and release timing requirements. The petitioners are concerned about the potential for noncompliance that is not within the control of known antilock brake systems.

NHTSA believes that it is important that a heavy vehicle's brake system revert to normal braking without antilock control, in the event of an ABS malfunction that affects the generation or transmission of response or control signals in any part of the antilock system. The agency believes that it would be inappropriate to allow brake performance to degrade to the level of the emergency braking performance requirements when a typical ABS malfunction exists. The service brakes of a vehicle with a malfunctioning ABS should provide a level of braking performance that is not substantially different from the service brake performance with the ABS operational. This is necessary so that the resulting braking performance will not surprise a driver when the ABS malfunctions. Based on the above considerations, the agency has decided to deny the petitions to amend the performance requirements for a vehicle with a failed antilock system.

VIII. Power Source

A. Separate Powering for Trailer ABS

In the final rule, NHTSA decided to require full time powering for the trailer ABSs as well as requiring that the towing vehicle have a corresponding separate circuit. (60 FR 13248–13250) The agency explained that this requirement provides the strongest possible source of electrical power from the tractor to ensure the functioning of the ECU, the modulators, and a continuous malfunction indication whenever a malfunction exists.

AAMA, Midland-Grau, and TTMA requested the agency to make it clear that the phrase, ''separate electrical circuits, specifically provided to power the antilock system,'' is not intended to require that a circuit be exclusively utilized by the towed vehicle ABS. AAMA and Midland-Grau want the agency to allow other uses for this circuit, such as interior van trailer lights and multiplexing applications. ATA asserted that the requirement for a separate circuit is redundant and costly. ATA subsequently requested the agency in a September 6, 1995 letter to interpret the requirement for a separate electrical circuit.

NHTSA has decided to deny the request to permit other uses for the separate ABS circuit. As emphasized in the final rule, based on the best data available to the agency, NHTSA determined that it is necessary for the ABS on towed vehicles to receive full-time power through a circuit that is exclusively used by the towed vehicle ABS, so as to reduce the possibility of the ABS being inoperative due to lack of power. Throughout the rulemaking, the agency has intended that a towed vehicle antilock system be powered through a separate electrical circuit that is specifically provided to power the antilock system.

NHTSA based that decision on the results of its field evaluation of the durability, reliability, and maintainability of trailer ABS systems (as reported in DOT Report No. HS 808 059). That report noted that each of the three electrical powering methods that employed a separate circuit (e.g., the Cole-Hersee 13-pin connector, the separate 6-pin connector, and the separate ISO connector) was superior to the stoplamp powering approach. Each of these separate powering approaches used completely dedicated electrical circuits, which included separate, fully dedicated positive and ground wires, to power the trailer ABS ECUs. Based on the existing data, the agency therefore believes that both positive and ground wires separate from those now provided for other uses are necessary to adequately power trailer ABS systems. The agency has no technical basis for concluding that circuits that share the existing ground provided by the currently-used SAE J560 connector would provide power as well as a fully separate circuit, and therefore has no basis to conclude that such a powering scheme would be adequate.

NHTSA is aware of extensive industry efforts in various Society of Automotive Engineers' (SAE) technical committees to establish performance standards for electrical systems used to power tractor and trailer ABS systems which include objective performance test procedures, measurement criteria, and, in some cases, target performance levels. If those efforts result in the development of consensus standards that would ensure high quality tractor and trailer electrical systems that could be demonstrated to adequately supply electrical power to trailer ABS systems, the agency would consider alternative means of satisfying the safety need for adequate trailer ABS powering, other than the one which currently available data indicate is necessary.

NHTSA has been asked whether the rule allows the use of the SAE J560 connector. The agency reiterates the point it made in the final rule, i.e, that it is leaving to industry the decision as to which design approach is used to implement the performance requirement that trailer ABS be supplied power through a separate circuit and that a means of signaling trailer ABS malfunctions to the tractor also be provided. SAE J560 standard both specifies the physical connector and standardizes the uses for each of the seven pins. Thus, the connector, if it is configured as specified in the J560 standard could not be used, because there is, at most, one pin available for new uses, and up to three new ones could be required. However, if the industry chooses to reconfigure the presently-used SAE J560 connector hardware in such a manner as to meet the requirements for a separate trailer ABS powering circuit (both positive and ground) and malfunction signaling, then that solution would be permitted. The agency notes that such a solution would require multiplexing of some circuits, in order to free up enough pins for ABS power.

NHTSA agrees with TTMA's concern that ''if the auxiliary circuit is used to provide full-time power to ABS, then there would be potential for inadvertently powering the auxiliary devices, due to human error, if a manual switch is left on * * *'' Such an inadvertent powering of an auxiliary device that uses the same power circuit as the ABS could result in a low voltage condition at the electronic control unit of the ABS, thus making the ABS inoperative. Also, the suggestion that the trailer ABS powering circuit could be shared with other electrical devices and still be adequate if power to those devices were automatically switched off (except when the vehicle is stationary), lacks an objective basis to gauge whether such an automatic means would be fail-safe. If the automatic means failed, the trailer ABS systems could have insufficient power. The agency therefore considers this approach to providing separate power to trailer ABSs to be inadequate.

B. ABS Malfunction Signal Circuit and Ground

In the final rule, NHTSA specified detailed requirements about the capabilities of the electrical circuits. Among other things, paragraph S5.2.3.2 requires each non-towing trailer to have the means for connection of the antilock

malfunction signal circuit and ground, at the front of the trailer.

AAMA and Midland-Grau petitioned the agency to delete the word ''circuit'' in the phrase ''malfunction signal circuit and ground'' in S5.2.3.2, claiming that it could be interpreted as requiring a separate circuit with dedicated power and ground wires.

After reviewing the petitions, NHTSA has decided to amend paragraph S5.2.3.2 to delete the words ''and ground'' from the phrase ''malfunction signal circuit and ground.'' The agency notes that it did not intend to require a dedicated circuit for the ABS malfunction signal circuit on trailers. The agency agrees with the petitioners that since a ''circuit'' is defined as an electrical path having both a power source and a ground, the present language could be confusing, and that the language should be changed to avoid being misinterpreted.

TTMA requested that the agency amend S5.1.6.2(a) and S5.2.3.2, which require that the vehicle be equipped with an ''electrical circuit that is capable of signaling a malfunction.'' The petitioner stated that the ABS, not the electrical circuit, should be required to signal a malfunction.

NHTSA agrees that TTMA's requested language is more precise than the wording in the final rule's regulatory text, and amends the regulatory language accordingly.

AAMA, Midland-Grau, and TTMA petitioned the agency to amend S5.1.6.2(c), which currently requires that a truck or truck tractor designed to tow another vehicle have an electrical circuit that is capable of ''transmitting'' information about a malfunction. The petitioners requested that the word ''transmitting'' be changed to ''receiving.''

NHTSA believes that it would be inappropriate to substitute the word ''receiving'' for ''transmitting'' since this electrical circuit both transmits and receives information. When towing a trailer, a tractor transmits the malfunction information that it receives from the trailer's ABS to the ABS malfunction indicator lamp in the cab of the tractor or the truck. Even though the agency has decided not to change the word ''transmitting'' in S5.1.6.2 to ''receiving,'' it has decided to clarify the provision's wording.

In addition to the changes specifically addressed by the petitions, NHTSA has decided to reword all three ABS malfunction circuit and indicator provisions (S5.1.6.2, S5.2.3.2, and S5.2.3.3) to clarify them and make them more consistent in form and wording to each other and to the other parts of the standard.

In particular:

(a) The new [10] S5.1.6.2(a) is written as a general requirement.

(b) The old S5.1.6.2(a) and S5.1.6.2(b) has been combined into one paragraph.

(c) The old S5.1.6.2(c) has been renumbered S5.1.6.2(b) and has been reworded to delete references to trailer failures in a tractor requirement.

(d) The new S5.2.3.2 no longer references a ''key switch'' or an in-cab ABS malfunction lamp, because those items are not present on trailers.

(e) The new S5.2.3.3 now includes requirements for memory and check of lamp functions.

C. Tractor Trailer ABS Interface Connector

AAMA petitioned the agency to specify the electrical connector, *SAE J2272, Tractor Trailer Interface Connector,* stating that ''the industry will not be able to converge to a single solution in the absence of regulatory direction.'' AAMA claimed that without regulatory direction, the end users could prevent an industry approach from being implemented, which would result in a proliferation, rather than needed deproliferation, in connector strategies. In its petition for reconsideration, TTMA supported the J2272 connector. However, in a later submission to the docket, that organization withdrew its support of that connector. TTMA now supports a separate connector, but does not favor any one in particular. ATA supports the current seven-pin connector.

NHTSA is aware that the industry is considering several options for powering trailer antilock systems and that it is having a difficult time reaching a consensus. The agency agrees that the SAE J2272 connector is one potentially permissible approach that should be given full consideration by the industry. However, the agency is also aware that the 7-pin configuration of the SAE J2272 connector might not allow the industry to have a one-connector solution in the long term, even if some of its pins are multiplexed. It is NHTSA's belief that the industry understands and can best respond to the future electrical powering needs for trailers, such as antilock braking systems, electronic braking systems, and satellite tracking and communications network. The agency believes that obtaining compatibility provides sufficient incentive for the industry to reach a consensus to standardize on a connector to comply with the full-time power and in-cab malfunction lamp requirements without the need for an electrical connector equipment requirement mandated by NHTSA. AMA, ATA, TTMA, and brake component manufacturers have been meeting under the auspices of SAE in an effort to reach consensus on the connector issue. These meetings indicate that all parties have placed forward and backward compatibility as an important issue for the industry to resolve and reach consensus. Based on these considerations, the agency has decided to deny the petition from AAMA to specify the SAE J2272 Tractor Trailer Interface Connector (or any other specific connector) as required equipment for tractors and trailers.

IX. Applicability of Amendments and Leadtime

A. Hydraulic-Braked Vehicles

In the final rule, NHTSA stated that a March 1999 compliance date for installing antilock brake systems on hydraulic-braked single-unit trucks and buses provides sufficient time for vehicle manufacturers and ABS manufacturers to complete the development and testing of these systems. (60 FR 13250–13251) It noted that some Japanese and European manufacturers are currently marketing ABS for medium and heavy hydraulic-braked vehicles and that brake manufacturers expressed confidence that such antilock systems will be available in the United States.

In its petition, ATA expressed concern that NHTSA was requiring hydraulic-braked heavy vehicles to be equipped with antilock brake systems, even though that organization claimed that such systems are not currently commercially available for heavy vehicles sold in the United States. ATA further stated that ''different concepts are necessary for hydraulic ABS on medium and heavy vehicles because of dissimilarities'' between the braking systems of hydraulic-braked light vehicles and hydraulic-braked medium/heavy vehicles. Given these concerns, ATA and UPS petitioned the agency to postpone the compliance date for hydraulic-braked vehicles, claiming that no antilock systems are available for these vehicles and such systems, when they are available, would need time to be tested. The petitioners urged the agency to postpone the compliance date for these vehicles until 2 years after the technology is readily available. Further, UPS reiterated its request for a three-year phase-in scheme of 20 percent/50

[10] ''New'' refers to changes made in today's document; ''old'' refers to the regulatory text adopted in the March 10, 1995 final rule.

percent/100 percent for the entire ABS applicability requirement.

NHTSA continues to believe that it is appropriate to require that medium and heavy hydraulic-braked vehicles be equipped with ABS, starting in March 1999. Two leading manufacturers of medium and heavy hydraulic vehicles, Freightliner and Navistar, have announced that they will offer the AlliedSignal hydraulic antilock brake system on their hydraulic-braked vehicles in 1996. Freightliner will offer ABS as an option on its Class 5–8 hydraulic Business Class models, while Navistar will offer hydraulic ABS as standard equipment on all its medium truck chassis, including the 4000 Series.[11] Moreover, in its comments to the April 1994 SNPRM, Freightliner stated that the March 1, 1999 ABS compliance date for hydraulic-braked heavy vehicles is realistic and appropriate, but urged the agency to continue to monitor manufacturers' progress and be willing to act on short notice, if necessary, to provide additional lead time.

NHTSA disagrees with ATA's claim that there are significant differences between ABS on hydraulic-braked light vehicles compared with medium and heavy vehicles. AlliedSignal, a manufacturer of both air-braked and hydraulic-braked ABS, stated in its comments to the September 1993 NPRM that the hydraulic- braked ABS technology that will be used on heavy vehicles is the same as the technology now used on passenger cars and other light vehicles, and that the application of hydraulic-braked ABS on heavy vehicles ''should not present significant technical risk.'' That company also explicitly stated that ''components are identical or nearly identical to that used in the passenger car and light truck applications.'' It added that ''the wheel speed sensors are the same technology as used in light vehicle applications, and in fact are the same as that planned for air-braked vehicles. The electronic control unit utilizes the same components as light vehicles * * * and is planned to be the same as that supplied by our AlliedSignal Truck Brake System Company for air braked vehicle applications.'' AlliedSignal concluded their comments to the NPRM by stating that as a supplier of ABS for hydraulic-braked vehicles, the requirements can be reliably achieved with proven technology within the suggested time frame.

Such similarities are also present when comparing ABS on air braked vehicles and hydraulic-braked vehicles. In the September 1995 *Pickup & Delivery* article, a representative of AlliedSignal stated that—

> There's quite a few similarities in complexity [between hydraulic and air braked ABS]. For example, the means of sensing wheel speed is basically identical. There's a wheel speed sensor that's used to check the speed of each wheel. You also have an ECU which monitors those wheel speeds and identifies if they are remaining constant or there are differentials from one side to another or front to rear.

ATA also disagreed with NHTSA statements, claiming that ABS will not be required on European trucks until after NHTSA's requirement takes effect.

NHTSA believes that ATA's claim is based on a misinterpretation of the European type approval system as compared with the United States' self-certification system. The agency is aware that there are new European requirements pending for hydraulic-braked medium and heavy vehicles equipped with ABS, with the first compliance date of January 1999. In Europe, newly produced vehicles with old type-approvals can use their old brake system design for a period of time after the compliance dates when ABS will be required on new type-approved vehicles. Therefore, these vehicles can continue to be built and sold without ABS, even after the European compliance dates, which begin in January 1999. When a manufacturer redesigns a vehicle, however, the new design has to be typed-approved, and therefore would be required to comply with the new ABS requirements. Hence, ATA is technically correct that some hydraulic-braked heavy vehicles built for the European market will be allowed to be built without ABS even after the compliance date for the United States requirements. However, other European market vehicles with hydraulic brakes will have to have ABS before their United States counterparts. Due to the differences between the type approval and self-certification processes, there is no way to completely synchronize the introduction of ABS on hydraulic-braked heavy vehicles in the United States and in Europe, and there is no reason to delay introduction in the United States until after all European vehicles are required to have it.

Based on the above comments from manufacturers and the positive experience in other countries with ABS-equipped hydraulic-braked vehicles, NHTSA has determined that requiring hydraulic-braked vehicles to be equipped with ABS is practicable and appropriate. The agency continues to believe that four years is sufficient leadtime for vehicle manufacturers to develop and test these antilock systems, given that ABS technology has already been introduced on light vehicles equipped with hydraulic braking systems. Therefore, the agency has decided to deny ATA's petition to extend the compliance date for equipping hydraulic-braked vehicles with ABS.

AM General petitioned the agency to change the compliance date for equipping hydraulic-braked vehicles with ABS from March 1, 1999, to September 1, 1999. It claimed that the company would face complications in making such a major mid-year change.

NHTSA notes that vehicles produced on or after the specified compliance dates must comply with the new requirements. This also means that a vehicle manufacturer can comply with the new brake requirements before the compliance date of the new requirements. Hence, if AM General finds it difficult to comply with the March 1, 1999 compliance date because of the mid-year timing of the date, then it has the option of complying with the new requirements prior to that date, such as on September 1, 1998.

AM General petitioned the agency to specify a timetable for monitoring and reviewing the technical status and viability of commercially available hydraulic antilock systems.

NHTSA currently has no plans for specifying a formal timetable for monitoring and reviewing the technical status of hydraulic-braked ABS for heavy vehicles. Nevertheless, the agency plans to monitor this development closely and could modify the implementation schedule if development of antilock systems for hydraulic-braked vehicles faced unexpected development problems. As stated above, vehicle and brake manufacturers indicate that they will have hydraulic antilock systems commercially available in 1996. The agency has provided a leadtime of four years to ensure that manufacturers will have sufficient time to develop and test antilock systems for hydraulic-braked heavy vehicles. The agency believes that the fleets and users, the ABS manufacturers, and the vehicle manufacturers can work together to lay out a timetable for the industry so that antilock systems for these heavy vehicles are ready for commercial use by March 1, 1999.

B. Class 3 Vehicles

AM General petitioned that the ABS requirements not apply to vehicles with GVWRs between 10,001 and 14,000 pounds (Class 3 trucks). It argued that

[11] ''Medium-Duty ABS,'' *Pickup and Delivery* September 1995

since many of these vehicles are derived from light vehicles, and given its belief that the effectiveness of ABS on light vehicles is open to debate, the industry should be given the opportunity to review and consider comments on equipping Class 3 vehicles with ABS.

NHTSA has previously stated that excluding vehicles of certain weight classes between 10,000 and 26,000 pounds GVWR would create an uneven application of the ABS requirements and could result in an inconsistent regulatory framework that would not provide safety benefits to all vehicles. The results of the accident data analysis that examined the effectiveness of ABS on light vehicles showed that there was a net positive safety benefit from equipping vans, sport utilities, and light trucks with ABS. Since many Class 3 vehicles are derived from these light trucks, the agency anticipates that Class 3 vehicles will also experience safety benefits from being equipped with ABS. The agency therefore disagrees with AM General's conclusion and has decided to deny its petition requesting that Class 3 vehicles be excluded from applicability to the ABS requirements because of the lack of demonstrated effectiveness of ABS on passenger cars.

C. Four-Wheel Drive Vehicles

AM General also requested that the ABS requirement not apply to four-wheel drive vehicles. The company stated that it has had difficulty getting an ABS supplier to develop a system for its Hummer vehicle because of the vehicle's full-time 4WD, torque-biasing differentials on both axles, and low volume production. AM General believes that the issue of four-wheel drive ABS has been overlooked and needs to be addressed openly.

NHTSA believes that it is appropriate to apply the ABS requirements to four-wheel drive vehicles, since such vehicles can and do lose control during braking. Moreover, the agency is aware of ABS applications on current vehicles equipped with full-time four-wheel drive or with all-wheel drive, and believes that the ABS technology, to accomplish an ABS installation on AM General's Hummer vehicle, is readily available. Therefore, the agency has decided to deny AM General's petition requesting that four-wheel drive vehicles be excluded from being equipped with ABS.

D. Trailers and Dollies

UPS petitioned the agency to implement ABS on air-braked vehicles by using a three-year phase-in scheme of 20 percent/50 percent/100 percent for trailers and dollies. That company requested that in 1998, 20 percent of trailers and dollies be required to have ABS; in 1999, 50 percent be required to have ABS; and in 2000, 100 percent be required to have ABS. UPS claims that it faces critical problems regarding reliability and cost to meet the current effective dates.

NHTSA believes that such a protracted delay in the implementation of ABS on trailers and dollies is unnecessary, given the current state of development of ABS for these vehicles and given that 2S/1M and tandem control configurations on semi-trailers and dollies are being allowed. The agency further notes that no ABS or trailer manufacturer expressed concerns about the agency's timetable or ABS reliability. Moreover, in the final rule, the agency discussed in detail the issues that ATA and UPS raised about reliability of ABS on heavy vehicles. NHTSA concluded that ABSs are reliable and that maintenance costs associated with ABS are neither excessive nor unreasonable compared to other maintenance costs. The agency further stated that these costs will not be significantly reduced if the implementation dates of this rule are further delayed.

X. Miscellaneous

A. National Uniformity

ATA petitioned the agency to clarify that States may not impose compliance dates that differ from NHTSA's rules. That organization specifically requested NHTSA to ''confirm * * * that any attempt under State law to impose a retroactive ABS mandate would frustrate the significant Federal statutory purpose and, therefore, is not permitted.''

NHTSA notes that the statute (formerly known as the ''National Traffic and Motor Vehicle Safety Act of 1966'') clearly addresses the issue of preemption at 49 USC 30103(b). That provision states that when a Federal motor vehicle safety standard is in effect, a State generally may only prescribe an identical standard.

B. Publish Complete Regulatory Texts and Compliance Test Procedures

AAMA, HDBMC, and Midland-Grau requested that the agency immediately publish complete and updated versions of Standard No. 105 and Standard No. 121.

NHTSA agrees that there should be complete and updated versions of Standard No. 105 and Standard No. 121, showing all the amendments made by the ABS and Stopping Distance rulemakings. Such changes are generally reflected in the Code of Federal Regulations published annually by the National Archives and Records Administration. The agency believes that the publication of updated versions of Standard No. 105 and Standard No. 121 would be helpful to the regulated industry. Since the agency's first priority is to issue the substantive rules, it has issued today's notice first. The agency anticipates publishing the updated Standards in 1996.

AAMA, AlliedSignal, HDBMC, and Midland-Grau petitioned the agency to provide the compliance test procedures for Standard 121, TP–121, within 60 days after April 10, 1995.

NHTSA notes that these compliance test procedures are currently under development by the agency and will be made available in the near future.

C. Costs

ATA claimed that NHTSA's cost estimate for ABS ''are low by roughly a factor of two.'' That organization stated that fleets are getting bids on ABS equipment and actual quotes are running at almost $2,000 per tractor and $1,400 per trailer.

NHTSA disagrees with ATA that the agency's cost estimates for ABS are low by ''a factor of two.'' The agency conducted an in-depth study of heavy vehicle ABS cost, and the findings are reported in a final report, ''Incremental Cost, Weight, and Leadtime Impacts of Requiring Heavy Truck Tractor/Trailer ABS,'' published in June 1994. This study is based on an annual production volume of 100,000 ABS units. Hence, it is to be expected that the current prices that ATA is quoting would be higher than those provided in the agency's study, considering that current annual production of ABS units is under 10,000 units.

D. Corrections to Standard No. 101 and Standard No. 105

NHTSA has revised Table 2 of Standard No. 101, *Controls and Displays*, to correct several of the identifying symbols in Column 4, which were inadvertently changed in the regulatory text of the final rule. The attached Table 2 has been revised to include the original identifying symbols in Column 4.

NHTSA has also corrected Table II of Standard No. 105 to reflect correct positioning of footnote references.

XI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice was reviewed under Executive Order 12866. NHTSA has

considered the impacts of this rulemaking action and determined that it is ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. In connection with the March 1995 final rules, the agency prepared a Final Economic Assessment (FEA) describing the economic and other effects of this rulemaking action. Summary discussions of those effects were provided in the ABS final rule. The amendments in this final rule do not make those effects any more stringent, and in some respects make it easier for a manufacturer to comply with them. For persons wishing to examine the full analysis, a copy is in the docket.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of both this final rule or the original final rule under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a final regulatory flexibility analysis.

The primary cost effect of the requirements in this final rule or in the original final rules will be on manufacturers of heavy vehicles which are generally large businesses. However, final stage manufacturers are generally small businesses. A detailed discussion about the anticipated economic impact on these businesses is provided in the FEA.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency has determined that this notice does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No State laws will be affected.

E. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending Standard No. 101, *Controls and Displays,* Standard No. 105, *Hydraulic Brake Systems* and Standard No. 121, *Air Brake Systems,* in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

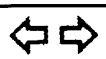
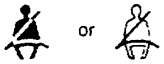
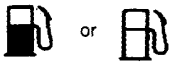
Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166, delegation of authority at 49 CFR 1.50.

2. In § 571.101, Table 2 is revised to appear as follows: § 571.101 *Standard No. 101; Controls and Displays.*

* * * * *

BILLING CODE 4910–59–P

Table 2
Identification and Illustration of Displays

Column 1	Column 2	Column 3	Column 4	Column 5
Display	*Telltale Color*	*Identifying Words or Abbreviation*	*Identifying Symbol*	*Illumination*
Turn Signal Telltale	Green	Also see FMVSS 108	 [1] [6]	—
Hazard Warning Telltale		Also see FMVSS 108	 [2] [6]	—
Seat Belt Telltale	— [7]	Fasten Belts or Fasten Seat Belts Also see FMVSS 208		—
Fuel Level Telltale		Fuel		—
Gauge	—			Yes
Oil Pressure Telltale		Oil		—
Gauge	—			Yes
Coolant Temperature Telltale		Temp		—
Gauge	—			Yes
Electrical Charge Telltale		Volts, Charge or Amp		—
Gauge	—			Yes
Highbeam Telltale	Blue or Green [4]	Also see FMVSS 108	 [6]	—
Brake System [8]	Red [4]	Brake, Also see FMVSS 105 & 135	—	—
Malfunction in Anti-Lock or	Yellow	Antilock, Anti-lock, or ABS. Also see FMVSS 105 & 135	—	—
Variable Brake Proportioning System [8]	Yellow	Brake Proportioning Also see FMVSS 135	—	—
Parking Brake Applied [8]	Red [4]	Park or Parking Brake Also see FMVSS 105 & 135	—	—
Malfunction in Antilock	Yellow	ABS, or Antilock; Trailer ABS, or Trailer Antilock. Also see FMVSS 121	—	—
Brake Air Pressure Position Telltale		Brake Air, Also see FMVSS 121	—	—
Speedometer	—	MPH [5]	—	Yes
Odometer	—	— [3]	—	—
Automatic Gear Position	—	Also see FMVSS 102	—	Yes

[1] The pair of arrows is a single symbol. When the indicator for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.

[2] Not required when arrows of turn signal tell-tales that otherwise operate independently flash simultaneously as hazard warning telltale.

[3] If the odometer indicates kilometers, then "KILOMETERS" or "km" shall appear, otherwise, no identification is required.

[4] Red can be red-orange. Blue can be blue-green.

[5] If the speedometer is graduated in miles per hour and in kilometers per hour, the identifying words or abbreviations shall be "MPH and km/h" in any combination of upper or lower case letters.

[6] Framed areas may be filled.

[7] The color of the telltale required by S4.5.3.3 of Standard No 208 is red; the color of the telltale required by S7.3 of Standard No. 208 is not specified.

[8] In the case where a single telltake indicates more than one brake system condition, the word for Brake System shall be used.

WSS Tables–Jobs 2b Disk

BILLING CODE 4910–59–C

2. Section 571.105 is amended by revising the definition of ''Directly controlled wheel'' in S4; by revising S5.1.1(c), S5.3.3(b); S5.5.1, S7, and S7.5 to read as follows:

§ 571.105 Standard No. 105, Hydraulic Brake Systems

* * * * *

S4.* * *

Directly Controlled Wheel means a wheel for which the degree of rotational wheel slip is sensed, either at that wheel or on the axle shaft for that wheel and corresponding signals are transmitted to one or more modulators that adjust the brake actuating forces at that wheel. Each modulator may also adjust the brake actuating forces at other wheels that are on the same axle or in the same axle set in response to the same signal or signals.

* * * * *

S5.1.1* * *

(c) The service brakes shall be capable of stopping each vehicle with a GVWR greater than 10,000 pounds in two effectiveness tests within the distances and from the speeds specified in S5.1.1.2 and S5.1.1.3. Each school bus with a GVWR greater than 10,000 pounds manufactured after January 12, 1996 and before March 1, 1999 and which is equipped with an antilock brake system may comply with paragraph S5.1.1.2 and S5.5.1 rather than the first effectiveness test, as specified in S5.1.1.1. Each school bus with a GVWR greater than 10,000 pounds manufactured on or after March 1, 1999 shall be capable of meeting the requirements of S5.1.1 through S5.1.5, under the conditions prescribed in S6, when tested according to the procedures and in the sequence set forth in S7.

* * * * *

S5.3.3* * *

(b) For vehicles with a GVWR greater than 10,000 pounds, each message about the existence of a malfunction, as described in S5.3.1(c), shall be stored in the antilock brake system after the ignition switch is turned to the ''off'' position and the indicator lamp shall be automatically reactivated when the ignition switch is again turned to the ''on'' position. The indicator lamp shall also be activated as a check of lamp function whenever the ignition is turned to the ''on'' (run) position. The indicator lamp shall be deactivated at the end of the check of lamp function unless there is a malfunction or a message about a malfunction that existed when the key switch was last turned to the ''off'' position.

* * * * *

S5.5.1 Each vehicle with a GVWR greater than 10,000 pounds, except for any vehicle that has a speed attainable in 2 miles of not more than 33 mph, shall be equipped with an antilock brake system that directly controls the wheels of at least one front axle and the wheels of at least one rear axle of the vehicle. On each vehicle with a GVWR greater than 10,000 pounds but not greater than 12,000 pounds, the antilock brake system may also directly control the wheels of the drive axle by means of a single sensor in the drive line. Wheels on other axles of the vehicle may be indirectly controlled by the antilock brake system.

* * * * *

S7. *Test procedures and sequence.* Each vehicle shall be capable of meeting all the applicable requirements of S5 when tested according to the procedures and in the sequence set forth below, without replacing any brake system part or making any adjustments to the brake system other than as permitted in the burnish and reburnish procedures and in S7.9 and S7.10. (For vehicles only having to meet the requirements of S5.1.1, S5.1.2 and S5.1.3 in section S5.1, the applicable test procedures and sequence are S7.1, S7.2, S7.4, S7.5, S7.8, S7.9, S7.10 and S7.18. However, at the option of the manufacturer, the following test procedures and sequence may be conducted: S7.1, S7.2, S7.3, S7.4, S7.5, S7.6, S7.7 S7.8, S7.9, S7.10 and S7.18. The choice of this option shall not be construed as adding to the requirements specified in S5.1.2 and S5.1.3.) Automatic adjusters must remain activated at all times. A vehicle shall be deemed to comply with the stopping distance requirements of S5.1 if at least one of the stops at each speed and load specified in each of S7.3, S7.5, S7.8, S7.9, S7.10, S7.15 and S7.17 (check stops) is made within a stopping distance that does not exceed the corresponding distance specified in Table II. When the transmission selector control is required to be in neutral for a deceleration, a stop or snub shall be obtained by the following procedures:

(a) Exceed the test speed by 4 to 8 mph;

(b) close the throttle and coast in gear to approximately 2 mph above the test speed;

(c) shift to neutral; and

(d) when the test speed is reached, apply the service brakes.

* * * * *

S7.5 Service brake system-second effectiveness test. Repeat S7.3, except for vehicles with a GVWR greater than 10,000 lbs. Then, for vehicles with a GVWR of 10,000 pounds or less, make four stops from 80 mph if the speed attainable in 2 miles is not less 84 mph.

* * * * *

3. Section 571.121 is amended by revising the definitions of ''Directly Controlled Wheel'' and ''Full-treadle brake application'' in S4; by adding the definition for ''Maximum treadle travel'' in S4; and by revising S5.1.6.2, S5.2.3.2, S5.2.3.3, S5.3.1, S5.3.6, S5.3.6.1, and S5.7.1 to read as follows:

§ 571.121 Standard No. 121; Air Brake Systems.

* * * * *

S4.* * *

Directly Controlled Wheel means a wheel for which the degree of rotational wheel slip is sensed, either at that wheel or on the axle shaft for that wheel and corresponding signals are transmitted to one or more modulators that adjust the brake actuating forces at that wheel. Each modulator may also adjust the brake actuating forces at other wheels that are on the same axle or in the same axle set in response to the same signal or signals.

* * * * *

Full-treadle brake application means a brake application in which the treadle valve pressure in any of the valve's output circuits reaches 85 psi within 0.2 seconds after the application is initiated, or in which maximum treadle travel is achieved within 0.2 seconds after the application is initiated.

* * * * *

Maximum treadle travel means the distance that the treadle moves from its position when no force is applied to its position when the treadle reaches a full stop.

* * * * *

S5.1.6.2 *Antilock Malfunction Signal.*

(a) Each truck tractor manufactured on or after March 1, 1997 and each single unit vehicle manufactured on or after March 1, 1998 shall be equipped with an indicator lamp, mounted in front of and in clear view of the driver, which is activated whenever there is a malfunction that affects the generation or transmission of response or control signals in the vehicle's antilock brake system. The indicator lamp shall remain activated as long as such a malfunction exists, whenever the ignition (start) switch is in the ''on'' (run) position, whether or not the engine is running. Each message about the existence of such a malfunction shall be stored in the antilock brake system after the ignition switch is turned to the ''off'' position and automatically reactivated when the ignition switch is again turned to the ''on'' position. The indicator lamp shall also be activated as a check of lamp function whenever the ignition is turned to the ''on'' or ''run'' position.

The indicator lamp shall be deactivated at the end of the check of lamp function unless there is a malfunction or a message about a malfunction that existed when the key switch was last turned to the ''off'' position.

(b) Each truck tractor manufactured on or after March 1, 1997, and each single unit vehicle manufactured on or after March 1, 1998 that is equipped to tow another air-braked vehicle, shall be equipped with an electrical circuit that is capable of transmitting a malfunction signal from the antilock brake system(s) on one or more towed vehicle(s) (e.g., trailer(s) and dolly(ies)) to the trailer ABS malfunction lamp in the cab of the towing vehicle, and shall have the means for connection of this electrical circuit to the towed vehicle. Each such truck tractor and single unit vehicle shall also be equipped with an indicator lamp, separate from the lamp required in S5.1.6.2(a), mounted in front of and in clear view of the driver, which is activated whenever the malfunction signal circuit described above receives a signal indicating an ABS malfunction on one or more towed vehicle(s). The indicator lamp shall remain activated as long as an ABS malfunction signal from one or more towed vehicle(s) is present, whenever the ignition (start) switch is in the ''on'' (run) position, whether or not the engine is running. The indicator lamp shall also be activated as a check of lamp function whenever the ignition is turned to the ''on'' or ''run'' position. The indicator lamp shall be deactivated at the end of the check of lamp function unless a trailer ABS malfunction signal is present.

(c) [Reserved]

* * * * *

S5.2.3.2 *Antilock Malfunction Signal.* Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998 that is equipped with an antilock brake system shall be equipped with an electrical circuit that is capable of signalling a malfunction in the trailer's antilock brake system, and shall have the means for connection of this antilock brake system malfunction signal circuit to the towing vehicle. The electrical circuit need not be separate or dedicated exclusively to this malfunction signaling function. The signal shall be present whenever there is a malfunction that affects the generation or transmission of response or control signals in the trailer's antilock brake system. The signal shall remain present as long as the malfunction exists, whenever power is supplied to the antilock brake system. Each message about the existence of such a malfunction shall be stored in the antilock brake system whenever power is no longer supplied to the system, and the malfunction signal shall be automatically reactivated whenever power is again supplied to the trailer's antilock brake system. In addition, each trailer manufactured on or after March 1, 1998, that is designed to tow another air-brake equipped trailer shall be capable of transmitting a malfunction signal from the antilock brake system(s) of additional trailers in a combination by means of its ABS malfunction signal circuit, and shall have the means for connection of its ABS malfunction signal circuit to the towed vehicle.

S5.2.3.3 *Antilock Malfunction Indicator.* In addition to the requirements of S5.2.3.2, each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998 and before March 1, 2006, shall be equipped with an external indicator lamp that is activated whenever there is a malfunction that affects the generation or transmission of response or control signals in the trailer's antilock brake system. The indicator lamp shall remain activated as long as such a malfunction exists, whenever power is supplied to the antilock brake system. Each message about the existence of such a malfunction shall be stored in the antilock brake system whenever power is no longer supplied to the system, and the malfunction signal shall be automatically reactivated when power is again supplied to the trailer's antilock brake system. The indicator lamp shall also be activated as a check of lamp function whenever power is supplied to the antilock brake system and the vehicle is stationary. The indicator lamp shall be deactivated at the end of the check of lamp function unless there is a malfunction or a message about a malfunction that existed when power was last supplied to the antilock brake system.

* * * * *

S5.3.1 *Stopping distance—trucks and buses.* When stopped six times for each combination of vehicle type, weight, and speed specified in S5.3.1.1, in the sequence specified in Table I, each truck tractor manufactured on or after March 1, 1997 and each single unit vehicle manufactured on or after March 1, 1998 shall stop at least once in not more than the distance specified in Table II, measured from the point at which movement of the service brake control begins, without any part of the vehicle leaving the roadway, and with wheel lockup permitted only as follows:

(a) At vehicle speeds above 20 mph, any wheel on a nonsteerable axle other than the two rearmost nonliftable, nonsteerable axles may lock up, for any duration. The wheels on the two rearmost nonliftable, nonsteerable axles may lock up according to (b).

(b) At vehicle speeds above 20 mph, one wheel on any axle or two wheels on any tandem may lock up for any duration.

(c) At vehicle speeds above 20 mph, any wheel not permitted to lock in (a) or (b) may lock up repeatedly, with each lockup occurring for a duration of one second or less.

(d) At vehicle speeds of 20 mph or less, any wheel may lock up for any duration.

Table I.—Stopping Sequence

1. Burnish.

2. Stops on a peak friction coefficient surface of 0.5: (a) With the vehicle at gross vehicle weight rating (GVWR), stop the vehicle from 30 mph using the service brake, for a truck tractor with a loaded unbraked control trailer. (b) With the vehicle at unloaded weight plus up to 500 lbs., stop the vehicle from 30 mph using the service brake, for a truck tractor.

3. Manual adjustment of the service brakes allowed for truck tractors, within the limits recommended by the vehicle manufacturer.

4. Other stops with vehicle at GVWR:

(a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor with a loaded unbraked control trailer, or for a single-unit vehicle.

(b) 60 mph emergency brake stops on a peak friction coefficient of 0.9, for a single-unit vehicle. Truck tractors are not required to be tested in the loaded condition.

5. Parking brake test with the vehicle loaded to GVWR.

6. Manual adjustment of the service brakes allowed for truck tractors and single-unit vehicles, within the limits recommended by the vehicle manufacturer.

7. Other stops with the vehicle at unloaded weight plus up to 500 lbs.

(a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor or for a single-unit vehicle.

(b) 60 mph emergency brake stops on a peak friction coefficient of 0.9, for a truck tractor or for a single-unit vehicle.

8. Parking brake test with the vehicle at unloaded weight plus up to 500 lbs.

9. Final inspection of service brake system for condition of adjustment.

S5.3.6 *Stability and Control During Braking-Truck Tractors.* When stopped four consecutive times for each combination of weight, speed, and road conditions specified in S5.3.6.1 and

S5.3.6.2, each truck tractor manufactured on or after March 1, 1997 shall stop at least three times within the 12-foot lane, without any part of the vehicle leaving the roadway.

S5.3.6.1 Using a full-treadle brake application for the duration of the stop, stop the vehicle from 30 mph or 75 percent of the maximum drive-through speed, whichever is less, on a 500- foot radius curved roadway with a wet level surface having a peak friction coefficient of 0.5 when measured on a straight or curved section of the curved roadway using an American Society for Testing and Materials (ASTM) E1136 standard reference tire, in accordance with ASTM Method E1337–90, at a speed of 40 mph, with water delivery.

* * * * *

S5.7.1 *Emergency brake system performance.* When stopped six times for each combination of weight and speed specified in S5.3.1.1, except for a loaded truck tractor with an unbraked control trailer, on a road surface having a PFC of 0.9, with a single failure in the service brake system of a part designed to contain compressed air or brake fluid (except failure of a common valve, manifold, brake fluid housing, or brake chamber housing), the vehicle shall stop at least once in not more than the distance specified in Column 5 of Table II, measured from the point at which movement of the service brake control begins, except that a truck-tractor tested at its unloaded vehicle weight plus up to 500 pounds shall stop at least once in not more than the distance specified in Column 6 of Table II. The stop shall be made without any part of the vehicle leaving the roadway, and with unlimited wheel lockup permitted at any speed.

* * * * *

Issued on: December 8, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–30375 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–59–P

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1043 and 1160

[Ex Parte No. 55 (Sub-No. 96)]

Freight Operations by Mexican Motor Carriers—Implementation of North American Free Trade Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: This action amends Interstate Commerce Commission (ICC) regulations relating to motor carrier operating authority and insurance, in order to implement the second phase of the North American Free Trade Agreement (NAFTA) relating to land transportation. The amendments will establish procedures under which Mexican motor carriers may apply for operating authority to provide service across the United States-Mexico international boundary line to and from points in California, Arizona, New Mexico, and Texas. They will also establish procedures under which persons of Mexico who establish enterprises in the United States to distribute international cargo in this country may apply for operating authority.

EFFECTIVE DATE: December 18, 1995.

FOR FURTHER INFORMATION CONTACT: Applications for operating authority may be obtained by calling the ICC's Automated Response Capability (ARC) telephone system at (202) 927–7600 and selecting the option for how to file an application. For additional information, contact either Bernard Gaillard, (202) 927–5500 or Stanley M. Braverman, (202) 927–6316. [TDD for the hearing impaired: (202) 927–5721.] To obtain a copy of the Commission's full decision in this matter, contact D.C. News & Data Inc., ICC Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423.

SUPPLEMENTARY INFORMATION: The Commission published a notice of proposed rulemaking in the Federal Register on October 18, 1995 (60 FR 53894). This notice proposed changes to ICC licensing and insurance regulations, and it sought comments on a new application form created to assist in the implementation of the second phase of NAFTA. After reviewing the comments submitted, we have decided to adopt the proposed rules. We have made some changes to Form OP–1MX, ''Application for Operating Authority by Mexican Carriers,'' to correct inadvertent oversights and to address points made in the comments.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, we have examined the impact of our action on small businesses and small organizations. We conclude that our action will not have a substantial impact upon a significant number of small entities, and that any impact it may have will be beneficial. We expect that the new application form designated for Mexican applicants (Form OP–1MX), and the corresponding regulations, will simplify and clarify the application process. Use of the existing Form OP–1 for these new applications, by contrast, could cause confusion and require more work on the part of Mexican carrier applicants.

Environmental and Energy Considerations

We conclude that our rules will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1043

Insurance, Motor Carriers, Surety Bonds.

49 CFR Part 1160

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Motor carriers, Moving of household goods.

Decided: November 30, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen and Commissioner Simmons.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1043 and 1160 are amended as set forth below:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

§ 1043.1 [Amended]

2. Section 1043.1, paragraphs (a)(1) and (b) are amended as follows:

a. In paragraph (a)(1) in the first sentence add the words ''or foreign (Mexican) motor private carrier or foreign motor carrier transporting exempt commodities'' after the words ''No common or contract carrier''.

b. In paragraph (b) in the first sentence add the words ''nor any foreign (Mexican) common carrier of exempt commodities'' after the words ''title 49 of the U.S. Code''.

PART 1160—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

3. The authority citation for part 1160 continues to read as follows:

Authority: 5 U.S.C 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, 10928 and 11102.

4. In § 1160.1 a new paragraph (h) is added to read as follows:

§ 1160.1 Applications governed by these rules.

* * * * *

(h) Applications for Mexican carriers to operate in foreign commerce as common, contract or private motor carriers of property (including exempt items) between the U.S./Mexico border, and points in California, Arizona, New Mexico and Texas.

§ 1160.3 [Amended]

5. In § 1160.3, paragraph (a), remove the word ''and'' after the words ''of household goods;''; add the words ''and Form OP–1MX for Mexican motor property carriers'' after the words ''for water carriers''.

§ 1160.4 [Amended]

6. Section 1160.4, paragraphs (a)(1) and (d) are amended as follows:

a. In paragraph (a)(1) add the words '', Mexican motor property carriers that perform private carriage and transport exempt items,'' after the words ''(except household goods)''.

b. In paragraph (d) introductory text, add the words '', including Mexican carrier applicants'' after the words ''household goods applications''.

c. In the Note at the end of § 1160.4 add the words ''Form OP–1MX for Mexican property carriers,'' after the words ''OP–1 for motor property carriers,''.

7. In § 1160.5 a new paragraph (a)(8) is added to read as follows:

§ 1160.5 Commission review of the applications.

(a) * * *

(8) All applications must be completed in English.

* * * * *

[FR Doc. 95–30239 Filed 12–12–95; 8:45 am]

BILLING CODE 7035–01–P

Proposed Rules

Federal Register
Vol. 60, No. 239
Wednesday, December 13, 1995

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1487, 1491, 1492 and 1495

Regulatory Reform Initiative

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Proposed rule.

SUMMARY: In response to the President's Regulatory Reform Initiative, the Commodity Credit Corporation is proposing to amend its regulations to eliminate the following programs: Noncommercial Risk Assurance Program (GSM–101); CCC Intermediate Credit Export Sales Program for Breeding Animals (GSM–201); CCC Intermediate Credit Export Sales Program for Foreign Market Development Facilities (GSM–301); and Disposition of Agricultural Commodities under the CCC Barter Program (Barter Program).

These programs are inactive or obsolete and have not been used in 15 years or more.

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

ADDRESSES: All comments concerning these proposed regulations should be addressed to L.T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AG Box 1035, Washington, D.C., 20250–1035; FAX (202) 720–2949. All comments received will be available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, at the address stated above. Telephone (202) 720–6211. The U.S. Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720–5881 (voice) or (202) 720–7808 (TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined to be neither significant nor economically significant for the purposes of E.O. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Executive Order 12372

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Paperwork Reduction Act

The amendment to 7 CFR parts 1487, 1491, 1492 and 1495 set forth in this proposed rule does not contain information collections that require clearance by the OMB under the provisions of 44 U.S.C. 35.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. The proposed rule would not 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 rule would not have retroactive effect.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations.

Request for Public Comment

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In response to the President's Regulatory Reform Initiative, the Commodity Credit Corporation is proposing to amend Title 7 of the Code of Federal Regulations to remove the following parts:

- Part 1487—Noncommercial Risk Assurance Program (GSM–101);
- Part 1491—CCC Intermediate Credit Export Sales Program for Breeding Animals (GSM–201);
- Part 1492—CCC Intermediate Credit Export Sales Program for Foreign Market Development Facilities (GSM–301); and
- Part 1495—Disposition of Agricultural Commodities under the CCC Barter Program (Barter Program).

Reasons for Removal

CCC proposes to remove these parts for the following reasons:

- GSM–101—This risk assurance program, implemented in 1979, covered only non-commercial or political risk and became obsolete when the CCC Export Credit Guarantee Program (GSM–102) was introduced in 1980 to cover political and commercial risk. The GSM–101 program was last used in 1981.
- GSM–201—This direct credit program has been used only once (a transaction for livestock exports to Spain in 1979). The terms available under the program—3 to 10 year direct credits—could be made available under a modified GSM–5 Program (7 CFR Part 1488) Financing of Sales of Agricultural Commodities Program.

• GSM–301—This direct credit program was intended to facilitate commodity exports which would be sold to generate funds to finance the construction of a market development project. The program was used only once (in connection with a bulk grain discharge and storage facility developed at Ashdod, Israel). That project began in 1978 and was completed in the early 1980's. For a number of years, funding has not been made available for this program.

• Barter Program—From 1950 through 1973, CCC exchanged CCC-owned agricultural commodities for strategic and critical materials for the National Defense Stockpile. The program could also be used to obtain foreign-produced supplies and services used in Department of Defense construction projects and Agency for International Development projects. The program was terminated in 1973 when CCC stocks were depleted. The National Defense Stockpile is now liquidating many strategic materials. Also, CCC has authority, which it has at times used, to enter into direct barter arrangements under the CCC Charter Act in order to obtain strategic materials for defense stock piles.

List of Subjects

7 CFR Part 1487

Agricultural commodities, Exports, Insurance, Reporting and recordkeeping requirements.

7 CFR Parts 1491 and 1492

Exports, Livestock, Loan programs-agriculture, Reporting and recordkeeping requirements.

7 CFR Part 1495

Agricultural commodities, Exports, Government procurement, Strategic and critical materials.

PARTS 1487, 1491, 1492, 1495—[REMOVED]

For the reasons set out in the preamble under the authority at 5 U.S.C. Section 552(a)(1)(E), it is proposed to amend 7 CFR Chapter XIV by removing parts 1487, 1491, 1492 and 1495.

Signed at Washington, DC, on December 1, 1995.

Christopher E. Goldthwait,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 95–30018 Filed 12–12–95; 8:45 am]

BILLING CODE 3410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AF31

Constraint Level for Air Emissions of Radionuclides

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to establish a constraint of 10 mrem/yr total effective dose equivalent (TEDE) for dose to members of the public from air emissions of radionuclides from NRC licensed facilities other than power reactors. This proposed rule is necessary to provide assurance to the Environmental Protection Agency (EPA) that future emissions from NRC licensees will not exceed levels that will provide an ample margin of safety. This action is expected to be the final step in providing EPA with a basis upon which to rescind its Clean Air Act (CAA) regulations for NRC licensed facilities (other than power reactors) and Agreement State licensees, thereby relieving these licensees from unnecessary dual regulations.

DATES: Submit comments by March 12, 1996. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Docketing and Services Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Rulemaking Bulletin Board (BBS) on FEDWORLD.

The BBS is an electronic information system operated by the National Technical Information Service of the Department of Commerce. The purpose of this bulletin board BBS is to facilitate public participation in the NRC regulatory process, particularly rulemakings. With publication of this notice, proposed rulemakings and appropriate supporting documents will be available for review and comment on the BBS. These same documents are also available for review and comment at the NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. The BBS may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

The NRC rulemaking bulletin board (rulemaking subsystem) on FEDWORLD can be accessed directly by using a personal computer and modem, dialing the toll free number at 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FEDWORLD consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FEDWORLD Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FEDWORLD also can be accessed by a direct dial phone number for the main FEDWORLD BBS at 703–321–3339; or by using Telnet via Internet: fedworld.gov. Using the 703 number to contact FEDWORLD, the NRC subsystem will be accessed from the main FEDWORLD menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has the option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FEDWORLD command line. If you access NRC from FEDWORLD's main menu, then you may return to FEDWORLD by selecting the ''Return to FEDWORLD'' option from the NRC Online Main Menu. However, if you access NRC at FEDWORLD by using NRC's toll-free number, then you will have full access to all NRC systems, but you will not have access to the main FEDWORLD system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the ''Rules Menu''. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files. If you contact FEDWORLD using FTP, all files can be accessed and downloaded, but uploads are not allowed, and all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with

descriptions, is available. There is a 15-minute time limit for FTP access.

Although FEDWORLD also can be accessed through the World Wide Web as well, like FTP, that mode only provides access for downloading files, and does not display the NRC ''Rules Menu.''

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Comments received on this proposed rule may be examined and/or copied for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charleen T. Raddatz, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6215; e-mail CTR@NRC.GOV.

SUPPLEMENTARY INFORMATION: The EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPs) for radionuclides on October 31, 1989. Subpart I of 40 CFR 61 was promulgated to implement the CAA and limit doses to members of the public from air emissions of radionuclides (other than Radon-222) from all NRC licensees other than licensees possessing only sealed sources, high-level waste repositories and uranium mill tailings piles that have been disposed of in accordance with 40 CFR Part 192 and are subject to the requirements of Subpart I. Initially, Radon-222 emissions from tailings were covered by 40 CFR 61, Subparts T and W. Subpart T was rescinded for NRC licensees after Appendix A to Part 40 was amended by the Commission to conform to changes EPA issued to 40 CFR 192 that adopted the provisions of subpart T (Subpart W still applies to NRC licensees). Since Radon-222 is adequately addressed in Appendix A to Part 40 and other provisions of Part 20 it is not covered in this proposed rulemaking.

Under Subpart I, emissions of radionuclides must be limited so that no member of the public would receive an effective dose equivalent of greater than 10 mrem/yr [1].

In 1990, Congress enacted amendments to the CAA. Section 112(d)(9) of these amendments to the CAA (the Simpson amendment) states:

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

Upon issuance, the effectiveness of Subpart I for all NRC licensees was immediately stayed by EPA pending further evaluation. During the stay period, EPA conducted two studies of the air emissions from NRC and Agreement State materials licensees. The first was a survey of 367 randomly selected nuclear materials licensees. EPA determined that the highest estimated dose to a member of the public from air emissions from these facilities was 8 mrem/yr, based on very conservative modeling. In addition, 98 percent of the facilities surveyed reported doses to members of the public resulting from air emissions less than 1 mrem/yr. The second study evaluated dose from air emissions from 43 additional facilities that were selected because of their potential for air emissions resulting in significant public exposures. EPA found that 75 percent of these licensees had air emissions resulting in an estimated maximum public dose less than 1 mrem/yr. For the licensees evaluated, none exceeded 10 mrem/yr.

In its initial proposal to rescind Subpart I for NRC licensees other than power reactors, EPA stated that:

> Based on the result of the survey undertaken by EPA and the commitments made by NRC in the MOU, EPA has made an initial determination that the NRC program under the Atomic Energy Act provides an ample margin of safety to protect the public health (57 FR 56880; December 1, 1992).

However, EPA continued to express concern regarding the adequacy of the measures to ''assure EPA that future emissions from NRC licensees will not exceed levels that will provide an ample margin of safety.'' The stay on Subpart I expired on November 15, 1992, and Subpart I became effective on November 16, 1992. Subsequently, in July of 1993, the EPA Administrator determined that there was insufficient basis at that time to rescind Subpart I. Consequently, NRC and Agreement State licensed facilities are currently subject to dual regulation of air emissions of radionuclides under both the AEA and the CAA, including regulatory oversight by EPA (or authorized State) and NRC (or Agreement State).

NRC licensees subject to Subpart I are also subject to NRC dose limits for members of the public contained in 10 CFR Part 20, Subpart D entitled ''Radiation Dose Limits for Individual Members of the Public'' (Subpart D). Under Subpart D, licensees shall ensure that doses to members of the public are less than 100 mrem/yr from all pathways (including air emissions) and all sources associated with the licensee's operation. In addition, doses to members of the public must be kept as low as is reasonably achievable (ALARA). Based on the aforementioned studies conducted by EPA and licensee reporting of doses to members of the public from air emissions to EPA, it is evident that less than 10 mrem/yr to the maximally exposed member of the public from air emissions is reasonably achievable.

NRC power reactor licensees subject to 10 CFR 50.34a must keep doses to members of the public from air emissions consistent with the numerical guidelines in Appendix I to 10 CFR Part 50. In addition, these licensees have for many years reported estimated doses to members of the public from air emissions well below the Subpart I value. Based on the combination of a continuing regulatory basis for reduced air emissions and documented proof of the effectiveness of the NRC program for these licensees, EPA has already proposed to rescind Subpart I for power reactors licensed by NRC (56 FR 37196; August 5, 1991).

The NRC is proposing to establish a constraint of 10 mrem/yr TEDE for dose to members of the public from air emissions of radionuclides from NRC licensed facilities other than power reactors as a part of its program to maintain doses ALARA. The rulemaking being proposed would codify numerical values for NRC's application of ALARA guidelines on radioactive air emissions from its licensees, other than power reactors. For power reactors, ALARA guidelines have already been established within 10 CFR 50 and facility licensing conditions. This regulatory action would ensure that air emissions are maintained at a very low level and, taking into consideration the elimination of dual regulation, at little or no cost. This action would also bring consistency between EPA's dose standard and the NRC's ALARA application, thereby providing EPA with a basis upon which to rescind Subpart I as it applies to NRC licensed facilities other than power reactors. This action is expected to be the final step in providing EPA with a basis upon which to rescind Subpart I for NRC licensees other than power reactors.

[1] Subpart I expresses dose in effective dose equivalent (EDE). NRC expresses dose in total effective dose equivalent (TEDE). These terms are essentially equivalent. For the sake of consistency, this paper will refer to all doses in terms of TEDE.

NRC has been working cooperatively with EPA over the last several years to support rescission of EPA's standards in Subpart I of 40 CFR Part 61 in accordance with Section 112(d)(9) of the CAA. The fundamental objective of this effort has been to eliminate unnecessary duplicative regulations that provide no incremental benefit in terms of public and environmental protection.

The regulatory framework within which NRC proposes to provide a basis for rescission of Subpart I consists of the requirements in 10 CFR Part 20 to limit doses to members of the public to 100 mrem/yr, to maintain these doses as far below this limit as is reasonably achievable (ALARA), and to constrain dose to members of the public from air emissions of radioactive materials from a single source to 10 mrem/yr.

If the licensee estimates or measures a dose to a member of the public expected to receive the highest dose from air effluents to be less than 10 mrem/yr, the licensee would be required to record the dose and the assumption used to calculate it consistent with the requirements of § 20.2103. This data would be made available to inspectors upon request. If the licensee estimates or measures a dose to the member of the public expected to receive the highest dose from air effluents to be greater than 10 mrem/yr, the licensee would be required to report the dose to NRC in writing within 30 days. In addition, the licensee would be required to include in that report the circumstances that led to the greater than 10 mrem/year dose, a description of the corrective steps the licensee has taken or proposes to take to ensure that the constraint is not again exceeded, a timetable for implementing the corrective steps, and the expected results.

The constraint on dose from air emissions is different than a limit. Exceeding this constraint would not result in a Notice of Violation (NOV). Rather, a NOV would be issued only upon failure to report that actual or estimated doses, from air effluent releases from a facility, have exceeded the constraint value and/or failure to institute appropriate measures to correct and prevent further emissions in excess of those which would result in dose exceeding the constraint level.

The proposed rule would apply to airborne releases, other than Radon-222, from all NRC licensees except power reactors. Power reactors are exempt from this proposed rule because they are already required under 10 CFR 50.34a to identify, in their application, design objectives and the means to be employed for keeping doses to members of the public from air effluents ALARA. Appendix I to Part 50 contains the numerical guidelines to meet this requirement.

In addition to the discussion above, the Commission is soliciting comments on the question of whether the 10 mrem constraint should be established in 10 CFR Part 20, as proposed, or whether it should be established separately in each appropriate Part of Title 10 instead.

Regulatory Guide

Regulatory Guide 8.37, —ALARA Levels for Effluents From Materials Facilities,— is being modified to reflect the introduction of the constraint on air emissions in the proposed rule and to identify those methods acceptable to the NRC for implementing the rule. To afford members of the public with an opportunity to comment on the rule and guide as a complete package, publication of the guide for comment is expected to be coincident with publication of the proposed rule, or within a few weeks of the date of publication of the proposed rule.

Agreement State Compatibility

Section 116 of the CAA authorizes individual States to establish more restrictive requirements than those presented in Subpart I. In view of the CAA precedent, the NRC staff is recommending that this rule be a Division 2 matter of compatibility under the existing compatibility policy. As such, Agreement States could choose to adopt a rule which is more restrictive but no less restrictive than the one approved by the Commission.

The NRC is in the process of revising its compatibility policy and has issued a proposed policy for public comment (59 FR 37269; July 21, 1994). Although the compatibility policy has not yet been finalized, the NRC anticipates that a similar level of Agreement State compatibility will be required for air emissions under the new policy as is required under a Division Level 2 designation.

Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. This action is not expected to have any significant environmental impact because the programs would provide equivalent protection. Actual air emissions are not expected to change. The changes would be procedural methods for demonstrating compliance and inspection procedures. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection and photocopying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the collection of information contained in the proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0014), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the collections of information or on the above issues should be submitted by January 12, 1996. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC 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.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Charleen T. Raddatz, (301) 415–6215.

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This rule only impacts NRC licensees with emissions of significant quantities of radioactive material. This category of licensee includes only a few small businesses.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because it does not apply to power reactor licensees, and therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects In 10 CFR Part 20

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

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

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

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

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

2. In § 20.1003, the definition of Constraint is added to read as follows:

§ 20.1003 Definitions.

* * * * *

Constraint (dose constraint) means a value above which specified licensee actions are required.

* * * * *

3. In § 20.1101 paragraph (d) is added to read as follows:

§ 20.1101 Radiation protection programs

* * * * *

(d) To implement the ALARA requirements of § 20.1101(b), and notwithstanding the requirements in § 20.1301 of this part, licensees other than those subject to §§ 50.34a or 50.36b, shall constrain air emissions of radioactive materials other than radon-222 so that the individual member of the public likely to receive the highest dose will not be expected to receive a dose in excess of 10 mrem/yr TEDE from these emissions. If a licensee subject to this requirement exceeds this dose constraint, the licensee shall report the exceedence as provided in § 20.2203 and promptly take appropriate corrective action to ensure against recurrence.

4. In § 20.2203 a new paragraph (a)(2)(vi) is added and the section heading and paragraph (b)(1)(iv) are revised to read as follows:

§ 20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits.

(a) * * *

(2) * * *

(vi) The ALARA constraints for air emissions established under § 20.1101(c); or

(b) * * *

(1) * * *

(iv) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license conditions.

* * * * *

Dated at Rockville, Maryland, this 7th day of December, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–30334 Filed 12–12–95; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule for minicomputers.

SUMMARY: The Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Minicomputers. A Minicomputer is ''a digital computer whose price and capability lies above that of a personal computer or workstation, and below that of a mainframe computer'' as defined by the Ralston and Reilly Encyclopedia of Computer Science Third Edition. The SBA adds that most Minicomputers are run in a closed-shop environment, with the user acting as operator, programmer, and application analyst. The basis for a waiver of the Nonmanufacturer Rule for this product is that there are no small business manufacturers or processors available to supply these products to the Federal Government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply other than the product of a domestic small business manufacturer or processor on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before December 29, 1995.

ADDRESSES: David Wm. Loines, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street S.W., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: David Wm. Loines, 202–205–6475.

SUPPLEMENTARY INFORMATION: Public law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set-aside for small businesses or the SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual

manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines ''class of products'' based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual. The second is the Product and Service Code established by the Federal Procurement Data System.

The Small Business Administration is currently processing a request for a waiver of the Nonmanufacturer Rule for Minicomputers (SIC 3571, PSC 7010) and invites the public to comment or provide information on potential small business sources for this product.

In an effort to identify potential small business sources, the SBA has searched the Procurement Automated Source System (PASS) and Thomas Register, and the SBA will publish a notice in the Commerce Business Daily. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for this class of products.

Dated: November 6, 1995.

Judith A. Roussel,

Associate Administrator for Government Contracting.

[FR Doc. 95–30328 Filed 12–12–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–66]

Airworthiness Directives; Hamilton Standard 14RF and 14SF Series, and Hamilton Standard/British Aerospace Model 6/5500/F Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Hamilton Standard 14RF and 14SF series, and Hamilton Standard/British Aerospace Model 6/5500/F propellers. This proposal would require initial and repetitive inspections of critical components, and removal, and replacement with serviceable parts, of those critical components that do not meet the return to service criteria. This proposal is prompted by failure modes effects analysis (FMEA), certification test data, engineering analysis, and repair actions performed at overhaul depots. The actions specified by the proposed AD are intended to prevent loss of propeller control due to failure of critical components, which could result in loss of control of the aircraft.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95- ANE–66, 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 Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. 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: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7158, fax (617) 238–7199.

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–66.'' 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–66, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) and Hamilton Standard have identified critical aspects of the transfer tube assembly, actuator assembly, and propeller control unit (PCU) for Hamilton Standard Models 14RF–9, 14RF–19, 14RF–21; 14SF–5, 14SF–7, 14SF–11, 14SF–11L, 14SF–15, 14SF–17, 14SF–19, 14SF–23; and Hamilton Standard/British Aerospace 6/5500/F propellers. A continuous airworthiness requirement for inspection of those critical aspects of the transfer tube assembly, actuator assembly, and PCU for wear is required to ensure continued safe operation between inspections. The inspection intervals and inspection criteria have been generated by failure modes effects analysis (FMEA), certification test data, engineering analysis, and repair actions performed at overhaul depots. This condition, if not corrected, could result in loss of propeller control due to failure of critical components, which could result in loss of control of the aircraft.

The FAA has reviewed and approved the technical contents of the following Hamilton Standard Service Bulletins (SB's), all dated November 29, 1995, that describe procedures for initial and repetitive inspections of critical components: 14RF–9–61–64, 14RF–19–61–32, 14RF–21–61–51, 14SF–61–70, and 6/5500/F–61–25.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would

require initial and repetitive inspections of critical aspects of the transfer tube assembly, actuator assembly, and PCU for wear. This AD would also require, prior to further flight, removing and replacement with serviceable parts those critical components that do not meet the return to service criteria. The actions would be required to be accomplished in accordance with the SB's described previously.

There are approximately 2,900 propellers of the affected design in the worldwide fleet. The FAA estimates that 1,350 propellers installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 4.3 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 $348,300.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Hamilton Standard: Docket No. 95–ANE–66.

Applicability: Hamilton Standard Models 14RF–9, 14RF–19, 14RF–21, and 14SF–5, 14SF–7, 14SF–11, 14SF–11L, 14SF–15, 14SF–17, 14SF–19, 14SF–23 and Hamilton Standard/British Aerospace 6/5500/F propellers installed on but not limited to Embraer EMB–120 and EMB–120–RT; SAAB–SCANIA SF 340B; Aerospatiale ATR42–100, ATR42–300, ATR42–320, ATR72; DeHavilland DHC–8–100 series, DHC–8–300 Series; Construcciones Aeronauticas SA (CASA) CN–235 series and CN–235–100; Canadair CL–215T an CL–415; and British Aerospace ATP Airplanes.

Note: This airworthiness directive (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 (e) 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 loss of propeller control due to failure of critical components, which could result in loss of control of the aircraft, accomplish the following:

(a) For those propellers with transfer tube assemblies, actuator assemblies, and propeller control units (PCU's) with greater than or equal to 15,500 hours time in service (TIS), or unknown TIS, on the effective date of this AD, inspect for wear within 1,000 hours TIS after the effective date of this AD. Perform inspections of the critical aspects of these components in accordance with the applicable service bulletins (SB's) listed in paragraph (d) of this AD. Thereafter, inspect at intervals not to exceed 10,500 hours TIS since last inspection. Prior to further flight, remove and replace with serviceable parts those components that do not meet the return to service criteria defined in the applicable SB's.

(b) For those propellers with transfer tube assemblies, actuator assemblies, and PCU's with greater than or equal to 10,500 hours TIS but less than 15,500 hours TIS on the effective date of this AD, inspect for wear within 1,000 hours TIS after the effective date of this AD, or prior to accumulating 16,500 hours TIS, whichever occurs later. Perform inspections of the critical aspects of these components in accordance with the applicable SB's listed in paragraph (d) of this AD. Thereafter, inspect at intervals not to exceed 10,500 hours TIS since last inspection. Prior to further flight, remove and replace with serviceable parts those components that do not meet the return to service criteria defined in the applicable SB's.

(c) For those propellers with transfer tube assemblies, actuator assemblies, and PCU's with less than 10,500 hours TIS on the effective date of this AD, inspect for wear within 6,000 hours TIS after the effective date of this AD, or prior to accumulating 10,500 hours TIS, whichever occurs later. Perform inspections of the critical aspects of these components in accordance with the applicable SB's listed in paragraph (d) of this AD. Thereafter, inspect at intervals not to exceed 10,500 hours TIS since last inspection. Prior to further flight, remove and replace with serviceable parts those components that do not meet the return to service criteria defined in the applicable SB's.

(d) Perform the inspections for wear required by this AD in accordance with, and use the return to service criteria defined in, the following applicable Hamilton Standard SB's, all dated November 29, 1995: 14RF–9–61–64, 14RF–19–61–32, 14RF–21–61–51, 14SF–61–70, and 6/5500/F–61–2.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

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

Issued in Burlington, Massachusetts, on December 6, 1995.

James C. Jones,

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

[FR Doc. 95–30352 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–124–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires an inspection of the control rods of the outboard leading edge slat, and follow-on actions (including repetitive ultrasonic inspections), if necessary. That AD also requires replacement of the control rod ends and attach bolts for certain airplanes. It also provides for an optional terminating action for follow-on repetitive inspections. That AD was prompted by reports of cracks and worn attach bolts of the control rods of the leading edge outboards slats of the wings due to the high breakout torque in the joint of the control rod end. This action would require installation of the previously optional terminating action. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane and damage in the slat structure or fixed leading edge of the wing, as a result of cracks and worn attach bolts.

DATES: Comments must be received by January 24, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–124–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–124–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–124–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On September 5, 1990, the FAA issued AD 90–20–16, amendment 39–6726 (55 FR 37858, September 14, 1990), applicable to certain Boeing Model 767 series airplanes, to require a one-time visual inspection to determine the date of manufacture of the control rods of the outboard leading edge slat, and follow-on actions, if necessary. Certain of the follow-on actions entail performing repetitive ultrasonic inspections of the control rods. That AD also requires replacement of the control rod ends and attach bolts, for certain airplanes. It also provided for an optional terminating action for the follow-on repetitive inspections. That action was prompted by a report that certain airplanes could be operating with control rods of the outboard leading edge slat that are subject to cracking. The requirements of that AD are intended to prevent the loss of the pilot's ability to control the affected slat, which could adversely affect the controllability of the airplane.

Since the issuance of that AD, the FAA has reviewed and approved Revision 5 of Boeing Service Bulletin 767–57–0021, dated June 15, 1995. The one-time visual inspection and the replacement of the control rod ends and attach bolts procedures described in this revision are essentially identical to those described in Revision 1 and Revision 2 of the service bulletin (which were referenced in AD 90–20–16). For certain airplanes, Revision 5 of the service bulletin describes procedures for replacement of the control rod with a control rod that has been manufactured after June 1983. The control rod ends of these newer control rods have improved bearings and chrome plated bolts, and a lower break-out torque, all of which will reduce wear of the attach bolts of the control rods. Accomplishment of this replacement eliminates the need for the (follow-on) repetitive ultrasonic inspections described in Revision 1 and Revision 2 of the service bulletin.

The FAA has determined that accomplishment of the replacement of the control rod with a new control rod that has been manufactured after June 1983, will positively address the unsafe condition identified as loss of the pilot's ability to control the affected slat, which could adversely affect the controllability of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90–20–16. It would continue to require a one-time visual inspection to determine the date of manufacture of the control rods of the outboard leading edge slat, and follow-on actions (i.e., repetitive ultrasonic inspection), if necessary. The proposed AD would also continue to require replacement of the control rod ends and attach bolts, for certain airplanes. For operators accomplishing the (follow-on) repetitive ultrasonic inspections, the proposed AD would require replacement of the control rod with a new control rod manufactured after June 1983; this replacement would constitute terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 271 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 193 airplanes of U.S.

registry would be affected by this proposed AD.

The actions that are currently required by AD 90–20–16 take approximately 21 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $5,500 per airplane. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $1,304,680, or $6,760 per airplane.

For certain affected airplanes, the new replacement (terminating) action that is proposed in this AD would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required replacement parts is estimated to be $5,500 per airplane. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $5,560 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6726 (55 FR 37858, September 14, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–124–AD. Supersedes AD 90–20–16, Amendment 39–6726.

Applicability: Model 767 series airplanes, as listed in Boeing Service Bulletin 767–57–0021, Revision 1, dated September 14, 1989, or Revision 5, dated June 15, 1995; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously. To prevent loss of the pilot's ability to control the affected slat, which could adversely affect the controllability of the airplane, accomplish the following:

(a) For airplanes having line positions 1 through 235 inclusive: Within the next 1,200 landings or 9 months after October 23, 1990 (the effective date of AD 90–20–16, amendment 39–6726), whichever occurs first, unless accomplished within the last 800 landings or 6 months, whichever occurs later, perform a visual inspection to determine the date of manufacture of the control rods of the outboard leading edge slat of the wings, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57–0021, dated August 25, 1988; Revision 1, dated September 14, 1989; Revision 2, dated July 26, 1990; or Revision 5, dated June 15, 1995.

(1) If the date of manufacture (stamped on the control rod) is June 1983 or later, no further action is required by this paragraph.

(2) If the date of manufacture is illegible or is prior to June 1983, accomplish paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to further flight, perform an ultrasonic inspection to detect cracks of the control rods in accordance with Figure 1 of Boeing Service Bulletin 767–57–0021, dated August 25, 1988, Revision 1, dated September 14, 1989, or Revision 2, dated July 26, 1990. If any crack or fracture is detected, prior to further flight, replace it in accordance with Figure 2 of the service bulletin. Repeat the ultrasonic inspection of the control rods manufactured prior to June 1983 thereafter at intervals not to exceed 2,000 landings or 15 months, whichever occurs first, until the replacement required by paragraph (a)(2)(ii) of this AD is accomplished.

(ii) Within 3,000 flight hours or 15 months after the effective date of this AD, whichever occurs later, replace the control rod with a new rod manufactured June 1983 or later, in accordance with Boeing Service Bulletin 767–57–0021, Revision 5, dated June 15, 1995. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirement of paragraph (a)(2)(i) of this AD.

(b) For airplanes having line number 1 through 264 inclusive, and 266 through 273 inclusive: Within the next 2,500 landings or 18 months after October 23, 1990 (the effective date of AD 90–20–16, amendment 39–6726, whichever occurs first, replace the control rod end and attach bolt with a new configuration control rod end and attach bolt on each wing, in accordance with Boeing Service Bulletin 767–57–0221, Revision 1, dated September 14, 1989; Revision 2, dated July 26, 1990; or Revision 5, dated June 15, 1995.

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

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

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

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30353 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–244–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767 series airplanes. This proposal would require inspections of the components of the leading edge outboard slat; replacement of the control rod end, if necessary; and various follow-on actions. This proposal is prompted by reports of skewed panels of the outboard leading edge slat due to either corrosion of the rotary actuator, cracking of the control rod, or incorrect clearance of the overtravel stop of the outboard leading edge slat. The actions specified by the proposed AD are intended to prevent such conditions, which could result in reduced controllability of the airplane and damage to or cracking of the leading edge slats or the fixed leading edge of the wing.

DATES: Comments must be received by January 24, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–244–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–244–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs.

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–244–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of skewed panels of the outboard leading edge slat on several Boeing Model 767 series airplanes. Investigation revealed that the cause of the skewed panels is attributed to either corrosion of the rotary actuator, cracking of the control rod, or incorrect clearance of the overtravel stop of the outboard leading edge slat. These conditions, if not detected and corrected in a timely manner, could result in reduced controllability of the airplane and damage to or cracking of the leading edge slats or the fixed leading edge of the wing.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the FAA has determined that an airworthiness directive (AD) is warranted to require the following inspections and follow-on actions of the affected airplanes. These actions are necessary in order to ensure that the unsafe condition is corrected, and to provide an acceptable level of safety:

1. A visual inspection to verify proper clearance of the overtravel stop;

2. Adjustment of the stop clearance, and replacement of the rotary actuator and adjacent offset gearbox, if necessary;

3. Repetitive visual inspections to detect external signs of internal corrosion of the rotary actuator of the outboard leading edge slat;

4. Replacement of a certain earlier model rotary actuator with a certain later model rotary actuator, for certain airplanes;

5. Visual inspection(s) to verify proper installation of the control rods of the outboard leading edge slats; and

6. Tightening of the bolts or installing a new lockwire, if any bolt is loose or any lockwire is missing.

This proposed AD would require that these actions be accomplished at specific times and in accordance with the procedures specified in the Boeing 767 Airplane Maintenance Manual (AMM), Chapter 27–81–20.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition that is the subject of this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

There are approximately 612 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 213 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $178,920, or $840 per airplane, per inspection cycle.

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

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

For the reasons discussed above, I certify that this proposed regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 95–NM–244–AD.

Applicability: All Model 767 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane and damage to or cracking of the leading edge slats or the fixed leading edge of the wing, accomplish the following:

(a) Within 500 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 3,000 hours time-in-service prior to the effective date of this AD: Perform a visual inspection to verify proper clearance of the overtravel stop, in accordance with the Boeing 767 Airplane Maintenance Manual (AMM), Chapter 27–81–20.

(1) If proper clearance exists, repeat the inspection for proper clearance thereafter at intervals not to exceed 6,000 hours time-in-service or 18 months, whichever occurs later.

(2) If clearance exists, but is incorrect, at the next convenient maintenance interval, but no later than 500 flight hours after accomplishment of the inspection, adjust the stop clearance for the slats in accordance with the AMM. Repeat the inspection for proper clearance thereafter at intervals not to exceed 6,000 hours time-in-service or 18 months, whichever occurs later.

(3) If no clearance exists (i.e., stop contact), prior to further flight, adjust the stop clearance for the slats in accordance with the AMM. After the adjustment, within 3,000 hours time-in-service or 1,500 flight cycles after accomplishing the inspection required by paragraph (a) of this AD, whichever occurs later, replace the rotary actuator and adjacent offset gearbox in accordance with the AMM. After replacement, repeat the inspection for proper clearance at intervals not to exceed 6,000 hours time-in-service or 18 months, whichever occurs later.

(b) Within 500 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 3,000 hours time-in-service prior to the effective date of this AD, perform a visual inspection to detect external signs of internal corrosion of the rotary actuator of the outboard leading edge slat, in accordance with the Boeing 767 Airplane Maintenance Manual (AMM), Chapter 27–81–20.

(1) If no sign of internal corrosion is detected, accomplish paragraph (b)(1)(i) or (b)(1)(ii) of this AD, as applicable.

(i) For airplanes on which a rotary actuator having part number (P/N) 256T2120–3 or earlier is installed: Within 4,000 flight hours after the effective date of this AD, replace that rotary actuator with a new rotary actuator having P/N 256T2120–5 or later. After replacement, repeat the inspection of the rotary actuator at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(ii) For airplanes on which a rotary actuator having P/N 256T2120–5 or later is installed: Repeat the inspection of the rotary actuator thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(2) If any sign of internal corrosion is detected, accomplish paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For airplanes on which a rotary actuator having part number (P/N) 256T2120–3 or earlier is installed: Within 4,000 flight hours after the effective date of this AD, replace that rotary actuator with a new rotary actuator having P/N 256T2120–5 or later. After replacement, repeat the inspection of the rotary actuator at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(ii) For airplanes on which a rotary actuator having P/N 256T2120–5 or later is installed: Within 6,000 flight hours or 18 months after accomplishing the initial inspection required by paragraph (b) of this AD, replace that rotary actuator with a new rotary actuator having P/N 256T2120–5 or later. After replacement, repeat the inspection required of the rotary actuator at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(c) Within 500 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 3,000 hours time-in-service prior to the effective date of this AD, perform a visual inspection to verify proper installation (including loose bolts and missing lockwires) of the control rods of the outboard leading edge slats, in accordance with the Boeing 767 Airplane Maintenance Manual (AMM), Chapter 27–81–20.

(1) If all control rods are installed properly, repeat the inspection to verify proper installation thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(2) If any bolt is loose or any lockwire missing, prior to further flight, tighten the bolt or install a new lockwire, in accordance with the AMM. Repeat the inspection to verify proper installation thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

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

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

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

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30354 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AGL–20]

Establishment of Class E Airspace; Bigfork, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Bigfork Municipal Airport, Bigfork, MN, to accommodate a Nondirectional Radio

Beacon (NDB) to serve Runway 15. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–20, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Eleanor J. Williams, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or 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 those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AGL–20.'' 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 Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the 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's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. 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 procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Bigfork Municipal Airport, Bigfork, MN, to accommodate a Nondirectional Radio Beacon (NDB) to serve Runway 15. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. 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 the 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 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Bigfork, MN [New]

Bigfork Municipal Airport, MN
(lat. 47°46′44.7″ N, long. 93°39′00.6″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Bigfork Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on November 22, 1996.

Maureen Woods,

Acting Manager, Air Traffic Division.

FR Doc. 95–30370 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Minimum Financial Requirements, Prepayment of Subordinated Debt and Gross Collection of Exchange-Set Margin for Omnibus Accounts

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) proposes to amend: (1) Rules 1.17(a)(1)(i) and (ii) to (a) increase the minimum required dollar amount of adjusted net capital for futures commission merchants (FCMs) from $50,000 to $250,000, (b) increase the minimum required dollar amount of adjusted net capital for introducing brokers (IBs) from $20,000 to $30,000, and (c) make the amount of adjusted net capital required by a registered futures association for its member FCMs and IBs an element of the Commission's minimum financial requirements for FCMs and IBs; (2) Rule 1.17(h)(2)(vii) with respect to the procedure to obtain approval for prepayment of subordinated debt; and (3) Rule 1.58, which governs gross collection of exchange-set margins for omnibus accounts, to make it applicable to omnibus accounts carried by FCMs for foreign brokers. The Commission believes that these amendments will conform the Commission's rules with those of industry self-regulatory organizations (SROs) and therefore should not require changes in the operations of most firms.

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

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Please refer to ''Financial Rule Amendments.''

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5439.

SUPPLEMENTARY INFORMATION:

I. Minimum Financial Requirements

A. Minimum Financial Requirements for FCMs

Rule 1.17(a)(1)(i) requires FCMs to maintain adjusted net capital equal to or in excess of the greatest of: (1) $50,000, (2) four percent of the sum of the amount of funds required to be segregated under Section 4d(2) of the Commodity Exchange Act (Act) [1](*i.e.*, for trading in U.S. markets) and the amount of funds required to be set aside under Commission Rule 30.7 [2] for customers trading foreign markets (referred to as the ''secured amount''); or (3) if an FCM is also registered as a securities broker-dealer, the amount of net capital required by the Securities and Exchange Commission (SEC).[3] The $50,000 minimum dollar requirement was established in 1978 [4]and has remained unchanged. On August 27, 1990, the Commission approved amendments to Rule 201 of the Chicago Board of Trade (CBT) and Section 1 of NFA's Financial Requirements increasing their respective FCM members' minimum adjusted net capital requirement to $250,000.[5] The NFA proposed the minimum adjusted net capital increase based upon the growth in trading volume in the industry,[6]the increase in segregated funds per FCM [7]and the decrease in the value of the dollar that had occurred since 1978. The Commission approved these amendments to provide FCM customers with the same degree of protection that was provided by the $50,000 minimum adjusted net capital requirement when it was originally adopted in 1978.

Pursuant to paragraph (a)(2) of Commission Rule 1.17, the Commission's minimum financial requirements are not applicable to a registrant that is a member of an SRO and that conforms to the minimum financial standards set by such SRO. As noted above, all persons required to register as FCMs are required to be NFA members under Commission Rule 170.15. Consequently, when the Commission approved NFA's amendment of the minimum dollar amount of adjusted net capital required of its member FCMs in 1990, the Commission effectively raised the dollar level of minimum adjusted net capital for all FCMs to $250,000.

The Commission nonetheless believes that raising the required minimum dollar amount of adjusted net capital for FCMs under Commission Rule 1.17 to that required by NFA and CBT for their members is necessary and appropriate for the following reasons. Section 8c(a)(1) of the Act, 7 U.S.C. 12c(a)(1) (1994), authorizes the Commission to discipline a member of an exchange in accordance with the rules of that exchange if the exchange fails to do so. Section 17(l)(1) of the Act, 7 U.S.C. 21(1)(1) (1994), authorizes the Commission to suspend a registered futures association that has failed to enforce compliance with its own rules. However, the Commission does not have the authority to discipline an exchange member for violation of an exchange rule in the absence of the exchange's failure to act, or to enforce compliance with a registered futures association's own rule upon a member thereof. This limitation upon the Commission's enforcement remedies in the context of SRO rules does not, of course, exist in the context of violations of the Act or Commission regulations. Section 6c of the Act, 7 U.S.C. 13a–1 (1994), authorizes the Commission, whenever it appears that a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule or regulation thereunder, to bring an action to enjoin such act or practice, or to enforce compliance with the Act or any rule or regulation thereunder.

The proposed amendment to Rule 1.17(a)(1)(i)(A) thus would permit the Commission to use its authority under Section 6c of the Act to enforce

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[1] 7 U.S.C. 6d(2) (1994).

[2] 17 CFR 30.7 (1995).

[3] Commission Rule 170.15 mandates that each person required to register as an FCM become and remain a member of a futures association which provides for the membership therein of such FCM unless there is no registered futures association. National Futures Association (NFA) is the only registered futures association. It has an FCM membership category and virtually all FCMs are NFA members. However, there are approximately 90 firms registered as FCMs (out of a total of approximately 260) that do not handle customer funds and therefore are not required to register as FCMs. Accordingly, these firms are not required to be NFA members pursuant to Commission Rule 170.15 but almost all of them are NFA members anyway. However, there still are approximately ten registered FCMs that are not members of any SRO and thus have a current minimum dollar adjusted net capital requirement of $100,000 under Commission Rule 1.17(a)(1)(i)(A). Since such a small number of firms are in this category, for ease of discussion we shall assume that all registered FCMs currently have a minimum dollar requirement of adjusted net capital of $50,000 under Commission rules.

[4] See 43 FR 39956 (September 8, 1978).

[5] On November 24, 1992, the SEC also adopted rule amendments to raise its minimum net capital requirement for securities broker-dealers holding customer funds, which had been $25,000, to $250,000 in stages. The requirement increased to $100,000 effective July 1, 1993, $175,000 effective January 1, 1994 and to the current level of $250,000 effective July 1, 1994. *See* 57 FR 56973, 56990 (Dec. 2, 1992); 17 CFR § 240.15c3–1e(a)(1995).

[6] This trend has continued. In fiscal year 1990, 334.2 million futures and option contracts were traded on U.S. contract markets, and that number increased more than 50 percent in the last five years to approximately 504.8 million in fiscal year 1995.

[7] In NFA's 1990 submission, it noted that the average amount of funds in segregation at each FCM more than tripled from 1980 to 1985, increasing from $8.7 million to $28.5 million. That amount more than tripled again in the last ten years and now exceeds $100 million.

compliance with what is effectively, for the reasons discussed above, the current minimum adjusted net capital requirement applicable to FCMs with the benefit of all of the remedies available to it under the Act for the enforcement of compliance with any provision of the Act and any rule promulgated thereunder. In addition, this amendment would harmonize the Commission's minimum dollar requirement for FCMs with the prevailing standards established by NFA rules and support the objective of assuring that FCMs have a substantial base of liquid capital from which to meet their obligations to customers, an objective for which an increased requirement appears appropriate given the increase in the amount of funds held by FCMs and the change in the value of the dollar since 1978.

The Commission believes it is necessary to clarify its authority to require the transfer of positions at such time as a firm is no longer in compliance with the NFA rule. The Commission further believes that a base minimum adjusted net capital requirement of $250,000 is now essential to providing both an adequate stake in doing business in accordance with Commission rules and otherwise to provide a cushion sufficient with applicable haircuts and segregation of customer funds to permit the Commission to act in an emergency. The Commission also believes that the rule amendment is necessary to eliminate any confusion that may have existed as to whether the Commission could take action where an FCM's adjusted net capital is below $250,000 yet still exceeds $50,000.

Accordingly, the Commission is proposing to amend Rule 1.17(a)(1)(i)(A) to increase the minimum dollar amount of adjusted net capital for FCMs to $250,000.[8] In light of the amount of the proposed increase and the fact that, unlike the situation in 1978, very few FCMs are not members of any SRO and that those few FCMs in that category cannot handle customer funds, the Commission sees no need to maintain a higher dollar amount of required adjusted net capital for an FCM that is not a member of any SRO. In any event, such FCMs would have an increase in their adjusted net capital requirement from the current $100,000 to the proposed $250,000 that would apply to all FCMs.

The Commission further notes that several provisions of the Commission's minimum financial rules for FCMs, as well as one provision of the financial early warning system, contain cross-references to Rule 1.17(a)(1)(i)(A). Certain actions are restricted or required if the specified levels of adjusted net capital, which in all cases exceed 100 percent of the minimum dollar amount, are breached. These include Rule 1.17(e)(1)(i) (restricting the withdrawals of equity capital as well as the following paragraphs of Rule 1.17 concerning subordinated debt: paragraph (h)(2)(vi)(C)(*1*) (restricting the parties to a secured demand note (SDN) agreement from providing in such agreement that the unpaid principal amount of an SDN can be reduced below a floor amount if the value of collateral securing the SDN declines below the unpaid principal amount); paragraphs (h)(2)(vii)(A)(*1*) and (B)(*1*) (restricting prepayments and special prepayments); (h)(2)(viii)(A)(*1*) (requiring suspension of repayment); (h)(3)(ii)(A) (requiring notice of maturity or accelerated maturity); and (h)(3)(v)(A) (restricting use of temporary subordinations). In addition, Rule 1.12(b)(1) establishes the ''early warning'' minimum dollar level of adjusted net capital as 150 percent of the minimum dollar requirement, triggering notice and follow-up reporting requirements when an FCM's adjusted net capital is below that level. Even though the Commission is not amending the provisions of Rules 1.12 and 1.17 that cross-reference Rule 1.17(a)(1)(i)(A), the proposed amendment of the latter will have a corresponding impact on the various FCM activities or obligations referred to above.[9]

The Commission held a roundtable on capital on September 18, 1995 where several issues were discussed pertaining to minimum financial requirements. One of the issues discussed was whether the second prong of the current requirement, based upon four percent of the sum of segregated customer funds and the secured amount, should be amended in an effort to make an FCM's minimum adjusted net capital requirement reflect more closely the risks to an FCM caused by carrying open positions. The Commission may address that issue in a subsequent release following a review of empirical data being developed by the SROs but is not prepared to do so at this time.

B. Minimum Financial Requirements for IBs

Rule 1.17 also requires introducing brokers (IBs)[10] to maintain certain prescribed minimum amounts of adjusted net capital. Pursuant to Rule 1.17(a)(1)(ii), each person registered as an IB must maintain adjusted net capital equal to or in excess of the greater of: (A) $20,000 ($40,000 for each person registered as an IB who is not a member of an SRO);[11] or, (B) if the IB is also a securities broker-dealer, the amount of net capital required by the SEC.

On October 6, 1992, the Commission approved NFA rule amendments which, among other things, increased the required minimum dollar amount of adjusted net capital for member IBs from $20,000 to $30,000. However, the Commission did not at that time amend Commission Rule 1.17(a)(1)(ii)(A) to conform to NFA's rule amendment. The Commission believes that since it is now proposing to raise the minimum dollar amount of required adjusted net capital for FCMs as discussed above, it is appropriate also to propose an increase in the required minimum dollar amount of adjusted net capital for IBs. Accordingly, the Commission is proposing to amend Rule 1.17(a)(1)(ii)(A) to raise the minimum dollar amount of required net capital for a registered IB to $30,000. For reasons similar to those discussed above concerning FCMs, the Commission would eliminate any higher requirement for an IB that is not a member of an SRO.

[8] The Commission believes, for the reasons discussed above, that an increase from $50,000 to $250,000 is necessary and that it is unnecessary to phase this in over time as the SEC did in that most firms already meet the NFA requirement. The Commission also notes that when it adopted the current $50,000 standard in 1978, that was also a five-fold, one-step increase in the existing standard of $10,000 of working capital originally adopted by the Commission's predecessor agency, the Commodity Exchange Authority, effective March 17, 1969. 34 FR 599 (Jan. 16, 1969).

[9] For example, equity capital withdrawals from an FCM currently cannot reduce the FCM's adjusted net capital below $60,000 (120 percent of the minimum amount); if the amendment proposed herein to Rule 1.17(a)(1)(i)(A) were adopted, equity capital withdrawals would not be permitted to reduce the FCM's adjusted net capital below $300,000. Similarly, the ''early warning'' level of adjusted net capital would increase from $75,000 to $375,000 despite the fact that Rule 1.12(b)(1) itself would not be amended.

[10] Section 1a(14) of the Act, 7 U.S.C. 1a(14)(1994), defines an IB as ''any person (except an individual who elects to be and is registered as an associated person of [an FCM]) engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.'' Commission Rule 1.3(mm), 17 CFR 1.3(mm) (1995), also includes in the definition of an IB any person required to register as such by virtue of Part 33 of the Commission's rules, 17 CFR Part 33 (1995).

[11] As is the case with FCMs discussed above, virtually all registered IBs are members of NFA. Any IB that is registered but not an NFA member would be precluded from introducing customer accounts to an FCM and thus could not act as an IB.

This proposed amendment, like the proposal applicable to FCMs, would conform the Commission's rule to the general industry standard established by NFA. Therefore, there should be essentially no impact on the operations of IBs as a result of this amendment. In any event, the proposed amendment would only affect the minority of IBs who raise their own capital. Those IBs who have entered into guarantee agreements with FCMs would be unaffected by the proposed amendment.[12]

C. Conforming Commission and Registered Futures Association Rules

The Commission also approved NFA rule amendments on October 6, 1992 which provide that a member IB's minimum adjusted net capital requirement, as well as that of a member FCM, can be determined by the number of offices it operates and the number of APs it sponsors.[13] When NFA presented these provisions to the Commission, NFA stated that the amount of the IB minimum financial requirement should be linked to the size of an IB's operation and that it concluded, after studying several factors related to an IB's business, that the number of offices operated or APs sponsored by an IB were the most relevant factors to be used in a formula establishing an IB's minimum financial requirement. NFA also stated that an FCM's minimum financial requirement should parallel that of an IB in this regard.[14] The Commission believes that it should incorporate the NFA standards concerning the number of offices or APs sponsored into the minimum financial requirements for FCMs and IBs in Rule 1.17, and eliminate the necessity to amend Rule 1.17 each time NFA amends its minimum financial requirements in order to avoid a recurrence of the current situation where NFA's minimum dollar amount of adjusted net capital for an FCM is $250,000 and the Commission's minimum is $50,000. Therefore, the Commission is proposing to redesignate paragraphs (a)(1)(i)(C) and (a)(1)(ii)(B) as paragraphs (a)(1)(i)(D) and (a)(1)(ii)(C), respectively, of Rule 1.17, and to add new paragraphs (a)(1)(i)(C) and (a)(1)(ii)(B) that would provide that ''the amount of adjusted net capital required by a registered futures association of which it is a member'' is an element of the Commission's minimum financial requirement for FCMs and IBs. The Commission is also proposing conforming amendments to the early warning level of adjusted net capital for FCMs,[15] the restriction on withdrawals of equity capital and the various provisions of Rule 1.17(h) discussed above concerning subordinated debt.[16]

II. Prepayment of Subordinated Debt

For purposes of computing net capital, debt covered by ''satisfactory subordinated agreements'' can be excluded from liabilities.[17] Rule 1.17(h)(2)(vii)(A) generally prohibits any prepayment of subordinated debt for one year following the date upon which the governing subordination agreement became effective. However, Rule 1.17(h)(2)(vii)(B) permits special prepayment of subordinated debt at any time (even during the first year) provided that, after giving effect thereto, the applicant's or registrant's adjusted net capital does not fall below certain amounts prescribed in the rule, which are approximately one and one-half times the amounts of capital required for a normal prepayment. In addition, no prepayment and no special prepayment may occur unless the registrant has obtained written approval of its designated self-regulatory organization (DSRO), if any, and the Commission.[18]

On September 10, 1985, the Commission's Division of Trading and Markets (Division) advised all registered IBs, FCMs and SROs of its intention to recommend to the Commission that Rule 1.17(h)(2)(vii) be changed to require only the DSRO's approval for prepayment of subordinated debt.[19] ''The requirement for dual approval has been in effect for approximately seven years'', the Division stated, ''[d]uring [which] time, the DSROs have gained greater familiarity regarding subordinated debt and * * * have demonstrated * * * an ability to work together in the area of financial surveillance.'' This change would ''make the treatment of prepayment of subordinated debt consistent with the treatment of approval of new subordinated debt or amendments to subordinated agreements.''

The Commission is proposing to implement the change contemplated in Interpretative Letter No. 85–17 by amending Rule 1.17(h)(2)(vii) to require submission of a request for approval of prepayment of subordinated debt by a registrant to the DSRO only, if any, or to the Commission in those rare instances where the registrant is not an SRO member. Dual approval by the DSRO and the Commission would be required, however, should the requested prepayment or special prepayment result in a reduction of 20 percent or more of the registrant's adjusted net capital. Therefore, if a firm's subordinated debt amounts to 25 percent of its adjusted net capital and the firm wishes to prepay all of it and simultaneously enter into new subordinated debt arrangements for the same amount, but at a different maturity or interest rate, dual approval would *not* be required since there would be no net effect on the firm's adjusted net capital. Similarly, if a firm wanted to convert subordinated debt to paid-in-capital, dual approval would not be required so

[12] More than two-thirds of IBs enter into guarantee agreements with FCMs in accordance with Commission Rules 1.17(a)(2)(ii) and 1.10(j) in lieu of raising their own capital.

[13] Section 9 of NFA's Financial Requirements is entitled ''Introducing Broker Financial Requirements'' and provides as follows:

Each Member IB, except an IB operating pursuant to a guarantee agreement which meets the requirements set forth in CFTC Regulation 1.10(j), must maintain ''Adjusted Net Capital'' (as defined in Schedule A hereto) equal to or in excess of the greatest of:

(i) $30,000; or,

(ii) $6,000 per office operated by the IB (including the main office); or,

(iii) $3,000 for each AP sponsored by the IB; or

(iv) (for securities brokers and dealers), the amount of net capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

The corresponding provision for an FCM with respect to offices and APs is based upon ''$6,000 for each remote location operated (i.e., proprietary branch offices, main office of each guaranteed IB and branch offices of each guaranteed IB); or, $3,000 for each AP sponsored (including APs sponsored by guaranteed IBs).'' Section 1 of NFA's Financial Requirements.

[14] According to discussions with NFA staff, there are currently less than ten FCMs and less than ten IBs whose minimum financial requirement is based upon the number of offices operated or APs sponsored. As of September 30, 1995, of the registered IBs, 1,080 operated pursuant to guarantee agreements with an FCM and 388 were raising their own capital.

[15] *See* proposed new paragraph (b)(3) of Rule 1.12, which is based upon 150% of the amount of adjusted net capital required by a registered futures association, and is proportional to the other elements of Rule 1.12(b).

[16] *See* the following proposed new Rule 1.17(e)(1)(iii) and the proposed new paragraphs of Rule 1.17: (h)(2)(vi)(C)(*3*) (restricting reductions in unpaid principal amount of an SDN); (h)(2)(vii)(A)(*3*) (restricting prepayments); (h)(2)(vii)(B)(*3*) (restricting special prepayments); (h)(2)(viii)(A)(*3*) (requiring suspension of repayment); (h)(3)(ii)(C) (requiring notice of maturity or accelerated maturity); and (h)(3)(v)(C) (restricting use of temporary subordinations). The levels of adjusted net capital set forth in the proposed new paragraphs of Rule 1.17 are 120 percent of the registered futures association's minimum amount, except for the provision concerning special prepayment which would be 200 percent. These percentages correspond to the current levels in those rules that are based upon the minimum dollar amount.

[17] *See* Commission Rule 1.17(h) for a definition of the term ''satisfactory subordination agreement''.

[18] An applicant for registration must obtain prior written approval of NFA.

[19] CFTC Interpretative Letter No. 85–17, [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,738 (Sept. 10, 1985).

long as such conversion did not result in a reduction of 20 percent or more of the firm's adjusted net capital.

III. Gross Collection of Exchange-Set Margins

Pursuant to Commission Rule 1.58, each FCM which carries a commodity futures or commodity option position for another FCM on an omnibus basis must collect, and each FCM for which an omnibus account is being carried must deposit, initial and maintenance margin on each position reported in accordance with Commission Rule 17.04 at a level no less than that established for customer accounts by the rules of the applicable contract market. Rule 1.58 was proposed in 1981 [20] following the bankruptcy of three FCMs who cleared trades solely by means of omnibus accounts. The Commission was concerned that customer funds were ''being held by firms that, in comparison to clearing FCMs, generally [had] less capital and [were] less equipped to handle the volatility of the commodity markets''.[21] It is also the case, as demonstrated during the collapse of Barings PLC, that net margining of an omnibus account can mask risk to the clearing member. Thus, the primary purposes of Rule 1.58 were to ''strengthen the industry and enhance customer protection by moving segregated funds into the normally better-capitalized hands of a clearing member'' and to provide the Commission and the SROs with better information with respect to omnibus accounts.[22]

As originally adopted and currently, Rule 1.58 does not apply to omnibus accounts carried by FCMs on behalf of foreign brokers.[23] On November 16, 1988, the Division issued Financial and Segregation Interpretation No. 12 which, among other things, requires FCMs to obtain an agreement from customers who desire to have funds held offshore whereby such customers authorize the subordination of their claims attributable to funds held offshore to the claims of other customers should the FCM be placed in bankruptcy or receivership. Although the Commission is in the process of reviewing this Interpretation from the perspective of certain foreign currency deposits in light of the provisions for settlement of certain contracts traded on U.S. contract markets by means of foreign currency, certain statements made relative to foreign location risk remain relevant today. For example, in support of this Interpretation, the Commission expressed its concern that ''in the event of an FCM insolvency, deposits maintained at a foreign depository might not be handled or distributed in accordance with United States bankruptcy law'' and that ''both the size of the pool of funds available for distribution to customers and the size of individual claims against that pool may vary from day-to-day.'' The Commission further stated that ''to the extent foreign domiciled customers deposit [U.S.] dollars in connection with United States futures or options, such funds should be held in the United States'' because ''the Commission perceives no administrative necessity for FCMs and customers to incur the location risks attendant to holding such dollar deposits overseas''.[24] Likewise, the Commission is concerned that margin deposits maintained by a foreign broker at a foreign depository might become unavailable in the event of a bankruptcy of the clearing FCM due to differences in bankruptcy law among jurisdictions and might be exposed to currency fluctuations during the pendency of the bankruptcy. In addition, the Commission has observed that in times of turbulent markets, such as occurred in October 1987 and October 1989, accounts in the names of owners with foreign addresses had greater difficulty meeting margin calls than did domestic accounts, undoubtedly to some extent due to time zone differences and currency conversion logistics.[25] In this context, the Commission has recognized that foreign brokers' omnibus accounts carried by clearing FCMs can have a substantial impact on the financial condition of clearing FCMs. Further, as a result of the collapse of Barings PLC in February 1995, the Commission's concern has been heightened with respect to FCMs having a clear view of the exposures in omnibus accounts and the ability to assure proper handling and segregation of customer funds.

In view of the increasing internationalization of the financial markets, and in particular the increasing use of foreign omnibus accounts, the Commission believes that foreign broker omnibus accounts should be treated in the same manner as omnibus accounts carried for domestic FCMs. Thus, FCMs carrying foreign broker omnibus accounts would hold a higher level of funds, have less capital exposure and be better able to transfer positions from such accounts in the event of a financial disruption. Accordingly, the Commission is proposing to expand the application of Rule 1.58 to include foreign brokers' omnibus accounts carried by FCMs. As is the case with the proposed amendments to Rule 1.17 concerning the minimum amount of adjusted net capital for FCMs and IBs, the Commission is essentially proposing to conform its rule relating to collection of margins for omnibus accounts to the industry practice since, as a result of staff recommendations in rule enforcement reviews and SRO rule changes, all active U.S. contract markets other than the New York Cotton Exchange and the Philadelphia Board of Trade require that FCMs collect margin for omnibus accounts of foreign brokers as well as other domestic FCMs on a gross basis.

IV. Other Matters

As noted above, the Commission held a roundtable on capital issues on September 18, 1995, during which several matters were discussed. Although the Commission is not presenting any specific rule proposals at this time related to issues discussed at the roundtable, the Commission will be seeking additional information concerning certain of the issues discussed with a view towards possible additional rule amendments. These issues would include greater harmonization of the CFTC/SEC financial requirements in several areas such as reporting requirements and cycles, early warning requirements,[26] risk assessment data elements and the debt-equity ratio requirements with respect to a firm's capital.[27] The

[20] 46 FR 62864 (Dec. 29, 1981).

[21] Id.

[22] 47 FR 21026 (May 17, 1982).

[23] Neither the proposing release nor the adopting release for Rule 1.58 discuss omnibus accounts carried on behalf of foreign brokers.

[24] *See* 53 FR 46911 (Nov. 21, 1988), reprinted in 1 Comm. Fut. L. Rep. (CCH) ¶ 7122.

[25] *See* Final CFTC Staff Report, *Stock Index Futures and Cash Market Activity—October 1987, at pp. 192–193 (Jan. 1988) (reprinted in Comm. Fut. L. Rep. (CCH), Special Report No. 321, Feb. 5, 1988) and Commodity Futures Trading Commission, Division of Economic Analysis, Report on Stock Index Futures and Cash Market Activity During October 1989 to the U.S. Commodity Futures Trading Commission*, at p. 143 (May 1990).

[26] The Commission has proposed amendments to its Rule 1.12 to: (1) make paragraph (g), which requires the reporting of certain reductions in adjusted net capital, applicable to all FCMs, rather than just those FCMs subject to the risk assessment reporting requirements of Rule 1.15; (2) require reporting of a margin call that exceeds an FCM's excess adjusted net capital which remains unanswered by the close of business on the day following the issuance of the call; and (3) require reporting by an FCM whenever its excess adjusted net capital is less than six percent of the maintenance margin required to support proprietary and noncustomer positions carried by the FCM. 59 FR 66822 (Dec. 28, 1994).

[27] SEC Rule 15c3–1(d) (17 CFR 240.15c3–1(d) (1995)) requires that at least 30 percent of *all* of a broker-dealer's net capital consist of equity capital. *See* Report of the Technical Committee of IOSCO, ''Capital Requirements for Multinational Securities Firms,'' XV Annual Conference of the International Organization of Securities Commissions (IOSCO),

Commission is also considering a rethinking of the no-action relief provided to an FCM by the Division with respect to the short options value charge,[28] and the appropriateness of a concentration charge. Separately, the Commission has discussed with the Joint Audit Committee the data necessary to evaluate any proposals for a ''risk-based'' standard as a component of the minimum adjusted net capital requirements. Although the Commission has no specific proposals in any of these areas at this time, it nonetheless invites commenters to address these matters if they so choose.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments proposed herein would affect FCMs and independent IBs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[29]

With respect to IBs, the Commission stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[30] The proposed amendment to Rule 1.17(h)(2)(vii) would generally reduce the burden associated with the procedure to obtain approval for permissive prepayment of subordinated debt. Accordingly, that amendment should impose no additional requirements on an independent IB. In addition, the proposed amendment to the minimum adjusted net capital requirement for an IB would conform the Commission's requirement to that of the NFA and therefore there should be no impact on an IB's financial operations. Thus, if adopted, these proposals would not have a significant economic impact on a substantial number of IBs. Therefore, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these proposed rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1990, (PRA) 44 U.S.C. 3501 et seq., imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. While the amendments proposed herein have no burden,[31] Rules 1.12, 1.17 and 1.58 are parts of groups of rules with the following burdens.

The burden associated with the collection required by Rules 1.12 and 1.17 (3038–0024), including these proposed amendments, is as follows:

Average Burden Hours Per Response: 1.50.
Number of FCM Respondents: 165.00.
Number of IB Respondents: 62.00.
Frequency of Response: 1.00.

The burden associated with the collection required by Rule 1.58 (3038–0026), including these proposed amendments, is as follows:

A. Reporting
Average Burden Hours Per Response: 0.04.
Number of Respondents: 100.00.
Frequency of Response: 50.00.
B. Recordkeeping
Average Burden Hours Per Response: 1.00.
Number of Respondents: 300.00.
Frequency of Response: 1.00.

Persons wishing to comment on the estimated paperwork burden associated with these proposed rule amendments should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 1155 21st Street, N.W., Washington, DC 20581, (202) 418–5170.

List of Subjects in 17 CFR Part 1

Commodity futures, minimum financial requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.12 is amended by removing the word ''or'' at the end of paragraph (b)(2), by redesignating paragraph (b)(3) as paragraph (b)(4), and by adding a new paragraph (b)(3) to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(3) 150 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

* * * * *

3. Section 1.17 is amended as follows:

3.1. By revising paragraph (a)(1);

3.2. By removing the word ''or'' at the end of paragraph (e)(1)(ii), by redesignating paragraph (e)(1)(iii) as (e)(1)(iv), and by adding a new paragraph (e)(1)(iii);

3.3. By removing the word ''or'' at the end of paragraph (h)(2)(vi)(C)(*2*), by redesignating paragraph (h)(2)(vi)(C)(*3*) as paragraph (h)(2)(vi)(C)(*4*), and by adding a new paragraph (h)(2)(vi)(C)(*3*);

3.4. By removing the word ''or'' at the end of paragraph (h)(2)(vii)(A)(*2*), by redesignating paragraph (h)(2)(vii)(A)(*3*) as paragraph (h)(2)(vii)(A)(*4*) and, as redesignated, revising it, and by adding a new paragraph (h)(2)(vii)(A)(*3*);

3.5. By removing the word ''or'' at the end of paragraph (h)(2)(vii)(B)(*2*), by redesignating paragraph (h)(2)(vii)(B)(*3*) as paragraph (h)(2)(vii)(B)(*4*) and, as redesignated, revising it, and by adding new paragraphs (h)(2)(vii)(B)(*3*) and (h)(2)(vii)(C);

3.6. By removing the word ''or'' at the end of paragraph (h)(2)(viii)(A)(*2*), by redesignating paragraph (h)(2)(viii)(A)(*3*) as paragraph

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Santiago, Chile 1990. The general international standard in this connection, as recommended by Working Party No. 3 of the Technical Committee of IOSCO, would also apply the debt-equity requirement to all of a firm's capital. Although the Commission originally proposed a debt-equity requirement for an FCM that would have been similar to that of a broker-dealer under SEC rules (*see* 42 FR 27166, 27177 (May 26, 1977)), in response to comments that ''it would be inappropriate to penalize a firm that maintains capital in the form of satisfactory subordination agreements, which is in excess of the minimum required by regulations'', the Commission revised the required debt-equity total to which the 30 percent equity capital requirement applies to mean total capital less the excess of the FCM's adjusted net capital, *i.e.*, only the required minimum adjusted net capital. *See* 43 FR 39956, 39965, 39976 (Sept. 8, 1978).

[28] Commission Rule 1.17(c)(5)(iii), 17 CFR 1.17(c)(5)(iii) (1995); CFTC Interpretative Letter 95–65, [Current Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,495 (July 26, 1995).

[29] *See* 47 FR 18618, 18619 (Apr. 30, 1982).

[30] See 48 FR 35248, 35275–78 (Aug. 3, 1983).

[31] The proposed increase in the dollar amount of minimum adjusted net capital for an FCM and an IB would necessitate only a change in line item 23E of the Statement of the Computation of Minimum Capital Requirements on Form 1–FR–FCM and in line item 15 of that Statement on Form 1–FR–IB.

(h)(2)(viii)(A)(*4*), and by adding a new paragraph (h)(2)(viii)(A)(*3*);

3.7. By removing the word ''or'' at the end of paragraph (h)(3)(ii)(B), by redesignating paragraph (h)(3)(ii)(C) as paragraph (h)(3)(ii)(D), and by adding a new paragraph (h)(3)(ii)(C); and

3.8. By redesignating paragraphs (h)(3)(v) (C) and (D) as paragraphs (h)(3)(v) (D) and (E) and by adding a new paragraph (h)(3)(v)(C). The revised and added paragraphs read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a)(1)(i) Except as provided in paragraph (a)(2)(i) of this section, each person registered as a futures commission merchant must maintain adjusted net capital equal to or in excess of the greatest of:

(A) $250,000;

(B) Four percent of the following amount: The customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

(C) The amount of adjusted net capital required by a registered futures association of which it is a member; or

(D) For securities brokers and dealers, the amount of net capital required by Rule 15c3–1(a), of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

(ii) Except as provided in paragraph (a)(2) of this section, each person registered as an introducing broker must maintain adjusted net capital equal to or in excess of the greatest of:

(A) $30,000;

(B) The amount of adjusted net capital required by a registered futures association of which it is a member; or

(C) For securities brokers and dealers, the amount of net capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

* * * * *

(e) * * *

(1) * * *

(iii) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

* * * * *

(h) * * *

(2) * * *

(vi) * * *

(C) * * *

(*3*) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

* * * * *

(vii) * * *

(A) * * *

(*3*) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

(*4*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(b)(7) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(7)).

(B) * * *

(*3*) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

(*4*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(c)(5)(ii) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(5)(ii)): *Provided, however,* That no special prepayment shall be made if pre-tax losses during the latest three-month period were greater than 15 percent of current excess adjusted net capital.

(C) Notwithstanding the provisions of paragraphs (h)(2)(vii)(A) and (h)(2)(vii)(B) of this section, in the case of an applicant, no prepayment or special prepayment shall occur without the prior written approval of the National Futures Association; in the case of a registrant, if the requested prepayment or special prepayment will result in the reduction of the registrant's adjusted net capital by 20 percent or more, no prepayment or special prepayment shall occur without the prior written approval of the designated self-regulatory organization, if any, and of the Commission, or, if the requested prepayment or special prepayment will result in the reduction of the registrant's adjusted net capital by less than 20 percent without the prior written approval of the designated self-regulatory organization, if any, or of the Commission if the registrant is not a member of a self-regulatory organization.

(viii) * * *

(A) * * *

(*3*) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

* * * * *

(3) * * *

(ii) * * *

(C) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

* * * * *

(v) * * *

(C) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member;

* * * * *

4. Section 1.58 is revised to read as follows:

§ 1.58 Gross collection of exchange-set margins.

(a) Each futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant or for a foreign broker on an omnibus basis must collect, and each futures commission merchant and foreign broker for which an omnibus account is being carried must deposit, initial and maintenance margin on each position reported in accordance with § 17.04 of this chapter at a level no less than that established for customer accounts by the rules of the applicable contract market.

(b) If the futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant or for a foreign broker on an omnibus basis allows a position to be margined as a spread position or as a hedged position in accordance with the rules of the applicable contract market, the carrying futures commission merchant must obtain and retain a written representation from the futures commission merchant or from the foreign broker for which the omnibus account is being carried that each such position is entitled to be so margined.

Issued in Washington, D.C. on December 7, 1995 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–30360 Filed 12–12–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 206, and 211

RIN 1010–AC02

Amendments to Gas Valuation Regulations for Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule; notice of meeting and extension of comment period.

SUMMARY: The Minerals Management Service (MMS) is scheduling a public meeting to receive comments on a proposed rulemaking, which was published in the Federal Register on November 6, 1995 (60 FR 56007). MMS is also extending the public comment period for the proposed rulemaking. The proposed rule would implement the recommendations of the Federal Gas Valuation Negotiated Rulemaking Committee by amending the regulations governing the value of gas produced from Federal leases. MMS will hold the public meeting in Houston, Texas, on January 22, and, if necessary on the 23rd, 1996. The meeting will allow interested parties an opportunity to provide direct feedback to MMS officials regarding the proposed rule. Interested parties are invited to attend and participate at this meeting. MMS is also extending the comment period for the proposed rule from January 5, 1996, to February 5, 1996.

DATES: A public meeting will be held on Monday January 22, and if necessary, on Tuesday January 23, 1996, from 9 a.m. until 5 p.m. Comments must be received on or before February 5, 1996.

ADDRESSES: The meeting will be held in Room 104, first floor, at the Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, Texas, 77032. Comments should be sent to: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov. If you plan to attend the meeting, please contact Larry Cobb of the Valuation and Standards Division at telephone (303) 275–7245, fax (303) 275–7227, e-mail Larry__Cobb@smtp.mms.gov prior to January 12, 1996.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public without advance registration. However, anyone that will be attending the meeting is encouraged to call Larry Cobb so MMS can arrange the room seating requirements. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and are encouraged to file written statements for consideration.

Dated: December 6, 1995.

Kenneth R. Vogel,

Acting Associate Director for Royalty Management.

[FR Doc. 95–30351 Filed 12–12–95; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 89–014]

RIN 2115–AD23

Implementation of the Shore Protection Act of 1988

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal.

SUMMARY: In May 1989, the Coast Guard began rulemaking to incorporate into regulation certain elements of the Shore Protection Act. Its objective was to help prevent trash, medical debris, and other unsightly and potentially harmful materials from being deposited into the coastal waters of the United States as a result of sloppy waste-handling procedures. Because no additional regulations are needed, the Coast Guard is discontinuing rulemaking under docket number 89–014.

DATES: This discontinuance is effective on December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade L.V. Kabler, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G–MRO–1), (202) 267–0423.

SUPPLEMENTARY INFORMATION: In a Federal Register document published May 24, 1989, (54 FR 22546) the Coast Guard contemplated, at some point in the future, establishing procedures for a regular permit and for suspension-and-revocation proceedings under the Shore Protection Act (33 U.S.C. 2601 *et seq.*). Because the Coast Guard has determined that the current procedures implementing the Act are satisfactory, it has decided to continue issuing conditional permits to vessels carrying waste in the coastal waters of the United States and to discontinue any further rulemaking under docket number 89–014. It will, at some point in the future, re-examine the necessity of further rulemaking and may, at that point, initiate a new rulemaking under a new docket number.

Dated: December 6, 1995.

Joseph J. Angelo,

Director for Standards.

[FR Doc. 95–30400 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 081–4012b; FRL–5326–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Stage II Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of approving supplemental provisions that would correct deficiencies in the Pennsylvania Stage II vapor recovery rule that were previously identified by EPA. In the Final Rules section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

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

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of

Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title (Pennsylvania; Approval of Stage II Vapor Recovery Requirements) which is located in the Rules and Regulations Section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 31, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 95–30108 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 63

[AD–FRL–5344–4]

National Emission Standards for Hazardous Air Pollutants for: Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Ethylene Oxide Commercial Sterilization and Fumigation Operations; Perchloroethylene Dry Cleaning Facilities; and Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: amendment.

SUMMARY: This action proposes amendments to certain sections of the following promulgated standards: ''National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Final Rule'' (subpart N); ''National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations'' (subpart O); ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities'' (subpart M); and ''National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting'' (subpart X). Except in the case of subpart X, today's action proposes to amend the Final Rules' requirement that nonmajor sources obtain title V operating permits. The action being taken today will substantially reduce the unnecessary and undue regulatory burden for States and local agencies, EPA Regional Offices, and the industry during a time when tremendous resources are necessary for the initial implementation of the title V permit program. Because sources are still required to meet all applicable emission control requirements established by the respective MACT standards, this action is not expected to have adverse environmental results. The amendment to subpart X will confirm that existing nonmajor secondary lead smelting facilities will be subject to title V permit requirements.

DATES: *Comments.* Comments must be received on or before January 12, 1996, unless a hearing is requested by December 26, 1995. If a hearing is requested, written comments must be received by January 29, 1996.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than December 26, 1995. If a hearing is held, it will take place on December 28, 1995, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–88–02 (subpart N), or Attention Docket No. A–88–03 (subpart O), or Attention Docket No. A–95–16 (subpart M), or Attention Docket No. A–92–43 (subpart X), as applicable, (see docket section below), room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Marguerite Thweatt, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5607.

Docket. Docket No. A–88–02, containing the supporting information for the original subpart N NESHAP and this action, Docket No. A–88–03, containing the supporting information for the original subpart O NESHAP, Docket No. A–88–11, containing the supporting information for the original subpart M NESHAP, and Docket No. A–92–43, containing the supporting information for the original subpart X NESHAP, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Lalit Banker, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5420.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the Clean Air Act (Act), as amended in 1990, requires States to develop programs for issuing operating permits to major stationary sources (including major sources of hazardous air pollutants listed in section 112 of the Act), sources covered by New Source Performance Standards (NSPS), sources covered by emission standards for hazardous air pollutants pursuant to section 112 of the Act, and affected sources under the acid rain program. Section 502(a) of the Act requires that major and nonmajor sources subject to 111 and 112 standards obtain operating permits. However, the Administrator may exempt certain categories of nonmajor sources from the requirement to obtain a permit ''if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories.* * *''

On July 21, 1992, EPA published in the Federal Register implementing regulations for the title V permit program (40 CFR part 70). In § 70.3(b)(1), EPA opted to allow States to temporarily exempt nonmajor sources (except for affected sources and solid waste incineration units), including those which were subject to section 111 or 112 standards promulgated as of July 21, 1992, from the requirement to obtain a permit.

This temporary exemption was allowed for several reasons. Under part 70, permitting authorities will process applications and issue permits for tens of thousands of major sources during the early years of the program. The EPA considered it ''unnecessarily burdensome'' to also require permitting authorities to issue permits to a larger population of nonmajor sources within the same time frame. Such a requirement would stress the permitting

system at its most vulnerable time, and hinder timely issuance of permits to both major and nonmajor emitters.

Additionally, the great majority of nonmajor sources are small businesses, and many are not currently subject to State air permit programs. Many small businesses will require greater assistance from the permitting authorities because of a relative lack of technical and legal expertise, resources, and experience in dealing with environmental regulation. If permitting authorities are overburdened from a backlog of permits to be processed, nonmajor sources will be unable to obtain technical and procedural assistance necessary to help them file timely and complete applications. This likely scenario constitutes an unnecessary burden on nonmajor sources, especially considering that by definition they emit less than major sources and that deferring permitting requirements does not defer a source's obligation to comply with the applicable requirements of the Act. [The preamble to the final part 70 regulations (57 FR 32261) provides a more exhaustive discussion of EPA's decision to allow States to temporarily exempt nonmajor sources from title V permitting.]

The part 70 regulations specify that this temporary exemption will expire at such time as EPA completes a rulemaking to determine how the part 70 program should be structured for nonmajor sources. In addition, the rulemaking will consider whether to grant permanent exemptions to any source categories for which there is a sufficient record to support such an exemption.

The part 70 regulations also address applicability for nonmajor sources subject to section 111 or 112 standards promulgated after July 21, 1992. Section 70.3(b)(2) specifies that for nonmajor sources that are subject to a standard or other requirement promulgated under either section 111 or 112 of the Act after July 21, 1992, the Administrator will determine whether to exempt any or all such sources from the requirement to obtain a part 70 permit at the time that the new standard is promulgated. Thus, decisions regarding permitting exemptions were to be made as each new standard covering nonmajor sources was published. With regard to section 112, EPA has published since July 21, 1992 (in 40 CFR part 63) hazardous air pollutant standards that apply to nonmajor sources in the following five source categories: perchloroethylene dry cleaning facilities (September 22, 1993; 58 FR 49353), halogenated solvent cleaning (December 2, 1994; 59 FR 61801—amended June 5, 1995; 60 FR 29484), ethylene oxide commercial sterilization and fumigation operations (December 6, 1994; 59 FR 62585), hard and decorative chromium electroplating and chromium anodizing tanks (January 25, 1995; 60 FR 4948), and secondary lead smelters (May 31, 1995; 60 FR 32587). Of these five, only the standard for halogenated solvent cleaning contained a temporary permitting exemption. In this standard, States were given the option of permanently exempting small cold cleaners and temporarily exempting all other nonmajor solvent cleaners from title V permit requirements.

The remaining standards did not offer any exemptions from permitting, although the preamble to the dry cleaning standard did state an intention to allow States to defer permitting of nonmajor sources subject to that standard. Nonetheless, in the absence of specific language in that regulation granting States the option to exempt or temporarily exempt nonmajor sources from permit requirements, the General Provisions (subpart A) of part 63 apply, which by default extend the permitting requirement to nonmajor sources subject to post-July 21, 1992, MACT standards.

II. Proposed Changes to Subpart N, Subpart O, and Subpart M

A. State Option to Defer Nonmajor Sources

The final rules, that is subparts N, O, and M, required all affected nonmajor sources to obtain a title V permit from the appropriate permitting authority. All affected nonmajor sources in the above source categories are required to apply for a title V permit within 12 months of the later of the following dates: the effective date of the respective MACT standard or the effective date of a title V program to which an affected source in the above source categories is subject. Major sources in the above source categories are required to apply for and obtain permits according to the transition plans outlined in the title V programs submitted by the State and local permitting authorities for EPA approval.

Several comments were received regarding the title V permit requirements for area sources in the Chromium Electroplating rule (subpart N) before promulgation. The commenters believed that the costs for nonmajor sources to obtain title V permits would be overly burdensome, and the emissions from such sources may be insignificant. However, in responding to these comments in the final rule, EPA believed that requiring area sources to obtain title V permits was important because of the toxicity of chromium compounds and the close proximity of many of these sources to residential areas. Following promulgation of these final rules, discussions were held with States and EPA Regions regarding their permitting strategies for nonmajor sources. As a result, EPA concluded that the Chromium Final Rule imposes an undue burden on the States in requiring the permitting of nonmajor Chromium sources without deferral. In particular, EPA found that permitting such sources during the early stages of the title V program would be particularly burdensome to permitting authorities. In addition to ensuring compliance with the requirements of the standard, permitting authorities would also need to contact and educate owners or operators of nonmajor sources regarding title V requirements. Following the submittal of applications, permitting authorities would then begin processing such applications in conjunction with major source applications. Given that the vast number of Chromium sources (about 5,000 nationwide) are nonmajor sources, requiring a permitting authority to permit nonmajor sources during the early years of implementing a title V program imposes an undue burden.

The EPA believes that the Final Rule as promulgated will also impose an undue hardship on a majority of owners or operators of nonmajor sources because this burden on permitting authorities translates into a burden on sources subject to the program. To require that owners or operators of nonmajor sources meet the requirement of filing a timely and complete application prior to or within the initial implementation period of the Chromium Electroplating MACT Standard would place an undue burden on these sources. As a result, the EPA has concluded that the burden associated with permitting outweighs the enhancement to the enforceability of this standard that would result from inclusion in a title V permit. Therefore, the Final Rule is being amended to allow States to defer for five (5) years all nonmajor Chromium sources from being subject to the requirements of a title V permit program.

The 5-year deferral is determined with respect to the effective date of the first State or local program to defer nonmajor sources from title V permitting. Washington State and local programs within the State of Washington were the first programs approved by EPA which deferred nonmajor sources. Final action on these programs was published on November 9, 1994, and the programs became

effective on December 9, 1994. As a result, the 5-year deferral ends on December 9, 1999, with Chromium sources becoming subject to title V on that date. Applications from nonmajor Chromium sources are to be filed within 12 months of becoming subject to title V (by December 9, 2000). This also applies to nonmajor sources in subparts O and M for similar reasons. The EPA emphasizes that this deferral applies to nonmajor sources.

The sole standard which will not offer temporary exemptions from part 70 permitting requirements is the secondary lead smelter standard (subpart X, promulgated on May 31, 1995 (60 FR 32587)). In contrast to the hundreds or thousands of sources in the four other source categories, there are a total of only 16 secondary lead smelters and only five of these are nonmajor sources. Additionally, the five nonmajor lead smelters are owned by relatively large companies. These companies should be better equipped to handle the part 70 permitting process than the small businesses characterizing the other source categories. For these reasons, EPA concludes that requiring the five sources to obtain part 70 permits without delay will not be impracticable or infeasible for the State or local permitting authorities involved and will not unnecessarily burden the five companies.

B. Proposed Permanent Exemption of Certain Decorative Chromium Electroplating and Chromium Anodizing Operations

Section 502(a) of the Act expressly gives the Administrator the discretion to exempt one or more nonmajor source categories (in whole or in part) from the requirement to obtain a permit ''if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories.'' 42 U.S.C. section 7661a (a). One factor that EPA considers as part of the unnecessarily burdensome criteria is the degree to which the standard is implementable outside of a title V permit, such that the title V permit will provide minimal additional benefit with regard to source-specific tailoring of the standard. To the extent such benefit is minimal, it supports the finding that the burden imposed is ''unnecessary.'' This factor was analyzed when EPA evaluated decorative chrome plating (using hexavalent chromium baths) and chromium anodizing processes that use fume suppressant technology to reduce chromium emissions during operation. The fume suppressant technology inhibits emissions at the source by reducing the surface tension of the plating solution. The standard requires that the surface tension be kept below 45 dynes per centimeter (dynes/cm) in order to comply. In addition, the surface tension must be measured at a certain specified time interval to ensure continuous compliance. This measure of compliance (45 dynes/cm) is directly stated in the standard and is directly enforceable. No judgment or negotiation is required in establishing a directly enforceable monitoring value during a performance test as is the case with the other chromium sources covered by the rule which use add-on controls. Also included in this permitting exemption are the decorative chrome plating operations using the trivalent chrome baths which incorporate the use of wetting agents which inhibit chromium emissions as a bath component. The standard does not have any additional requirements for these sources except for recordkeeping of chemicals bought.

Although sources using fume suppressant technology could be permitted through general permits, thereby reducing the administrative permitting burden for these sources, EPA believes this would add minimally to enforceability of the rule. This is because the reporting, recordkeeping, and annual compliance certification requirements of the rule already approximate those which would be imposed through title V, and which constitute a primary value added by a general title V permit.

Therefore, for the reasons stated above, the EPA is proposing to permanently exempt all hexavalent decorative plating and chromium anodizing operations that use fume suppressants as an emission reduction technology and all trivalent decorative plating operations incorporating wetting agents as a bath component from the requirement of obtaining a title V permit. This is based upon EPA's determination that it will be unnecessarily burdensome for these sources to obtain permits.

All the requirements listed in the final standards (subparts N, O, and M) will continue to be applicable per the schedule that is provided in the respective rules. For example, all sources still must comply with the compliance schedule within the rule, perform monitoring of the required parameters for ensuring compliance, and follow the reporting and recordkeeping requirements. The Administrator or a delegated State or local authority will enforce the requirements of the final rules through appropriate means, and will not be handicapped by the temporary or permanent exemptions from the title V permit requirements. The EPA believes that through the implementation of the final rules, the primary goal of significant reductions in chromium, ethylene oxide, and perchloroethylene emissions will be achieved.

III. Possible Additional Permanent Exemptions

Although this action proposes temporary exemptions for the subject source categories (except for proposed permanent exemptions for two subcategories within the chrome plating category), EPA will consider promulgating additional permanent exemptions for any of these source categories or subcategories within these source categories if warranted. The EPA specifically solicits comment on whether any of the source categories for which temporary exemptions are being proposed should be permanently exempted from title V requirements and the reasons for such permanent exemptions. Comments should address the Clean Air Act criteria for exempting categories from permitting requirements, which are that it would be ''impracticable, infeasible, or unnecessarily burdensome on such source categories.'' Any comments received and additional information obtained by EPA after this proposal will be considered in determining whether sufficient justification exists to promulgate permanent exemptions.

IV. Typographical Correction

A minor typographical error was discovered in section 63.344 of the subpart N. It is being amended here to correctly present our intention.

V. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding the proposed amendments in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentation on the proposed amendments should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section at the address given in the **ADDRESSES** section of this preamble and should refer to the applicable docket number.

A verbatim transcript of the hearing and written statements will be available

for inspection and copying during normal business hours at the EPA's Air Docket Section in Washington, D.C. (see **ADDRESSES** section of the preamble).

B. Paperwork Reduction Act

The information collection requirements of the previously promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) were submitted to and approved by the Office of Management and Budget (OMB). Today's proposed changes to the NESHAP would not increase the information collection burden estimates made previously. In fact, they are expected to reduce the required paperwork by providing the opportunity for delays for some sources and exemptions for others from requirements to obtain a title V permit.

C. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the 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, the OMB has notified the EPA that it does not consider this to be a ''significant regulatory action'' within the meaning of the Executive Order. Therefore, the EPA did not submit this action to the OMB for review.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small business ''entities.'' A regulatory flexibility analysis (RFA) is required if preliminary analysis indicates ''a significant economic impact on a substantial number of small entities.'' As explained earlier in this notice, the proposed amendments would reduce the impacts on small businesses by allowing States to delay some and exempt others from the requirement to obtain a title V permit.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

As explained earlier in this notice, the proposed amendments would reduce the cost to State, local, and tribal governments and the private sector by allowing States to delay some and exempt others from the requirement to obtain a title V permit. Therefore, EPA has not prepared a budgetary impact statement for the proposed amendments.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 1, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart N—[Amended]

2. Section 63.340 is amended by revising paragraph (e) to read as follows:

§ 63.340 Applicability and designation of sources.

* * * * *

(e)(1) The Administrator has determined, pursuant to the criteria under section 502(a) of the Act, that an owner or operator of the following types of operations that are not by themselves major sources and that are not located at major sources, as defined under 40 CFR 70.2, is permanently exempt from title V permitting requirements for that operation:

(i) Any decorative chromium electroplating operation or chromium anodizing operation that uses fume suppressants as an emission reduction technology; and

(ii) Any decorative chromium electroplating operation that uses a trivalent chromium bath that incorporates a wetting agent as a bath ingredient.

(2) An owner or operator of any other affected source subject to the provisions of this subpart is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet the compliance schedule as stated in section 63.343.

3. Section 63.342 is amended by revising the first sentence of paragraph (c)(2)(i)(B) and introductory text of paragraph (f)(3)(i) to read as follows:

§ 63.342 Standards.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) By accepting a Federally-enforceable limit on the maximum cumulative potential rectifier capacity of a hard chromium electroplating facility and by maintaining monthly records in accordance with § 63.346(b)(12) to demonstrate that the limit has not been exceeded. * * *

* * * * *

(f) * * *

(3) * * *

(i) The owner or operator of an affected source subject to the work practices of paragraph (f) of this section shall prepare an operation and maintenance plan to be implemented no later than the compliance date. The plan shall be incorporated by reference into the source's title V permit, if and when a title V permit is required. The plan shall include the following elements:

* * * * *

§ 63.344 [Amended]

4. In § 63.344, paragraphs (e)(3)(v) and (e)(4)(iv) are amended by revising the word ''less'' to read ''more.''

5. Section 63.347 is amended by revising the introductory text in paragraph (e)(2) and paragraph (f)(1) to read as follows:

§ 63.347 Reporting requirements.

* * * * *

(e) * * *

(2) If the State in which the source is located has not been delegated the authority to implement the rule, each time a notification of compliance status is required under this part, the owner or operator of an affected source shall submit to the Administrator a notification of compliance status, signed by the responsible official (as defined in § 63.2) who shall certify its accuracy, attesting to whether the affected source has complied with this subpart. If the State has been delegated the authority, the notification of compliance status shall be submitted to the appropriate authority. The notification shall list for each affected source:

* * * * *

(f) * * *

(1) If the State in which the source is located has not been delegated the authority to implement the rule, the owner or operator of an affected source shall report to the Administrator the results of any performance test conducted as required by § 63.7 or § 63.343(b). If the State has been delegated the authority, the owner or operator of an affected source should report performance test results to the appropriate authority.

* * * * *

6. Table 1 to subpart N of Part 63 is amended by revising the entry for ''63.5(a)'' to read as follows:

TABLE 1 TO SUBPART N OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART N

General provisions reference	Applies to subpart N	Comment
*	*	*
63.5(a)	Yes	Except replace the term ''source'' and ''stationary source'' in § 63.5(a) (1) and (2) of subpart A with ''affected sources.''
*	*	*

Subpart O—[Amended]

7. Section 63.360 is amended by revising paragraph (f) to read as follows:

§ 63.360 Applicability.

* * * * *

(f) The owner or operator of a source, subject to the provisions of the title 40, chapter I, part 63 subpart O, using 1 ton (see definition) is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet compliance schedule as stated in this § 63.360.

* * * * *

Subpart M—[Amended]

8. Section 63.320 is amended by adding paragraph (k) to read as follows:

§ 63.320 Applicability.

* * * * *

(k) The owner or operator of any source subject to the provisions of this subpart M is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet compliance schedule as stated in this § 63.320.

Subpart X—[Amended]

9. Section 63.541 is amended by adding paragraph (c) to read as follows:

§ 63.541 Applicability.

* * * * *

(c) The owner or operator of any source subject to the provisions of the title 40, chapter I, part 63 subpart X is required to obtain a title V permit from the applicable permitting authority in which the affected source is located.

[FR Doc. 95–30260 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 5E4598/P638; FRL–4990–5]

RIN 2070–AC18

Imidacloprid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a time-limited tolerance for indirect or inadvertent combined residues of the insecticide (1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine (referred to in this document as imidacloprid) and its metabolites resulting from crop rotational practices in or on the raw agricultural commodities in the cucurbit vegetables crop group. The proposed regulation to establish a maximum permissible level for residues of the insecticide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4) pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA). The time-limited tolerance would expire on December 31, 1996.

DATES: Comments, identified by the document control number [PP 5E4598/P638], must be received on or before January 12, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All

comments and data in electronic form must be identified by the docket number [PP 5E4425/P638]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information.'' CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 5E4598 to EPA on behalf of the Agricultural Experiment Stations of California, Florida, Georgia, South Carolina, and Texas. The petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.472 by establishing a tolerance for indirect or inadvertent, combined residues of the insecticide imidacloprid (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)-methyl]-*N*-nitro-2-imidazolidinimine, resulting from crop rotational practices in or on the raw agricultural commodities in the cucurbit vegetables crop group at 0.2 part per million (ppm).

The proposed tolerance will not support registration for imidacloprid on cucurbit vegetables. EPA will not consider applications for section 3 or section 24(c) registration of imidacloprid on cucurbit vegetables based the proposed time-limited tolerance. The tolerance would allow growers to produce cucurbit vegetables in rotation with crops that are treated in accordance with registered uses of imidacloprid. Imidacloprid registrations prohibit growers from planting crops which lack an imidacloprid tolerance on ground treated with the insecticide within a 12-month period. In some areas, however, it is a common practice for growers to plant back cucurbit vegetables (melons, squash, and cucumbers) in fields that have been used to produce tomatoes and peppers. Imidacloprid is registered and tolerances are established for the fruiting vegetables crop group (including tomatoes and peppers). There are no established imidacloprid tolerances, however, for the cucurbit vegetables. Crop rotational studies reviewed by EPA indicate that plant-back crops grown in fields treated with imidacloprid may contain measurable amounts of the pesticide residue, if the rotational crop is planted within 12 months of application of the pesticide.

Currently, growers who plan to double crop with cucurbit vegetables must not use imidacloprid, or they must not plant back cucurbit vegetables in fields treated within 12 months of application with imidacloprid. According to the University of Florida Cooperative Extension Service, the inability to double crop because of the imidacloprid plant-back restriction will have a serious financial impact on the South Florida vegetable industry. Approximately 12,000 acres in South Florida are double cropped with cucurbit vegetables. Much of this acreage has been treated with imidacloprid to control sweet potato whitefly (silverleaf whitefly) on tomatoes. Prior to registration of imidacloprid on tomatoes, EPA approved emergency exemptions under Section 18 of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for its use in California, Florida, South Carolina, and Texas to avert significant economic loss from sweet potato white fly damage.

The proposed tolerance, which would expire on December 31, 1996, should allow IR-4 sufficient time to submit a permanent tolerance for imidacloprid on cucurbit vegetables. IR-4 is developing field residue data in support of a permanent tolerance and registration for use of imidacloprid on cucurbit vegetables. The permanent tolerance will be proposed by IR-4 to cover residues in cucurbit vegetables from application to the growing crop, as well as crop rotational practices.

EPA's policy is to consider tolerance petitions, when requested by the registrants or any interested parties, for pesticide residues on replacement or rotational crops when residues result from pesticide carryover in soil from treatment of previous crops. Such tolerances will be set at levels determined to be appropriate based on evaluations of toxicity and residue data submitted to the Agency by the petitioner. Guidance on how to conduct residue studies on rotation crops can be found in the EPA publication ''Pesticide Reregistration Reject Rate Analysis Residue Chemistry/Environmental Fate Follow Up Guidance for Conducting Rotational Crop Studies,'' February 1993. The procedures for filing a petition, as described in 40 CFR 180.7, should be followed, and each petition must be accompanied by the appropriate fee, as specified in 40 CFR 180.33.

The toxicological data considered in support of the proposed tolerance include:

1. A 1-year chronic feeding study in dogs fed diets containing 0, 200, 500, or 1,250/2,500 ppm (average intake was 0, 6.1, 15, or 41/72 milligrams (mg)/kilogram (kg)/day) with a no-observed-effect level of 1,250 ppm based on increased plasma cholesterol and liver cytochrome P-450 levels in dogs at the 2,500-ppm dose level. The high dose was increased to 2,500 ppm (72 mg/kg/day) from week 17 onward due to lack of toxicity at the 1,250-dose level.

2. A 2-year feeding/carcinogenicity study in rats fed diets containing 0, 100, 300, 900, or 1,800 ppm with a NOEL for chronic effects at 100 ppm (5.7 mg/kg/day in males, 7.6 mg/kg/day in females) that included decreased body weight gain in females at 300 ppm (24.9 mg/kg/day) and above; and increased thyroid lesions in males at 300 ppm (16.9 mg/kg/day) and above, and in females at 900 ppm (73 mg/kg/day) and above. There were no apparent carcinogenic effects under the conditions of the study.

3. A 2-year carcinogenicity study in mice fed diets containing 0, 100, 330, 1,000, or 2,000 ppm with a NOEL of 1,000 ppm (208 mg/kg/day in males, 274 mg/kg/day in females) based on decreased food consumption and decreased water intake at the 2,000-ppm dose level. There were no apparent carcinogenic effects observed under the conditions of this study.

4. A three-generation reproduction study with rats fed diets containing 0, 100, 250, or 700 ppm with a reproductive no-observed-effect level

(NOEL) of 100 ppm (equivalent to 8 mg/kg/day based on decreased pup body weight observed at the 250-ppm dose level.

5. A developmental toxicity study in rat given gavage doses at 0, 10, 30, or 100 mg/kg/day during gestation days 6 to 16 with a NOEL for developmental toxicity at 30 mg/kg/day based on increased wavy ribs observed at the 100-mg/kg/day dose level.

6. A developmental toxicity study in rabbits given gavage doses at 0, 8, 24, or 72 mg/kg/day during gestation days 6 through 19 with a NOEL for developmental toxicity at 24 mg/kg/day based on decreased body weight and increased skeletal abnormalities observed at the 72-mg/kg/day dose level.

7. Imidacloprid was negative for mutagenic effects in all but two of 23 mutagenic assays. Imidacloprid tested positive for chromosome aberrations in an *in vitro* cytogenetic study with human lymphocytes for the detection of induced clastogenic effects, and for genotoxicity in an *in vitro* cytogenetic assay measuring sister chromatid exchange in Chinese hamster ovary cells.

Dietary risk assessments for imidacloprid indicate that there is minimal risk from established tolerances and the proposed tolerance for cucurbit vegetables. A cancer risk assessment is not appropriate for imidacloprid since the pesticide is assigned to ''Group E'' (no evidence of carcinogenicity) of EPA's cancer classification system. Dietary risk assessments for the pesticide were conducted using the Reference Dose (RfD) to assess chronic exposure and risk.

The RfD is calculated at 0.057 mg/kg/of body weight/day based on a NOEL of 5.7 mg/kg/day from the 2-year rat feeding/carcinogenicity study and 100-fold uncertainty factor. The theoretical maximum residue contribution (TMRC) from existing tolerances utilizes less than 15 percent of the RfD for the general population and less than 30 percent of the RfD for nonnursing infants less than 1 year in age. The proposed tolerance for cucurbit vegetables would utilize less than 1 percent of the RfD for the general population and all population subgroups.

There is no reasonable expectation that secondary residues will occur in milk and eggs, or meat, fat, and meat byproducts of livestock or poultry; there are no livestock feed items associated with the cucurbit vegetables.

The metabolism of imidacloprid in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridiyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

A record has been established for this rulemaking under docket number [PP 5E4598/P638] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

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

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

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: November 30, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.472, by adding new paragraph (f), to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

* * * * *

(f) Time-limited indirect or inadvertent tolerance: A time-limited tolerance, to expire on December 31, 1996, is established for indirect or inadvertent combined residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, when present therein as a result of the application of the pesticide to growing crops listed in this section and other nonfood crops as follows:

Commmodity	Parts per million
Vegetables, cucurbit	0.2

[FR Doc. 95–30372 Filed 12–12–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50601G; FRL–4976–3]

Ethane, 1,1,1,2,2-pentafluoro-; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for ethane, 1,1,1,2,2-pentafluoro-, based on receipt of new data. The data indicate that for purposes of TSCA section 5, the substance will not present an unreasonable risk to human health.

DATES: Written comments must be received by January 12, 1996.

ADDRESSES: All comments must be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Room G–099, East Tower, Washington, DC 20460.

Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, an additional sanitized copy must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS-50601G. Unit III of this preamble contains additional information on submitting comments containing CBI.

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 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–50601G). No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV of this document.

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

SUPPLEMENTARY INFORMATION: In the Federal Register of September 23, 1992 (57 FR 44064), EPA issued a SNUR (FRL–4001–2) establishing significant new uses for ethane, 1,1,1,2,2-pentafluoro-. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for ethane, 1,1,1,2,2-pentafluoro- under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for the substance, including its premanufacture notice (PMN) number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced in Unit IV of this preamble.

PMN Number: P–91–1392

Chemical name: Ethane, 1,1,1,2,2-pentafluoro-.
CAS Registry Number: Not available.
Effective date of revocation of section 5(e) consent order: February 21, 1995.
Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA can no longer support a finding that the manufacture, processing, distribution in commerce, use, or disposal of the PMN substance may present an unreasonable risk to human health. Accordingly, EPA has determined that further regulation under section 5(e) is not warranted at this time.
Toxicity testing results: The PMN substance P–91–1392 was tested in a cardiac sensitization study (epinephrine challenge in dogs), a 90-day inhalation toxicity study in rats, and a developmental inhalation toxicity study (rats and rabbits). The 90-day subchronic study showed that there were no observable adverse effects at concentrations up to 50,000 parts per million (ppm). There were no observed developmental toxicity effects at concentrations up to 50,000 ppm in the developmental toxicity study. There was evidence of maternal toxicity at 50,000 ppm but no maternal effects noted at 15,000 ppm. The PMN substance P–91–1392 was found to be a cardiac sensitizer when exposures occurred at a 10 percent concentration in air (100,000 ppm) for 10 minutes. Lower exposures did not elicit a sensitization response.
CFR Number: 40 CFR 721.3240

II. Background and Rationale for Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure. EPA identified the tests necessary to make a reasoned evaluation of the risks posed by the substance to the human health. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter pursuant to the

consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and consequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as ''confidential,'' ''trade secret,'' or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50601 (P–91–1392). This record includes information considered by the Agency in developing the rule and includes the test data that formed the basis for this proposal.

A record has been established for this rulemaking under docket number OPPTS–50601G (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

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

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

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

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of the rule. Any costs or burdens associated with the rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: December 5, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.3240 [Removed]

2. By removing § 721.3240.

[FR Doc. 95–30371 Filed 12–12–95; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–29; Notice 8]

RIN 2127–AG06

Federal Motor Vehicle Safety Standards; Stability and Control of Medium and Heavy Vehicles During Braking

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document responds to petitions for reconsideration of a March 1995 final rule amending Standard No. 121, *Air Brake Systems,* to require, among other things, the installation of antilock brake systems (ABS) on medium and heavy vehicles and the installation of external ABS malfunction indicator lamps on trailers and trailer converter dollies. This document proposes to amend the Standard to specify the location, color, activation protocol, and intensity of the lamps.

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

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Mr. George Soodoo, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–5892. FAX (202) 366–4329.

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–2992.

I. Background

On March 10, 1995, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard (FMVSS) No. 121 to require medium and heavy vehicles to be equipped with an antilock brake system (ABS) (60 FR 13216). The final rule also required that these vehicles be equipped with lamps to alert their drivers of ABS malfunctions. Trailers produced during an interim eight-year period are required to be

equipped with an external ABS malfunction indicator lamp. That period begins on March 1, 1998, the date on which ABS installation on trailers must also begin. The lamp must ''be visible within the driver's forward field of view through the rearview mirrors.'' (60 FR 13244–13246). Truck tractors and other towing trucks will be required to be equipped with two separate in-cab lamps: one indicating malfunctions in the ABS of the towing truck and the other indicating malfunctions in the ABS of any towed trailer(s) or dolly(ies). All other powered heavy vehicles will be required to be equipped with a single in-cab lamp to indicate ABS malfunctions.

II. Petitions for Reconsideration

NHTSA received petitions for reconsideration from the American Trucking Associations (ATA), the American Automobile Manufacturers Association (AAMA), the Truck Trailer Manufacturers Association (TTMA), the Heavy Duty Brake Manufacturers Council (HDBC), the United Parcel Service (UPS), vehicle manufacturers, including Chrysler, Navistar, AM General, and brake system suppliers, including Midland-Grau, Jenflo, AlliedSignal, Rockwell WABCO, Rockwell International, Kelsey-Hayes, and Ferodo America.

The petitioners generally agreed with NHTSA's decision to require all heavy vehicles to be equipped with ABS and to comply with the stopping distance requirements, and to require truck tractors to comply with the braking-in-a-curve performance test requirements. Nevertheless, they requested modifications of various aspects of those rules.

This document responds to those petitioners which requested changes in the requirements concerning ABS malfunctions indicators. The agency is responding to other requests for reconsideration in another document published elsewhere in today's Federal Register.

Midland-Grau and TTMA petitioned NHTSA to delete the requirement that the external malfunction indicator lamp on a trailer be visible from the driver's seating position ''through the rearview mirrors.'' (see S5.2.3.3). Midland-Grau stated that since truck tractor manufacturers cannot control where the external lamp would be located, requiring tractor manufacturers to ensure that the lamp is visible from the cab of the truck tractor is unreasonable. TTMA stated that since trailer manufacturers cannot control where mirrors are located on tractors, requiring the ABS malfunction lamp on dollies and trailers to be visible ''through the rearview mirrors'' is not appropriate. That organization also stated that there is no good, practical location for such a lamp on a dolly.

AAMA and TTMA requested that if the agency retains the requirement for an external ABS malfunction indicator lamp on the trailer,[1] then the agency should specify the location, color and intensity of the lamp in Standard No. 108, *Lamps, reflective devices, and associated equipment.*

III. Agency Response and Proposal

In a separate notice published elsewhere in today's Federal Register, NHTSA has denied requests by several petitioners to rescind the requirement for external ABS malfunction lamps on trailers and dollies. However, in response to the petitions from Midland-Grau and TTMA, NHTSA has decided to propose requirements concerning the location, color, activation protocol and intensity of the external ABS malfunctions lamps on trailers and dollies.

A. Location

NHTSA is proposing to specify the location for the external ABS malfunction indicator lamp on trailers and dollies. The proposed location for trailers is similar to the one proposed by the agency when it was considering requiring a low air pressure warning lamp on trailers. (55 FR 4453, February 8, 1990) For most trailers, the ABS malfunction indicator lamp would be required to be located on the left side of each trailer, as close to the front as practicable, and at a height as close as practicable to 96 inches above the road surface. (If it is impracticable to mount the indicator lamp on the left side of the trailer at a height of 60 inches or more above the road surface, the lamp shall be mounted on a permanent structure on the front face of the trailer as far leftward as practicable and at a height as close as practicable to 96 inches above the road surface). For dollies, the indicator lamp would be required on a permanent structure of the dolly and to be visible to a person standing on the road surface near the location of the indicator.

Standard No. 111, *Rearview mirrors,* specifies requirements for the performance and location of rearview mirrors, but it does not provide a requirement for the height of the mirror relative to the ground. A location requirement would have given some reference for locating the ABS malfunction indicator lamp on the trailer. However, S8.1 of Standard No. 111 specifies that ''the mirrors shall be located so as to provide the driver a view to the rear along both sides of the vehicle, * * * '' This requirement should ensure that the driver would have a view of an indicator lamp required to be mounted on the left side of the trailer.

NHTSA is basing its proposal regarding the height of the trailer malfunction indicator lamp on a report published by the University of Michigan Transportation Research Institute (UMTRI), ''The Influence of Truck Driver Eye Position on the Effectiveness of Retroreflective Traffic Signs,'' by Sivak, Flannagan, and Gellatly, September 1991. This report includes data on driver eye heights for 188 heavy trucks. The mean driver eye height above the ground for heavy trucks in that study is 2.33 meters or 91.74 inches. Therefore, the location of a side rearview mirror for such vehicles is likely to be slightly above or below this mean driver eye height to ensure that the average driver would be provided ''a view to the rear along both sides of the vehicle,'' as required in S8.1 of Standard No. 111.

NHTSA believes that if the malfunction indicator lamp is located on the left side of the trailer, as far forward as practicable and at a height as close as practicable to 96 inches above the road surface, it would coincide with the mean driver eye height, based on the data from the UMTRI report. In that location, the indicator lamp would be likely to be visible to the driver.

NHTSA recognizes that on some trailers, such as flatbed and platform trailers, there may be no side structure that is sufficiently high to locate the ABS malfunction lamp at or near a height of 96 inches. If it is impracticable to mount the indicator lamp on the left side of the trailer at a height of 60 inches or more above the road surface, then locating the lamp on the front face of the trailer would be a more appropriate lamp location for such a vehicle. To increase the likelihood of a lamp on the front face of the trailer being visible through the side rearview mirror, the lamp would be required to be positioned as far leftward as practicable and at a height as close as practicable to 96 inches above the road surface.

In response to notices issued on the ABS rulemaking, TTMA and other

[1] ATA and UPS petitioned the agency to delete the requirements for an external trailer mounted malfunction lamp. They claimed that the external malfunction lamp will lead to less safety because drivers will be looking in their mirrors during braking to see whether the ABS lamp is functioning, instead of looking at traffic conditions ahead of their vehicle.

commenters stated that requiring a lamp to be visible through the rearview mirrors would make it necessary for such a lamp to protrude from the dolly structure, thereby making it susceptible to damage. They recommended that a dolly be required to indicate an ABS malfunction only at the ECU mounted on the dolly's frame, on the presumption that it would be visible during a walk-around inspection.

NHTSA concludes that the proposed requirement for specifying the location for an ABS malfunction lamp on a dolly must be different from the requirement proposed for trailers. The agency agrees with TTMA's comment that there is ''no good, practical location for an ABS malfunction lamp on a dolly,'' from which the lamp could be viewed by a driver looking through the side rearview mirrors.

Based on the available information, NHTSA proposes that the ABS malfunction lamp on dollies be located on a permanent structure of the dolly so that it would be visible, with or without a trailer attached to the dolly, to a person in a standing position during a walk-around inspection. By permanent structure, the agency means a fixed portion of the vehicle that is inherently part of the dolly as opposed to something that is easily removed. To accomplish this goal, the proposed requirement is specified in objective terms by stating that the lamp must be located on a permanent structure of the dolly and positioned at a height of not less than 15 inches above the road surface. In addition, the malfunction lamp would have to be visible when viewed by a person standing erect and located no more than 10 feet from the dolly. The proposed height of not less than 15 inches for the location of the dolly ABS malfunction lamp coincides with the lower height limit for side marker lamps on the lower edge of a trailer, as specified in Standard 108. Given the differences in dolly configurations and sizes, that proposed minimum lamp height is expected to provide dolly manufacturers with the flexibility to locate the ABS lamp in a protected location. The agency expects that dolly manufacturers would locate the lamp below the fifth-wheel to reduce the potential for damage to the lamp when the dolly is being connected to a trailer.

NHTSA believes that locating the malfunction lamp on the ECU of the ABS would decrease the ability of the driver or inspectors to see the lamp. The ECU is typically placed in a protected location where it would not be easily damaged. Such a location would not be conspicuous enough to ensure that the ECU, and hence the malfunction lamp, is easily seen during a walk-around inspection of the towed vehicle.

B. Color

TTMA requested that NHTSA require the use of a green lamp for the external ABS malfunction lamp on the trailer and the dolly, and that the lamp be lit continuously whenever the ECU is powered, but be extinguished when there is a malfunction.

Standard No. 101, *Controls and displays*, currently requires that in-vehicle ABS malfunction lamps be yellow. This color requirement has been harmonized with the vehicle standards of other countries. NHTSA and regulatory agencies in other countries have historically used a red lamp to indicate a critical system failure and a yellow lamp to indicate a non-critical malfunction. The International Organization for Standardization (ISO) and the Economic Commission for Europe (ECE) recently harmonized European braking requirements with American requirements, agreeing to specify red to indicate brake failure and yellow to indicate ABS malfunction. NHTSA recognizes that these color requirements are applicable to instrument panel lamps and do not address ABS malfunction indicator lamps on the exterior of a vehicle. However, the desirability of having a uniform protocol in this regard is clear. The agency concludes that the same requirements should be applied to external ABS malfunction lamps since they perform the same function as in-vehicle ABS malfunction lamps.

NHTSA notes that Table I of Standard 108 includes a requirement for two amber clearance lamps at the front of a trailer and two red clearance lamps at the rear of a trailer. In addition, Standard No. 108 references the Society of Automotive Engineers (SAE) Recommended Practice J592e (July 1972), *Clearance, Side Marker, and Identification Lamps.* A recent update of this Recommended Practice (SAE J592 JUN92) states in Section 5.1.7 that ''the color of light from front clearance lamps * * * shall be yellow.'' The agency believes that the color of external ABS malfunction lamps should be the same as that used for clearance lamps.

Based on these considerations, NHTSA concludes that the use of a green lamp on the exterior of the trailer for indicating a trailer ABS malfunction would violate the already established convention for ABS malfunction lamps and, therefore, could create confusion among drivers. However, there would be no prohibition against supplementing the required yellow external malfunction lamp on a trailer with a green lamp on the ECU to indicate the status of the trailer ABS. The supplemental lamp would not have to conform to any of the color or protocol requirements specified for the external ABS malfunction lamp.

C. Lamp Protocol

TTMA requested a change in the lamp protocol, which would allow the lamp to be lit continuously when the ABS is functioning properly and to be extinguished when there is a malfunction in the ABS. NHTSA has addressed this issue in detail in previous Federal Register notices and in the final rule on heavy vehicle ABS rulemaking. In the final rule, the agency decided to require that the ABS malfunction lamp be lit when a malfunction exists and that it not be lit when the antilock system is functioning properly.

Under the requirement for an external ABS malfunction indicator in S5.2.3.3 of Standard 121, NHTSA requires that the trailer ABS malfunction lamp be lit during the check-of-lamp function only when the vehicle is stationary and power is first supplied to the antilock system. This allows the ABS lamp on a trailer that is moving to undergo the check of lamp function, without the lamp cycling on and off whenever the brakes are applied. This requirement will eliminate any potential distractions for the driver or for drivers of other vehicles nearby, which might be created by the ABS lamp cycling on and off with every brake application. The agency emphasizes that in the event of a malfunction in the trailer antilock system, the malfunction indicator lamp would be lit whenever power is supplied to the trailer antilock system, regardless of whether the vehicle is stationary or moving. Accordingly, the agency has decided to deny TTMA's request for a change in the ABS malfunction lamp protocol and proposes no change to the protocol included in the ABS final rule.

D. Intensity and Photometric Requirements

AAMA and TTMA petitioned the agency to require that the external ABS malfunction lamp have the same photometric requirements as those specified in Standard No. 108. Photometric values specify the amount of light emitted by a lamp, when measured from a specified distance.

NHTSA agrees with the petitioners' recommendation, and proposes that the ABS malfunction lamps meet the requirements specified by the SAE Recommended Practice J592 JUN92 for

the clearance lamps. Those requirements are referenced in Standard No. 108.

The photometric performance requirements in SAE J592 JUN92 for the luminous intensity of side marker lamps specify minimum intensity values at test points of 45 degrees along a horizontal axis and 10 degrees along a vertical axis, when measured from a lamp distance of at least three meters. In addition, the agency proposes that the lamp be mounted on the trailer in such a manner that its beam is directed toward the front of the trailer and rotated so that its top and bottom become its sides. Such an orientation of the lamp would ensure that its widest light beam is in a vertical plane just outboard of the side of the trailer, and hence would be more likely to be visible by the driver through the tractor's rearview mirrors.

In addition to providing general comments regarding this issue, commenters are asked to specifically comment on the quantified aspects of the proposed location, color, and photometric requirements of the ABS malfunction lamp on trailers and dollies.

IV. Costs

NHTSA has already evaluated the economic impact of requiring trailers and dollies to be equipped with an external ABS malfunction lamp in the final rule on heavy vehicle ABS published on March 10, 1995. The agency estimated that the unit cost of requiring an ABS lamp on trailers and dollies is $9.43. Since this proposed rule does not require additional equipment, but only specifies location, color and intensity for the ABS malfunction lamp, the proposal should not have any impact on previously estimated costs or benefits.

V. Rulemaking Analyses and Notices

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

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The impacts of the rule, if adopted, would be so minimal as not to warrant preparation of a full regulation evaluation. As noted above, NHTSA has already evaluated the economic impact of requiring an external ABS malfunction lamp. For details, see the Final Economic Assessment (FEA) titled, ''Final Rules FMVSS Nos. 105 & 121 Stability and Control While Braking Requirements and Reinstatement of Stopping Distance Requirements for Medium and Heavy Vehicles,'' published in June 1994.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically would not qualify as small entities. Further, as noted above, the proposal would have no impacts on costs or benefits beyond those addressed in the FEA for the ABS final rule. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

5. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and

PART 571—[AMENDED]

In consideration of the foregoing, the agency proposes to amend Standard No. 121, *Air Brake Systems*, in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. § 571.121 would be amended by revising S5.2.3.3, which would read as follows:

§ 571.121 Standard No. 121; Air Brake Systems.

* * * * *

S5.2.3.3 Antilock Malfunction Indicator. (a) In addition to the requirements of S5.2.3.2, each trailer and trailer converter dolly manufactured on or after March 1, 1998, and before March 1, 2006, shall be equipped with an external indicator lamp that meets the requirements of paragraphs (b)(1)–(5) and (c).

(b)(1) The lamp shall be designed to conform to the Society of Automotive Engineers (SAE) Recommended Practice J592 JUN92, *Clearance, Side Marker, and Identification Lamps.*

(i) Except as provided in S5.2.3.3(b)(1)(ii), each trailer that is not a trailer converter dolly shall be equipped with an indicator lamp mounted on a permanent structure on the left side of the trailer as viewed from the rear, as close to the front as practicable and at a height as close as practicable to 96 inches above the road surface, when measured from the center of the lamp on the trailer at curb weight.

(ii) If it is impracticable to mount the indicator lamp on the left side of the trailer at a height of 60 inches or more above the road surface, the lamp shall be mounted on a permanent structure on the front of the trailer as far leftward as practicable, at a height as close as practicable to 96 inches above the road surface, when measured from the center of the lamp on the trailer at curb weight.

(2) The lamp required in S5.2.3.3(b)(1)(i) and S5.2.3.3(b)(1)(ii) shall be mounted to provide light toward the front and rotated so that its top becomes its side, as specified in SAE J592 JUN92.

(3) The lamp for a converter dolly shall be mounted on a permanent structure of the dolly so that the lamp is at a height above the road surface of not less than 15 inches when measured from the center of the lamp on the dolly at curb weight. The lamp shall be located such that visual access to it, when viewed by a person standing erect and not more than 10 feet from the dolly, is not obscured by other structures on the dolly.

(4) The color of the lamp shall be yellow.

(c) The lamp shall be illuminated whenever power is supplied to the antilock brake system and there is a malfunction that affects the generation or transmission of response or control signals in the trailer's antilock brake system. The lamp shall remain illuminated as long as such a malfunction exists and power is supplied to the antilock brake system. Each message about the existence of such a malfunction shall be stored in the antilock brake system whenever power is no longer supplied to the system. The lamp shall be automatically reactivated when power is again supplied to the trailer's antilock brake system. The lamp shall also be activated as a check of lamp function whenever power is first supplied to the antilock brake system and the vehicle is stationary. The lamp shall be deactivated at the end of the check of lamp function, unless there is a malfunction or a message about a malfunction that existed when power was last supplied to the antilock brake system.

* * * * *

Issued on: December 8, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–30376 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 649, 650, and 651

[I.D. 112995F]

New England Fishery Management Council; Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Wednesday, December 13, 1995, at 10 a.m. and on Thursday, December 14 at 8:30 a.m.

ADDRESSES: The meeting will be held at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA 01906–1097; telephone: (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, (617) 231–0422.

SUPPLEMENTARY INFORMATION:

December 13, 1995

The December 13, 1995, session will include reports from the Council's Gear Conflict, Monkfish, and Dogfish Committees. The gear conflict discussion will focus on reviewing and possibly approving a draft plan amendment document for public hearing purposes that contains a framework adjustment procedure to reduce gear conflicts. The intent is to amend several fishery management plans for this purpose. The Monkfish Committee will update the Council on possible monkfish total allowable catches, limited access quotas, and limited access qualification criteria within the context of alternatives already developed as part of a draft fishery management plan. The Dogfish Committee will provide background information on the Mid-Atlantic Fishery Management Council's decision to temporarily delay development of the joint plan.

During the afternoon session of the meeting, the Marine Mammal Committee will report on its efforts to develop time/area closures to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery. The Sea Scallop Committee will discuss the development of Amendment 5 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (Scallop FMP), a program to allow vessels to consolidate their days at sea. The Council may also approve draft Amendment 6 to the Scallop FMP for public hearing purposes. The amendment proposes to establish a temporary experimental use area 10 miles south of Martha's Vineyard for sea scallop research, enhancement, and aquaculture.

Abbreviated Rulemaking—Atlantic Sea Scallops

At the recommendation of its Scallop Committee, the Council will consider initial action on Framework Adjustment 7 to the Scallop FMP under the framework for abbreviated rulemaking procedure contained in 50 CFR 650.40. The Council proposes to extend the current rule specifying a maximum crew size of seven until a plan amendment allows the consolidation of days at sea now allocated to individual scallop vessels, or until the Council changes the crew size through other action.

December 14, 1995

The December 14, 1995, session will begin with an update on the future direction of lobster management. The Northeast Multispecies (Groundfish) Committee will follow with a report on

actions to date to finalize proposed Amendment 7 to the Fishery Management Plan for the Northeast Multispecies Fishery (Multispecies FMP).

Abbreviated Rulemaking Action—Northeast Multispecies

The Council will consider action on Framework Adjustment 13 to the Multispecies FMP under the framework for abbreviated rulemaking procedure contained in 50 CFR 651.40. The Council proposes to require exempted fishery status for vessels fishing outside of their allocated groundfish or sea scallop days at sea. The Council will consider two additional actions under the framework for abbreviated rulemaking procedure: Initial action on Framework Adjustment 14 to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery through time/area closures in the mid-coast and southern New England regions during the spring, and initial action on Framework Adjustment 15 in which the Council proposes to require that all vessels take a 20-day block of time off from harvesting groundfish during the March through May spawning period.

The Council will consider public comments at a minimum of two Council meetings prior to making any final recommendations to the Director, Northeast Region, NMFS (Regional Director), under the provisions for abbreviated rulemaking cited above. If the Regional Director concurs with the measures proposed by the Council, he will publish them as a final rule in the Federal Register.

The Council will address any other outstanding business at the conclusion of the agenda items described above.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: December 8, 1995

Richard W. Surdi,

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

[FR Doc. 95–30380 Filed 12–8–95; 2:17 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 239
Wednesday, December 13, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(32b1)–20–95]

Foreign-Trade Zone 21—Charleston, SC Request for Manufacturing Authority Hubner Manufacturing Corporation (Industrial Bellows/Molded Parts)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 21, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of the Hubner Manufacturing Corporation (HMC) (a subsidiary of Hubner Gummi-Und Kunststoff GmbH, Germany), to manufacture industrial bellows and plastic/rubber molded parts under zone procedures for the U.S. market and export within FTZ 21. It was formally filed on November 30, 1995.

HMC plans to establish a facility within the Wando Park site of FTZ 21 to manufacture industrial bellows used in buses, trains and airport gangways; and, plastic, rubber, and metal molded parts used in motor vehicles, medical instruments, and sporting goods. Certain components and materials (about 40% the finished products' value) would be sourced from abroad, including: rubberized fabric, trimming bands, articulation/electronic/hydraulic parts, aluminum profiles, treat plate and kinematic systems, plastic resins, and rubber compounds. All foreign merchandise would be admitted to the zone in privileged foreign status (19 CFR 146.41). Up to 80 percent of the finished products are exported.

Zone procedures would exempt HMC from Customs duty payments on the foreign materials used in the export activity. On domestic sales, the company would be able to defer Customs duty payments on the foreign materials until they are transferred from the zone for domestic consumption. A portion of the foreign merchandise which becomes scrap during the production process (e.g., rubberized fabric) may also be exempt from Customs duties (scrap yield ranges up to 25 percent). In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 12, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 29, 1996).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue NW., Washington, DC 20230

Dated: November 30, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–30275 Filed 12–12–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Amendment to Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Bicycles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Katherine Johnson, Office of Antidumping Investigations, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3965 or (202) 482–4929, respectively.

THE APPLICABLE STATUTE: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA).

Scope of Investigation

The product covered by this investigation is bicycles of all types, whether assembled or unassembled, complete or incomplete, finished or unfinished, including industrial bicycles, tandems, recumbents, and folding bicycles. For purposes of this investigation, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law, or the *Harmonized Tariff Schedule of the United States (HTSUS):* (1) The term ''unassembled'' means fully or partially unassembled or disassembled; (2) the term ''incomplete'' means lacking one or more parts or components with which the complete bicycle is intended to be equipped; and (3) the term ''unfinished'' means wholly or partially unpainted or lacking decals or other essentially aesthetic material. Specifically, this investigation is intended to cover: (1) Any assembled complete bicycle, whether finished or unfinished; (2) any unassembled complete bicycle, if shipped in a single shipment, regardless of how it is packed and whether it is finished or unfinished; and (3) any incomplete bicycle, defined for purposes of this investigation as a frame, finished or unfinished, whether or not assembled together with a fork, and imported in the same shipment with any two of the following components: (a) The rear wheel; (b) the front wheel; (c) a rear derailleur; (d) a front derailleur; (e) any one caliper or cantilever brake; (f) an integrated brake lever and shifter, or separate brake lever and click stick lever; (g) crankset; (h) handlebars, with or without a stem; (i) chain; (j) pedals; and (k) seat (saddle), with or without seat post and seat pin.

The scope of this investigation is not intended to cover bicycle parts except to the extent that they are attached to or in the same shipment as an unassembled complete bicycle or an incomplete bicycle, as defined above.

Complete bicycles are classifiable under subheadings 8712.00.15, 8712.00.25, 8712.00.35, 8712.00.44, and 8712.00.48 of the 1995 HTSUS. Incomplete bicycles, as defined above, may be classified for tariff purposes under any of the aforementioned HTSUS subheadings covering complete

bicycles or under HTSUS subheadings 8714.91.20–8714.99.80, inclusive (covering various bicycle parts). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Case History

On November 1, 1995 (60 FR 56567, November 9, 1995), the Department of Commerce (''the Department'') made its affirmative preliminary determination of sales at less than fair value in the above-referenced investigation. On November 7, 1994, we disclosed our calculations for the preliminary determination to counsel for petitioners, counsel for Bo-An Bike (Shenzhen) Co., Ltd. (''Bo-An''); CATIC Bicycle Co., Ltd. (''CATIC''); China Bicycle Co. (Holdings) Ltd. (''CBC''); Giant China Co., Ltd. (''Giant''); Hua Chin Bicycle (S.Z.) Co., Ltd. (''Hua Chin''); Merida Bicycle (Shenzhen) Co., Ltd. (''Merida''); Shenzhen Overlord Bicycle Co., Ltd. (''Overlord''); and Universal Cycle Corporation (Guangzhou) (''UCC''), and counsel for Shun Lu Bicycle Company (''Chitech''), respondents in this investigation.

On November 9 and 20, 1995, respondents alleged that ministerial errors had occurred in the calculations and requested that these errors be corrected and an amended preliminary determination be issued reflecting these corrections. As discussed below, we find that most of these errors constitute ministerial errors within the meaning of 19 CFR 353.28(d) (hereinafter ''ministerial errors'').

For all companies, we miscalculated factory overhead in three ways: (1) We mistakenly used cumulative depreciation instead yearly depreciation; (2) we inadvertently included factory overhead, packing and certain SG&A expenses in the denominator of the calculation; and (3) we misapplied the calculation formula to one company's financial statements.

For CATIC and CBC, we inadvertently double-counted the value of certain components. For Hua Chin, we miscalculated the factor valuation for one component. For Merida, we miscalculated brokerage expenses and double-counted certain other expenses. For Universal, we miscalculated packing.

In preparing the recalculations for the ministerial errors described above, we noted several minor unintentional errors in the programming for Bo-An, CBC, Hua Chin, and UCC. These constitute ministerial errors within the meaning of 19 CFR 353.28(d). Although not noted by other parties, we are correcting these errors for those companies whose calculations we are already revising. (See memorandum from The Team to Barbara R. Stafford dated November 29, 1995.)

Amendment of Preliminary Determination

The Department has stated that it will amend a preliminary determination only to correct for significant ministerial errors (*i.e.,* corrections that result in a difference of 5 absolute percentage points and that are at least 25 percent greater or less than the preliminary margin, and corrections resulting in a margin of zero or de minimis). (See Notice of Amended Preliminary Determination of Sales at Less than Fair Value: Disposable Lighters from the People's Republic of China, 60 FR 9008 (February 16, 1995), Notice of Amended Preliminary Determination of Sales at Less than Fair Value: Fresh Cut Roses from Colombia, 59 FR 51554 (October 12, 1994), and Amendment to Preliminary Determination of Sales at Less than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong, 55 FR 19289 (May 9, 1990).)

Given the facts of this investigation, as noted above, the Department hereby amends its preliminary determination to correct for the ministerial errors involved for Hua Chin, Merida, Overlord, and UCC, since the correction of the ministerial errors results in de minimis or zero margins for those companies.

We are not amending the preliminary margins of Chitech and CBC because the corrections of the ministerial errors do not result in a difference of five absolute percentage points from the preliminary margin rates, nor do they result in de minimis margins.

Finally, we are not amending the preliminary margins of Bo-An, CATIC, and Giant because those companies were preliminarily found not to be selling at less than fair value. (*See* memorandum from The Team to Barbara R. Stafford dated November 29, 1995, for a detailed discussion of the ministerial error allegations and the Department's analysis). The revised estimated margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Bo-An	0.00.
CATIC	0.00.
Giant	0.00.
Hua Chin	1.56 (*de minimis*).
Merida	0.00.
CBC	5.69.
Overlord	1.54 (*de minimis*).
Chitech	5.29.
UCC	0.55 (*de minimis*).
PRC-Wide Rate	61.67.

The PRC-Wide rate applies to all entries of subject merchandise except for entries from exporters/factories that are identified individually above.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to continue to require a cash deposit or posting of a bond for all entries of subject merchandise from the PRC for CBC and Chitech that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Department will direct the U.S. Customs Service to terminate suspension of liquidation for Merida, Overlord, UCC, and Hua Chin. Furthermore, any entries by Merida, Overlord, UCC, and Hua Chin which were suspended as a result of the preliminary determination will be liquidated. The ''PRC-Wide'' rate established in the preliminary determination remains the same. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the amended preliminary determination.

Postponement of Final Determination

On November 6 and 9, 1995, respondents representing a significant proportion of exports to the United States of subject merchandise requested a 60-day postponement of the final determination, in accordance with 19 U.S.C. section 1673d(a)(2) and 19 CFR 353.20(b). Pursuant to 19 CFR 353.20(b), because our preliminary determination is affirmative, and no compelling reasons for denial exist, we are postponing the date of the final determination. Because of the federal government shutdown, the date of the final determination will be extended by an additional six days, the number of days of the shutdown, to March 29, 1996.

The deadline for interested parties to submit additional publicly available information concerning surrogate values is February 13, 1996. Rebuttal comments on this information must be submitted no later than February 23, 1996.

The revised deadlines for submitting case briefs and rebuttal briefs are March 1, 1996, and March 8, 1996,

respectively. On November 20, 1995, petitioners requested that a hearing be held. At this time the hearing is scheduled for March 12, 1996, the time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

This notice is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: December 4, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–30276 Filed 12–12–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–307–807]

Amended Order and Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Venezuela.

SUMMARY: On May 15, 1995, the Department of Commerce (the Department) submitted to the Court of International Trade (CIT) the final results of redetermination pursuant to a court remand in *Aimcor, et al.* v. *United States* (Slip Op. 94–192, December 13, 1994). On September 16, 1995, the CIT affirmed our redetermination (Slip Op. 94–192). In accordance with that affirmation, we are hereby amending the *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Venezuela* 58 FR 27522 (May 10, 1993). We have recalculated the margin for the sole respondent in the investigation, CVG-Venezolana de Ferrosilicio C.A. (CVG–FESILVEN), as well as the ''All Others'' rate, as follows:

Manufacturer/exporter	Margin (percent)
CVG–FESILVEN	15.01
All others	15.01

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–1776.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1994, the CIT, in *Aimcor, et al.* v. *United States* (Slip Op. 94–192), remanded to the Department for redetermination the *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Venezuela* 58 FR 27522 (May 10, 1993). In its remand order, the Court granted the Department's request to reconsider the issue of CVG–FESILVEN'S depreciation costs, and instructed the Department to determine whether CVG–FESILVEN's depreciation costs should be based on the revalued amount shown in the company's 1991 financial statements.

In the Department's final determination, the dumping margin for CVG–FESILVEN was 9.55 percent. CVG–FESILVEN's dumping margin was based on using CVG–FESILVEN's historical costs of its assets to calculate depreciation expenses.

Final Remand Results

In accordance with the CIT's order, the Department reconsidered its final determination with respect to Ferrosilicon from Venezuela. Upon redetermination, we find that we should base depreciation costs on the revalued amount of CVG–FESILVEN's fixed assets. Accordingly, we revised CVG–FESILVEN's cost of production (COP) to include the depreciation expense related to the company's asset revaluation.

We incorporated the revised COP in our cost test analysis. We also included the revised depreciation amount in our calculation of constructed value (CV) and then incorporated the revised CV into the margin calculations, as appropriate.

Final Results of Redetermination

On September 16, 1995, the CIT affirmed our redetermination (Slip Op. 94–192). Because no party appealed that affirmation to the Court of Appeals for the Federal Circuit, that decision has become the ''final and conclusive'' decision in this action. *See Timkin* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990). Therefore, in accordance with that affirmation, we are hereby amending the final determination and order with respect to CVG–FESILVEN's and the ''all others'' rates. The revised weighted-average margin for both is 15.01 percent.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

This notice is in accordance with section 516(a)(e) of the Tariff Act of 1930, as amended.

Dated: December 4, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–30277 Filed 12–12–95; 8:45 am]

BILLING CODE 3510–DS–P

Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a new shipper administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway with an October semi-annual anniversary date. In accordance with the Commerce Regulations, we are initiating this administrative review.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230, telephone (202) 482–4195/3814.

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request, in accordance with 19 CFR 353.22(h) (1995), for a new shipper review of an antidumping duty order with an October semi-annual anniversary date.

Initiation of Reviews

In accordance with 19 CFR 353.22(h), we are initiating one new shipper review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway. We intend to issue the final results of this review not later than August 15, 1996.

Antidumping duty proceeding	Period to be reviewed
Norway:	
Fresh and Chilled Atlantic Salmon, A–403–801, Nordic Group A/L	5/1/95–10/31/95

Concurrent with publication of this notice, we will instruct the Customs Service to allow, at option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of merchandise (19 CFR 353.22(h)(4)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(h).

This notice is published pursuant to 19 CFR 353.22(h).

Dated: November 29, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–30280 Filed 12–12–95; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Coastal Information Management: Customer Survey

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 12, 1996.

ADDRESSES: Direct all written comments to Gerald Taché, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Catherine McCrary, NOAA Coastal Services Center, 1990 Hobson Ave., Charleston, SC 29405–2623. Telephone: (803) 974–6251, Fax: (803) 974–6224

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration's Coastal Services Center (CSC) was established in 1994 for the purpose of bridging the gap between the scientists and managers in the coastal zone management community. There are two main components of the CSC: Coastal Management Services (CMS) and Coastal Information Services (CIS). The goals of the CIS division are to be an integrator and provider of marine ecosystem and coastal watershed data to coastal resource managers. A survey is being used to learn how we can best meet the needs of the coastal information management community.

The objectives of the survey are: to get feedback from the coastal information management community on the relevance, importance, and need of specific Center proposed products; to give coastal information managers the opportunity to describe other needs and/or programs that they would like the Center to foster; and to obtain information on the hardware and software platforms and capabilities of the coastal information management community. The survey results will provide the Coastal Information Services division of the Coastal Services Center with specific information about the needs of the coastal information management community.

II. Method of Collection

A combination of mail surveys and electronic surveys on the Internet will be used.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Coastal Information Managers from the following programs or agencies: Coastal Zone Management Programs, National Estuarine Research Reserve Sites, National Marine Sanctuaries, Sea Grant Institutions, and Natural Resource Management agencies.
Estimated Number of Respondents: 600.
Estimated Time Per Response: 20 minutes.
Estimated Total Annual Burden Hours: 198.
Estimated Total Annual Cost: $0.

IV. Request for Comments

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 (including hours and cost) 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 submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 6, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–30278 Filed 12–12–95; 8:45 am]

BILLING CODE 3510–12–P

[I.D. 112095C]

Small Takes of Ringed Seals Incidental to On-Ice Seismic Activity

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

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that letters of authorization to take ringed seals incidental to on-ice seismic operations in the Beaufort Sea off Alaska were issued on December 1, 1995 to BP Exploration, Western Geophysical, and Geco-Prakla, all of Anchorage, AK.

EFFECTIVE DATE: These letters of authorization are effective from January 1, 1996, through May 31, 1996.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and Western Alaska Field Office, NMFS, 701 C Street, Anchorage, AK 99513.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Ron Morris, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings

are made, and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if the Secretary of Commerce finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of ringed seals incidental to on-ice seismic activities were published on January 13, 1993 (58 FR 4091) and remain in effect until December 31, 1997.

Summary of Requests

NMFS received requests for letters of authorization on the dates specified from (1) BP Exploration (Alaska) Inc., 900 East Benson Blvd. P.O. Box 196612, Anchorage, AK 99519–6612 (September 11, 1995); (2) Geco-Prakla, 500 W. International Airport Road, Anchorage, AK 99518 (October 11, 1995) and (3) Western Geophysical/Western Atlas International, Inc. 351 E. International Airport Road, Anchorage, AK 99518–1299 (November 10, 1995). All letters request a take by harassment of a small number of ringed seals incidental to on-ice seismic work in the Beaufort Sea, AK.

Issuance of these letters of authorization is based on findings that the total takings will have a negligible impact on the ringed seal species or stock and will not have an unmitigable adverse impact on the availability of this species for subsistence uses.

Dated: December 1, 1995.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–30379 Filed 12–12–95; 8:45 am]

BILLING CODE 3510–22–F

National Weather Service; Automated Surface Observing System

SUBJECT: Notice of Intent.

SUMMARY: The National Weather Service (NWS) implemented the Supplemental Data Program effective October 1, 1995. This program supplements data provided by the Automated Surface Observing System (ASOS). Observations produced through the Supplementary Data Program are transmitted separately from the ASOS operations and provide data to support hydrometeorological operations and climatological applications. This notice explains the reasons for the shift in reporting methods and describes how to obtain and interpret hydrometeorological information that was previously available in the surface aviation observation (SAO) format.

EFFECTIVE DATE: October 1, 1995.

ADDRESSES: Requests for information should be sent to Steve Pritchett, NWS, Office of Systems Operations, 1325 East-West Highway, Silver Spring, MD 20910 or through electronic mail at suppdata @smtpgate.ssmc.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Steve Pritchett at 301–713–1792.

SUPPLEMENTARY INFORMATION: As part of the NWS modernization, the NWS is undergoing a major shift in the methods used to observe and report surface weather information.

The NWS has developed and is installing ASOS to automate certain observing functions, thereby taking advantage of advances in sensor and microprocessor technology. At approximately 900 airports in the United States during the 1990s, the U.S. Departments of Commerce, Transportation, and Defense are deploying ASOS to support aviation operations and weather forecasting and warnings, as well as general needs of the hydrometeorological, climatological, and meteorological research communities.

ASOS will provide greatly expanded coverage (locations and observing hours), objective observations, a continuous weather watch, and improved operating efficiency. ASOS, when integrated with advances in remote sensing and weather information processing systems, is expected to contribute to improved warning and forecast services. ASOS will perform the basic observing functions necessary to generate a SAO. However, because some weather parameters observed manually today will not initially be observed by ASOS, the NWS is introducing two new classes of observations to the array of meteorological surface observations: the supplementary data observation (SDO) and the supplementary climate data (SCD).

Supplementary observations are *not* appended to the ASOS observation; rather, they are disseminated as separate messages. The NWS will disseminate these reports to a variety of Federal and non-Federal users of NWS data. Supplementary data will be made available through NWS communication systems such as Family of Services, NOAA Weather Wire, and various computer and commercial vendor services.

Surface observational data in the ASOS era will continue to come from many sources. ASOS, along with complementary data derived from remote sensing technologies, such as statellites, will form the backbone of the surface observing network (SAO) system. Surface data from over 20,000 automatic and manual hydrometerological sites, including cooperative and hydrologic networks, will continue to play an important role in NWS operational forecast programs. They comprise the climatological data bases and supply information to users who currently rely on surface observations from airports, as well as for non-aviation related information.

The NWS Weather Forecast Offices (WFOs) will issue these new supplemtary data reports. The SDOs will provide significant, event-driven observations primarily intended to support weather forecasting and general hydrometeorological needs. Elements may be reported in SDOs on an ''as-observed'' basis and do not imply a continuous or basic weather watch. SDOs will not generally include elements that are in augmented ASOS observations from that location.

The SCD reports may provide routinely scheduled observations useful for climatological applications, as well as hydrometeorological operations. SCDs are routinely issued at designated hours at about the same time as the recorded surface observation (note: the SDOs are issued on an event basis, which may fall ''on the hour'' only by chance).

Most offices issuing SCDs and SDOs will not issue the full suite of SCD/SDO elements. There will be some variation among individual offices in the elements they report. Elements reported in SCDs will generally not be reported in SDOs. Exceptions are: (1) precipitation type and intensity reported in SCDs may also be reported in SDOs when considered significant by the on-site observer, and (2) volcanic ash reported in SCDs will also be reported in SDOs. Observations of volcanic eruptions and volcanic ash when first noted and severe weather (severe thunderstorms and tornadic

activity) when first observed may be included in weather warnings and statements issued by cognizant NWS offices rather than in supplementary data reports. The same elements may be reported in both SDO's and aviation observations from some sites (see enclosures).

In the future, non-Federal observers (volunteers, Cooperative Observers, etc.) are expected to participate as members of the supplementary data network. Their reports will focus on snow depth, snowfall amount, hail and ice pellet occurrences. It is expected that a subset of volunteer observers will report water equivalent of snow on the ground.

Susan F. Zevin,

Deputy Assistant Administrator for Operations.

Report Format and Content

The information in supplementary data reports will follow the syntax and abbreviations used in Federal Meteorological Handbook Number 1 for Surface Observations (FMH–1). (FMH–2 for synoptic cloud reports) where practical. Supplementary data reports differ from surface aviation observations in the following ways:

- Only a limited set of observed elements is included in supplementary data reports. A given supplementary report may contain one or several elements.
- Supplementary data reports are not issued on an hourly basis. Time-scheduled SCDs are issued at main synoptic hours or at other designated hours of the day depending on the variable(s) being reported. Event-driven SDOs are issued when a significant phenomenon is first observed. A follow-up ''termination'' SDO will be issued after the cessation of certain events.
- Some SDOs will contain a ''/'', solidus remarks separator. The purpose of the remarks separator is to help computer decoders differentiate between decodable (parsable) remarks and remarks not readily amendable to decoding. SCDs will *not* inclde the ''/'' remarks separator because all remarks in SCDs are decodable.

Supplementary data reports are encoded as follows:

SID—TYPE—(COR—)TIME—WX/—Decodable RMKS—/—Other RMKS (''—'' indicates a required space and ''/'' indicates a required solidus. The ''/'' will appear in an observation if and only if one or more ''WX'' elements are reported *and* are followed by remarks. The ''/'' remarks separator will appear in an SDO, only if, the SDO contains both decodable *and* noncodable remarks.

SID—Station identifier (3 to 5 alphanumeric characters).

TYPE—Type of observation (either SCD or SDO). If the observation is a correction to a previously disseminated SCD or SDO, the contraction COR will follow the type of observation (in which case the time (TIME) will be the time of the observation being corrected).

TIME—Time of observation in hours and minutes UTC [0000 * * * 2359].

WX—Weather and/or obstructions to vision. This field will be from 1 to 15 characters in length including the precipitation intensity symbol (−,+). The elements to be reported in the ''WX'' field are given in Table 1 of this guide. Contractions for precipitation types are given in Table 2; contractions for obstructions to vision are in Table 3.

Decodable RMKS, Other RMKS—Remarks are separated from the ''WX'' group with a solidus and a space. If no ''WX'' is reported, the remarks are preceded with a space after the time (TIME) element.

SCD remarks are encoded in the following order:

$8NN_hC_LhC_MC_H$—Total cloud cover and synoptic cloud types

931nnn—Depth of new snow (snowfall)

933RRR—Water equivalent of snow on the ground

4/sss—Depth of snow on ground

98xxx—Duration of sunshine

$7R_{24}R_{24}R_{24}R_{24}$—Calendar day total precipitation (from designated sites)

$4s_nT_xT_xT_xs_nT_nT_nT_n$—Calendar day maximum and minimum temperature (from designated sites)

NIL—Nothing to report

SDO remarks are encoded in the following order:

Temination reports for ''WX'' elements (e.g., END IP)

SNOINCR x/x—Snow increasing rapidly

HLSTO x—Size of largest hailstone observed

'' / '' remarks separator

Other SDO remarks when considered significant by the on-site staff:

Local variation in visibility (e.g., VSBY N2; F BANK N–E2) (designated stations)

Virga—Precipitation evaporating before reaching ground (designated stations)

Precipitation not at station (e.g., RWU SW; SU OVR MTNS N) (designated stations)

Clouds above 12,000 feet (types and/or layers) (designated stations)

Distant clouds obscuring mountains (designated stations)

Other meteorological information considered significant, such as blowing volcanic ash

The SDO ''WX'' group, remarks of snow increasing rapidly (SNOINCR), hailstorms (HLSTO), and termination reports for ''WX'' elements are considered decodable.

Initiation *and* termination reports will be issued for selected ''WX'' elements (those listed in Table 2 of this guide). An exception is hail, for which only an initiation report will be issued. Termination reports will be issued for any weather and/or obstructions to vision previously reported in the ''WX'' field of an SDO when the event is determined to have ended. Termination reports are not required for information reported in SDO remarks unless designated by NWS regional headquarters.

- The initiation report for a ''WX'' element is implicit in the ''WX'' field (e.g., ''MCI SDO 1325 BS'' is an initiation report for blowing snow). The initiation report for other significant events carries the information in the SDO remarks section (e.g., ''MCI SDO 1325 BD/ RWU SW'' may be an initiation report for distant rain showers. The blowing dust, previously reported, continues).
- Termination reports contain the key word ''END'' followed by a space and a description of the event which ended. All termination information, even for a ''WX'' element, is considered to be in the remarks category. Termination information for ''WX'' elements precedes any '' / '' remarks separator (e.g., ''MCI SDO 1445 END BD / END RWU SW'').
- Termination reports for items listed under ''other SDO remarks when considered significant by the on-site staff'' can have several meanings: (1) the event ended, (2) the event is no longer considered significant, but it may still exist, or (3) because of darkness, it is not possible to determine if the event still exists.

Plain language remarks may at times be necessary to clarify changing local conditions. For example, if a fog bank previously reported to the north (e.g., ''ANC SDO 1205 F BANK N2'') moves over the airport, ''ANC SDO 1330 F BANK MOVD OVR ARPT'' might be subsequently reported.

Location of phenomena within 10 miles of the station will be reported as ''VCNTY STN,'' followed by the direction from the station. Phenomena between 10 and 30 miles of the station will be located by direction from the station. Phenomena beyond 30 miles will be reported as ''DSNT,'' followed by the direction from the station.

If there are no coded remarks or weather to report in a scheduled SCD,

the SCD will be transmitted with ''NIL'' (e.g., ''PHL SC 1758 NIL'').

Table 1 gives the type of supplementary information reported, the category of the supplementary data report, criteria for reporting, and type of site making the report. It also gives the syntax of the element and one or more examples. Examples of complete supplementary data reports are given in the back of this guide. Except where explicitly stated otherwise, the ''WFO'' column refers to all WFOs, whether or not they have a collocated ASOS. The ''Other NWS Office'' column refers to NWS staffed or manual observing sites with responsibility for supplementary data reporting. This table represents the initial supplementary data reporting configuration by office type (augmented elements are excluded).

TABLE 1.—DESCRIPTION OF ELEMENTS REPORTED AS SUPPLEMENTARY DATA

Element	Type of report		When reported	Reported by		Format, example, comments
	SDO	SCD		WFO	Other NWS offices	
WX—Weather and/or obstructions to vision. —All precipitation types and intensities. —Volcanic ash	.....	X ..... Volcanic ash will not be included in SCDs from sites with a collocated ASOS.	at 6-hrly synoptic times (00, 06, 12, and 18 UTC) and staff is available.	X	Designated Stations.	*Format:* Table 2 gives contractions for precipitation types; Table 3 gives contractions for obstructions to vision. *Where:* ''WX'' refers to weather and obstructions to vision. Weather refers to precipitation and tornadoes. Obstructions to vision refer to phenomena that reduce visibility but are not precipitation. Weather and obstruction to vision elements included in SCDs and SDOs are given in the ''Element'' column to the left. *Examples:* VOLCANIC ASH; IF; HLSTO ¼; IP-: END VOLCANIC ASH; END IF *Comments:* Visibility specified by FMH-1 for qualifying intensity of snow and drizzle may not be well resolved at certain WFOs without a collocated ASOS. Consequently, snow and drizzle intensities reported by non-ASOS WFOs must be considered to be estimates. A follow-up ''termination'' SDO will be issued upon termination of the event (with the exception of hail). The termination SDO will give the event preceded by the key world ''END.'' Volcanic ash will not be reported in supplementary data originating from sites which have collocated ASOS. Volcanic ash is appended directly to the ASOS observations at those sites. Visibility will not be a factor in reporting ''VOLCANIC ASH'' as present weather (WX) in an SDO. Any observed ''VOLCANIC ASH'' will be reported.

TABLE 1.—DESCRIPTION OF ELEMENTS REPORTED AS SUPPLEMENTARY DATA—Continued

Element	Type of report		When reported	Reported by		Format, example, comments
	SDO	SCD		WFO	Other NWS offices	
WX—Weather and/or obstructions to vision. —Ice pellets ... —Volcanic ash —Other nonaugmented elements when considered significant by the on-site staff (ice crystals, ice fog, smoke, blowing snow, blowing sand, blowing dust, and blowing spray).	X ..... Volcanic ash will not be included in SDOs from sites with a collocated ASOS.	.....	when observed and staff is available.	X	Designated stations.	
Daily total sunshine duration.	.....	X	Once daily at 08 UTC. If the station is closed at 08 UTC, the ''98xxx'' group will be reported in the first 6-hrly observation after opening. Equipment must be available.	Reported at official NWS sunshine-duration reporting sites. These sites may be moved as required.	.....	*Format:* 98xxx. *Where:* ''98'' is the code group indicator and ''xxx'' gives the total minutes of sunshine for the previous calendar day. ''xxx'' is encoded in hundreds, tens, and units. *Example:* 98096; 98000. *Interpretation:* 96 minutes of sunshine; 0 minutes of sunshine. *Missing data indicator:* 98///.
Calendar day total prescription accumulation (water equivalent).	.....	X	24-hour value once daily at 00 LST and staff is available.	Only reported by WFOs which do not have a collocated ASOS.	.....	*Format:* $7R_{24}R_{24}R_{24}R_{24}$. *Where:* ''7'' is the code group indicator; $R_{24}R_{24}R_{24}R_{24}$ gives precipitation amount encoded in tens, units, tenths, and hundredths of inches. *Example:* 70125. *Interpretation:* 1.25 inches of precipitation (water equivalent) in the preceding 24 hours. *Missing data indicator:* 7////. *Comment:* Note that in the SCD the ''7'' group refers to a 24-hr precip total ending at midnight LST whereas the ''7'' group in the remarks of an ASOS observation or a manual surface observation refers to a 24-hr precip total ending at 12 UTC.
Calendar day maximum and minimum temperatures.	.....	X	24-hour value once daily at 00 LST and staff is available.	Only reported by WFOs which do not have a collocated ASOS.	.....	*Format:* $4s_nT_xT_xT_xs_nT_nT_nT_n$. *Where:* ''4'' is the code group indicator; s_n gives sign of the data (''1'' for temperatures below 0°F, ''0'' for temperatures 0°F or higher); $T_xT_xT_x$ is the maximum temperature in whole degrees F; $T_nT_nT_n$ is the minimum temperature in whole degrees F. *Example:* 400700045. *Interpretation:* 24-hr max temperature of 70°F, 24-hr min temperature of 45°F. *Missing data indicator:* 4/////////.

TABLE 1.—DESCRIPTION OF ELEMENTS REPORTED AS SUPPLEMENTARY DATA—Continued

Element	Type of report		When reported	Reported by		Format, example, comments
	SDO	SCD		WFO	Other NWS offices	
Snow increasing rapidly.	X	X	Hourly when snow depth increase equals or exceeds 0.5″/hr and staff is available.	Designated stations.	Designated stations.	*Format:* SNOINCR x/x. *Reference:* FMH–1 Table A3–88, 2.e modified to exclude the depth increase since the last 6-hrly report. *Where:* ''SNOINCR'' is the code group indicator. ''x/x'' gives the snow depth increase in the past hour/total depth of snow on the ground at time of observation, both of which are reported in whole inches. *Example:* SNOINCR 1/6. *Interpretation:* One inch depth increase in the past hour with 6 inches on the ground at time of observation.
Size of largest hailstone observed.	X	.....	when first observed and staff is available.	Designated stations.	Designated stations.	Format: HLSTOx. Where: ''HLSTO'' is the group indicator. ''x'' gives the diameter (in inches) of the largest hailstone observed. Hailstone size is reported in ¼ inch increments. If the hailstone size is less than ⅛ inch, it will be encoded as <¼. Example: HLSTO ½. Interpretation: The largest hailstone observed was ½'' in diameter.
Other Significant Weather Information						
Significant local variations in visibility.	X	.....	when observed and staff is available.	Reported at specific, currently staffed NWS observing sites which are determined to be especially problematic with respect to terrain, and multiple visibility sensors are not available or do not suffice.	.....	Format: Description and direction from station. Examples: VSBY N2; F Bank N–E2. Interpretation: (1) Visability to the north is 2 miles. (2) A fog bank exists north through east. Comment: Once reported, significant changes to ''local variations in visibility'' will be reported in updated SDO reports.
Virga	X	.....	when observed and staff is available..	Reported at specific, currently staffed NWS observing sites in mountainous areas lacking radar coverage which are determined to be especially problematic with respect to terrain.	.....	Format: ''VIRGA'' and direction from station. Example: VIRGA NW. Comment: Once reported, significant changes to ''virga'' will be reported in updated SDO reports, e.g., VIRGA VCNTY STN NW MOVG E.

TABLE 1.—DESCRIPTION OF ELEMENTS REPORTED AS SUPPLEMENTARY DATA—Continued

Element	Type of report		When reported	Reported by		Format, example, comments
	SDO	SCD		WFO	Other NWS offices	
Precipitation not at the station.	X	.....	when observed and staff is available.	Reported at specific, currently staffed NWS observing sites in mountainous areas lacking radar coverage which are determined to be especially problematic with respect to terrain.	.....	Format: Type and intensity (or ''U'' if unknown) of precipitation and direction from station. Examples: RWU SW; SU OVR MTNS N. Comment: Once reported, significant changes to ''precipitation not at the station'' will be reported in updated SDO reports, e.g., RWU VCNTY STN SW MOVD NW.
Significant clouds above 12,000 feet AGL and significant cloud types.	X	.....	When observed and staff is available.	Reported at specific, currently staffed NWS observing sites in mountainous areas which are determined to be especially problematic with respect to terrain.	.....	*Format:* ''CLD LYR'' followed by one or more cloud base heights (generally estimated, hundreds of feet AGL) and amounts (SCT, BKN, or OVC). Ceiling designators (''E'' and ''M'') are not reported as this layer may not be the layer constituting a ceiling. Only significant cloud layers above 12,000 feet AGL are reported. Types of significant clouds associated with orographic features, such as ACSL and rotor clouds, may also be reported. *Example:* CLD LYR 140 OVC; ACSL VCNTY STN SW–W *Interpretation:* A significant overcast cloud layer based at 14,000 feet above ground level was observed. *Comment:* Once reported, significant changes to ''cloud layers above 12,000 feet'' and ''significant cloud types'' will be reported in updated SDO reports, e.g., CB W MOVD N.
Significant distant clouds obscuring mountains.	X	.....	When observed and staff is available.	Reported at specific, currently staffed NWS observing sites which are determined to be especially problematic with respect to terrain.	.....	*Format:* Description and direction from station. *Example:* CLD BASES OBSCG MTNS W. *Interpretation:* Cloud bases obscuring mountains to the west. *Comment:* Once reported, significant changes to ''distant clouds obscuring mountains'' will be reported in updated SDO reports.
Any other meteorological information when considered significant by the on-site staff.	X	.....	When observed and staff is available.	X	X	*Format:* Plain language using FMH–1 contractions where practical. *Comments:* Any significant weather information such as convective cloud types not covered above *may* be entered here if not included in an ASOS observation.

TABLE 1.—DESCRIPTION OF ELEMENTS REPORTED AS SUPPLEMENTARY DATA—Continued

Element	Type of report		When reported	Reported by		Format, example, comments
	SDO	SCD		WFO	Other NWS offices	
Depth of new snow.	.....	X	At 6-hrly synoptic times (00, 06, 12, and 18 UTC) when any amount of snow has fallen in the past 6 hours and staff is available.	Designated stations.	Designated stations.	*Format:* 931nnn. *Where:* ''931'' is the code group indicator for the amount of solid precipitation (i.e., snow, snow pellets, snow grains, ice pellets, ice crystals, and hail) that fell in the past 6 hours, even if some or all of it melted. ''nnn'' gives the depth in the frozen state to the nearest tenth of an inch using a leading zero if less than 1 inch. Trace amounts are reported as 931000. *Example:* 931012. *Interpretation:* 1.2 inches of new snow fell in the past 6 hours. *Missing data indicator:* The group is not reported if no solid precipitation fell during the past 6 hours or if hail was the only form of solid precipitation.
Water equivalent of snow on the ground.	.....	X	Once daily at 18 UTC if the average snow depth (to the nearest inch) is 2 inches or more and staff is available.	Designated stations.	Designated stations.	*Format:* 933RRR. *Where:* ''933'' is the code group indicator and ''RRR'' is the water equivalent of snow on the ground reported in tenths of inches. *Example:* 933125. *Interpretation:* 12.5 inches water equivalent of snow on the ground. *Missing data indicator:* Not reported if no solid precipitation fell during the past 6 hours or if hail was the only form of solid precipitation.
Depth of snow on the ground.	.....	X	At 6-hrly synoptic times (00, 06, 12, and 18 UTC) and staff is available. See comments.	Designated stations.	Designated stations.	*Format:* 4/sss. *Where:* ''4/'' is the code group indicator for depth of snow on the ground at observation time. ''sss'' gives the snow depth encoded in whole inches with leading zeros. *Example:* 4/009. *Interpretation:* The snow depth at observation time was 9 inches. *Missing data indicator:* Not reported if the frozen precipitation was comprised exclusively of hail. *Comments:* Report at 00 and 12 UTC whenever there is more than a trace of snow on the ground and at 06 and 18 UTC if there is more than a trace of snow on wht ground and more than a trace of precipitation (water equivalent) occurred within the past 6 hours.

TABLE 1.—DESCRIPTION OF ELEMENTS REPORTED AS SUPPLEMENTARY DATA—Continued

Element	Type of report		When reported	Reported by		Format, example, comments
	SDO	SCD		WFO	Other NWS offices	
Synoptic total cloud cover and cloud types (low cloud base height; low cloud amount; low, middle, and high cloud types).	.....	X	At 6-hrly synoptic times (00, 06, 12, and 18 UTC) unless the sky is clear.	Designated stations.	.....	*Format:* $8NN_h\ C_L\ hC_M\ C_H$. *Reference:* FMH–2 paragraph 4.2.7 modified to include ''N'' (total cloud cover) as described in FHM–2 paragraph 4.2.2.1 and ''h'' (height of lowest cloud) as described in FMH–2 paragraph 4.2.1.3. *Where:* ''8'' is the code group indicator. ''N'' is total fraction of oktas (eighths) of the celestial dome covered by clouds, where ''9'' represents sky obscured by fog and/or other meteorological phenomena and ''/'' in the ''N'' position means cloud cover is indiscernible for reasons other than fog or other meteorological phenomena, or the observation was not made. N_h gives the total amount (oktas) of all C_L clouds. If there are no C_L clouds, N_h gives the total amount of all C_M clouds. Otherwise N_h=0. N_h=9 for sky obscured by fog and/or other meteorological phenomena. N_h=/ for cloud cover indiscernible for reasons other than fog or other meteorological phenomena, or if the observation is not made. C_L, C_M, and C_H are types of low, middle, and high clouds respectively. ''0'' is coded for clouds absent, except that ''/'' is coded in the cloud layer subfield(s) above on overcast layer if the types are not determinable. ''h'' gives the height with respect to the surface of the base of the lowest cloud seen. It is a single digit coded in accordance with FMH–2. Table 3–3. ''h'' and $C_L\ C_M\ C_H$ are coded with ''/'' if there is a total surface based obscuration which prevents an observation of the clouds. *Example:* 8220850. *Interpretation:* N=2 oktas total cloud cover. Scattered middle clouds (N_h=2 oktas cloud coverage and C_L=0) with bases between 7,000 and 8,000 ft AGL (h=8); no low clouds; middle clouds are altocumulus progressively invading the sky; no high clouds. *Missing data indicator:* The ''8'' group is not reported for clear skies.

Precipitation types			
Weather	Contraction	Weather	Contraction
Rain	R	Snow	S
Rain Showers.	RW	Snow Showers.	SW
Drizzle ...	L	Snow Pellets.	SP

Precipitation types			
Weather	Contraction	Weather	Contraction
Freezing Rain.	ZR	Snow Grains.	SG
Freezing Drizzle.	ZL	Ice Crystals.	IC

Precipitation types			
Weather	Contraction	Weather	Contraction
Ice Pellets.	IP	Hail	A
Ice Pellet Showers.	IPW	.....	

TABLE 2.—PRECIPITATION TYPES AND THEIR CONTRACTIONS

Obstructions to vision			
Obstruction	Contraction	Obstruction	Contraction
Volcanic ash.	VOLCANIC ASH.	Blowing Sand.	BN
Ice Fog ...	IF	Blowing Dust.	BD
Smoke	K	Blowing Spray.	BY
Blowing Snow.	BS	Fog	F
Ground Fog.	GF	Dust	D
Haze	H	.....	

Table 3.—Obstructions to Vision and their Contractions

Examples of Supplementary Data Reports

CAESCDCHS
TTAA00 KCHS DDHHMM
CHS SCD 1758 IP–/ 8872// 931024 933009 4/009

This SCD shows the occurrence of weather (ice pellets) along with coded remarks. 8872// indicates overcast low clouds (ragged shreds of stratus or cumulus associated with precipitation) with low cloud base height of 400–600 ft. 931024 represents a 6 hour snowfall amount of 2.4 inches. The water equivalent of snow on the ground was 0.9″. The snow depth (4/009) at time of observation was 9 inches.

PHLSCDPHL
TTAA00 KPHL DDHHMM
PHL SCD 0455 70050 400700045

This SCD, issued at midnight EST, is from a WFO which does not have a collocated ASOS. The 24-hour precipitation total (70050) was 0.50 inches water equivalent. The 24-hour maximum and minimum temperatures were 70°F and 45°F respectively.

BISSCDBIS
TTAA00 KBIS DDHHMM
BIS SCD 0755 98096

This SCD from a network sunshine duration station reports 96 minutes of sunshine for the previous calendar day.

STLSDOMCI
TTAA00 KMCI DDHHMM
MCI SDO 0642 IP–

This SDO reports the onset of light ice pellets.

STLSDOMCI
TTAA00 KMCI DDHHMM
MCI SDO 0729 END IP

This SDO reports the cessation of ice pellets.

PHLSDOACY
TTAA00 KACY DDHHMM
ACY SDO 0759 SNOINCR ½

This SDO indicates snow depth increase at a rate of more than 0.5 inches/hour. The snow depth increased 1 inch during the past hour. Two inches of snow were on the ground at observation time.

PHLSDOACY
TTAA00 KACY DDHHMM
ACY SDO 2036 HLSTO ¾

This SDO reports a hail occurrence with the largest observed hailstone size of ¾ inch.

SEASDOSMP
TTAA00 KSMP DDHHMM
SMP SDO 1756 END IP / RWU CAD LYR 140 OVC

This SDO was reported from a mountainous site where terrain is problematic. Ice pellets ended. Rain showers of unknown intensity were observed to the southwest. There was a significant overcast cloud layer based at 14,000 feet above the observer's ground level. The ''/ '' remarks separator separates decodable and nondecodable remarks.

DENSDODEN
TTAA00 KDEN DDHHMM
DEN SDO 1056 CLD BASES OBSCG MTNS W

This SDO was also reported from a mountainous site where terrain is problematic. Clouds were observed obscuring mountains to the west.

/D ANC SDO HHMM
ANC SDO 1310 IF=

This SDO shows the initiation of ice fog. Notice that a different communications header and message ending code (=) are used in Alaska.

/D ANC SDO HHMM
ANC SDO 1645 END IF=

This SDO terminates the ice fog event.

[FR Doc. 95–30246 Filed 12–12–95; 8:45 am]
BILLING CODE 3510–12–M

[I.D. 111595A]

Marine Mammals

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

ACTION: Receipt of application for a scientific research permit (P772#67).

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, NMFS, 8604 La Jolla Shores Drive, La Jolla, CA 92038 (Principal Investigators: Michael F. Tillman, Ph.D. and Rennie S. Holt, Ph.D.) has applied in due form for a permit to take Antarctic pinnipeds for purposes of scientific research.

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

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to conduct Level B harassment during census survey activities on Southern elephant seals (*Mirounga leonina*) and Antarctic fur seals (*Arctocephalus gazella*). Other animals that may be harassed are Crabeater seals (*Lobodon carcinophagus*), Leopard seals (*Hydrurga leptonyx*), Ross seals (*Ommatophoca rossii*), and Weddell seals (*Leptonychotes weddellii*). During the 1996 season, up to 200 *A. gazella* will be captured, weighed and released during growth studies at Seal Island. Thereafter, seals may be captured/released up to 5 times per year for a total take of 500 animals. Up to 3,000 animals may be inadvertently harassed during these activities.

Dated: November 30, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–30378 Filed 12–12–95; 8:45 am]
BILLING CODE 3510–22–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Wednesday, January 23, 1996, at the Wilson Inn-Airport, 4301 East Roosevelt, Little Rock, Arkansas 72206. The purpose of the meeting is to hold orientation for new members and plan for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TTY 913–551–1413). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 6, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–30385 Filed 12–12–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:30 p.m. on Thursday, January 18, 1995, at the Midland Hotel, 172 West Adams Street, Chicago, Illinois 60604. The purpose of the meeting is to hold a consultation: Focus on Affirmative Action.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Joe Mathewson, 312–360–1110, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 6, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–30386 Filed 12–12–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Thursday, January 25, 1996, at the Hilton Hotel, Poydras at the Mississippi, New Orleans, Louisiana 70140. The purpose of the meeting is to plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TTY 913–551–1413). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 6, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–30387 Filed 12–12–95; 8:45 am]

BILLING CODE 6335–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limit for Certain Wool Textile Products Produced or Manufactured in Poland

December 8, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limit.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for category 443 is being adjusted for special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 62645, published on December 20, 1994). Also see 59 FR 62718, published on December 6, 1994.

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.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, 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, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on December 12, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to adjust the limit for category 443 to 239,430 numbers [1].

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).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30436 Filed 12–11–95; 12:12 pm]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

December 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 6, 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) 927–6717. 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, carryforward and special shift.

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 17337, 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.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on December 6, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
363	18,713,748 numbers.
369–S [2]	228,255 kilograms.
Sublevels in Group II	
340	282,043 dozen.
435	57,828 dozen.
638/639	1,908,600 dozen.
640	397,460 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–S: only HTS number 6307.10.2005.

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).

Troy H. Cribb,

Chairman, Committee for the Implementatin of Textile Agreements.

[FR Doc.95–30279 Filed 12–12–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Corps of Engineers

Intent To Prepare a Draft Supplement to a Final Environmental Impact Statement (EIS) for Proposed Construction of a Water Supply Reservoir on Sugar Creek in Williamson and Johnson Counties, IL

AGENCY: Department of the Army, U.S. Army Engineer District, Louisville, Corps of Engineers, CEORL–PD–R, P.O. Box 59, Louisville, Kentucky 40201–0059.

ACTION: Notice of Intent to Prepare a Draft SEIS.

SUMMARY: The U.S. Army Engineer District, Louisville Corps of Engineers is initiating the preparation of a Draft Supplement to a Final EIS for a regulatory permit application from the City of Marion, Illinois. The proposed action by the City of Marion is the construction of a water supply reservoir on Sugar Creek in Williamson and Johnson Counties, Illinois by the City of Marion, Illinois. The Draft supplement will address only the alternative action of purchase of water from Rend Lake, an existing reservoir in southern Illinois.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the preparation of this Draft Supplement to the Final EIS should be addressed to Mr. Terry Siemsen at the above address or by telephone (502) 582–5550.

SUPPLEMENTARY INFORMATION: The Louisville District prepared a Draft and Final EIS (Final EIS completed July 1995) for this permit application. The Final EIS concluded that purchase of water from Rend Lake by the City of Marion was not a viable alternative since the information available at that time indicated that the available water supply of that reservoir was fully committed. Since that document was completed and circulated for public opinion, additional information has been provided to the Louisville District that indicates that the public water supply capability of Rend Lake has not been fully committed.

Dated: December 1, 1995.

Michael F. Hullihan,

Lieutenant Colonel, Deputy Commander.

[FR Doc. 95–30291 Filed 12–12–95; 8:45 am]

BILLING CODE 3710–JB–M

Chief of Engineers Environmental Advisory Board

AGENCY: U.S. Army Corps of Engineers.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, the Federal Advisory Committee Act, this announces the forthcoming Executive Session of the Chief of Engineers Environmental Advisory Board. The meeting will be held from 8:30 a.m. to 3:30 p.m., Wednesday, January 24, 1996. The Executive Session is intended to be a business and planning opportunity; substantive environmental discussions will be limited to a review of the previous meeting on environmental

partnering and selection of the topic for the Spring 1996 EAB forum. The meeting location is the Headquarters, U.S. Army Corps of Engineers, Room 8222D, 20 Massachusetts Avenue, NW, Washington, D.C. 20314–1000. The meeting is open to the public and any interested person may attend.

FOR FURTHER INFORMATION CONTACT: Mr. Paul D. Rubenstein, Office of Environmental Policy, U.S. Army Corps of Engineers, Washington, D.C. 20314–1000, (202) 761–8731.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–30292 Filed 12–12–95; 8:45 am]

BILLING CODE 3710–92–M

Department of the Army

Movement of Foreign Military Sales (FMS) Shipments—Policy Change

AGENCY: Military Traffic Management Command.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC) is changing the application of the Guaranteed Traffic (GT) and related freight movement programs to include movement of Foreign Military Sales (FMS) materiel. The policy change is effective 15 Jan 96 for new movements and for resolicited MTMC GT freight solicitations. Effective 15 Mar 96 the policy change will apply to all other applicable effective MTMC GT agreements and related freight movement programs. Carriers performing under existing GT agreements and related freight movement programs will be given the opportunity to voluntarily participate in the FMS movement. FMS movements will only be offered to those carriers who voluntarily participate. This policy change is the result of congressional repeal of most tariff requirements for motor carriers (other than carriers of household goods) in the Interstate Commerce Act.

DATES: This policy change is effective 15 Jan 96 for new movements and for resolicited MTMC GT freight solicitations; and effective 15 Mar 96 for current MTMC GT agreements and related freight movement programs.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP–T–ND, Room 621, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara McGinnis, MTOP–T–ND, (703) 681–6103.

SUPPLEMENTARY INFORMATION: Historically, The Interstate Commerce Act provided that carriers could provide transportation only at the rates set forth in a tariff filed with the Interstate Commerce Commission. A carrier could not charge a shipper any rate different from the filed tariff rate, with the exception that under 49 U.S.C. 10721 the carrier could transport property for the U.S. Government ''at reduced rates'', meaning rates that were reduced from the common carrier's tariff rates. By Public Law 103–311 (The Trucking Industry Regulatory Reform Act of 1994), effective 26 Aug 94, Congress repealed the requirement that motor carriers (other than carriers of household goods) file a tariff and apply that tariff. With some exceptions, tariffs are no longer filed by motor carriers with the Interstate Commerce Commission, and there is, accordingly, no requirement that carriers apply a tariff rate to FMS traffic. MTMC's policy change in its movement programs will require motor carriers to participate in FMS shipments for new movements and resolicited GT agreements; and, will accommodate motor carrier's voluntary agreements to include FMS shipments in currently effective GT agreements and related freight movement programs.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–30293 Filed 12–12–95; 8:45 am]

BILLING CODE 3710–08–M

Proposed Amendments to the Courts of Criminal Appeals Rules of Practice and Procedure

AGENCY: U.S. Army Legal Services Agency.

ACTION: Notice.

SUMMARY: A joint committee representing the respective Courts of Criminal Appeals of the Air Force, Army, Navy-Marine Corps, and Coast Guard has drafted proposed changes to the joint Rules of Practice and Procedure for the Courts of Criminal Appeals (formerly named Courts of Military Review). The current rules are published at 32 CFR 150.1. The proposed changes will be submitted to the respective Judge Advocate Generals for approval and promulgation pursuant to Article 66(f) of the Uniform Code of Military Justice. Persons interested in reviewing the proposed amendments may obtain a copy by telephoning the Clerk of Court, U.S. Army Court of Criminal Appeals, Area Code 703, 681–6888.

FOR FURTHER INFORMATION CONTACT: Written comments or suggestions should be sent by mail so as to reach the Clerk of Court, Attention: Mr. Fulton, U.S. Army Court of Criminal Appeals, Nassif Building Room 204A, 5611 Columbia Pike, Falls Church, VA 22041–5013, on or before January 15, 1996.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–30294 Filed 12–12–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–101–000, et al.]

Entergy Power Inc., et al.; Electric Rate and Corporate Regulation Filings

December 6, 1995.

Take notice that the following filings have been made with the Commission:

1. Entergy Power, Inc.

[Docket No. ER96–101–000]

Take notice that on November 24, 1995, Entergy Power, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Dartmouth Power Associates Ltd

[Docket No. ER96–149–000]

Take notice that on November 30, 1995, Dartmouth Power Associates Ltd tendered for filing an amendment in the above-referenced docket.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Colorado

[Docket No. ER96–361–000]

Take notice that on November 13, 1995, Public Service Company of Colorado tendered for filing comparable transmission service tariffs, including its Point-to-Point Transmission Service Tariff in Docket No. ER95–1268–000.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas and Electric Company

[Docket No. ER96–434–000]

Take notice that on November 24, 1995, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Rainbow

Energy Marketing Corporation under Rate GSS.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. The Dayton Power and Light Company

[Docket No. ER96–435–000]

Take notice that on November 24, 1995, The Dayton Power and Light Company (Dayton), tendered for filing, an executed Interconnection Agreement between Dayton and Ohio Valley Electric Corporation (OVEC).

Pursuant to the rate schedules attached to the Agreement, Dayton will provide to OVEC power and/or energy for resale. Dayton and OVEC are currently parties to an Inter-Company Power Agreement for the sale of surplus power and energy to Dayton from OVEC.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. United Illuminating Company

[Docket No. ER96–436–000]

Take notice that on November 27, 1995, United Illuminating Company (UI), submitted for informational purposes all individual Purchase Agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2 during the six-month period of May 1, 1995 through October 31, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Montaup Electric Company

[Docket No. ER96–437–000]

Take notice that on November 27, 1995, Montaup Electric Company (Montaup), tendered for filing: 1) executed unit sales service agreements under Montaup's FERC Electric Tariff, Original Volume No. III; and 2) executed service agreements for the sale of system capacity and associated energy under Montaup's FERC Electric Tariff, Original Volume No. IV. The service agreements under both tariffs are between Montaup and the following companies (Buyers):

1. Braintree Electric Light Department (BELD);
2. Middleborough Gas & Electric Department (MG&E);
3. CNG Energy Service (CNG); and
4. KOCH Power Services, Inc. (KPSI).

The service agreements under Original Volume No. IV with MG&E, CNG, and KPSI allow them, through certificates of concurrence, to provide exchange capacity from one of their units, in order to enable Montaup to make a system sales while maintaining its minimum monthly system capability under the NEPOOL Agreement.

The transactions under the service agreements are purely voluntary and will be entered into only if mutually beneficial and agreeable. Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective November 1, 1995 for the KPSI agreement and October 30, 1995 for the other agreements.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Public Service Company

[Docket No. ER96–438–000]

Take notice that on November 27, 1995, Maine Public Service Company submitted an agreement under its Umbrella Power Sales tariff.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation; WPS Energy Services, Inc.; WPS Power Development, Inc.

[Docket No. ER96–439–000]

Take notice that on November 22, 1995, Wisconsin Public Service Corporation (WPSC), WPS Energy Services, Inc., and WPS Power Development, Inc., each of Green Bay, Wisconsin, submitted requests for authorization to sell capacity and energy at market-based rates. In support of the requests, WPSC submitted revisions to its comprehensive, open-access transmission tariff (the Tariff). They request a January 22, 1996 effective date.

They state that this filing has been posted in accordance with the Commission's Regulations and that copies of the filing have been served upon the Wisconsin Public Service Commission, the Michigan Public Service Commission, and all persons listed on the official service lists in Docket Nos. ER95–1528–000 and ER95–1546–000.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER96–440–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL), filed the Contract for purchases and Sales of Power and Energy between FPL and Tennessee Power Company. FPL requests an effective date of December 1, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER96–441–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Rainbow Energy Marketing Corporation. FPL requests an effective date of December 1, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER96–442–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and AES Power, Inc. FPL requests an effective date of December 1, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER96–445–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) tendered for filing proposed service agreements with Coastal Electric Services Company for transmission service under FPL's Transmission Tariff No. 2 and FPL's Transmission Tariff No. 3.

FPL requests that the proposed service agreements be permitted to become effective on December 1, 1995, or as soon thereafter as practicable.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Company

[Docket No. ER96–446–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and InterCoast Power Marketing Company. FPL requests an effective date of December 1, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Nevada Power Company

[Docket No. ER96–447–000]

Take notice that on November 28, 1995, Nevada Power Company (NPC) tendered for filing a Network Integration Transmission Service Tariff (Network Tariff), and a Point-to-Point Transmission Service Tariff (Point-to-Point Tariff).

NPC requests that the Network Tariff and Point-to-Point Tariff become effective upon expiration of the 60-day notice period.

Copies of this filing have been served on the Public Service Commission of Nevada.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Edison Company

[Docket No. ER96–448–000]

Take notice that on November 28, 1995 Commonwealth Edison Company (ComEd) submitted Service Agreements establishing Wisconsin Power and Light (WP&L), dated October 20, 1995, Louis Dreyfus Electric Power Inc. (Louis Dreyfus) and Industrial Energy Applications (IEA), dated October 24, 1995, Citizens Lehman Power Sales (Citizens), Catex Vitol Electric L.L.C. (Catex), MidCon Power Services Corp. (MidCon), Wisconsin Public Power Inc. System (WPPI), and Rainbow Energy Marketing Corporation (REMC) ComEd's Transmission Service Tariff FTS–1 (FTS–1 Tariff). The Commission has previously designated the FTS–1 Point to Point Service Tariff as FERC Electric Tariff, Second Revised Volume No. 3.

ComEd requests an effective date of October 21, 1995 for the Service Agreement with WP&L, an effective date of October 24, 1995 for the Service Agreements between ComEd and Louis Dreyfus and IEA, and an effective date of November 9, 1995 for the Service Agreements between ComEd and Citizens, Catex, MidCon, WPPI, and REMC and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served upon WP&L, Louis Dreyfus, IEA, Citizens, Catex, MidCon, WPPI, REMC and the Illinois Commerce Commission.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company

[Docket No. ER96–449–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) tendered for filing Amendment Number Two to Short-Term Agreement to Provide Capacity and Energy between Florida Power & Light Company and Utilities Commission, City of New Smyrna Beach, Florida.

FPL requests that the amendment be permitted to become effective on January 1, 1996.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power & Light Company

[Docket No. ER96–450–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) tendered for filing service agreements with Sonat Power Marketing Inc. for transmission service under FPL's Transmission Tariff No. 2 and FPL's Transmission Tariff No. 3.

FPL requests that the amendment be permitted to become effective on December 1, 1995, or as soon thereafter as practicable.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power & Light Company

[Docket No. ER96–451–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) filed the Contract Purchases and Sales of Power and Energy between FPL and Industrial Energy Applications, Inc. FPL requests an effective date of December 1, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Duquesne Light Company

[Docket No. ER96–452–000]

Take notice that on November 28, 1995, Duquesne Light Company (DLC) filed a Service Agreement dated November 10, 1995 with American Municipal Power-Ohio, Inc. Corporation under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds American Municipal Power-Ohio, Inc. as a customer under the Tariff. DLC requests an effective date of November 10, 1995 for the Service Agreement.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Duquesne Light Company

[Docket No. ER96–453–000]

Take notice that on November 28, 1995, Duquesne Light Company (DLC) filed a Service Agreement dated October 30, 1995 with PECO Energy Company (PECO) under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds PECO as a customer under the Tariff. DLC requests an effective date of October 30, 1995 for the Service Agreement.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Duquesne Light Company

[Docket No. ER96–454–000]

Take notice that on November 28, 1995, Duquesne Light Company (DLC) filed a Service Agreement dated October 26, 1995 with Rainbow Energy Marketing Corporation under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Rainbow Energy Marketing Corporation as a customer under the Tariff. DLC requests an effective date of October 26, 1995 for the Service Agreement.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Duquesne Light Company

Docket No. ER96–455–000

Take notice that on November 28, 1995, Duquesne Light Company (DLC) filed a Service Agreement dated November 1, 1995 with Stand Energy Corporation under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Stand Energy Corporation as a customer under the Tariff. DLC requests an effective date of November 1, 1995 for the Service Agreement.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Power, Inc.

[Docket No. ER96–456–000]

Take notice that Entergy Power, Inc. on November 28, 1995, tendered for filing an Energy Exchange Agreement with the U.S. Department of Energy, and Southwestern Power Administration.

EPI requests an effective date for the Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the Commission's notice requirements.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Northern Indiana Public Service Company

[Docket No. ER96–457–000]

Take notice that on November 29, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Sonat Power Marketing Inc.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Sonat Power Marketing Inc. under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Sonat Power Marketing Inc. request waiver of the Commission's sixty-day notice

requirement to permit an effective date of December 1, 1995.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service Company

[Docket No. ER96–496–000]

Take notice that on December 1, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing Transmission Service Tariff No. 8, which provides for Long-Term Firm, Short-Term Firm and Non-Firm point-to-point transmission service and related ancillary services, and Network Transmission Service Tariff No. 3, which provides for network integration transmission service and related ancillary services. NUSCO states that these revised transmission tariffs conform to the pro forma tariffs contained in the Notice of Proposed Rulemaking in Docket No. RM95–8–000. NUSCO also tendered for filing Sale for Resale Tariff No. 7, which provides for the sale of wholesale power outside New England at market-based rates. NU is requesting an effective date of January 30, 1996.

NUSCO states that a copy of this filing has been mailed to all wheeling customers with whom NU has entered into a service agreement under any of its transmission tariffs, to the intervenors in Docket No. ER95–1686–000 and ER95–1696–000, and to the Connecticut, Massachusetts and New Hampshire state public utility commissions.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30348 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–133–000, et al.]

Nevada Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 5, 1995.

Take notice that the following filings have been made with the Commission:

1. Nevada Power Company

[Docket No. ER96–133–000]

Take notice that on November 30, 1995, Nevada Power Company (Nevada Power) tendered for filing an amendment to its October 23, 1995 filing in the above referenced docket. Docket No. ER96–133–000 is a Non-Firm Transmission Service Agreement between Nevada Power Company and Rainbow Energy Marketing Corporation (Rainbow). The amendment provides cost support for the rates and charges contained n the original filing.

Copies of this filing were served on Rainbow and the Nevada Public Service Commission.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Northern Indiana Public Service Company

[Docket No. ER96–406–000]

Take notice that on November 21, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Kimball Power Company.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Kimball Power Company under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Kimball Power Company request waiver of the Commission's sixty-day notice requirement to permit an effective date of November 30, 1995.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Northern Indiana Public Service Company

[Docket No. ER96–407–000]

Take notice that on November 21, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Koch Power Services, Inc.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Koch Power Services, Inc. under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Koch Power Services, Inc. request waiver of the Commission's sixty-day notice requirement to permit an effective date of November 30, 1995.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Company

[Docket No. ER96–408–000]

Take notice that on November 21, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and The Dayton Power and Light Company.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Dayton Power and Light under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Dayton Power and Light request waiver of the Commission's sixty-day notice requirement to permit an effective date of November 30, 1995.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. CINergy Services, Inc.

[Docket No. ER96–409–000]

Take notice that on November 21, 1995, CINergy Services, Inc. tendered for filing the following service agreement under CINergy's Non-Firm Point-to-Point Transmission Service Tariff entered into by: The Wabash Valley Power Association, Rainbow Energy Marketing Corp., Louis Dreyfus Electric Power Inc., and American Municipal Power-Ohio, Inc.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER96–410–000]

Take notice that on November 21, 1995, Niagara Mohawk Power Corporation (NMPC) tendered for filing an executed Service Agreement between NMPC and Industrial Energy Applications, Inc. (IEA). This Service Agreement specifies that IEA has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and IEA to enter into separately scheduled transactions under which NMPC will sell to IEA capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of November 12, 1995. NMPC has requested waiver of the Commission's notice requirements.

NMPC has served copies of the filing upon the New York State Public Service Commission and IEA.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER96–411–000]

Take notice that on November 21, 1995, Niagara Mohawk Power Corporation (NMPC) tendered for filing an executed Service Agreement between NMPC and Koch Power Services, Inc. (Koch Power). This Service Agreement specifies that Koch Power has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and Koch Power to enter into separately scheduled transactions under which NMPC will sell to Koch Power capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of November 12, 1995. NMPC has requested waiver of the Commission's notice requirements.

NMPC has served copies of the filing upon the New York State Public Service Commission and Koch Power.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Edison Company

[Docket No. ER96–412–000]

Take notice that on November 21, 1995, Commonwealth Edison Company (ComEd) submitted Service Agreements establishing Industrial Energy Applications, Inc. (IEA), dated October 9, 1995, Louisville Gas and Electric Company (LG&E), dated September 15, 1995, Aquila Power Corporation (Aquila), dated September 29, 1995, and The Dayton Power and Light Company (DP&L), dated November 7, 1995 as customers under the terms of ComEd's Power Sales Tariff PS–1 (PS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

ComEd requests an effective date of October 21, 1995, for the Service Agreements between ComEd and IEA, LG&E, and Aquila and an effective date of November 7, 1995 for the Service Agreement between ComEd and DP&L and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon IEA, LG&E, Aquila, DP&L and the Illinois Commerce Commission.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Company

[Docket No. ER96–413–000]

Take notice that on November 20, 1995, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, 1st Revised Volume No. 2, executed Service Agreements between PGE and the City of Glendale Public Service Department and Englehard Power Marketing Inc.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreements to become effective December 1, 1995.

Copies of this filing were served upon the list of entities appearing on the Certificate of Service attachment to the filing letter.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Company

[Docket No. ER96–414–000]

Take notice that on November 14, 1995, Kansas City Power & Light Company (KCPL) tendered for filing a Notice of Cancellation of Service Schedule H–4, Supplement No. 11 to KCPL's Rate Schedule FPC No. 34.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Kansas City Power & Light Company

[Docket No. ER96–415–000]

Take notice that on November 14, 1995, Kansas City Power & Light Company (KCPL) tendered for filing a Notice of Cancellation of Service Schedule E–MPA–4, Supplement No. 26 to KCPL's Rate Schedule FPC No. 56.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER96–416–000]

Take notice that on November 21, 1995, MidAmerican Energy Company (MidAmerican), One River Center Place, 106 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, filed an Application for Approval of Depreciation Rates pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure.

MidAmerican is the surviving corporation and utility of the July 1, 1995, merger of Iowa-Illinois Gas and Electric Company with Midwest Power Systems, Inc. and its exempt holding company parent, Midwest Resources, Inc. MidAmerican states that since July 1, 1995, the effective date of the merger, MidAmerican has used the depreciation rates used by its predecessors immediately prior to the merger. This practice has resulted in the application of two different depreciation rates to depreciable property held in the same account. MidAmerican requests authorization to use a single set of electric depreciation rates for accounting and financial reporting purposes effective on January 1, 1996.

Copies of the filing were served on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER96–417–000]

Take notice that on November 22, 1995, Florida Power & Light Company (FPL), tendered for filing an open-access network integration service transmission tariff, Tariff No. 4. FPL proposes to make the tariff effective January 22, 1996.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–418–000]

Take notice that on November 22, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Aquila Power Corporation (AQUILA), dated November 17, 1995. This Service Agreement specifies that AQUILA has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in *Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and AQUILA to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 17, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–419–000]

Take notice that on November 22, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Dayton Power & Light Company (DPLC), dated November 17, 1995. This Service Agreement specifies that DPLC has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and DPLC to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 17, 1995 for the Service Agreement.

GPU has served copies of this filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER96–420–000]

Take notice that on November 22, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Vermont Marble Power Division of OMYA, Inc. and Virginia Power, dated November 1, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Vermont Marble Power Division of OMYA, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of this filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER96–421–000]

Take notice that on November 22, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Commonwealth Edison Company and Virginia Power, dated November 10, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Commonwealth Edison Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission and the Illinois Commerce Commission.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER96–422–000]

Take notice that on November 22, 1995, PECO Energy Company (PECO), filed a Service Agreement dated November 10, 1995, with New York State Electric & Gas Corporation (NYSEG) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NYSEG as a customer under the Tariff.

PECO requests an effective date of November 10, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to NYSEG and to the Pennsylvania Public Utility Commission.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. South Carolina Electric & Gas Company

[Docket No. ER96–423–000]

Take notice that on November 22, 1995, South Carolina Electric & Gas Company, tendered for filing proposed Contract for Purchases and Sales of Energy between South Carolina Electric & Gas Company and Entergy Power, Inc.

Under the proposed contract, the parties will purchase and sell electric energy and power between themselves.

Copies of this filing were served upon Entergy Power, Inc.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. San Diego Gas & Electric Company

[Docket No. ER96–424–000]

Take notice that on November 22, 1995, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and SONAT Power Marketing, Inc. (SONAT).

SDG&E requests that the Commission allow the Agreement to become effective on the 22nd day of January 1996 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and SONAT.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Company

[Docket No. ER96–425–000]

Take notice that on November 22, 1995, New England Power Company submitted for filing a letter agreement for transmission service to Indeck Pepperell Power Associates, Inc.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. New England Power Company

[Docket No. ER96–426–000]

Take notice that on November 22, 1995, New England Power Company (NEP) tendered for filing a Notice of Cancellation of Appendix A to Service Agreement No. 39 between NEP and Canal Electric Company under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Boston Edison Company

[Docket No. ER96–427–000]

Take notice that on November 22, 1995, Boston Edison Company (Edison), filed a standstill agreement between itself and Thirteen Municipal Customers extending the one-year claims limitation provision in the Pilgrim power purchase contract of each of the Municipals with regard to disputes over 1993 and 1994 billings. The purpose of the standstill agreement is to allow the parties to achieve a settlement agreement regarding 1993 and 1994 billing disputes. The standstill agreement makes no other changes to the rates, terms and conditions of the contracts between Edison and the Thirteen Municipals.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Louisville Gas and Electric Company

[Docket No. ER96–428–000]

Take notice that on November 24, 1995, Louisville Gas and Electric Company tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc. under Rate GSS.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER96–429–000]

Take notice that on November 24, 1995, PECO Energy Company (PECO), filed a Service Agreement dated November 16, 1995, with Heartland Energy Services, Inc. (HES) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds HES as a customer under the Tariff.

PECO requests an effective date of November 16, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to HES and to the Pennsylvania Public Utility Commission.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Southwestern Public Service Co.

[Docket No. ER96–430–000]

Take notice that on November 24, 1995, Southwestern Public Service Company (Southwestern) and Rainbow Energy Marketing Corporation (Rainbow), have entered into an umbrella service agreement dated October 31, 1995, which allows Rainbow to take non-firm point-to-point transmission service under Southwestern's Transmission Service Tariff (accepted subject to refund on August 1, 1995 in Docket No. ER95–1138–000).

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. Kentucky Utilities Company

[Docket No. ER96–431–000]

Take notice that on November 24, 1995, Kentucky Utilities Company (KU), tendered for filing a Service agreement between KU and Illinois Power Company, Inc. under its TS Tariff. KU requests an effective date of October 27, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. Louisville Gas and Electric Company

[Docket No. ER96–432–000]

Take notice that on November 24, 1995, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. Madison Gas and Electric Company

[Docket No. ER96–433–000]

Take notice that on November 24, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Upper Peninsula Power Company under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

30. Florida Power & Light Company

[Docket No. ER96–443–000]

Take notice that on November 28, 1995, Florida Power & Light Company filed the Contract for Purchases and Sales of Power and Energy between FPL and Sonat Power Marketing Inc. FPL requests an effective date of December 1, 1995.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

31. Florida Power & Light Company

[Docket No. ER96–444–000]

Take notice that on November 28, 1995, Florida Power & Light Company filed the Contract for Purchases and Sales of Power and Energy between FPL and LG&E Power Marketing Inc. FPL requests an effective date of December 1, 1995.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30347 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–776–000, et al.]

Texas Eastern Transmission Corporation, et al.; Natural Gas Certificate Filings

December 6, 1995.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation

[Docket No. CP95–776–000]

Take notice that on September 22, 1995 Texas Eastern Transmission Corporation (''Texas Eastern''), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP95–776–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the Pointe Au Chien compressor station and certain short laterals, meter stations and appurtenant facilities, all in Lafourche and Terrebonne Parishes, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Two of the compressors at Pointe Au Chien compressor station and the appurtenant facilities were authorized by Commission order dated October 2, 1970 in Docket No. CP70–314. The remaining compressor at Pointe Au Chien compressor station was authorized by Commission order dated July 18, 1975 in Docket No. CP75–128. The laterals and meter stations were constructed and installed during the 1970s and 1980s pursuant to Texas Eastern's Blanket Certificates.

Texas Eastern states that it is no longer utilizing the facilities to transport gas supplies. Further, Texas Eastern submits that the natural gas reserves connected to the Facilities have been depleted, and that Texas Eastern is not aware of any significant prospects of natural gas reserves being developed in the vicinity of the Facilities that could be delivered to Texas Eastern's mainline system through such Facilities.

Comment date: December 27, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP96–92–000]

Take notice that on December 1, 1995, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP96–92–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point in El Paso County, Texas under El Paso's blanket certificate issued in Docket No. CP82–435–000 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.

El Paso proposes to construct and operate a new delivery point. The new delivery point will permit the interruptible transportation and delivery of natural gas for Integrated Services, Inc.'s (ISI) account to associated Milk Producers, Inc. (AMPI). ISI has advised El Paso that AMPI owns and operates a dairy processing plant and utilizes natural gas to fuel boilers and milk dryers. El Paso states that this would provide AMPI with the flexibility of an alternate gas supply source.

Comment date: January 22, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP96–93–000]

Take notice that on December 1, 1995, Transcontinental Gas Pipe Line Corporation (Transco), P. O. Box 1396, Houston, Texas 77251, filed an abbreviated application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approval, on an expedited basis, the partial abandonment by sale of (1) an existing dual twelve-inch skid-mounted metering station with flow control and (2) appurtenant interconnecting piping (Jim Wells Meter), located at the interconnection between Padre Island Pipeline System (PIPS) and Tennessee Gas Pipeline System in Jim Wells County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that it proposes to partially abandon by sale to Gasdel Pipeline System Incorporated (Gasdel) a 7.914% ownership interest in the Jim Wells Meter. Gasdel has a 7.914% ownership in PIPS pursuant to a Construction and Ownership Agreement dated April 1, 1982 between Transco and Gasdel. Both Transco and Gasdel continue to transport volumes on PIPS and through the Jim Wells Meter. Gasdel seeks to purchase, and Transco has agreed to sell at net book value on the effective date of the abandonment, a 7.914% ownership interest in the Jim Wells Meter. Transco further states that it seeks authorization for such a partial abandonment by sale of these facilities in order to provide Gasdel with capacity through the Jim Wells Meter equivalent to Gasdel's ownership percentage on PIPS. Transco indicates that the proposed partial abandonment will have no impact on the daily design capacity of or operating conditions on its system, and no service to any of its customers will be impacted by the proposed partial abandonment.

The cost to Gasdel for a 7.914% ownership interest in the Jim Well Meter is estimated to be $22,500.00. Abandonment of the Jim Wells Meter will not require any removal of facilities.

Comment date: December 18, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of

Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, 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. 95–30349 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1359–000]

Amoco Power Marketing Corp; Notice of Issuance of Order

December 8, 1955.

On July 11, 1995, as amended September 14, 1995 and October 27, 1995, Amoco Power Marketing Corporation (Amoco Power) submitted for filing a rate schedule under which Amoco Power will engage in wholesale electric power and energy transactions as a marketer. Amoco Power also requested waiver of various Commission regulations. In particular, Amoco Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Amoco Power.

On November 29, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Amoco Power 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).

Absent a request for hearing within this period, Amoco Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect or any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Amoco Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 29, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30345 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–362–000]

Boston Edison Co.; Notice of Filing

December 7, 1995.

Take notice that on November 9, 1995, Boston Edison Company (Edison), tendered for filing for informational purposes the 1994 true-up to actual for the Substation 402 Agreement (FPC Rate No. 149) between Edison and Cambridge Electric Light Company (Cambridge). This filing is made pursuant to the terms of the 1987 Settlement Agreement between Edison, Cambridge and the Town of Belmont, Massachusetts in Docket No. ER86–517–000.

Edison states that it has served the filing on Cambridge, Belmont and the Massachusetts Department of Public Utilities.

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 18 CFR 385.214). All such motions or protests should be filed on or before December 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30319 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–37–000]

Boundary Gas, Inc.; Notice of Refund Report

December 7, 1995.

Take notice that on November 29, 1995, Boundary Gas, Inc. (Boundary) submitted a refund report reflecting the flowthrough of the Gas Research Institute (''GRI'') refund received by Boundary on September 29, 1995. Boundary states, that pursuant to the 1993 GRI settlement, and in compliance with the Commission order approving such settlement, it has credited such refund proportionally to its firm customers on non-discounted service based on the GRI surcharges those customers paid during the calendar year 1994.

Boundary states that each customer's credit was reflected on its invoice for October, 1995 services issued on or about November 15, 1995.

Boundary states that a copy of this filing is being mailed to each of Boundary's affected customers and the state commissions of New York, Connecticut, New Jersey, Massachusetts, New Hampshire and Rhode Island.

Any person desiring to be heard or protest 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 Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30320 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–97–000]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on November 30, 1995, Chandeleur Pipe Line Company (Chandeleur) tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, Sheet Nos. 5, 8 and 14.

Chandeleur states that it is proposing to change its Fuel and Line Loss provision in its FT and IT Rate Schedules from allocation of actual Fuel and Line Loss to a fixed retention percentage based on allocated receipt volumes. This percentage will be retained by Chandeleur each month to cover the actual Fuel and Line Loss. Any differences between the actual Fuel and Line Loss, and the retained volumes will be made up by an annual change/recalculation in the retention percentage. The 1996 Fuel and Line Loss percentage is set at 0.5% on allocated receipt volumes.

Chandeleur states that copies of the filing were served upon the company's jurisdictional customers and state regulatory commissions.

Chandeleur has proposed an effective date for the revised tariff sheets of January 1, 1996.

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, DC 20426, in accordance with Sections 385.214 and 375.211 to 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30310 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1328–006]

CMEX Energy, Inc.; Notice of Filing

December 7, 1995.

Take notice that on November 3, 1995, CMEX Energy, Inc. filed a notice of cancellation of its Rate Schedule FERC No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 22, 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. 95–30321 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 7, 1995.

Take notice that on November 30, 1995, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fourteenth Revised Sheet No. 11 reflecting an increase in the fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from (1.12%) to (0.76%), effective January 1, 1996.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). 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. 95–30309 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–5–000]

Dow Pipeline Company; Notice of Petition for Rate Approval

December 7, 1995.

Take notice that on December 1, 1995, Dow Pipeline Company (Dow Pipeline) filed, pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.0782 per MMBtu, plus 0.7% in-kind fuel reimbursement, for interruptible transportation services performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). Dow Pipeline's mailing address is P.O. Box 4286, Houston, Texas 77210.

Dow Pipeline's petition states it is an intrastate pipeline within the meaning of Section 2(16) of the NGPA. Dow Pipeline provides interruptible transportation service pursuant to Section 311(a)(2) of the NGPA through its facilities located in Wharton, Fort Bend, Brazoria, Whaller, and Matagorda Counties, Texas. This petition is intended to establish a new system-wide maximum transportation rate for Section 311(a)(2) service, and is filed pursuant to the terms of the Stipulation and Agreement of Settlement filed July 8, 1993, in Docket No. PR93–6–000, which required Dow Pipeline to file an application on or before December 1, 1995, to justify its current rate or to establish a new system-wide rate. Dow Pipeline proposes an effective date of December 1, 1995.

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, Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions and protests should be filed on or before December 22, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30322 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–52–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on November 29, 1995, El Paso Natural Gas Company (El Paso), tendered for filing as part of its FERC Gas Tariff, Volume Nos. 1, 1–A, and 2, the following tariff sheets, to become effective January 1, 1996:

Third Revised Volume No. 1

First Revised Sheet No. 10
Second Revised Sheet No. 200
First Revised Sheet No. 326

Second Revised Volume No. 1–A

Second Revised Sheet No. 1
First Revised Sheet No. 10
3rd Revised Fourth Revised Sheet No. 20
Third Revised Sheet No. 21
2nd Revised First Revised Sheet No. 22
3rd Revised Fourth Revised Sheet No. 23
Third Revised Sheet No. 24
3rd Revised Fourth Revised Sheet No. 25
Third Revised Sheet No. 26
2nd Revised Third Revised Sheet No. 27–29
Second Revised Sheet No. 101–103
Second Revised Sheet No. 111–113
2nd Revised Original Sheet No. 114–115
Second Revised Sheet No. 127–129
First Revised Sheet No. 202
First Revised Sheet No. 210
Second Revised Sheet No. 214
First Revised Sheet No. 216–218
First Revised Sheet No. 225
First Revised Sheet No. 227–228
First Revised Sheet No. 236
First Revised Sheet No. 269–270
First Revised Sheet No. 284
First Revised Sheet No. 330–332
Second Revised Sheet No. 357
Second Revised Sheet No. 401–402
Second Revised Sheet No. 407
Second Revised Sheet No. 416–417
Second Revised Sheet No. 423
Second Revised Sheet No. 434–435
Second Revised Sheet No. 441

Third Revised Volume No. 2

3rd Rev Thirty-Fifth Rev Sheet No. 1–D.2
Twenty-Seventh Revised Sheet No. 1–D.3
Seventh Revised Sheet No. 1–H
Eighth Revised Sheet No. 1–I
Eighth Revised Sheet No. 1–J
Sixth Revised Sheet No. 1049
Second Revised Sheet No. 1815
Second Revised Sheet No. 1973

El Paso states that it is filing pursuant to Section 4 of the Natural Gas Act to terminate gathering services, revise Standards of Conduct, abandon Special Rate Schedules, and place the implementing tariff sheets into effect in order to complete the transfer of El Paso's gas gathering, treating and processing functions to El Paso Field Services Company.

El Paso states that this filing is to comply with the Commission's order issued September 13, 1995 in Docket Nos. CP94–183–000 and 001 which approved the transfer of gathering facilities conditioned upon a tariff filing to implement the proposed changes.

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 Sections 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. 95–30313 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on December 1, 1995, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective January 1, 1996:

Eleventh Revised Sheet No. 8A
Sixth Revised Sheet No. 8A.01
Third Revised Sheet No. 8A.02

FGT states that Section 27 of the General Terms and Conditions (GTC) of its Tariff provides for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted for. The Fuel Reimbursement Charge established pursuant to Section 27 consists of the Current Fuel Reimbursement Charge and the Annual Fuel Surcharge.

The Annual Fuel Surcharge is computed for each twelve-month Recovery Period beginning each January 1 and is designed to refund or collect, on an in-kind basis, the balance of the Deferred Fuel Account as of the preceding August 31. On May 1, 1995 FGT filed in Docket No. TM95–5–34 to adjust its initial Annual Fuel Surcharge to include volumes recorded in the Deferred Fuel Account between September 1, 1994 and February 28, 1995. This was done, in part, to segregate the balance in the Deferred Fuel Account related to pre-Phase III expansion activity from any ovFGT's Phase III expansion was placed in service on March 1, 1995.

Pursuant to Section 27 of the GTC of its Tariff, FGT, is filing herein to revise the Annual Fuel Surcharge to be effective January 1, 1996 to recover the net under recovery of fuel volumes recorded in the Deferred Fuel Account between March 1, 1995 and August 31, 1995. The Annual Fuel Surcharge now will be applicable to all market area shippers on FGT's system, including shippers under FGT's Rate Schedule FTS–2.

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 Sections 385.211 and 385.214 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. 95–30308 Filed 12–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–4–25–000]

Mississippi River Transmission Corporation; Notice of Proposed Refund

December 7, 1995.

Take notice that on November 30, 1995, Mississippi River Transmission Corporation (MRT) submitted for filing worksheets reflecting the proposed lump sum distribution of Excess Revenues derived from providing service under Rate Schedules ITS and ISS and certain revenues derived from Authorized Overrun Service.

MRT states that the filing provides for the flowthrough of $181,438.91 in Excess Revenues attributable to the twelve month period ended October 31, 1995. MRT states that the filing is being made pursuant to Section 17 of the General Terms and Conditions of its FERC Gas Tariff, Third Revision Volume No. 1.

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 to protest 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 Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR 385.211 and 385.214. 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 the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30306 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–36–000]

Mississippi River Transmission Corp; Notice of Proposed Flowthrough of Account No. 858 Refund

December 7, 1995.

Take notice that on November 28, 1995, Mississippi River Transmission Corporation (MRT) submitted worksheets reflecting the proposed flowthrough of an Account No. 858 refund received by MRT from Transok, Inc.

MRT states that subject to the receipt of Commission approval it proposes to refund by check on January 23, 1996 each customer's respective portion of the refund including interest through January 22, 1996.

MRT states that a copy of this filing is being mailed to each of MRT's former jurisdictional sales customers and the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30323 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–2–001]

Northern Natural Gas Company; Notice of Compliance Filing

December 7, 1995.

Take notice that on December 1, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northerns FERC Gas Tariff Fifth Revised Volume No. 1, the following tariff sheet, proposed to be effective November 1, 1995.

Substitute First Revised Sheet No. 211

Northern states that this filing is being made to comply with the Commission's Letter Order issued October 30, 1995, in Docket No. RP96–2–000.

Northern states that Sheet No. 211 has been revised to retain the existing meter responsibility mechanism as the default mechanism, with additional language allowing for any other mutually agreed upon alternative.

Northern also states that copies of the filing were served upon the companys customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30314 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP94–608–005 and MT95–12–001]

Northern Natural Gas Company; Notice of Compliance Filing

December 7, 1995.

Take notice that on November 30, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, proposed to be effective December 31, 1995:

Third Revised Sheet No. 221

Northern asserts that the purpose of this filing is to comply with the Commission's Order issued November 29, 1995, in the above-referenced dockets.

Northern states that Sheet No. 221 is being modified by addition of a provision for affiliated gathering.

Northern further states that copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party 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. 95–30324 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–86–000]

Pacific Gas Transmission Co; Notice of Compliance Filing

December 7, 1995.

Take notice that on December 1, 1995, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Tenth Revised Sheet No. 4; and as part of its FERC Gas Tariff, Second Revised Volume No. 1: Ninth Revised Sheet No. 7. PGT requested the above-referenced tariff sheets become effective January 1, 1996.

PGT asserts that the purpose of this filing is to comply with Paragraphs 37 and 23 of the terms and conditions of First Revised Volume No. 1–A and Second Revised Volume No. 1, respectively, of its FERC Gas Tariff, ''Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages.'' These tariff changes reflect a reduction in PGT's fuel and line loss surcharge percentage to become effective January 1, 1996. Also included, as required by Paragraphs 37 and 23, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PGT further states that a copy of this filing has been served on PGT's judrisdicational customers and interested state regulatory agencies.

Any person desiring to be heard or 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 Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. 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. 95–30307 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–172–008]

Panhandle Easter Pipe Line Co.; Notice of Compliance Filing

December 7, 1995.

Take notice that on November 30, 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 November 30, 1995.

Panhandle asserts that the purpose of this filing is to comply with the Commission's order issued October 31, 1995, in Docket Nos. RP93–172–004, RP93–172–006 and RP94–238–001. 73 FERC ¶ 61,151.

Panhandle states that in compliance with Ordering Paragraph (C) of the Commission's October 31, 1995 order, it has submitted tariff sheets for approval to direct bill its former sales customers certain amounts which previously had been approved for recovery through surcharges pursuant to the provisions of Section 18.12 of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1.

Panhandle also states that in compliance with Ordering Paragraph (D) of the Commission's October 31, 1995 order, on November 30, 1995 it refunded to its transportation customers the amounts previously collected through the application of the Section 18.12 surcharge which will now be direct billed to its former sales customers, has filed workpapers supporting the revised accounting methodology approved in the order and has filed a workpaper reflecting the status of the direct bill amounts previously approved by the Commission.

Panhandle states that copies of this filing are being served on all customers subject to the tariff sheets and all applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such 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 a party to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30325 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–396–003]

Tennessee Gas Pipeline Company; Notice of Motion Filing

December 7, 1995.

Take notice that on December 1, 1995, Tennessee Gas Pipeline Company (Tennessee) in accordance with the Commission's Order Accepting Stipulation and Agreement With Modifications issued November 1, 1995 in the captioned docket, filed to move the following tariff sheets into effect as of January 1, 1996:

Second Revised Sheet No. 203
Second Revised Sheet No. 204
Fourth Revised Sheet No. 205
First Revised Sheet No. 205A
Original Revised Sheet No. 205B
First Revised Sheet No. 206
First Revised Sheet No. 209
First Revised Sheet No. 209A
Third Revised Sheet No. 210
Second Revised Sheet No. 211
First Revised Sheet No. 211A
Third Revised Sheet No. 212
First Revised Sheet No. 217
Second Revised Sheet No. 227
Original Sheet No. 227A
Second Revised Sheet No. 314
Original Sheet Nos. 314 A-C
Second Revised Sheet No. 315
First Revised Sheet No. 393
Original Sheet No. 393A
Third Revised Sheet No. 397A
Original Sheet No. 397B
Third Revised Sheet No. 398

Tennessee states that these tariff sheets place into effect Phase I of the Stipulation and Agreement filed on July 25, 1995 and approved in the November 1, Order. Specifically, the filed tariff sheets reflect: (1) adoption of a new ''bumping'' policy governing the rights of firm shippers to interrupt interruptible shippers with mid-day nomination changes, (2) provision of additional flexibility for hourly

nominations to certain shippers, (3) reduction of the currently effective ''zone proximity'' requirements, (4) recovery of third party short term storage costs through the cash out mechanism, and (5) establishment of a Maximum Allowed Volume (AMAV) that addresses unauthorized overruns at delivery points by establishing firm entitlements under Operational Balancing Agreements held by delivery point operators.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20526, in accordance with Section 211 of the Commission Rules of Practice and Procedure, 18 CFR 385.211. Pursuant to Section 154.210 of the Commission's Regulations, all such protests should be field 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 this proceeding. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30315 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–197–008]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on November 30, 1995, Tennessee Gas Pipeline Company (Tennessee) filed a limited application pursuant to Section 4 of the Natural Gas Act, and the Rules and Regulations of the Federal Energy Regulatory Commission promulgated thereunder, to adjust the gas supply realignment costs (''GSR costs'') previously reported in Tennessee's past GSR quarterly filings to comply with the Commission's ''Order Accepting Tariff Sheets Subject to Conditions'' issued November 1, 1995 in Docket Nos. RP94–197–005, RP93–151–007, RP94–425–003, and RP94–425–004. Tennessee states that the tariff sheets identified below set forth Tennessee's revised GSR-related charges:

Third Revised Sheet No. 20
Fourth Revised Sheet No. 21
Seventh Revised Sheet No. 21A
Twelfth Revised Sheet No. 22
Seventh Revised Sheet No. 22A
Third Revised Sheet No. 23
Original Sheet No. 23A
Twelfth Revised Sheet No. 24
Sixth Revised Sheet No. 25
Third Revised Sheet No. 26
Fourth Revised Sheet No. 26A
Third Revised Sheet No. 26B
Third Revised Sheet No. 27
First Revised Sheet No. 29A
Seventeenth Revised Sheet No. 30

Tennessee states that copies of the filing have been mailed to all affected customers of Tennessee and interested state regulatory commissions.

Any person desiring to protest the filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. Pursuant to Section 154.210 of the Commission's Regulations, all such 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30317 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–17–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on December 1, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheet:

Fifth Revised Sheet No. 126

The proposed effective date of this revised tariff sheet is January 1, 1996.

Texas Eastern states that this revised tariff sheet is being filed pursuant to Section 15.6(E), Applicable Shrinkage Adjustment (ASA), of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern seeks by this interim filing to revise the ASA percentages established in its Annual ASA filing to reflect the increased fuel now projected to be required by Texas Eastern for operation of its pipeline system in providing service to its customers. Texas Eastern proposes to revise by this filing only those ASA percentages to be effective for the period, January 1, 1996 through March 31, 1996, the last three months in the current winter season. Texas Eastern states that interim revisions to its ASA percentages are specifically permitted by Section 15.6(E) of the tariff.

Texas Eastern states that as a consequence of higher throughput assumptions, Texas Eastern projects that it will require an additional 2.7 MMdth of fuel during the period, December 1, 1995 through March 31, 1996, which higher fuel requirement translates into an increase in the ASA percentages from 5.57% to 6.41% for transportation from the ELA area to M–3. Texas Eastern is requesting to place the revision in effect as of January 1, 1996 rather than at the beginning of the winter season on December 1, 1995 because Customers have already determined and nominated their December 1995 service requirements on Texas Eastern's system utilizing the ASA percentages filed on October 31, 1995.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern, interested state commissions, all interruptible shippers as of the date of the filing.

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 Sections 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. 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. 95–30312 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–227–004]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on November 30, 1995, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective October 17, 1995

3rd Revised Sheet No. 83
2nd Revised Sheet No. 84

Transwestern states that the above-referenced tariff sheets are being filed in compliance with the Commission's October 17th Order and set forth revisions to Section 24, ''Purchase Gas Adjustment Alternate Rate Recovery Mechanism (PGAR Mechanism),'' of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1.

Specifically, Transwestern has revised three subsections. First, Section 24.1(b) has been revised to provide for the following order of discounting: (1) GRI demand surcharge; (2) base reservation charge; and (3) PGAR reservation surcharge. Second, Section 24.1(c) has been revised to provide that the estimated interest for the period beginning June 1, 1994 shall be CFR 154.67(c)(2)(iii)(A).1 Third, Section 24.3, which was set forth in Pro Forma Sheet No. 84 (filed with Transwestern's Initial Comments) and which included a true-up mechanism, has been revised to delete such true-up mechanism, and to provide for the following: (i) Termination of the PGAR surcharge upon recovery of total PGAR Costs, plus interest, including possible early termination prior to October 31, 1996; (ii) Transwestern's payment of any refunds, plus interest; and (iii) Transwestern's submitting a report demonstrating compliance with the order of discounting set forth in Section 24.1(b).

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

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 Rule 211 of the Commission's Rules of Practice and Procedure. Pursuant to Section 154.210 of the Commission's Regulations, all such protests must be filed no 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30316 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–43–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on December 1, 1995, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective January 1, 1996:

Second Revised Volume No. 1
Eighth Revised Sheet No. 6
Ninth Revised Sheet No. 6A
Third Revised Sheet No. 250
Original Sheet No. 250A
Original Volume No. 2
Second Revised Sheet No. 362

WNG states that this filing is being made pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the twelve months ended September 30, 1995.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

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 Sections 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. 95–30311 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–38–000]

Williston Basin Interstate Pipeline Co.; Notice of Filing

December 7, 1995.

Take notice that on December 1, 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 December 1, 1995:

Eighth Revised Sheet No. 778
Tenth Revised Sheet No. 779
Ninth Revised Sheet No. 780
Twelfth Revised Sheet No. 785
Thirteenth Revised Sheet No. 786
Thirteenth Revised Sheet Nos. 787–788
Fourteenth Revised Sheet Nos. 789–790
Thirteenth Revised Sheet No. 791
Fourteenth Revised Sheet Nos. 792–795
Ninth Revised Sheet No. 796
Eleventh Revised Sheet No. 829

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such 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. 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. 95–30326 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–146–000]

Yankee Energy Marketing Co.; Notice of Issuance of Order

December 8, 1995.

On October 25, 1995, Yankee Energy Marketing Company (Yankee Energy) submitted for filing a rate schedule under which Yankee Energy will engage in wholesale electric power and energy transactions as a marketer. Yankee Energy also requested waiver of various Commission regulations. In particular, Yankee Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Yankee Energy.

On November 29, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard

or to protest the blanket approval of issuances of securities or assumptions of liability by Yankee Energy 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).

Absent a request for hearing within this period, Yankee Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Yankee Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 29, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30346 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRC–5344–8]

Retrofit Rebuild Requirements for 1993 and Earlier Model Year

Urban Buses; Appoval of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency certification of equipment for the urban bus retrofit/rebuild program.

SUMMARY: The Agency received a notification of intent to certify equipment signed March 13, 1995 from the Cummins Engine Company (Cummins) with principal place of business at BOX 3005, COLUMBUS, IN 47202–3005, for certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR Sections 85.1401–85.1415. The equipment is applicable to Cummins petroleum-fueled LTA10–B model petroleum fueled 4-stroke heavy-duty engines that were originally manufactured between November 1985 and December 1992. On June 21, 1995, EPA published a notice in the Federal Register that the notification had been received and made the notification available for public review and comment for a period of 45-days (60 FR 32316). EPA has completed its review of this notification, and the comments received, and the Director of the Engine Programs and Compliance Division [1] has determined that it meets all the requirements for certification. Accordingly, EPA approves the certification of this equipment effective December 13, 1995.

The certified equipment provides 25 percent or greater reduction in exhaust emissions of particulate matter (PM) for the engines for which it is certified, and meets the life-cycle cost requirements of the urban bus retrofit/rebuild program for certification. As such, it triggers the requirements for operators choosing to comply with compliance program 1 for applicable engines. This equipment may also be used by operators choosing to comply with compliance program 2.

The Cummins' notification, as well as other materials specifically relevant to it, are contained in Public Docket A–93–42, category VIII, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

DATES: The date of this notice December 13, 1995 is the effective date of certification for the equipment described in the Cummins notification. This certified equipment may be used immediately by urban bus operators. Operators who have chosen to comply with Program 1 will be required to utilize this equipment (or other applicable equipment that is certified in the meantime) for any engine that is listed in Table B that undergoes rebuild on or after June 13, 1996.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Technical Support Branch, Engine Programs and Compliance Division (6405J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 233–9259.

SUPPLEMENTARY INFORMATION:

I. Background

By a notification of intent to certify signed March 13, 1995, Cummins applied for certification of equipment applicable to the LTA10–B model urban bus engines that were originally manufactured between November 1985 and December 1992. Two separate horsepower/torque ratings are to apply for each Control Parts List (CPL), [2] either 270 horsepower and 860 foot-pounds of torque or 240 horsepower and 750 foot-pounds of torque. This equipment will reduce PM emissions 25 percent or more, on petroleum-fueled diesel engines that have been rebuilt to Cummins specifications. Life-cycle cost analysis information was submitted with the Cummins notification, along with a guarantee that the equipment will be offered to all affected operators for less than the incremental life cycle cost ceiling of $2,000 (1992 dollars). Cummins listed the total kit price to be $5,930 including an incremental increase of $1,435 for component parts. Installation costs, maintenance costs and fuel costs were stated to be unchanged. This equipment triggers program requirements for the 25% reduction standard for the applicable engines.

All components of the candidate equipment are contained in a combination of two kits. The first kit is common to both horsepower/torque ratings and consists of a camshaft, cam key, cylinder kits, and a fuel plumbing kit. The second kit contains the injectors, cylinder head, turbocharger and fuel pump and is ordered based on the horsepower/torque rating that is desired. The first kit in combination with one of the second kits is required for the rebuild of an engine.

Using engine dynamometer testing in accordance with the Federal Test Procedure for heavy-duty diesel engines, Cummins documented significant reductions in PM emissions. Emission test data supplied by Cummins in the notification are shown in Table A. The data indicate that the applicable engines with the certified

[1] The Office of Mobile Sources underwent a reorganization in September 1995 in which the responsibility to oversee the Urban Bus Retrofit/Rebuild Program and approve certification was assigned to the Director of the Engine Programs and Compliance Division. Formerly, this responsibility was assigned to the Director of the Manufacturers Operations Division. The regulations at 40 CFR Sections 85.1401–85.1415 will be amended in the near future to reflect this change.

[2] The CPL is a number that identifies a specific Cummins part or component.

equipment installed comply with applicable Federal emission standards for hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_X), and smoke emissions. These data also demonstrate reductions in PM exhaust emissions.

TABLE A.—TEST ENGINE EMISSIONS

[g/bhp-hr] [3]

Control Parts List	Engine Baseline Emission Levels				Smoke		
	HC	CO	NO_x	PM	ACC	LUG	PEAK
0780	0.69	3.04	4.97	0.58	13.6	2.2	28.4
0781	0.85	2.05	4.97	0.59	11.5	2.2	19.74
0774	0.68	3.34	6.86	0.46	11.0	1.4	23.3
0777	0.68	2.93	6.49	0.61	12.8	1.8	33.5
0996	1.33	4.73	5.17	0.61	14.9	2.7	37.5
1226	0.69	2.65	4.58	0.45	13.5	1.1	30.6
1441	0.6	2.70	4.7	0.46	10.0	1.0	18.0
1622	0.6	2.70	4.7	0.46	10.0	1.0	18.0
1624	0.69	2.65	4.58	0.45	13.5	1.1	30.6
1994 (240Hp)	1.1	2.3	5.1	0.28	7	2	12
1994 (270Hp)	0.8	2.3	5.4	0.24	6	1	10

[3] The baseline emission level for each pollutant is based on either the certification level or the average test audit result.

Cummins is certifying this equipment to PM emission levels of 0.34 g/bhp-hr for all engine models and years covered under this certification. This certification level represents a PM reduction that ranges between 25 to 44 percent when compared to the original certification PM levels for these engines. The certification levels for this equipment in the urban bus program are indicated in Table B, and apply only to the model numbers listed for engines that were manufactured within the cited manufacture dates.

TABLE B.—RETROFIT/REBUILD CERTIFICATION LEVELS FOR CUMMINS EQUIPMENT [4]

Engine family	Control parts list (CPL)	Manufacture dates	Original PM certification level (g/bhp-hr)	Retrofit PM certification level (g/bhp-hr) for 240 and 270 HP ratings
343B	780	11/20/85 to 12/31/87	0.58	0.34
343B	0781	11/20/85 to 12/31/87	0.59	0.34
343C	0774	11/20/85 to 12/31/89	0.46	0.34
343C	0777	11/20/85 to 12/31/89	0.61	0.34
343C	0996	12/04/87 to 08/19/88	0.61	0.34
343C	1226	07/26/88 to 12/31/90	0.50	0.34
343F	1226	07/12/90 to 08/26/92	0.45	0.34
343F	1441	12/18/90 to 12/31/92	0.46	0.34
343F	1622	04/24/92 to 12/31/92	0.46	0.34
343F	1624	04/24/92 to 12/31/92	0.45	0.34

[4] The original PM certification levels are based on the certification level or the average test audit result for each engine family. It is noted that for engine family 343F, although the PM standard for 1991 and 1992 was 0.25 g/bhp-hr and the NO_X standard was 5.0 g/bhp-hr, Cummins certified the 1226, 1441, 1622, and 1624 CPLs to a Federal Emission Limit (FEL) of 0.49 g/bhp-hr PM and 5.6 g/bhp-hr NO_X under the averaging, banking and trading program.

Under Program 1, all rebuilds of applicable engines performed 6 months following the effective date of this certification, must use this Cummins equipment (or other equipment certified in the meantime to reduce PM levels by at least a 25 percent). This requirement will continue for the applicable engines until such time as it is superseded by equipment that is certified to trigger the 0.10 g/bhp-hr emission standard for less than a life cycle cost of $7,940 (in 1992 dollars).

Cummins has established a post-rebuild PM certification level of 0.34 g/bhp-hr for this equipment when installed on engines with either the 240/750 or the 270/860 horsepower/torque rating. Operators who choose to comply with Program 2 and install this equipment, will use the 0.34 g/bhp-hr PM emission level in their calculation of fleet level attained.

II. Summary and Analysis of Comments

EPA received comments from one party on this notification. The Amalgamated Transit Union, Local 998, Milwaukee, Wisconsin stated that this certification will have a significant impact on bus mechanics because local transit authorities will no longer be able to rebuild these engines due to the fact that the information needed to rebuild the engines, i.e., the technology and methods of modification, would not be made available to local transit providers by the certifier. Without the opportunity to rebuild these engines, the workers skill base would erode and their ability in the future to diagnose and repair these engines would be greatly reduced. It was stated that in order to avoid this situation, the technology and methods of modification should be made available to local transit providers so that they have the choice of rebuilding in-house in order to reduce costs and maintain the skill level of the transit workforce.

Although the failure of a certifier to provide rebuild specifications to an operator that would enable the operator to perform engine rebuilds is not a

criteria that the Agency uses to evaluate an application during the review process, Cummins was contacted to determine whether or not information would be provided to operators that would enable them to rebuild the components of the certified kit and the engine rebuild itself. Cummins' representative stated that the information will be made available to authorized facilities only. Transit operators who desire to rebuild in-house have the option of being qualified as an authorized facility by meeting certain requirements through a Cummins review and approval process. Cummins stated that a few of the larger bus operators have obtained this approval already but noted that it may not be feasible for smaller operators who would not have a sufficient number of engines to justify the investment of time and resources necessary to become an authorized facility. Rebuilds that are not performed by an authorized facility would not be covered under the emissions warranties provided by Cummins under this certification.

Based on the Cummins policy, it will be necessary for an operator to perform the initial retrofit/rebuild of this equipment at an authorized Cummins facility. However, the urban bus retrofit/rebuild regulation allows a bus operator to use retrofit/rebuild equipment beyond the 150,000 mile warranty period. Therefore, a bus operator could perform maintenance (including rebuilding certain parts) on retrofit/rebuild equipment beyond the warranty period. Under these circumstances, the transit operator would be responsible for maintaining the equipment in proper operating condition, assumes responsibility for emissions performance, and is subject to the enforcement penalties associated with noncompliance under the retrofit/rebuild program. Cummins would not be responsible for warranty coverage as stated in 40 CFR Sections 85.1409 (a) and (b) for such engines after the expiration of the initial warranty periods.

In addition, it is noted that certification testing is currently underway for other equipment, including aftertreatment devices, that will allow operators to perform engine rebuilds using current rebuild practices. We anticipate that a number of these applications will be presented to EPA for approval in the near future. Certification of these applications should allow operators to maintain their current rebuild procedures.

III. Certification Approval

The Agency has reviewed this notification, along with comments received from interested parties, and finds that the equipment described in this notification of intent to certify:

(1) Reduces particulate matter exhaust emissions by at least 25 percent, without causing the applicable engine families to exceed other exhaust emissions standards;

(2) Will not cause an unreasonable risk to the public health, welfare, or safety;

(3) Will not result in any additional range of parameter adjustability; and,

(4) Meets other requirements necessary for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR Sections 85.1401 through 85.1415).

The Agency hereby certifies this equipment for use in the urban bus retrofit/rebuild program as discussed below in section IV.

IV. Operator Requirements and Responsibilities

This equipment may be used immediately by urban bus operators who have chosen to comply with either program 1 or program 2, but must be properly applied. Currently, operators having certain engines who have chosen to comply with program 1 must use equipment certified to reduce PM emissions by 25 percent or more when those engines are rebuilt or replaced. Today's Federal Register notice certifies the above-described Cummins equipment as meeting that PM reduction requirement. Equipment that has been certified to reduce PM by 25% or more must be used by operators with applicable engines who have chosen program 1. Urban bus operators who choose to comply with Program 1 may use the certified Cummins equipment until such time as the 0.10 g/bhp-hr standard is triggered for the applicable engines.

Operators who choose to comply with Program 2 and use the Cummins equipment will use the appropriate PM emission level from Table B when calculating their fleet level attained (FLA).

As stated in the program regulations (40 CFR 85.1401 through 85.1415), operators should maintain records for each engine in their fleet to demonstrate that they are in compliance with the requirements beginning in January 1, 1995. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines.

Dated: November 14, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–30404 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5344–7]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45 day public review and comment period.

SUMMARY: The Agency has received a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR Part 85, Subpart O. Pursuant to § 85.1407(a)(7), today's Federal Register notice summarizes the notification below, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well as comments received, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The Johnson Matthey, Inc. (JMI) notification of intent to certify, as well as other materials specifically relevant to it, are contained in category XI–A of Public Docket A–93–42, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. This docket is located at the address below.

Today's notice initiates a 45 day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to Public Docket A–93–42, Category XI–A, at the address below. An identical copy should be submitted to Anthony Erb, also at the address below.

DATES: Comments must be submitted on or before January 29, 1996.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category XI–-A), Room M–1500, 401 M Street S.W., Washington, DC 20460.

2. Anthony Erb, Engine Compliance Programs Group, Engine Programs and Compliance Division (6405J), 401 ''M'' Street S.W., Washington, DC 20460.

The JMI notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Compliance and Programs Division (6405J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. Telephone: (202) 233–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the affected buses must use equipment which has been certified by the Agency. Emissions requirements under either of the two compliance options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

II. Notification Of Intent To Certify

By a notification of intent to certify signed September 6, 1995, Johnson Matthey, Inc. (JMI) has applied for certification of equipment applicable to all Detroit Diesel Corporation (DDC) two-cycle engines originally equipped in an urban bus from model year 1979 to model year 1993, exclusive of the DDC 6L71TA 1990 model year engines (see Table A). The notification of intent to certify states that the equipment being certified is a catalytic exhaust muffler (CEM). The CEM contains an oxidation catalyst developed specifically for diesel applications, packaged as a direct replacement for the muffler. The application states that the candidate equipment provides a 25 percent or greater reduction in emissions of particulate matter (PM) for petroleum fueled diesel engines relative to an original engine configuration with no after treatment installed. The engines may either be rebuilt to original specifications, or not rebuilt but able to meet specified engine calibrations. A 25 percent reduction is also claimed for engines that have been retrofit/rebuilt with certified new rebuild kits that do not include after treatment devices. The latter would apply to the DDC retrofit/rebuild kit which was certified on October 2, 1995 (60 FR 51472).

TABLE A.—CERTIFICATION LEVELS

Engine Models	Model Year	PM Level [1] with CEM	Code	Family
6V92TA MUI	1979–87	0.38	All	All.
	1988–1989	0.23	All	All.
6V92TA DDEC I	1986–89	0.23	All	All
6V92TA DDEC II	1988–91	0.23	All	All.
	1992–93	0.19	All	All.
6V71N	1973–87	0.38	All	All.
6V71N	1988–89	0.38	All	All.
6V71T	1985–86	0.38	All	All.
8V71N	1973–84	0.38	All	All.
6L71TA	1988–89	0.23	All	All.
6LV71TA DDEC	1990–91	0.23	All	All.
8V92TA	1979–87	0.40	All	8V92TA
	1988	0.29	All	8V92TA
8V92TA–DD	1988	0.31	ALL	8V92TA–DDEC II
8V92TA	1989	0.35	9E70	KDD0736FW89
8V92TA	1989	0.29	9A90	KDD0736FW89
8V92TA	1989	0.26	9G85	KDD0736FW89

TABLE A.—CERTIFICATION LEVELS—Continued

Engine Models	Model Year	PM Level [1] with CEM	Code	Family
8V92TA DDEC	1989	0.31	1A	KDD0736FZH 4
8V92TA	1990	0.35	9E70	LDD0736FAH 9
8V92TA DDEC	1990	0.37	1A	LDD0736FZH 3
8V92TA DDEC	1991	0.19	1A or 5A	MDD0736FZH 2
8V92TA DDEC	1992–93	0.16	1D	NDD0736FZH 1 & PDD0736FZH X
8V92TA DDEC	1992–93	0.22	6A	NDD0736FZH 1 & PDD0736FZH X
8V92TA DDEC	1992–93	0.15	5A	NDD0736FZH 1 & PDD0736FZH X
8V92TA DDEC	1992–93	0.19	1A	NDD0736FZH 1 & PDD0736FZH X

[1] The original PM certification levels for the 1991 6V92TA DDEC II, 6LV71TA DDEC and 8V92TA DDEC engine models are based on Federal Emission Limits (FELs) under the averaging, banking and trading program. These limits are higher than the 1991 PM standard of 0.25 g/bhp-hr. The PM level listed in this table for the engines that are equipped with the CEM provide at least a 25% reduction from the original certification levels. The 1992 to 1993 6V92TA DDEC II and 8V92TA DDEC engine models were also certified using FELs under the trading and banking program and likewise the PM levels for the engines equipped with the CEM represent at least a 25% reduction from the original certification levels.

Transit pricing level data has been submitted with the notification, along with a guarantee that the equipment will be offered to all affected operators for less than the incremental life cycle cost ceiling of $2,000 in 1992 dollars. JMI indicates that the maximum cost in 1995 dollars will not exceed $2,173.00. Equipment cost is listed to be $1,926.00 and installation costs are not to exceed $247.00 (6.5 hours of labor time maximum). JMI states that there is no fuel economy impact, and that no incremental maintenance will be necessary due to this equipment. Therefore, this equipment may qualify as a trigger for program requirements for the 25% reduction standard. However, it is noted that designation as a trigger is not necessary in this case as trigger technology is already certified for the 25% reduction standard for every engine model for which this technology would be certified. However, in the future this technology may lower the target PM level for bus operators under Program 2 for particular engine models, if the PM level for this technology is lower than the PM certification level for any other certified technology.

JMI presents data from testing the equipment on a 2-stroke 1986 model year DDC 6V92TA engine documenting PM emissions reduction under two different scenarios. In applications involving aftertreatment devices, the use of a ''worst case'' engine during testing allows the certifier to extrapolate the results to engines known to have engine out PM levels that are equal to or less than the test engine. Based on a pre-rebuild PM level for the 6V92TA of 0.50, from the table in 40 CFR section 85.1403(c)(1)(iii)(A), the 6V92TA qualifies as a ''worst case'' for all two-stroke/cycle engines with the exception of the 1990 DDC 6L71TA.

In the first test sequence, the baseline test was performed on the engine prior to rebuild. Then the catalytic converter was added to the exhaust system and another test was performed. The results are presented in Table B. When the results of the two tests are compared, the test on the engine that was equipped with the catalytic converter shows a 50% decrease in PM emissions compared to the baseline engine. This test also shows that hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO_X) emissions are within the applicable emission standards.

TABLE B.—CERTIFICATION EMISSION TEST RESULTS

[Pre-Rebuild Composite Test Results (g/bhp-hr)]

	Baseline engine	Engine with CEM	Percent reduction
PM	0.44	0.22	50
HC	0.7	0.4	43
CO	1.0	0.6	40
NOx	10.5	10.2	3
Smoke:			
Accel (percent)	2	1	
Lug (percent)	1	1	
Peak (percent)	4	3	

In the second test sequence, the baseline test was performed on the engine after rebuild. Then, as in the first test sequence, the catalytic converter was added and a comparison test was performed. The results are presented in Table C. When the results of these tests are compared, the test on the engine with the catalytic converter installed shows a 38% reduction in PM emissions when compared with the test results for the baseline engine. The HC, CO, and NO_X emissions for this test are within the applicable emission standards.

JMI also provided smoke emission measurements for the engine in the

rebuilt condition with the catalytic converter installed. These measurements indicate that the engine complies with the applicable smoke standards.

TABLE C.—CERTIFICATION EMISSION TEST RESULTS

[Post-Rebuild Composite Test Results (g/bhp-hr)]

	Baseline engine	Engine with CEM	Percent reduction
PM	0.13	0.08	38
HC	0.6	0.3	50
CO	0.7	0.4	43
NO_X	9.7	9.4	3
Smoke:			
Accel (percent)	1	1	
Lug (percent)	1	1	
Peak (percent)	6	5	

The information submitted by JMI shows that this equipment achieves a 25% or greater reduction in PM emissions and will be sold for less than the cost ceiling of $2,000 (1992 dollars). If EPA approves the request for certification of this equipment, urban bus operators will be required to use this equipment or other equipment that is already certified to provide 25% or greater equivalent reductions to comply with Program 1 of this regulation beginning December 1, 1995. This requirement will continue unless other equipment which reduces PM emissions to 0.10 g/bhp-hr is certified at or below the $7,940 life cycle cost ceiling.

If EPA approves JMI's certification request, urban bus operators who chose to comply under Option 2 of this regulation may also use this equipment. If certification is approved by EPA, the emission levels of the JMI equipment may be used to modify the Option 2 post rebuild levels in July 1996, unless other rebuild kits with life cycle costs below the life-cycle cost ceiling and lower PM emission levels are certified before July 1996.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) The certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify, including whether the data provided by JMI complies with the life cycle cost requirements.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) Problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45 day period during which the Agency will accept written comments relevant to whether or not the equipment described in the JMI notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45 day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45 day period.

Dated: December 1, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–30403 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5344–6]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45-day public review and comment period.

SUMMARY: Twin Rivers Technologies' (TRT) has submitted to the Agency a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR Part 85, Subpart O. The notification describes equipment consisting of biodiesel fuel additive in combination with a particular exhaust system catalyst. Pursuant to § 85.1407(a)(7), today's Federal Register notice summarizes the notification, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in category X of Public Docket A–93–42, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. This docket is located at the address listed below.

Today's notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to Public Docket A–93–42, Category X, at the address below, and an identical copy should be submitted to William Rutledge, also at the address below.

DATES: Comments must be submitted on or before January 29, 1996.

ADDRESSES: Submit identical copies of comments to each of the two following addresses: 1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category X), Room M–1500, 401 M Street S.W., Washington, DC 20460.

2. William Rutledge, Engine Compliance Group, Engine Programs and Compliance Division (6403J), 401 ''M'' Street S.W., Washington, DC 20460.

The TRT notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. Telephone: (202) 233–9297.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended

to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Program 1 establishes PM emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced. Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the affected buses must use equipment which has been certified by the Agency. Emissions requirements under either of the two compliance programs depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

As noted above, operators of affected buses must use equipment which has been certified by EPA. An important element of the certification process is input from the public based on review of notifications of intent to certify. It is expected that engine manufacturers, bus manufacturers, transit operators, and industry associations will be able to provide valuable information related to the installation and use of particular equipment by transit operators. Such information will be useful to the Engine Programs and Compliance Division in its role of determining whether any specific equipment can be certified.

II. Notification Of Intent To Certify

By a notification of intent to certify signed August 18, 1995, and subsequently modified by letter dated October 5, 1995, Twin Rivers Technologies, Limited Partnership (TRT), with principal place of business at 780 Washington Street, Quincy, Massachusetts 02169, applied for certification of equipment applicable to certain urban bus engines manufactured by Detroit Diesel Corporation (DDC). The notification states that the candidate equipment will provide reductions in exhaust PM, as discussed below, dependent upon the configuration used, from petroleum-fueled diesel engines that have been properly calibrated or rebuilt to the original engine manufacturer's specifications.

TRT requests certification for the following two configurations of equipment: (1) Biodiesel fuel additive blended with diesel fuel (the blend is referred to as ''B20'') in combination with a particular exhaust system oxidation catalyst; and, (2) B20 and the catalyst, plus retarded fuel injection timing. Certification, if approved by the Agency, would apply to the combination of catalyst and biofuel supplied by TRT or its licensed distributors. The fuel B20 (alone) is not candidate for certification under this notification.

One configuration of the candidate equipment, as applied to some engines, provides PM reductions greater than 25 percent and the other configuration does not. This is discussed further below. TRT has not provided life cycle cost information with the notification and has not requested to be certified as being available for less than the life cycle cost ceiling.

A key component of both configurations of the candidate equipment is use of biodiesel as an additive at a 20 percent by volume blend ratio with diesel fuel. Biodiesel is an ester-based fuel oxygenate derived from biological sources for use in compression-ignition (that is ''diesel'') engines. Biodiesel is the alkyl ester product of the transesterification reaction of biological triglycerides, or biologically-derived oils. Any biological oil source, such as vegetable oils, animal fats or used cooking oils and fats, can produce esters through this reaction. TRT has registered biodiesel under the Agency's Fuel/Fuel Additive Registration Program, which defines Twin Rivers biodiesel (marketed as ''EnviroDiesel™'' and ''EnviroDiesel Plus™'') as an alkyl ester containing C1–C4 alcohols and C6–C24 acids. The fuel handling procedure differs from that for diesel fuel only in that it requires mixing by the fuel distributor or bus operator of 20 percent by volume biodiesel with low-sulfur diesel fuel. TRT is a company created specifically for the production of biodiesel.

A key component of both configurations of the candidate equipment is a particular oxidation catalyst-muffler unit (discussed further below) designed to replace the typical noise muffler in the exhaust system of applicable recipient engines. In a report included as an attachment to TRT's notification, it is indicated that the combination of B20 and the catalyst achieve greater PM reductions than with the catalyst alone. Improved PM reduction associated with that combination may be due to an apparent shift in the composition of total exhaust particulates, when using B20, toward a lower soot fraction and higher soluble organic fraction (SOF). It is the SOF portion of the exhaust particulates that an oxidation catalyst is most effective in reducing.

The exhaust catalysts are to be matched to specific urban bus and engine configurations. Further, the maximum allowable exhaust pipe length between engine and catalyst is 108 inches. Exhaust system backpressure is designed to remain within the engine manufacturer's specified limits. The catalyst unit has no additional maintenance requirements for the life of the catalyst.

The second configuration of the candidate equipment includes the retard of fuel injection timing in combination with B20 and the above-described exhaust catalyst. All applicable engines using this second configuration and equipped with mechanical unit injection (MUI) would use a timing retard of four (4) degrees. All applicable engines using this configuration and equipped with electronically-controlled fuel injection would use a timing retard of one (1) degree. The notification states that timing is retarded by a shift of the timing sensor. The Agency requests comment and information concerning the reasonability of these timing specifications.

For its certification testing, TRT used catalytic muffler units that were manufactured by Engelhard Corporation and are the same formulation and configuration that is certified by the Agency for use in the urban bus program (see 60 FR 28402, dated May 31, 1995, for that certification). While an agreement is in place for Engelhard to supply TRT with catalysts, the physical specifications of the catalyst to be used in production are neither part of the

TRT notification of intent to certify nor provided to TRT as part of that agreement. In general, the Agency has concerns when a certifier is not aware of the technical specifications of equipment it wants to certify and when the potential exists for a change in equipment specifications to adversely affect emissions reduction performance. Such a change in specifications may occur, for example, with a change in catalyst production which may not be known to the certifier. In a letter provided to the Agency, Engelhard states that it will notify both TRT and the Agency in the event of changes to specifications of the catalytic converter muffler provided to TRT. The specifications for the catalyst have been provided to the Agency as a confidential part of Engelhard's notification of intent to certify its CMX™ catalyst muffler. A copy of this letter can be found in the public docket at the address indicated above. This provides the Agency with assurance that changes to catalyst specifications will be brought to the Agency's attention, and the Agency proposes to restrict certification for candidate TRT equipment to use of catalyst muffler units supplied by Engelhard and covered by Engelhard's certification, and require that use of catalysts supplied by any other supplier be the subject of a separate notification of intent to certify.

TRT presents exhaust emission data from testing the candidate equipment configurations on three engines using the federal engine-dynamometer test procedures of 40 CFR Part 86, as well as chassis dynamometer testing. A 1977 model year DDC 6V71N and 1988 model year DDC 6V92TA DDEC II were tested on engine dynamometers, and another 1988 model year DDC 6V92TA DDEC II was tested on a chassis dynamometer. The 6V71N engine was selected to represent a ''worst case'', with respect to PM, for most of the engines for which certification of the equipment is being sought, and also to represent engines equipped with MUI. Based on a pre-rebuild PM level for the 6V71N of 0.50, from the table in 40 CFR section 85.1403(c)(1)(iii)(A), TRT states that the 6V71N qualities as ''worst case'' for all two-stroke/cycle engines with the exception of the 1990 DDC 6L71TA. The 1988 6V92TA DDEC engines were tested to show the results of the biodiesel fuel on engines having electronic fuel control, and also to represent the ''worst case'' engine configuration for such engines, based on their ''pre-rebuild'' level of 0.31 g/bhp-hr. The notification states that the fuel used for testing, both the biodiesel and diesel, are representative of commercially available biodiesel and low-sulfur diesel fuels.

Baseline testing was conducted after two of the test engines were rebuilt to the original engine manufacturer's configurations. A third engine had not been used prior to testing. Baseline testing was conducted using low sulfur test fuel having a maximum sulfur level of 0.05 weight percent. Subsequent testing of the engines was done after the candidate equipment was installed.

Table 1A below summarizes the emission levels from the engine dynamometer testing. Table 1B summarizes the chassis testing in terms of range of impact on exhaust emissions of the candidate equipment from three driving cycles. The driving cycles used for the chassis testing were the Central Business District, New York Bus Composite Cycle, and the Arterial Cycle. A report attached to TRT's notification provides specific emission rates measured for each driving cycle and equipment configuration. Table 2 summarizes, for each test engine, the changes in PM and NO_X emissions with use of each configuration of the equipment. The reductions listed for the chassis testing include double weighting of the emission data from the Arterial Cycle, because TRT believes the resultant combination of the chassis driving cycles is more representative of the Agency's Urban Dynamometer Driving Schedule for Heavy-Duty Vehicles (40 CFR Part 86, Appendix I). Table 3 provides a summary of all engine models for which TRT intends the equipment to apply, and the associated percent reductions in PM emissions for these models, based on the test data. Table 4 summarizes the PM certification levels for each engine model for which certification is sought, based on reductions of Table 3 applied to the pre-rebuild levels established in the program regulations. Additional testing information is provided in reports from the facilities which conducted the emission testing (these reports are attachments to the notification).

TABLE 1A.—TEST ENGINE EMISSIONS

Engine	Gaseous and Particulate				Smoke			Comment
	HC	CO	NO_X	PM	ACC	LUG	Peak	
	g/bhp-hr				percent opacity			
Engine Dyno	1.3	15.5	10.7	0.60	20	15	50	1988 EPA stds.
1977 6V71N MUI	0.86	3.18	11.72	0.282	1.2	1.8	1.8	Baseline (low S, 2D).
1977 6V71N MU	0.38	0.86	12.11	0.166	0.9	1.7	1.7	B20 + cat.
1977 6V71N MU	0.42	0.94	8.47	0.213	2.2	2.8	2.9	B20, cat + 4° retard.
1988 6V92TA DDEC II	0.60	1.60	8.52	0.20	6.0	5.3	8.7	Baseline (low S, 2D).
1988 6V92TA DDEC II	0.21	0.95	9.12	0.11	3.7	1.7	6.9	B20 + cat.
1988 6V92TA DDEC II	0.25	1.05	8.35	0.12	5.1	2.5	8	B20, cat + 1° retard.

TABLE 1B.—CHASSIS TESTING: RANGE OF PERCENTAGE CHANGE [1] IN EMISSIONS FROM BASELINE (LOW SULFUR DIESEL)

Pollutant	B20 + catalyst	B20 + catalyst + 1.5° retard
HC	−59 to −39	−33 to +3
CO	−85 to −54	−38 to −19
NO_X	+4 to +8	−5 to −2
PM	−56 to −22	−46 to −7

[1] Three different chassis driving cycles were used.

TABLE 2.—EMISSIONS CHANGES FROM TEST ENGINES

Test Engine	Configuration			Per cent PM change	Per cent No_X change	Test/dyno
	B20	CAT	Timing retard			
1977 6V71N	√	√	None	−41	+3	Engine.
MUI	√	√	4°	−24.5	−28	
1988 6V92TA DDEC	√	√	None	−45	+6	Engine.
II	√	√	1°	−40	−2	
1988 6V92TA DDEC	√	√	None	−40	+4	Chassis.
II	√	√	1.5°	−27	−5	

TABLE 3.—APPLICABLE ENGINES AND PM REDUCTION

Engine model	Model year	Configuration and per Cent PM Reduction	
		B20 + cat	B20, cat + retard
6V92TA MUI	79–87	41.1	24.5
6V92TA MUI	88–89	41.1	24.5
6V92TA DDEC I	86–87	45.0	40.0
6V92TA DDEC II	88–91	45.0	40.0
6V92TA DDEC II	92–93	45.0	40.0
6V71N MUI	73–87	41.1	24.5
6V71N MUI	88–89	41.1	24.5
6V71T MUI	85–86	41.1	24.5
8V71N MUI	73–84	41.1	24.5
6L71TA MUI	90	41.1	24.5
6L71TA MUI	88–89	41.1	24.5
6L71TA DDEC	90–91	45.0	40.0

TABLE 4.—PM CERTIFICATION LEVELS

Engine model	Model year	Equipment Configuration	
		B20 + cat	B20, cat + retard
6V92TA MUI	79–87	0.29	0.38
6V92TA MUI	88–89	0.17	0.23
6V92TA DDEC I	86–87	0.17	0.18
6V92TA DDEC II	88–91	0.17	0.19
6V92TA DDEC II	92–93	0.14	0.15
6V71N MUI	73–87	0.29	0.38
6V71N MUI	88–89	0.29	0.38
6V71T MUI	85–86	0.29	0.38
8V71N MUI	73–84	0.29	0.38
6L71TA MUI	90	0.34	0.44
6L71TA MUI	88–89	0.18	0.23
6L71TA DDEC	90–91	0.17	0.18

Section 85.1406(a) of the program regulations state ''The test results must demonstrate that the retrofit/rebuild equipment * * * will not cause the urban bus engine to fail to meet any applicable Federal emission requirements set for that engine in the applicable portions of 40 CFR part 86 * * *''. TRT's emission test data indicate that both configurations of the candidate equipment reduce hydrocarbon (HC) and carbon monoxide (CO), when compared with baseline (pre-retrofit) emissions. There is, however, potential for concern with regard to NO_X emissions from other engines with which the candidate equipment might be certified, because an increase of three percent was measured for the MUI test engine when equipped with the B20-catalyst configuration without fuel injection retard, and six percent for the electronically-timed DDEC II test engine. Because test data is not available on all engines for which certification of the equipment is sought, TRT performed analyses to determine whether such increases would indicate that other engines exceed applicable NO_X standards. The analysis, in general, applies each of the measured increases to the NO_X certification levels established by the engine manufacturer for engines tested under the Agency's new engine certification program. (New engine certification testing results are reported yearly by the Agency in its ''Federal Certification Test Results''.) Three percent increase in NO_X is evaluated for engines equipped with MUI, and six percent increase is evaluated for engines equipped with electronically-timed injection. The increased NO_X level is compared with the relevant standard for the particular engine. TRT's analyses is in the public docket, and discussed below.

TRT's analysis for MUI engines is broken down by engine model year to account for two new engine certification test procedures, each having particular emissions standards. The ''13 mode'' engine dynamometer test procedure was used for heavy-duty engine testing prior to the 1985 model year, and the ''transient'' engine dynamometer test procedure is used for 1985 and later model years. For certification under the urban bus program, TRT tested the 1977 model year 6V71N MUI engine using the ''transient'' procedure. While the ''13 mode'' test was used for new engine certification of the 1977 model year, the ''transient'' test is the current standard test procedure for heavy-duty engines and is generally recognized as more representative than the ''13-mode'' test. Therefore, the Agency believes that the NO_X increase measured by TRT using the ''transient'' test data is a relevant gauge of the impact of the candidate equipment. TRT's analysis applies the increase to the new engine certification data available for engines of 1984 and earlier model years. Prior to 1985, there was no federal emission standard for NO_X alone. The relevant emission standards (for engines that were certified using the ''13-mode'' procedure) are 16 g/bhp-hr for 1974 through 1978 model year engines and 10 g/bhp-hr for 1979 through 1984 model year engines, for the sum of HC emissions added to NO_X emissions. TRT's initial analysis applied three percent increase to the new engine certification levels for HC + NO_X emissions for 1982 and later model year engines for which such data is available. This predicts that only one engine (a 325 horsepower version of 1982 model year 6V92TA engine family CGM0552FWG5) would exceed its NO_X standard. Further analysis for this engine, applying three percent increase in its NO_X emission level added to 50 percent decrease in its reported HC certification level, indicates that the combined federal emission standard would not be exceeded for this engine if equipped with the candidate equipment. Based on this analysis and TRT's emission test data indicating significant reductions in HC emissions (at least 50 percent), the Agency believes that for any applicable pre-1985 engine equipped with MUI, an increase in NO_X emissions of the percentage measured on the 1977 6V71N MUI test engine will be more than offset by a decrease in HC emissions, such that the HC + NO_X standard will not be exceeded.

Another part of TRT's analysis pertains to engines equipped with MUI and certified using the ''transient'' test procedure (that is, the engines of model year 1985 and later). TRT's analysis, applying three percent increase to NO_X levels developed during new engine certification testing, indicates that no 1985 or later engine equipped with MUI would exceed the applicable federal standard if equipped with the candidate equipment. TRT also analyzed the impact of six percent increase in NO_X emissions on electronically-controlled engines, because their data show that NO_X emissions for the 1988 model year 6V92TA DDEC II test engine increase roughly six percent when equipped with the B20-catalyst configuration without injection retard. This increase in NO_X emissions is important, especially because federal standards for NO_X were lowered to 6.0 g/bhp-hr for the 1990 model year and 5.0 g/bhp-hr for the 1991 model year. Therefore, TRT analyzed the impact of six percent increase in NO_X emission levels developed during new-engine certification testing on Detroit Diesel Corporation's DDEC engines. (Under the new engine certification program, all DDEC engines have been tested using the ''transient'' procedure.) The results indicate that NO_X levels for the engine families in Table 5 would exceed the appropriate federal emission standard. Therefore, the Agency proposes that use of the candidate equipment without fuel injection retard on any urban bus engines of the engine families listed in Table 5 not be covered by certification under the urban bus program.

TABLE 5.—ENGINE FAMILIES NOT COVERED BY CERTIFICATION

Configuration: B20 and Catalyst (without injection retard)		
Model year	Model	Engine family
1990	6V92TA DDEC II	LDD0552FZG6
	6V92TA DDEC II Coach	LDD0552FZL2
1991	6L71TA DDEC ALCC	MDD0426FZFX
	6V92TA DDEC II	MDD0552FZG5
	6V92TA DDEC II	MDD0552FZL1
1992	6V92TA DDEC II	NDD0552FZG4
	6V92TA DDEC II Coach	NDD0552FZL0
1993	6V92TA DDEC II	PDD0552FZG2
	6V92TA DDEC II Coach	PDD0552FZL9

The Agency requests comment, additional analysis, or additional emission test data or for engine families to which the equipment is intended to apply, to determine whether regulatory requirements are met with urban bus engines using the candidate equipment.

While absolute smoke opacity levels during testing of the 1977 6V71N MUI test engine were well below relevant standards, increases were measured between the baseline test and testing using B20, catalyst and retarded timing. This is not of significant concern because the Agency believes the absolute level of increase is more relevant than the percentage increase. Further, the absolute level of increase in opacity is believed not significant in the context of the current smoke test and opacity standards (in other words, there is probably no real increase in smoke opacity, given the nature of the smoke test and level of the standards). Finally, smoke emissions from heavy duty diesel engines, in general, have declined over the years as engines are designed to comply with declining federal PM emissions standards. The Agency believes that even if this test data accurately predicts an increase in smoke emission opacity with other engines for which the equipment is intended to apply, it is not a significant increase. The Agency requests comment regarding the applicability of that data to other engines having MUI for which the equipment is intended to apply.

Smoke emission measurements for the 1988 engine indicate compliance with applicable standards.

As indicated in the notification, the 6V71N test engine qualities as a ''worst case'' for all two-stroke/cycle engines with exception of the 1990 DDC

6L71TA. (The 1990 model year DDC 6L71TA has a pre-rebuild PM level of 0.59 g/bhp-hr.) While TRT requests certification coverage for the 1990 DDC 6L71TA and warrants comparable particulate emissions reduction percentages for it as is demonstrated by the 6V71N test engine, the requirement of the program regulations have not been met. Therefore, the Agency believes that the notification lacks sufficient basis for certification of the candidate equipment with the 1990 DDC 6L71TA.

Section 85.1406(d) of the regulations governing urban bus equipment certification states, in part, ''* * * installation of any certified retrofit/rebuild equipment shall not cause or contribute to an unreasonable risk to the public health, welfare or safety * * *''. Information for considering whether B20 in this context would affect any potential human health risks associated with exposure to conventional diesel emissions has been provided by TRT with its notification of intent to certify. This information will be reviewed by the Agency. The Agency has made this information part of the public docket at the address listed above. Any findings based on this information, together with any other information that may be considered, will be made part of the public docket located at the address noted above, and considered by the Agency in its decision regarding certification of the candidate equipment. The Agency requests additional information, including information on combustion by-products, for considering whether and, if so how, the use of the subject biodiesel blend, that is, B20, in diesel engines would affect any potential health risks associated with exposure to conventional diesel emissions.

Section 211 of the Clean Air Act sets forth fuel and fuel additive prohibitions, and gives the Agency authority to waive certain of those prohibitions. The Agency, however, does not believe that TRT must obtain a fuel additive waiver under Section 211(f)(4) of the Clean Air Act before certifying its additive system for the following reasons.

The Act prohibits the introduction into commerce of any fuel or fuel additive that is not substantially similar to a fuel or fuel additive used in the certification of any model year 1975 or later vehicle or engine under Section 206. The Administrator may waive this prohibition, if she determines that certain criteria are met. The Agency believes that certification of an urban bus retrofit system constitutes the certification of an engine under Section 206 for the purposes of the urban bus retrofit/rebuild program, and, since the additive is used in the certification of the system, a waiver is not required to market the additive in the limited context of use with the certified retrofit system. This determination does not affect whether the additive is ''substantially similar to any fuel or fuel additive'' outside the context of the urban bus retrofit/rebuild program. The Agency's position on this matter is discussed in additional detail as it relates to use of another fuel additive (Lubrizol Corporation) at 60 FR 36139 on July 13, 1995.

If the Agency certifies the candidate TRT equipment, operators may use it immediately, as discussed below. TRT's notification indicates that the candidate equipment is to be certified for compliance program 2; however, as discussed below, the Agency believes that configurations utilizing the catalytic muffler and reducing PM by at least 25 percent may also be used in compliance with current program 1 requirements.

In a Federal Register notice dated May 31, 1995 (60 FR 28402), the Agency certified an exhaust catalyst manufactured by the Engelhard Corporation, as a trigger of program requirements. For urban bus operators affected by this program and electing to comply with program 1 requirements, that certification means that rebuilds and replacements of all applicable urban bus engines, performed 6 months or more after that date of certification (that is, rebuilds or replacements after December 1, 1995), must be performed with equipment certified to reduce PM emissions by 25 percent or more. Under Program 1, operators could use the TRT equipment if certified to reduce PM by at least 25 percent, or other equipment certified to provide at least a 25 percent reduction, until equipment is certified which triggers the 0.10 g/bhp-hr PM standard. For Program 1, operators may also use the B20 blend with the Engelhard catalyst and injection retard only for the following engines: 6V92TA DDEC I and DDEC II, and 6L71TA DDEC.

Operators who choose to comply with Program 2 and install the TRT equipment, would use the PM emission level(s) established during the certification process, in their calculations for target or fleet level as specified in the program regulations.

In accordance with the program requirements of section 85.1404(a), operators using the candidate equipment would have to maintain purchase records of the B20 blend if the operator purchases the premixed blend from a fuel supplier, or, of biodiesel and low-sulfur diesel fuel if the operator mixes the B20. Such records would be subject to review in the event of an audit of a urban bus operator by the Agency. To be in compliance with program requirements, operators must be able to demonstrate that B20 is being used in the proper proportions required by the candidate equipment.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) The certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment described in the TRT notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Dated: December 1, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–30405 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–180985; FRL–4988–6]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 22 States as listed below. Crisis exemptions were initiated by various States, United States Departments of Agriculture, Animal and Plant Health Inspection Service, and the United States Department of the Army. One quarantine exemption was granted to the United States Department of Agriculture. These exemptions, issued during the months of June, July, August, and September 1995, except for the one in March and one in April, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied a specific exemption request from the Oregon Department of Agriculture and has withdrawn a specific exemption from the Connecticut Department of Environmental Protection. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703)–308–8417; e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific, crisis, and quarantine exemptions to the:

1. Arizona Department of Agriculture for the use of avermectin B_1 on melons to control leafminers; June 30, 1995, to June 29, 1996. (Larry Fried)

2. Arizona Department of Agriculture for the use of bifenthrin on cauliflower and leaf lettuce to control whiteflies; September 28, 1995, to May 15, 1996. (Andrea Beard)

3. Arkansas State Plant Board for the use of fomesafen on snap beans to control moringglory and pigweed; June 2, 1995, to September 10, 1995. (Larry Fried)

4. California Environmental Protection Agency for the use of carbofuran on cotton to control aphids; August 22, 1995, to October 15, 1995. (David Deegan)

5. California Environmental Protection Agency, Department of Pesticide Regulations, for the use of Pro-Gro (carboxin/thiram) on onion seed to control onion smut; September 11, 1995, to May 31, 1996. (Andrea Beard)

6. California Environmental Protection Agency, Department of Pesticide Regulations, for the use of myclobutanil on tomatoes to control powdery mildew; September 29, 1995, to June 16, 1996. California had initiated a crisis exemption for this use. (David Deegan)

7. California Environmental Protection Agency for the use of avermectin B_1 on melons to control leafminers; June 30, 1995, to November 1, 1995. (Larry Fried)

8. California Environmental Protection Agency for the use of avermectin B_1 on bell peppers to control leafminers; August 24, 1995, to August 23, 1996. (Larry Fried)

9. California Environmental Protection Agency for the use of cypermethrin on green onions to control thrips; June 15, 1995, to June 14, 1996. (Larry Fried)

10. California Environmental Protection Agency, Department of Pesticide Regulations, for the use of metalaxyl on mustard greens to control white rust; August 21, 1995, to August 20, 1996. (David Deegan)

11. Florida Department of Agriculture and Consumer Services for the use of imidacloprid on escarole, endives, spinach, and parsley to control aphids; September 29, 1995, to June 1, 1996. Florida had initiated a crisis exemption for this use. (Andrea Beard)

12. Florida Department of Agriculture and Consumer Services for the use of lactofen on tomatoes and green peppers to control nightshade; September 1, 1995, to August 31, 1996. A notice of receipt published in the Federal Register of July 26, 1995 (60 FR 38335). The use of lactofen has been requested for the past 4 years and was granted. A complete application for registration of the use has not yet been submitted to the Agency. The Florida tomato and green pepper growers are facing an urgent nonroutine situation and will suffer significant economic losses without the use of lactofen. (Margarita Collantes)

13. Idaho Department of Agriculture and Consumer Services for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids, pea aphids, and lygus bugs; June 16, 1995, to August 31, 1995. (Larry Fried)

14. Kansas Department of Agriculture for the use of cymoxanil, dimethomorph, and propamocarb hydrochloride on potatoes to control late blight; June 27, 1995, to September 30, 1995. (Libby Pemberton)

15. Maryland Department of Agriculture for the use of clomazone on snap beans to control broadleaf weeds; August 9, 1995, to September 10, 1995. (David Deegan)

16. Maryland Department of Agriculture for the use of clomazone on summer squash to control broadleaf weeds; August 9, 1995, to September 30, 1995. Maryland had initiated a crisis exemption for this use. (David Deegan)

17. Maryland Department of Agriculture for the use of metolachlor on spinach to control weeds; August 2, 1995, to May 1, 1996. (Margarita Collantes)

18. Michigan Department of Agriculture for the use of fomesafen on dry beans to control weeds; June 28, 1995, to August 15, 1995. (Larry Fried)

19. Michigan Department of Agriculture for the use of avermectin on pears to control mites and psylla; September 5, 1995, to September 30, 1995. Michigan had initiated a crisis exemption for this use. (Larry Fried)

20. Minnesota Department of Agriculture for the use of bentazon on peas to control Canada thistle; June 23, 1995, to July 15, 1995. (Larry Fried)

21. Mississippi Department of Agriculture and Commerce for the use of carbofuran on cotton to control aphids; June 30, 1995, to September 15, 1995. (David Deegan)

22. Montana Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids, pea aphids, and lygus bugs; June 16, 1995, to September 30, 1995. (Larry Fried)

23. Nebraska Department of Agriculture for the use of cymoxanil, dimethomorph, and propamocarb hydrochloride on potatoes to control late blight; September 6, 1995, to September 30, 1995. (Libby Pemberton)

24. Nevada Division of Agriculture for the use of cymoxanil, dimethomorph, and propamocarb hydrochloride on potatoes to control late blight; August 15, 1995, to September 15, 1995. (Libby Pemberton)

25. Nevada Department of Business and Industry for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids and blue alfalfa aphids; June 16, 1995, to August 31, 1995. (Larry Fried)

26. New Jersey Department of Environmental Protection for the use of metolachlor on spinach to control weeds; August 2, 1995, to November 1, 1995. New Jersey had initiated a crisis exemption for this use. (Margarita Collantes)

27. Ohio Department of Agriculture for the use of cypermethrin on green

onions to control thrips; June 15, 1995, to June 30, 1995. (Larry Fried)

28. Oklahoma Department of Agriculture for the use of fomesafen on snap beans to control morningglory and pigweed; June 2, 1995, to September 10, 1995. (Larry Fried)

29. Oklahoma Department of Agriculture for the use of carbofuran on cotton to control aphids; June 29, 1995, to October 15, 1995. (David Deegan)

30. Oklahoma Department of Agriculture for the use of metolachlor on spinach to control weeds; August 2, 1995, to March 31, 1996. (Margarita Collantes)

31. Oregon Department of Agriculture for the use of metolachlor on grasses grown for seed to control weeds; August 31, 1995, to November 15, 1995. (David Deegan)

32. Oregon Department of Agriculture for the use of oxyfluorfen on grasses grown for seed to control weeds; August 31, 1995, to January 15, 1996. (David Deegan)

33. Oregon Department of Agriculture for the use of pronamide on grasses grown for seed to control weeds; August 31, 1995, to January 20, 1996. (David Deegan)

34. Oregon Department of Agriculture for the use of lactofen on snap beans to control weeds; April 28, 1995, to July 31, 1995. (Larry Fried)

35. Oregon Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids, pea aphids, and lygus bugs; June 16, 1995, to September 1, 1995. (Larry Fried)

36. Pennsylvania Department of Agriculture for the use of fomesafen on snap beans to control weeds; June 30, 1995, to August 15, 1995. Pennsylvania had initiated a crisis exemption for this use. (Larry Fried)

37. Texas Department of Agriculture for the use of carbofuran on cotton to control aphids; June 9, 1995, to September 30, 1995. (David Deegan)

38. Texas Department of Agriculture for the use of metolachlor on spinach to control weeds; August 2, 1995, to August 15, 1996. (Margarita Collantes)

39. Virginia Department of Agriculture and Consumer Services for the use of clomazone on snap beans to control broadleaf weeds; August 9, 1995, to September 10, 1995. (David Deegan)

40. Virginia Department of Agriculture and Consumer Services for the use of clomazone on summer squash to control broadleaf weeds; August 9, 1995, to September 30, 1995. (David Deegan)

41. Washington Department of Agriculture for the use of pirimicarb on small seeded vegetable seed crops to control aphids; June 30, 1995, to September 15, 1995. (Larry Fried)

42. Washington Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids, pea aphids, and lygus bugs; June 16, 1995, to August 31, 1995. (Larry Fried)

43. Wyoming Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids, pea aphids, and lygus bugs; June 16, 1995, to August 31, 1995. (Larry Fried)

Crisis exemptions were initiated by the:

1. California Environmental Protection Agency, Department of Pesticide Regulation, on June 19, 1995, for the use of myclobutanil on tomatoes (fresh and processed) to control powdery mildew. The State requested a specific exemption for this use, which was granted by EPA on September 29, 1995, and will expire on June 16, 1996. (David Deegan)

2. Colorado Department of Agriculture on August 15, 1995, for the use of cypermethrin on green onions to control thrips. This program has ended. (Libby Pemberton)

3. Florida Department of Agriculture and Consumer Services on July 23, 1995, for the use of naled on utility poles, tree trunks, and other inanimate objects to control the oriental fruit fly. Since it was anticipated that this program would be needed for more than 15 days, Florida has requested a quarantine exemption to continue it. (Andrea Beard)

4. Maryland Department of Agriculture on July 31, 1995, for the use of clomazone on summer squash to control broadleaf weeds. This program has ended. (David Deegan)

5. Michigan Department of Agriculture on August 17, 1995, for the use of fosetyl-al on blueberries to control alternaria fruit rot. Since it was anticipated that this program would be needed for more than 15 days, Michigan has requested a specific exemption to continue it. (Larry Fried)

6. Minnesota Department of Agriculture on June 16, 1995, for the use of clopyralid on canola to control Canada thistle and perennial sowthistle. This program has ended. (Larry Fried)

7. Missouri Department of Agriculture on June 13, 1995, for the use of fomesafen on snap beans to control pig weed. This program has ended. (Larry Fried)

8. Montana Department of Agriculture on June 21, 1995, for the use of clopyralid on canola to control Canada thistle and perennial sowthistle. This program has ended. (Larry Fried)

9. New Jersey Department of Agriculture on March 23, 1995, for the use of metolachlor on spinach to control weeds. This program has ended. (Margarita Collantes)

10. New Mexico Department of Agriculture on September 2, 1995, for the use of triadimefon on peppers to control powdery mildew. This program has ended. (Larry Fried)

11. North Carolina Department of Agriculture on September 1, 1995, for the use of tebufenozide on cotton to control the beet armyworms. This program has ended. (Larry Fried)

12. North Dakota Department of Agriculture on August 1, 1995, for the use of bifenthrin on canola to control the Bertha armyworm. This program has ended. (Andrea Beard)

13. North Dakota Department of Agriculture on June 17, 1995, for the use of clopyralid on canola to control Canada thistle and perennial sowthistle. This program has ended. (Larry Fried)

14. Oklahoma Department of Agriculture on September 1, 1995, for the use of tebufenozide on cotton to control beet armyworms. This program has ended. (Larry Fried)

15. Texas Department of Agriculture on August 31, 1995, for the use of bifenthrin on grain sorghum grown for seed to control banks grass mites. This program has ended. (Andrea Beard)

16. Texas Department of Agriculture on June 2, 1995, for the use of esfenvalerate on grain sorghum to control sorghum midge. This program has ended. (Libby Pemberton)

17. Virginia Department of Agriculture and Consumer Services on August 28, 1995, for the use of bifenthrin on peanuts to control two-spotted spider mites. This program has ended. (Andrea Beard)

18. Wisconsin Department of Agriculture on July 21, 1995, for the use of bentazon on peas to control weeds. This program has ended. (Larry Fried)

19. United States Department of Agriculture, Animal and Plant Health Inspection Service, on June 6, 1995, for the use of paraformaldehyde in laboratory facilities to control exotic infectious diseases. The need for this program is expected to last until June 6, 1998. (Larry Fried)

20. United States Department of Agriculture, Animal and Plant Health Inspection Service, on August 24, 1995, for the use of permethrin on horses and cattle to control nonindigenous parasites. The need for this program is expected to last until August 24, 1998. (Larry Fried)

21. United States Department of the Army on August 4, 1995, for the use of paraformaldehyde to decontaminate high-security biocontaminent laboratories of microorganisms. This program has ended. (Larry Fried)

EPA has granted a quarantine exemption to the United States Department of Agriculture for the use of paraformaldehyde in laboratories to control infectious diseases; September 29, 1995, to June 5, 1998. UDSA had initiated a crisis exemption for this use. (Larry Fried)

EPA has denied a specific exemption request from the Oregon Department of Agriculture for the use of pendimethalin on grasses grown for seed. Oregon requested use of metolachlor for the same spectrum of weeds, and due to endangered species concerns with pendimethalin, the Agency denied the exemption. (David Deegan)

EPA has withdrawn a specific exemption from the Connecticut Department of Environmental Protection for the use of avermectin on pears to control pear psylla. Connecticut had initiated a crisis exemption for this use. The use of avermectin ended under the crisis exemption on September 30, 1995. (Larry Fried)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: November 30, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–30114 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–636; FRL–4971–5]

Pesticide Tolerance Petitions; Filings, Amendment, and a Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings and an amendment and a withdrawal of pesticide petitions (PP) and food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-636]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/ telephone number/e-mail	Address
George LaRocca (PM 13).	Rm. 204, CM #2, 703-305-6100; e-mail: larocca. george @ epamail. epa. gov..	1921 Jefferson Davis Hwy., Arlington, VA
Connie Welch (PM 21).	Rm. 227, CM #2, 703- 305-6226; e-mail: welch. connie @ epamail. epa. gov..	Do.
Phillip Hutton (PM 90).	5th Floor, CS #1, 703-308-8260; e-mail: hutton. phillip @ epamail. epa. gov..	2800 Jefferson Davis Hwy., Arlington, VA

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/ feed additive petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 5F4509.* Lakeshore Enterprises, P.O. Box 238-P, Benzonia, MI 49616, has submitted the petition proposing that 40 CFR part 180 be amended to establish an exemption from the requirement of a tolerance for the biochemicals meat meal and red pepper (capsicum) in or on agricultural, vegetable, ornamental, turf, tree, vine, and other terrestrial crops. (PM 90)

2. *PP 5F4588.* Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, has submitted the petition proposing to amend 40 CFR part 180 to establish tolerances for lambda-cyhalothrin, (*S*)-*alpha*-cyano-3-phenoxybenzyl (*Z*)-(*1R*,-3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-*alpha*-cyano-3-phenoxybenzyl (*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate, and epimer of lambda-cyhalothrin, a 1:1 mixture of (*S*)-*alpha*-cyano-3-phenoxybenzyl (*Z*)-(1*S*,-3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-*alpha*-cyano-3-phenoxybenzyl (*Z*)-(*1R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate, in or on the following raw agricultural commodities: lettuce, leaf at 2.0 parts per million (ppm); head and stem brassica crop subgroup (broccoli; broccoli, Chinese; brussels sprouts; cabbage; cabbage, Chinese (napa); cabbage, Chinese mustard; cauliflower; caval broccolo; and kohlrabi) at 0.4

ppm; alfalfa, forage at 3.0 ppm; and alfalfa, hay at 4.0 ppm. (PM 13)

3. *PP 5F4591.* Ciba Crop Protection, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, has submitted the petition that proposes that 40 CFR 180.434 be amended to establish tolerances for the fungicide propiconazole (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole) and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound equivalent in or on the raw agricultural commodities berry crop grouping at 1.0 ppm, carrots at 0.2 ppm, green onions at 8.0 ppm, and dry bulb onions at 0.3 ppm. (PM 21)

Amended Filing

4. *PP 4F4309.* EPA gave notice in the Federal Register of July 13, 1994 (59 FR 35719), that Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, had submitted the petition proposing that 40 CFR 180.436 be amended by establishing a tolerance to permit residues of the insecticide cyfluthrin, cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl cyclopropane carboxylate, in or on sweet corn, forage at 54.0 ppm; alfalfa, hay at 10.0 ppm; soybean, forage at 10.0 ppm; alfalfa, forage at 5.0 ppm; soybean, hay at 1.5 ppm; sunflower, forage at 1.0 ppm; sweet corn at 0.05 ppm; soybeans at 0.03 ppm; and sunflower, seed at 0.02 ppm. The company has submitted an amended petition that proposes decreasing the proposed tolerances on sweet corn forage from 54.0 ppm to 30.0 ppm; increasing tolerances for cattle fat, goat fat, hog fat, horse fat, and sheep fat from 0.05 ppm to 5.0 ppm; establishing a tolerance of 15.0 ppm for milkfat (representing 0.5 ppm in whole milk); and withdrawing proposed tolerances for soybean, forage, soybean, hay, and soybeans. (PM 13)

Withdrawn Filing

5. *FAP 4H5686.* EPA gave notice in the Federal Register of July 13, 1994 (59 FR 35719), that Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, had submitted the petition proposing that 40 CFR 186.1250 be amended by establishing a food/feed additive regulation to permit the residues of the insecticide cyfluthrin, cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl cyclopropane carboxylate, in or on sunflower hulls at 2.5 ppm and soybean, hulls at 0.1 ppm. The company has withdrawn the petition without prejudice to a future filing. (PM 13)

A record has been established for this rulemaking under docket number [PF-636] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

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

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

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Feed additives, Food additives, Reporting and recordkeeping requriements.

Authority: 7 U.S.C. 136a.

Dated: November 13, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–30373; Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180982; FRL–4985–1]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 28 States as listed below. Crisis exemptions were initiated by the Mississippi and Montana Departments of Agriculture. These exemptions, issued during the months of May, June, and July 1995, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied 11 specific exemption requests. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703)–308–8417; e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of tebufenozide on cotton to control beet armyworms; July 18, 1995, to September 30, 1995. Alabama had initiated a crisis exemption for this use. (Margarita Collantes)

2. Arizona Department of Agriculture for the use of imidacloprid and bifenthrin on melons to control the sweet potato whitefly; June 9, 1995, to June 9, 1996. (David Deegan)

3. Arkansas State Plant Board for the use of tebufenozide on cotton to control beet armyworms; July 18, 1995, to September 30, 1995. (Margarita Collantes)

4. California Environmental Protection Agency for the use of myclobutanil on strawberries to control powdery mildew; July 28, 1995, to July 27, 1996. (David Deegan)

5. Florida Department of Agriculture and Consumer Services for the use of malathion on atemoya and sugar apples to control Annona seed borers; July 12, 1995, to July 12, 1996. (Margarita Collantes)

6. Georgia Department of Agriculture for the use of tebufenozide on cotton to control beet armyworms; July 18, 1995, to September 30, 1995. (Margarita Collantes)

7. Idaho Department of Agriculture for the use of propamocarb hydrochloride, dimethomorph, and cymoxanil on potatoes to control late blight; July 14, 1995 to September 30, 1995. (Libby Pemberton)

8. Louisiana Department of Agriculture and Forestry for the use of

tebufenozide on cotton to control beet armyworms; July 18, 1995, to September 30, 1995. (Margarita Collantes)

9. Michigan Department of Agriculture for the use of triadimefon on asparagus to control asparagus rust; June 21, 1995, to November 1, 1995. (David Deegan)

10. Michigan Department of Agriculture for the use of chlorothalonil on asparagus to control purple spot; June 21, 1995, to November 1, 1995. (David Deegan)

11. Minnesota Department of Agriculture for the use of triclopyr on aquatic sites to control purple loose strife; July 26, 1995, to September 15, 1995. (Libby Pemberton)

12. Mississippi Department of Agriculture and Commerce for the use of tebufenozide on cotton to control beet armyworms; July 18, 1995, to September 30, 1995. Mississippi had initiated a crisis exemption for this use. (Margarita Collantes)

13. Montana Department of Agriculture for the use of cyhalothrin on small grains to control cutworms; May 17, 1995, to July 1, 1995. (Margarita Collantes)

14. New Jersey Environmental Protection Agency for the use of cymoxanil on tomatoes to control late blight; July 27, 1995, to April 1, 1996. A notice of receipt published in Federal Register of August 2, 1995 (60 FR 39387). The situation appears to be urgent; nonroutine; use can be toxicologically supported and hazard to nontarget organisms is not expected; use is not expected to pose a threat to surface and/or ground water. (Libby Pemberton)

15. New Jersey Environmental Protection Agency for the use of propamocarb hydrochloride on tomatoes to control late blight; July 27, 1995, to April 1, 1996. (Libby Pemberton)

16. New York Department of Environmental Conservation for the use of vinclozolin on snap beans to control white and gray mold; June 1, 1995, to September 15, 1995. (Kerry Leifer)

17. North Dakota Department of Agriculture for the use of sethoxydim on buckwheat to control volunteer cereal grains; July 18, 1995, to July 30, 1995. (David Deegan)

18. Tennessee Department of Agriculture for the use of tebufenozide on cotton to control beet armyworms; July 18, 1995, to September 30, 1995. (Margarita Collantes)

19. Texas Department of Agriculture for the use of carbofuran on cotton to control aphids; June 9, 1995, to September 15, 1995. (David Deegan)

20. Washington Department of Agriculture for the use of propamacarb hydrochloride, cymoxanil, and dimethomorph on potatoes to control late blight; July 7, 1995, to September 30, 1995. (Libby Pemberton)

21. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of mancozeb on ginseng to control leaf and stem blight; May 23, 1995, to August 31, 1995. (Margarita Collantes)

22. Wyoming Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids, pea aphids, and lygus bugs; June 16, 1995, to August 31, 1995. (Larry Fried)

The following States listed below were granted an emergency exemption for the use of propamocarb hydrochloride on potatoes to control late blight; June 23, 1995, to September 30, 1995, except for Florida and Oregon, whose expiration date is June 22, 1996, and October 31, 1995, respectively. A notice of receipt published in the Federal Register of June 21, 1995 (60 FR 32319). The exemption was granted on the basis that the situation appears to be urgent and nonroutine. Limited supplies of recently authorized products indicate need for a third chemical. The use can be toxicologically supported and is not expected to result in hazard to nontarget organisms and should not pose a threat to surface and/or ground water.

1. Delaware Department of Agriculture.
2. Florida Department of Agriculture and Consumer Services.
3. Georgia Department of Agriculture.
4. Maine Department of Agriculture.
5. Maryland Department of Agriculture.
6. Michigan Department of Agriculture.
7. Minnesota Department of Agriculture.
8. New Jersey Department of Environmental Protection.
9. New York Department of Environmental Conservation.
10. North Dakota Department of Agriculture.
11. Ohio Department of Agriculture.
12. Oregon Department of Agriculture.
13. Pennsylvania Department of Agriculture.
14. South Dakota Department of Agriculture.
15. Virginia Department of Agriculture and Consumer Services.
16. Wisconsin Department of Agriculture, Trade, and Consumer Protection. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. Mississippi Department of Agriculture and Commerce on July 7, 1995, for the use of tebufenozide on cotton to control beet armyworms. This program has ended. (Margarita Collantes)

2. Montana Department of Agriculture on July 15, 1995, for the use of bifenthrin on canola to control diamondback moth larvae. This program has ended. (Andrea Beard)

EPA has denied a specific exemption request from the:

1. California Department of Pesticide Regulations for the use of fenpropathrin on tomatoes to control silverleaf and greehouse whiteflies. (Margarita Collantes)

2. Montana Department of Agriculture for the use tralkoxydim on wheat to control weeds. The Agency denied the exemption because the situation is routine and not urgent, and significant economic loss is not expected. (Margarita Collantes)

3. Minnesota, North Dakota, and South Dakota Departments of Agriculture for the use of propiconazole on wheat and barley to control fusarium head blight. The request was denied because residue chemistry indicated that the crops would contain carcinogenic residue in processed commodities. This triggered the ''Delaney Clause'' of the Federal Food, Drug and Cosmetic Act (FFDCA). (Margarita Collantes)

EPA denied the following specific exemption requests for use of Pirate on cotton to control beet armyworms. Pirate is an unregistered chemical which was denied due to risk of unreasonable adverse effects to nontarget birds, aquatic organisms, and the environment. In addition, a registered alternative, tebufenozide, was granted to control this pest on the southeastern cotton belt region.

1. Alabama Department of Agriculture and Industries.
2. Arkansas State Plant Board.
3. Georgia Department of Agriculture.
4. Louisiana Department of Agriculture and Forestry.
5. Mississippi Department of Agriculture and Commerce.
6. Tennessee Department of Agriculture. (Margarita Collantes)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Crisis exemptions.

Dated: November 6, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–30112 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5343–9]

Proposed Administrative Cost Recovery Agreement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, Regarding the Hooker Chemical/Rucco Polymer Site, Hicksville, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative agreement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA'') Region II announces a proposed administrative settlement pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), relating to the Hooker Chemical/Ruco Polymer Site (the ''Site''), Hicksville, Nassau County, New York. This Site is on the National Priorities List established pursuant to Section 105(a) of CERCLA. This notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement, memorialized in an Administrative Cost Recovery Agreement (''Agreement''), is being entered into by EPA and Occidental Chemical Corporation and Ruco Polymer Corporation (the ''Respondents''). Under the Agreement, the Respondents shall pay EPA the sum of $124,665.00 in further reimbursement of EPA's response costs incurred and paid with respect to the Site on or prior to August 16, 1994. In response to EPAs cost recovery demands, Occidental Chemical Corp. had previously reimbursed EPA for $883,813.00 of the Agency's response costs at the Site.

DATES: EPA will accept written comments relating to the proposed settlement on or before January 12, 1996.

ADDRESSES AND FURTHER INFORMATION: Comments should reference the Hooker Chemical/Ruco Polymer Site and EPA Index No. II–CERCLA–95–0216. Comments and any requests for further information, including requests for a copy of the Agreement, should be sent to: Marla E. Wieder, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York, 10007–1866, Telephone: (212) 637–3185.

Dated: November 14, 1995.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 95–30104 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5344–1]

Proposed Administrative Settlement Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the Hudson Coal Tar Site, Hudson, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. § 9622(i), the U.S. Environmental Protection Agency (''EPA'') Region II announces a proposed administrative *de minimis* settlement pursuant to Section 122(g)(4) of CERCLA, relating to the Hudson Coal Tar Site (''Site'') in Hudson, New York. This Site is not on the National Priorities List established pursuant to Section 105(a) of CERCLA. This notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement, memorialized in an Administrative Order on Consent (the ''Order''), is being entered into by EPA and Lockwood Properties, Inc. (''Lockwood''). EPA has determined that Lockwood, the owner of a portion of the Site, is eligible for a *de minimis* settlement pursuant to Section 122(g)(1)(B) of CERCLA, 42 U.S.C. 9622(g)(1)(B).

Under the Order, Lockwood will provide EPA and Niagara Mohawk Power Corp., a potentially responsible party currently undertaking a removal action at the Site, with access to its property in order to permit the performance of response actions there. Lockwood has also agreed, among other things, to cooperate with EPA and Niagara Mohawk in their implementation of response actions at the Site; exercise due care with respect to hazardous substances at Lockwood's property; and provide perimeter fencing to secure the portion of the Site owned by Lockwood. Under the Order, EPA, in turn, covenants not to sue Lockwood for any civil liability for injunctive relief or reimbursement of response costs with regard to the Site, pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), subject to certain reservations of rights.

DATES: EPA will accept written comments relating to the proposed settlement on or before January 12, 1996.

ADDRESSES AND FURTHER INFORMATION: Comments should reference the Hudson Coal Tar Site and EPA Index No. II–CERCLA–95–0212. Comments and requests for further information, including requests for a copy of the Order, should be sent to: Brian E. Carr, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866, telephone: (212) 637–3170.

Dated November 14, 1995.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 95–30103 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5343–8]

De Minimis Settlements Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. § 9622(g), Peerless Industrial Paint Coatings Site, City of St. Louis, St. Louis County, Missouri

AGENCY: Environmental Protection Agency.

ACTION: Notice of the *de minimis* settlements under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g), Peerless Industrial Paint Coatings Site, City of St. Louis, St. Louis County, Missouri.

SUMMARY: The United States Environmental Protection Agency (EPA) has entered into four separate *de minimis* administrative settlements to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g). These settlements are intended to resolve the liability of Canam Steel Company, St. Louis Steel

Products, Henkel Corporation, and Peerless-Premier Appliance Company for the response costs incurred and to be incurred at the Peerless Industrial Paint Coatings Site, City of St. Louis, St. Louis County, Missouri.

DATES: Written comments must be provided on or before January 12, 1996.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: In the Matter of the Peerless Industrial Paint Coatings Superfund Site, City of St. Louis, St. Louis County, Missouri, EPA Docket Nos. VII–94–F–0022, VII–94–F–0021, VII–94–F–0027, and VII–94–F–0023.

FOR FURTHER INFORMATION CONTACT: Denise L. Roberts, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7559.

SUPPLEMENTARY INFORMATION: The settling parties are Canam Steel Company, Henkel Corporation, Peerless-Premier Appliance Company, and St. Louis Steel Products. They are *de minimis* generators of hazardous substances found at the Peerless Industrial Paint Coatings Site, which is the subject Superfund Site. In July and August 1995, Region VII entered into four separate *de minimis* administrative settlements to resolve claims under Section 122(g) of CERCLA, 42 U.S.C. 9622(g).

The Peerless Industrial Paint Coatings Site (the Site) is located in St. Louis at 1265 Lewis Street, St. Louis, Missouri, approximately ¼ mile north of downtown St. Louis in an industrial section of the city. The *de minimis* parties were corporations that manufactured paints. The *de minimis* parties sold paint sludges, paint solids, and paint liquids or semi-liquids to Peerless Industrial Paint Coatings (''Peerless''), a St. Louis corporation, at very low prices. The *de minimis* parties either admitted that they were disposing of hazardous substances through this arrangement, admitted that there was no other customer besides Peerless for such materials, and/or that the sales price was lower than the costs of disposal for hazardous wastes at an authorized permitted facility. Peerless was a manufacturer of paints and magazine coatings that purchased large quantities of paint materials at low prices and accumulated more materials on-site than could be used. In June 1993, the EPA began a removal action at the site. Approximately 3500 drums of hazardous substances that demonstrated the characteristics of ignitability were removed from the facility at the cost of $1,089,062.71.

The settlements have been approved by the U.S. Department of Justice because the response costs in this matter exceed $500,000.00. The EPA estimates the total past and future costs will be approximately $1,206,089.71. Pursuant to the Administrative Orders on Consent, the *de minimis* parties are responsible for the following costs: Peerless-Premier Appliance Company has an attributable share of 1.20% and is responsible for $13,236.45 in past costs and $1,193.24 in future costs; Canam Steel Corporation has an attributable share of 1.29% and is responsible for $14,238.45 in past costs and $1,283.55 in future costs; St. Louis Steel Products has an attributable share of 1.665% and is responsible for $18,412.20 in past costs and $1,659.80 in future costs; and Henkel Corporation has an attributable share of .30% and is responsible for $3,453.48 in past costs and $311.32 in future costs. The EPA determined these amounts to be the *de minimis* parties; fair shares of liability based on the amount of hazardous substances found at the Site and contributed by each of the settling parties. These settlements include contribution protection from lawsuits by other potentially responsible parties as provided for under Section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5).

The *de minimis* settlements provide that the EPA covenants not to sue the *de minimis* parties for response costs at the Site or for injunctive relief pursuant to Sections 106 and 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act of 1980, as amended (RCRA), 42 U.S.C. 6973. The settlements contain a reopener clause which nullifies the covenant not to sue if any information becomes known to the EPA that indicates that the parties no longer meet the criteria for a *de minimis* settlement set forth in Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A). The covenant not to sue does not apply to the following matters:

(a) Claims based on a failure to exercise due care with respect to hazardous substances at the Site;

(b) Claims based on a failure to make the payments required by Section IV, Paragraph 1 of this Consent Order;

(c) Claims based on the exacerbation by Respondent of the release or threat of release of hazardous substances from the Site;

(d) Claims based on the introduction of any hazardous substance, pollutant, or contaminant by any person at the Site after the effective date of this Consent Order;

(e) Criminal liability; or

(f) Liability for damages or injury to, destruction of, or loss of the natural resources.

The *de minimis* settlements will become effective upon the date which the EPA issues a written notice to the parties that the statutory public comment period has closed and that comments received, if any, do not require modification of or EPA withdrawal from the settlements.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–30102 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Community Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 8, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Community Bankshares, Inc., Concord, New Hampshire to acquire 100 percent of the voting shares of Centerpoint Bank, Bedford, New Hampshire.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Stone Street Bancorp, Inc., Mocksville, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Mocksville Savings Bank, Inc., SSB, Mocksville, North Carolina.

C. 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 acquire Interim Central and Southern Bank of Greensboro, Greensboro, Georgia.

Applicant proposes for its existing bank subsidiary, Central and Southern Bank of Greensboro, to merge with and into an interim thrift subsidiary, Interim Central and Southern Bank of Greensboro, pursuant to § 3(a)(4) of the Bank Holding Company Act. Interim Central and Southern Bank of Greensboro will survive the merger and operate under the name Central and Southern Bank of North Georgia.

D. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Associated Banc-Corp, Green Bay, Wisconsin, and its subsidiary, Associated Banc-Shares, Inc., Madison, Wisconsin; to acquire 100 percent of the voting shares of SBL Capital Bank Shares, Inc., Lodi, Wisconsin, and thereby indirectly acquire State Bank of Lodi, Lodi, Wisconsin.

In connection with this application, Associated Banc-Shares, Inc., Madison, Wisconsin, also has applied to become a bank holding company.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. ABNA Holdings, Inc., Dallas, Texas; to become a bank holding company by acquiring 97.6 percent of the voting shares of American Bank, N.A., Dallas, Texas.

Board of Governors of the Federal Reserve System, December 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30341 Filed 12–12–95; 8:45 am]

BILLING CODE 6210–01–F

First Community Bancshares, Inc., 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 29, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Community Bancshares, Inc., Knob Noster, Missouri; to engage *de novo* through its subsidiary, First Mortgage Co., Knob Noster, Missouri, in the sale of credit-related life and accident and health insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Comments on this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 1995.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Adam Financial Corporation, Bryan, Texas; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1), of the Board's Regulation Y. These activities will be conducted throughout the state of Texas.

Board of Governors of the Federal Reserve System, December 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30342 Filed 12–12–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Title VII of the ''Business Opportunity Development Reform Act of 1988'' (Public Law 100–656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 102–366) extended the demonstration program until September 1996 and made certain changes in the procedures for operation of the demonstration program. The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstituted only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total

contract dollars awarded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from October 1, 1994 to September 30, 1995. Modifications to solicitation practices are outlined in the Supplementary Information section below and apply to solicitations issued on or after January 1, 1996.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Tom Wisnowski, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION: Procurements of construction or trash/garbage collection with an estimated value of $25,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procurement Policy (58 FR 13513, March 11, 1993).

Procurements of construction or trash/garbage collection with an estimated value that exceeds $25,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Services in Groups 15, 16, and 17

Procurements for all construction services (except solicitations issued by GSA contracting activities in Regions 3, 4, 5, 6, 8, 9, and 10 in SIC Group 15, shall be conducted on an unrestricted basis.

Procurements for construction services in SIC Group 15 issued by GSA contracting activities in Regions 3, 4, 5, 6, 8, 9, and 10 shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 6 encompasses the states of Iowa, Kansas, Missouri and Nebraska.

Region 8 encompasses the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

Region 10 encompasses the states of Alaska, Idaho, Oregon, and Washington.

Trash/Garbage Collection Services in PSC S205

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer Services (All PSC Codes Under the Demonstration Program)

Procurements for all architect-engineer services (except procurements issued by contracting activities in GSA Regions 2, 3, 4, 5, 9, and the National Capital Region) shall be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by contracting activities in Regions 2, 3, 4, 5, 9, and the National Capital Region shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements may be conducted on an unrestricted basis.

Region 2 encompasses the states of New Jersey, New York, and the territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia

Non-Nuclear Ship Repair

GSA does not procure non-nuclear ship repairs.

Dated: December 4, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy.

[FR Doc. 95–30392 Filed 12–12–95; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

General Notice and Delegation of Authority To Review Decisions Issued by Administrative Law Judges in Certain Medicare Claims; Solicitation of Comments on Existing Procedures for These Appeals

SUMMARY: The publication of this notice and delegation of authority is to advise the public that the Department of Health and Human Services' Departmental Appeals Board has been given jurisdiction to review the decisions of Administrative Law Judges with respect to entitlement to coverage and claims for benefits under Medicare Part A, Hospital Insurance, and Medicare Part B, Supplementary Medical Insurance. It also gives notice of mailing and e-mail addresses to provide opportunities for interested parties to make suggestions for improvements in the current appeals procedures for these cases.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Glide B. Morrisson (202) 690–7043, (telephone) (202) 690–5863 (FAX).

Since the inception of the Medicare program, Administrative Law Judges (ALJs) from the Social Security Administration (SSA) have decided requests for ALJ hearings filed by or on behalf of Medicare beneficiaries concerning requests for payment under Part A of Medicare. In section 9341 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, Congress extended similar administrative review rights concerning requests for payment under Medicare Part B for services furnished on or after January 1, 1987. As a result, SSA's ALJs now conduct hearings concerning Medicare claims brought under both Parts A and B. Beneficiaries and other parties dissatisfied with an ALJ decision on either Part A or Part B claim may request that SSA's Appeals Council review the ALJ's decision. The Appeals Council also reviews ALJ hearing decisions concerning an individual's entitlement to hospital insurance (Part A) and supplementary medical insurance (Part B).

On August 15, 1994, the Social Security Independence and Program

Improvements Act of 1994, Pub. L. 103–296, was enacted, establishing SSA as an independent agency. As a result, the Secretary of Health and Human Services has decided to delegate to the Chair of the Departmental Appeals Board the authority to review ALJ decisions concerning claims for payment under Medicare Part A and B as well as ALJ decisions concerning entitlement to Medicare coverage. The delegation will be effective October 1, 1995. All Medicare cases pending before SSA's Appeals Council on September 30, 1995, will thereafter be the responsibility of the Departmental Appeals Board (DAB). Request for ALJ hearings on claims for payment under Parts A and B and requests for ALJ hearings on entitlement to Medicare coverage will continue to be decided by the ALJs in SSA's Office of Hearings and Appeals.

Until the procedures are modified, the DAB will conduct its review of ALJ decisions under the existing regulations governing appeals of Part A and B claims. Therefore, in conducting its review, the DAB will use the procedures provided in the following authorities, as applicable: 20 CFR Part 404, Subparts J and R, 42 CFR Part 405, Subparts G and H, 42 CFR Part 473, Subpart B (concerning review of decisions on Part A and B determinations made by peer review organizations) and regulations in 42 CFR part 417 governing review of decisions concerning Part A and B claims submitted by enrollees of health maintenance organizations, competitive health plans and health care prepayment plans. For the cases covered by this delegation, where ever the term ''Appeals Council'' is used, the term ''Departmental Appeals Board'' should be inserted.

The DAB, in cooperation with the Health Care Financing Administration, will review current procedures for appropriate changes and improvements. Interested parties may send comments and suggestions to the DAB at the following address: Departmental Appeals Board, Department of Health & Human Services, 200 Independence Avenue, S.W., Room 637D, Washington, DC 20201, or at the following e-mail address: gbm@ospahb.ssw.dhhs.gov.

On October 13, 1993, I delegated to the Departmental Appeals Board my authority to make final decisions on review of, or to decline to review, decisions of Administrative Law Judges involving, *inter alia,* provider participation and termination under section 1866(b)(2) of the Social Security Act and the other authorities enumerated in that delegation. See 58 Fed. Reg. 58171 (October 29, 1993). The delegation to the Departmental Appeals Board dated October 13, 1993, superseded all previous delegations of authority to review decisions by Administrative Law Judges on the referenced authorities, except that the delegation provided that the Social Security Administration, Office of Hearings and Appeals, Appeals Council continued to have the authority to review, or to decline to review, decisions in cases pending before it. There are still five of those cases pending; they are assigned to the same specialized personnel who are transferring to DAB to process the other Medicare appeals being delegated in this notice. Thus, notice is hereby given that any case pending before SSA's Appeals Council on September 30, 1995 that concerns the authorities referenced in the October 13, 1993 delegation will be transferred to the Departmental Appeals Board effective October 1, 1995.

Delegation of Authority

Notice is hereby given that I have delegated to the Chair of the Departmental Appeals Board my authority to make final decisions on review of, or to decline to review, decisions of Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration involving Title XVIII, Parts A and B of the Social Security Act, as provided below:

1. The authority to make final decisions on review of, or to decline to review, decisions of Administrative Law Judges involving determinations made under section 1869 of the Social Security Act concerning whether an individual is entitled to benefits under Part A or Part B, and concerning claims for benefits under Parts A or B.

2. The authority to make final decisions on review of, or to decline to review, decisions of Administrative Law Judges involving determinations made under section 1876(c)(5) of the Social Security Act, which affect an individual's right to receive items and services, without additional cost, from a health maintenance organization.

3. The authority to make final decisions on review of, or to decline to review, decisions of Administrative law Judges involving determinations made under section 1155 of the Social Security Act.

I have also delegated to the Chair of the Departmental Appeals Board the authority to make final decisions on review of, or to decline to review, decisions of Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration involving, *inter alia,* provider participation and termination under section 1866(b)(2) of the Social Security Act and the other authorities enumerated in that delegation for any cases pending before SSA's Appeals Council on September 30, 1995 that concern the authorities referenced in my October 13, 1993 delegation. See 58 Fed. Reg. 58171 (October 29, 1993).

These delegations include, but are not limited to, the authority to administer oaths and affirmations, to subpoena witnesses and documents, to examine witnesses, to exclude or receive and give appropriate weight to materials and testimony offered as evidence, and to make findings of fact and conclusions of law. These delegations, which supersede all previous delegations of authority to make final decisions on review of, or to decline to review, decisions by Administrative Law Judges on the above-referenced authorities, are effective October 1, 1995. Accordingly, all cases decided pursuant to the above-referenced authorities that are pending with the Appeals Council of the Office of Hearing and Appeals, Social Security Administration on September 30, 1995, will thereafter be the responsibility of the Chair of the Departmental Appeals Board.

Dated: October 24, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–30282 Filed 12–12–95; 8:45 am]

BILLING CODE 4120–03–M

Food and Drug Administration

[Docket No. 95N–0363]

Medical Devices; Review of Computer-Aided Diagnostic Software Devices; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to discuss the appropriate approach to the review of premarket submissions for computer-aided diagnostic (CADx) medical devices. Because there is increasing interest in and development of CADx medical devices, the agency is holding this workshop to obtain public comments and suggestions that may help FDA develop device description and assessment methodologies for reviewer guidance for premarket submissions for these CADx medical devices.

DATES: The workshop will be held on January 26, 1996, from 9 a.m. to 4:30 p.m. Participants and other persons who want to be heard must be present by 9 a.m. Submit written notices of participation on or before January 15, 1996.

ADDRESSES: The workshop will be held at the Parklawn Bldg., conference room D, 5600 Fishers Lane, Rockville, MD. Written comments, identified with the docket number found in brackets in the heading of this document, regarding reviewer guidance for CADx devices may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary P. Anderson, Center for Devices and Radiological Health (HFZ–142), 12720 Twinbrook Pkwy., Rockville, MD 20852, 301–443–5020 ext. 40, FAX 301–443–9101.

Contact Mary Anderson (address above) for a registration form for the workshop. There is no registration fee but advance registration is required. Interested persons are encouraged to register early because space is limited. Persons with disabilities who require special assistance to attend or participate in the workshop can be accommodated if advance notification is provided. If you have a disability that affects your attendance at, or participation in, this meeting, please contact Mary Anderson (address and telephone number above), in writing and identify your needs. The availability of appropriate accommodations cannot be assured unless prior written notification is provided.

SUPPLEMENTARY INFORMATION:

I. Background

FDA anticipates receiving increasing numbers of premarket submissions for CADx medical devices. Some of these devices are accessories that analyze data produced by diagnostic medical devices, such as digital radiography systems, and highlight possible findings which assist the device user in interpreting such data. An example of such a device is an automated Pap smear reader. In order to develop reviewer guidance for appropriate device description and assessment methodologies in premarket submissions for these devices, FDA has established a computer-aided diagnostic device working group. This working group is in the process of evaluating the agency's approach to review of premarket submissions for these medical devices.

II. Purpose and Tentative Agenda of the Workshop

The purpose of the public workshop is to obtain suggestions that will help FDA develop reviewer guidance for device description and assessment methodologies in premarket submissions for CADx medical devices.

Presiding over the workshop will be: David G. Brown, Chief Scientist, and Mary P. Anderson, Chief of the Medical Imaging and Computer Applications Branch, Division of Electronics and Computer Systems, Office of Science and Technology, Center for Devices and Radiological Health, FDA. They will be assisted by other FDA officials.

FDA will open the workshop with a summary of the present status of FDA review of these devices. This presentation will provide information on the impetus, objectives, and scope of the FDA's activities in this area. Following FDA's presentation, a specific period of time will be provided for participants to make presentations. Interested persons who wish to participate in the public workshop may, on or before January 15, 1996, submit a written notice of participation to the Dockets Management Branch (address above) identified with the docket number found in brackets in the heading of this document, including name, address, telephone number, business affiliation, a brief summary of the presentation, and an estimate of the amount of the time required for comments.

FDA requests that individuals or groups having similar interests consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests. A schedule of the allotted times will be available at the workshop. Each participant will be notified before the workshop of the approximate time of their presentation. The schedule will be placed on file in the Dockets Management Branch under the docket number found in brackets in the heading of this document. The workshop will also include an opportunity for interested persons who did not submit a notice of participation to make brief statements or comments, if time permits. The workshop will then proceed to a panel discussion of specific issues to be considered in developing FDA's approach to the review of premarket submissions for CADx medical devices. The workshop is informal, and the rules of evidence will not apply. No participant may interrupt the presentation of another participant.

Dated: November 28, 1995.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 95–30333 Filed 12–12–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired.
Title of Information Collection: Request for Medicare Payment-Ambulance.
Form No.: HCFA–1491.
Use: This form is completed on an ''occasional'' basis by beneficiaries and/or ambulance services. It is also submitted to a Medicare carrier to request payment for ambulance services.
Frequency: On occasion.
Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions.
Number of Respondents: 8,513,300.
Total Annual Hours Requested: 1,418,883.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent

within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 5, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–30393 Filed 12–12–95; 8:45 am]

BILLING CODE 4120–03–P

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Revision of a currently approved collection.
Title of Information Collection: Annual Report on Home and Community-Based Waivers.
Form No.: HCFA–372, HCFA–372(S).
Use: States with an approved waiver under section 1915© of the Social Security Act are required to submit the HCFA–372 or HCFA–372(S) annually in order for HCFA to: (1) verify that State assurances regarding waiver cost neutrality are met, and (2) determine the waiver's impact on the type, amount, and cost of services provided under the State plan and health and welfare of recipients.
Frequency: Annually.
Affected Public: State, local, or tribal government.
Number of Respondents: 49.
Total Annual Hours: 18,000.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 4, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–30290 Filed 12–12–95; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Request for Nominations to the National Advisory Committee on Rural Health; Extension of Closing Date

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Extension of Closing Date.

SUMMARY: The Health Resources and Services Administration is requesting nominations to fill five vacancies on the Secretary's National Advisory Committee on Rural Health. The closing date is extended to February 2, 1996. All other aspects of the November 7, 1995 Federal Register Notice (60 FR 62254) remain the same.

ADDRESSES: Nominations and curricula vitae of nominees should be sent to Dena S. Puskin, SC.D., Executive Secretary to the National Advisory Committee on Rural Health, Room 9–05, 5600 Fishers Lane, Rockville, MD 20857.

Dated: December 7, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–30338 Filed 12–12–95; 8:45 am]

BILLING CODE 4160–15–P

Funding Notice for Grant Programs Funded Under Title VIII of the Public Health Service Act for Fiscal Year 1996; Notice of Extension of Application Due Date

This notice extends the application due date for fiscal year (FY) 1996 grant program for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds (section 827). The application due date is extended to January 12, 1996. All applications must be received in the Parklawn Building by close of business on January 12, 1996. This change is necessary because of difficulties experienced with electronically accessing the program materials and unexpected delays in mailing. All other aspects of the October 20, 1995 Federal Register Notice (60 FR 54243) remain the same.

Dated: December 7, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–30337 Filed 12–12–95; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

National Institutes of Health; Proposed Data Collection Available for Public Comment

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Action of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH). National Cancer Institute (NCI) will publish periodic summaries of proposed projects. To request more information on the proposed project, call Ruth A. Kleinerman, M.P.H., Epidemiologist, at (301) 496–6600.

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 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. Send comments to Ruth A. Kleinerman, M.P.H., National Cancer Institute. EPN 408, 6130 Executive Boulevard, Rockville, MD 20892–7364. Written comments should be received by [Federal Register insert the date 60 days following the date of publication].

Proposed Project: Cancer Risk in X-ray Technologists: Second Survey for Incidence—renewal—A cohort study will be conducted to quantify the risk of radiation-induced cancer among 135,000 registered x-ray technologists. X-ray technologists will be asked to respond to a mail questionnaire which collects information about incident

cancers and risk factors for those cancers to evaluate cancer risk associated with occupational exposure to low-level ionizing radiation, taking into account potentially confounding factors. The information will be used by the National Cancer Institute to determine cancer specific radiation risk estimates. Physicians will be contacted to verify self-reports of cancer by x-ray technologists. Burden estimates are as follows:

	No. of respondents	No. of responses per respondent	Avg. burden/response (hours)
X-ray Technologists	14,000	1	.33
Physicians	500	1	.17

Dated: December 5, 1995.

Philip D. Amoruso,

NCI Executive Officer.

[FR Doc. 95–30305 Filed 12–12–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–96–962–1410–00–P; AA–70147 and AA–70153]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Calista Corporation for approximately 34,046 acres. The lands involved are in the vicinities of Goodnews, Alaska, and Crooked Creek, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Drums. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 12, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–30288 Filed 12–12–95; 8:45 am]

BILLING CODE 4310–JA–P

[AK–962–1410–00–P; F–14946–B, F–14946–C, F–14946–D F–14946–A2, F–14946–B2]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Teller Native Corporation for approximately 26,801.05 acres. The lands involved are in the vicinity of Teller, Alaska, within:

Kateel River Meridian, Alaska

Ts. 3 and 4 S., Rs. 35 W.
Ts. 3, 4, and 5 S., Rs. 36 W.
Ts. 4 and 5 S., Rs. 37 W.
Ts. 4 and 5 S., Rs. 38 W.

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 12, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Land Law Examiner, Branch of Gulf Rim Adjudication.

[FR Doc. 95–30388 Filed 12–12–95; 8:45 am]

BILLING CODE 4310–JA–P

[NV–020–02–1990–01]

Winnemucca District, NM; Santa Fe Pacific Gold Corp. Lone Tree Mine Expansion Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca District of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Draft Environmental Impact Statement on Santa Fe Pacific Gold Corporation's Lone Tree Mine Expansion Project. This document is available for public review for a 45 day period.

DATES AND ADDRESSES: Written comments on the Draft Environmental Impact Statement must be postmarked by February 16, 1996.

Public meetings to receive oral and written comments have been scheduled for the dates and places listed below. All meetings will begin at 7:00 p.m. each evening.

* January 9, 1996—at the West Hall, Winnemucca Convention Center, Winnemucca, Nevada.

* January 10, 1996—Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada.

* A copy of the Draft Environmental Impact Statement can be obtained from: Bureau of Land Management, Winnemucca District Office, ATTN: Gerald Moritz, Project Manager, 705 E. 4th Street, Winnemucca, Nevada 89445.

* The Draft Environmental Impact Statement is available for inspection at the following additional locations: Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, Nevada 89520; Humboldt County Library, Winnemucca, Nevada; Lander County Library, Battle Mountain, Nevada; and the University of Nevada Library in Reno.

FOR FURTHER INFORMATION CONTACT: Gerald Moritz, Project Manger at the above Winnemucca District Address or telephone (702) 623–1500.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement analyzes the potential environmental impacts that could result from the expansion of the current gold mining operations at the Lone Tree Mine. Alternatives analyzed include the Proposed Action and No Action. The Lone Tree Expansion would consist of expansion of the existing pit, ore processing facilities, and overburden disposal areas from private land onto public lands.

Dated: November 30, 1995.

Ann J. Morgan,

State Director, Nevada.

[FR Doc. 95–30394 Filed 12–12–95; 8:45 am]

BILLING CODE 4310–HC–M

[CA–063–1150–00]

Public Workshops for the Northern & Eastern Colorado Desert Coordinated Management Plan

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that a series of multi-agency meetings have been scheduled to update the public on the status of the Northern and Eastern Colorado Desert Coordinated Management Plan. The agencies urge interested individuals and organizations to attend these workshops to review progress and offer specific suggestions on the preparation of the draft plan. The following public workshops are scheduled:

Monday, January 8, 7–10 p.m., BLM Riverside District Office, 6221 Box Springs Boulevard, Riverside, CA

Tuesday, January 9, 7–10 p.m., Holiday Inn, 2640 Lakewood Boulevard, Long Beach, CA

Wednesday, January 10, 7–10 p.m., Joshua Tree National Park, Park Headquarters, 54485 Joshua Tree National Park, Twentynine Palms, CA

Thursday, January 11, 7–10 p.m., BLM Palm Springs Resource Area, 630500 Garnet Avenue, Palm Springs, CA

Tuesday, January 16, 7–10 p.m., BLM Needles Resource Area Office, 101 W. Spike's Road, Needles, CA

Wednesday, January 17, 7–10 p.m., Blythe City Council Chambers, 220 North Spring Street, Blythe, CA

Thursday, January 18, 7–10 p.m., Imperial Irrigation District, 1285 Broadway, El Centro, CA

Monday, January 22, 7–10 p.m., U.S. Forest Service, Cleveland National Forest, 10875 Rancho Bernardo Road, Suite 200, Rancho Bernardo, CA

ADDITIONAL INFORMATION: The purpose of the meetings includes: updating the public on the status of the Plan, including the scope and summarized issues that will guide decision making; invite public inspection of some of the information collected on resources and uses that will be used in analyzing values and conflicts and in making decisions focusing on wildlife habitats and the vehicle routes of travel inventories; gathering public comment about the plan's direction and process to date, the information that has been gathered; and advising the public about how to review and study the information gathered and obtain copies of some of the data to be better prepared to review and comment on the draft plan when it is issued.

The Bureau of Land Management is the lead agency and cooperating agencies are: National Park Service, Fish and Wildlife Service, National Biological Service, Marine Corps Air Station, Yuma; and the California Department of Fish and Game.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION: Contact the Bureau of Land Management, California Desert District, External Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507; (909) 697–5215.

Dated: November 29, 1995.

Jo Simpson,

Acting, District Manager.

[FR Doc. 95–30423 Filed 12–12–95; 8:45 am]

BILLING CODE 4310–40–M

[OR–958–1430–01; GP6–0033; OR–44130, OR–48183–WA]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon and Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 3,310 acres of public lands in Oregon, and 1,846.04 acres of public lands in Washington, out of Federal ownership. This action will also open 1,280 acres of reconveyed lands to surface entry. The 640 acres in Oregon are already open to mining and mineral leasing and the mineral estate in the 640 acres in Washington is not in Federal ownership.

EFFECTIVE DATE: January 18, 1996.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–952–6171.

SUPPLEMENTRY INFORMATION: Under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, patents have been issued transferring 3,310 acres in Harney County, Oregon, and 1,846.04 acres in Grant County, Washington, from Federal to private ownership.

In the exchange, the following described lands has been reconveyed to the United States:

Willamette Meridian

T. 5 N., R. 18 E.,
Sec. 27.

The area described contains 640 acres in Klickitat County, Washington.

Willamette Meridian

T. 32 S., R. 32 ¾ E.,
Sec. 15, W½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 21, N½NE¼;
Sec. 22, N½ and E½SE¼.

The area described contains 640 acres in Harney County, Oregon.

At 8:30 a.m., on January 18, 1996, the lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on January 18, 1996, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Dated: December 1, 1995.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 95–30287 Filed 12–12–95; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft Policy for Conserving Species Listed or Proposed for Listing Under the Endangered Species Act While Providing and Enhancing Recreational Fisheries Opportunities; Request for Public Comment

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of policy; Request for public comments.

SUMMARY: The Fish and Wildlife Service and the National Marine Fisheries Service (Services) propose to issue a policy that will address the conservation needs of species listed, or proposed to be listed, under the Endangered Species Act of 1973, as amended (ESA) while providing for the continuation and enhancement of recreational fisheries. This proposed policy identifies measures the Services will take to ensure consistency in the administration of the Endangered Species Act of 1973, as amended between and within the two agencies, promote collaboration with other Federal, State, and Tribal fisheries managers, and improve and increase efforts to inform nonfederal entities of the requirements of the ESA while enhancing recreational fisheries. This policy meets the requirements set forth in Section 4 of Executive Order 12962, Recreational Fisheries.

DATES: Comments on this proposed draft policy must be received on or before February 12, 1996 in order to be considered in the final decision on this proposed policy.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 452, Arlington, Virginia 22203 (telephone 703/358–2171), or the Chief, Endangered Species Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713–1401). Comments and materials received will be available for public inspection, by appointment, during normal business hours in Room 452, 4401 North Fairfax Drive, Arlington, Virginia 22203 (703/358–2171).

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (703/358–2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service (301/713–1401) at the respective addresses.

SUPPLEMENTARY INFORMATION:

Background

The ESA specifically charges the Secretaries of the Interior and Commerce with the responsibility to identify, protect, manage, and recover species of plants and animals in danger of extinction. The ESA also specifically identifies the protection and conservation of ecosystems upon which federally listed species depend as among the legislation's purposes (16 U.S.C. 1531(i).

In addition to the ESA, many Federal laws recognize the importance of aquatic resources (e.g., Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act, Anadramous Fish Conservation Act, Federal Water Project Recreation Act, Federal Aid in Sport Fish Restoration Act, National Wildlife Refuge System Administration Act of 1966, Magnuson Fishery Conservation and Management Act, Marine Sanctuaries Act, Coastal Zone Management Act, National Recreation Act of 1962, National Environmental Policy Act). These laws outline the roles of several Federal agencies to protect, restore, and conserve aquatic resources, and to provide for and enhance fisheries and other recreational uses; some apply only to activities undertaken, permitted, licensed, or funded by a Federal agency.

Most of North America's aquatic environments and biological communities have been significantly altered by human impacts. Degraded habitats have reduced the capacity of aquatic ecosystems to support former diversity and abundance of native fish and other freshwater species. Degraded and altered habitats are among the most commonly cited causes of population extirpation and decline among federally protected endangered and threatened aquatic species. Likewise, losses of suitable aquatic habitats have resulted in significant declines among many native sport and non-game species of fish and other aquatic organisms.

As of November 1, 1995, within the United States, 105 species of fish and 57 species of clams/mussels are on the Federal threatened or endangered species list (50 CFR 17.11 & 17.12). Approximately 36 percent of the fishes, 64 percent of the crayfishes, and 69 percent of the freshwater mussels in the United States are considered imperiled or extinct (Data from the National Network of Natural Heritage Programs and Conservation Data Centers and The Nature Conservancy, Eastern Regional Office, Boston, Massachusetts).

The Services recognize that fishery resources and aquatic ecosystems are integral components of our heritage and play an important role in the Nation's social, cultural, and economic well-being. Annually, approximately 50 million anglers spend $24 billion directly on tackle, equipment, food and lodging, and other fishing-related expenses. The total economic output (wholesale, retail, manufacturing, and supply of goods and services) stimulated by angler spending exceeded $69 billion in 1991. Those expenditures generated over $2.1 billion in Federal tax revenues, and provided employment for approximately 1.3 million people nationwide.

Historically, resource managers did not fully understand the effects of some management actions on ecosystems. Habitat alteration and degradation, heavy fishing pressure, and introduction of non-native species often resulted in unexpected negative impacts to other ecosystems components. As today's managers realize more fully the impacts of their actions, they also realize that they must be more cautious in what activities they prescribe in natural ecosystems. The benefits gained by some actions may be paid for with losses to non-target species or habitats. This has led to potential conflicts between efforts to conserve native species and their communities, and obligations to maintain and enhance recreational fishing opportunities. These issues have been of particular concern where the Services' responsibilities for both recreational fisheries and recovery of federally protected species are perceived to be opposed or mutually exclusive.

The present altered condition of many aquatic ecosystems limits their ability to support fish and other aquatic organisms. Successful future management of the Nation's aquatic resources must become more focused on an ecosystem approach to management that recognizes multiple uses of aquatic systems. Management of biological resources must be based on a sound scientific understanding of species' life histories, habitat requirements, and ecosystem processes. Resource managers and administrators must recognize the intrinsic, aesthetic, recreational, and economic importance of these same resources and assess their ability to meet the needs and desires of a variety of interests. Successful future management of aquatic resources requires substantive cooperative partnerships and a willingness to resolve differences among the Services and other Federal agencies, States, Native American governments, and private stakeholders. Such cooperation and problem solving must be based on a framework of mutually recognized concerns and common goals developed by all the stakeholders in a given area.

On June 7, 1995, President Clinton issued Executive Order 12962, Recreational Fisheries. That order requires Federal agencies, to the extent permitted by law and where practical, and in cooperation with States and Tribes, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for

increased recreational fishing opportunities. Among other actions, the order requires all Federal agencies to aggressively work to promote compatibility and reduce conflict between administration of the ESA and recreational fisheries.

Policy

The Services recognize the primary responsibility of State and Native American governments for the protection and management of fish, wildlife, and plant resources within their jurisdictions. The Services' policy is to work closely with the States and other stakeholders to minimize and resolve conflicts between implementation of the ESA and activities to enhance recreational fisheries. This will be accomplished through cooperative partnerships with other Federal agencies, State and local governments, Native American governments, recreational fisheries interests, conservation organizations, industry, and other interested recreational fisheries stakeholders. Activities to be undertaken by the Services with respect to implementation of the ESA include the following general areas:

1. The Services will increase efforts to work with all stakeholders in a given area to develop mutually understood and accepted goals and objectives among the involved Federal agencies, States, Native American governments, and affected recreational fisheries interests for the conservation of listed species by:

A. Ensuring consistency in ESA implementation between and within the Services;

B. Promoting cooperative interaction with other Federal agencies, States, Native American governments, and recreational fisheries stakeholders at appropriate organizational levels in implementing the ESA;

C. Promoting collaboration and information sharing among other Federal agencies, States, Native American governments, and recreational fisheries stakeholders;

D. Coordinating with all affected partners throughout the decision-making processes on federally listed species issues that may affect recreational fisheries; and

E. Improving and increasing efforts to inform non-Federal entities of the requirements of the ESA with particular reference to Sections 4, 7, 9, and 10.

2. The Services will encourage participation of other Federal agencies, States, Native American governments, and affected recreational fisheries stakeholders in developing, implementing, and reviewing actions identified in approved recovery plans for listed species by:

A. Involving other Federal agencies, States, Native American governments, recreational fisheries stakeholders in recovery planning and implementation;

B. Encouraging proactive conservation, restoration, and improvement projects on public and private lands and waters to conserve federally listed or proposed aquatic species and to support, when possible, similar measures to prevent further decline of species and loss of habitat in order to preclude the need to list additional species under the ESA;

C. Supporting management practices that are consistent with recovery objectives and compatible with existing recreational fisheries;

D. Identifying priorities for the restoration of aquatic habitats needed to conserve and recover federally listed and proposed species and, working to concurrently to support increased recreational fishing opportunities to the maximum extent possible;

E. Encouraging management actions that protect and conserve aquatic habitats, ecological processes and the diversity of aquatic communities;

F. Coordinating the reintroduction of listed species into former habitats within the species' historical range with other Federal agencies, States, and Native American governments, and other interested or affected entities, including recreational fisheries interests;

G. Evaluating the potential impacts of proposed introductions of non-indigenous species or hybrids in drainages supporting federally listed or proposed species. Such introductions must be based on management plans incorporating sound genetics, disease control, ecological principles, and listed species recovery objectives, as well as recreational fisheries and other socio-economic objectives;

H. Ensuring the effectiveness of actions taken to recover listed species by periodically evaluating, and adjusting conservation and recovery strategies and actions accordingly to minimize adverse effects on recreational fisheries where possible;

I. Eliminating unnecessary restrictions affecting recreational fisheries. Priority will be given to reviewing restrictions on recreational fisheries in areas currently unoccupied by a listed species but within known historical range of the listed species, areas unoccupied but designated as critical habitat, and areas that are not viewed as essential to a listed species' recovery. The value of the unoccupied areas as reintroduction sites for federally listed species will be carefully evaluated and balanced with activities needed to enhance recreational fisheries.

J. Encouraging States to become active participants in listed aquatic endangered, threatened, and proposed species recovery through Section 6 grants; and

K. Assisting the States and Native American governments in meeting their recreational fishing goals.

3. The Services, in cooperation with other Federal agencies, States, Native American governments, private organizations, and other recreational fisheries stakeholders will provide the public with a better understanding of the relationship between conservation and recovery of federally listed and proposed species and recreational fisheries by:

A. Involving the public in identifying opportunities to enhance recreational fisheries while providing for the conservation of federally listed species, and in identifying and implementing solutions to aquatic systems degradation;

B. Informing the fishing and non-fishing public about the ESA. Such efforts will include but not be limited to addressing topics such as the incidental take of listed species, the use of 4(d) rules, habitat conservation planning, and other adaptive conservation tools; and

C. Assisting to identify and provide, contingent on appropriations, priorities, and other constraints, comparable alternative recreational opportunities when existing recreational fisheries opportunities are altered or curtailed to meet objectives for conservation of federally listed or proposed species.

4. In order for the Services to meet particular mandates to conserve federally endangered, threatened, or proposed species while providing and enhancing recreational fisheries opportunities, the Services will:

A. Work with the recreational fisheries community in evaluating accomplishments, including those of the Services, toward meeting the prescriptions of this policy; and

B. Restore and enhance aquatic habitats to conserve Federal endangered, threatened, and proposed species and increase recreational fishing opportunities on Federal lands, consistent with agency missions, authorities, and as described in various agency strategic plans and initiatives contingent on appropriations, priorities, and other constraints.

Scope of Policy

This draft policy applies to all pertinent organizational elements of the Services and includes all efforts funded, authorized, or carried out by the Services relative to recreational fisheries and implementation of the ESA.

Public Comments Solicited

The Services intend that any final policy be accurate and effective and take advantage of information and recommendations from all interested parties. Therefore, the Services solicit comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party. The final decision on this policy will take into consideration any comments and any additional information received by the Services, and may lead to a policy that differs from this draft. The Services' decision will be published for public information

Author/Editor

The editors of this draft policy are David Harrelson of the Fish and Wildlife Service's Division of Endangered Species, Mail Stop 452 ARLSQ, 1849 C Street, NW, Washington, DC 20240 (703/358–2171), Bob Batky of the Fish and Wildlife Service's Division of Fish Hatcheries, Mail Stop 832 ARLSQ, 1849 C Street, NW, Washington, DC 20240 (703/358–1715), and Marta Nammack of the National Marine Fisheries Service's Endangered Species Division, 1315 East-West Highway, Silver Spring, Maryland 20910 (301/713–1401).

Authorities

Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544), Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), Fish and Wildlife Coordination Act (16 U.S.C. 661–667e), Federal Water Project Recreation Act (16 U.S.C. 460 (L)(12)–460(L)(21), Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k), Anadromous Fish Conservation Act (16 U.S.C. 757a–757g), Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801–1862), National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347).

Dated: December 1, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: December 4, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

[FR Doc. 95–30485 Filed 12–11–95; 2:13 pm]

BILLING CODE 4310–55–M

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–808054

Applicant: Sedgewick County Zoo, Wichita, KS.

The applicant requests a permit to import four male and one female captive-born and captive-held Puerto Rican boas (*Epicrates inornatus*), and five male captive-born and captive-held Jamaican boas (*Epicrates subflavus*) from the Granby Zoo, Canada, to enhance the propagation and survival of the species through captive breeding.

PRT–809370

Applicant: Wildlife Conservation Society, Bronx, NY.

The applicant has requested a permit to import blood and tissue samples, and salvaged tissue samples from available carcasses collected in the Campos de Tuyu Wildlife Preserve, Argentina, from free-living pampas deer (*Ozotoceros bezoarticus*) for the purpose of enhancement of the species through scientific research.

PRT–809275

Applicant: Philadelphia Zoological Garden, Philadelphia, PA.

The applicant requests a permit to import three male and three female African wild dogs (*Lycaon pictus pictus*) bred in captivity at the De Wildt Cheetah Centre, De Wildt, South Africa, for the purpose of enhancement of the survival of the species through propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 8, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–30399 Filed 12–12–95; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–366]

Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes; Notice of Termination of Investigation and Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order in the above-captioned investigation and terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: This investigation was instituted by the Commission on June 8, 1994, based on a complaint filed by Minnesota Mining and Manufacturing Co. (3M). On March 23, 1995, the then presiding administrative law judge (ALJ)(Chief Judge Janet Saxon) issued her final ID in the investigation. The ALJ determined that a violation of section 337 of the Tariff Act of 1930, as amended, had occurred by reason of infringement of certain claims of U.S. Letters Patent 4,166,152 (the '152 patent) in the importation or sale of certain products containing microsphere adhesives by Kudos Finder Tape Industrial Ltd. and Kudos Finder Trading Co. (collectively,

Kudos). The finding of violation as to Kudos was based on adverse inferences drawn from Kudos' failure to cooperate in discovery. The ID found no violation as to respondents Taiwan Hopax Chemicals Manufacturing, Co., Ltd.; Yuen Foong Paper Co., Ltd.; Beautone Specialties Co., Ltd.; and Beautone Specialties Co. (collectively, Beautone).

On April 17, 1995, 3M, Beautone, and the Commission investigative attorney (IA) filed petitions for review of the ID. On April 27, 1995, they filed responses to each other's petitions. On May 23, 1995, the Commission determined to review the issues of (1) claim interpretation, (2) patent infringement by Beautone and Kudos, (3) patent validity under 35 U.S.C. §§ 102(f), 102(g), and 112, second paragraph, and (4) domestic industry. The Commission determined not to review the remainder of the ID. The Commission also determined to remand the ID to the ALJ for additional findings and for clarification of certain findings made in the ID concerning the issues under review.

Subsequent to remand of the ID, the investigation was reassigned to Judge Paul Luckern, who, on August 8, 1995, issued his ID on remand. 3M and Beautone filed petitions for review on August 18, 1995. 3M, Beautone, and the IA filed responses to the petitions. On September 22, 1995, the Commission determined not to review the remand ID, thereby resolving the issues of claim interpretation and validity under 35 U.S.C. § 112, and the validity of claims 1, 2, 4, and 5. The Commission determined not to review the ALJ's remand ID and requested written submissions on the issues of remedy, the public interest, and bonding. 60 *Fed. Reg.* 50215 (1995)(Sept. 28, 1995). On review the Commission determined that claims 7, 8, and 10 were not invalid under 35 U.S.C. §§ 102(f), 102(g); that Beautone did not infringe any of the '152 patent claims in issue; that Kudos infringed claims 1, 4, and 7, based on adverse inferences; and that there is a domestic industry.

Submissions on remedy, the public interest, and bonding were received from complainant 3M, respondent Beautone, and the IA. Complainant, respondents, and the IA also filed reply submissions on those issues.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission made its determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed importation of infringing microsphere adhesives, and products containing same, including repositionable notes and products containing repositionable notes, manufactured and/or imported by or on behalf of Kudos. The order applies to any of the affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns of Kudos Finder Tape Industrial Ltd. and Kudos Finder Trading Co.

The Commission also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude the issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.58 of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. § 210.58)(1994).

Copies of the Commission order, the Commission opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: December 8, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–30398 Filed 12–12–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32704]

East Cooper and Berkeley Railroad—Construction and Operation Exemption—in Berkeley County, SC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by East Cooper and Berkeley Railroad (EC&B) of a 1.7-mile rail line running northwest from the terminus of EC&B's line (milepost 14.8) near Wando, in Berkeley County, SC.

DATES: This exemption is effective on December 13, 1995. Petitions to reopen must be filed by January 2, 1996.

ADDRESSES: Send pleadings, referring to Finance Docket No. 32704, to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423–0001; and (2) Petitioner's representative: David F. Groose, P.O. Box 279, Charleston, SC 29402–0279.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, D.C. 20423–0001. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: December 5, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30389 Filed 12–12–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32817]

Pine Belt Southern Railroad Company, Inc.—Trackage Rights Exemption—The Western Railway of Alabama

The Western Railway of Alabama (WRA) has agreed to grant overhead trackage rights to Pine Belt Southern Railroad Company, Inc. (PBRR),[1] on WRA's line of railroad as follows: (1) that portion of WRA's Lafayette Line beginning at its point of switch at valuation Station (V.S.) 1005+80, WRA milepost XXB–107.37, and extending north 369 feet (0.07 miles) to the ownership point between WRA and PBRR opposite V.S. 1002+11.0, milepost XXB–107.29; and (2) that portion of WRA's main track beginning at the point of switch of the Lafayette Line at V.S. 1005+80, WRA milepost XXB–

[1] The overhead trackage rights between Opelika and Roanoke Junction, AL, will allow PBRR to route traffic between Opelika to Lafayette, AL (Lafayette Line), via a combination of lines purchased from Central of Georgia Railroad Company a wholly owned subsidiary of Norfolk Southern Railway Company, and trackage rights acquired from WRA.

107.37, and extending 11,453 feet (2.17 miles) south to the point of switch of Central of Georgia Railroad Company Track No. 24 at V.S. 1120+32.5, WRA milepost XXB–109.55. The total length of trackage rights is 2.24 miles. The trackage rights were to become effective December 1, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,[2] and served on: Andrew C. Rambo, 104 Depot St., P. O. Box 129, Shelbyville, TN 37160.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: December 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30390 Filed 12–12–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 31102]

Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision modifying historic preservation condition imposed in 1988.

SUMMARY: The Commission has removed a condition, imposed in 1988 in connection with a sale of rail lines, that prevented the railroad from selling, destroying or modifying affected properties until completion of procedures under section 106 of the National Historic Preservation Act. 16 U.S.C. 470f.

EFFECTIVE DATE: January 12, 1996.

FOR FURTHER INFORMATION CONTACT: Louis Mackall, (202) 927–6056. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On November 25, 1994, the Commission issued a Federal Register notice (59 FR 60656) concerning a proposal to reopen this proceeding to remove a condition that was imposed 6 years before in this rail line sale proceeding. We noted that the condition is inconsistent with our current procedures and may no longer be necessary. After reviewing the comments, we believe that our proposal should be adopted, and the condition modified.

As we previously noted, Wisconsin Central Ltd. (Wisconsin Central) purchased approximately 1800 miles of rail line from Soo Line Railroad Company (Soo), on October 11, 1987, pursuant to the class exemption for rail line sales, 49 CFR 1150.31 *et seq.*[1] We allowed the sale to proceed under the class exemption, but imposed a historic preservation condition. Rather than delaying the public benefit of the line sale in preserving rail service, we permitted the sale, but ordered the carrier not to take any steps that would affect historic properties until after the National Historic Preservation Act (NHPA) process could be completed. We imposed the following broad historic preservation condition:

> The Commission will undertake a section 106 National Historic Preservation Act process in this matter. Pending completion thereof, [Wisconsin Central] shall refrain from taking any action that may jeopardize the historic integrity of sites and structures 50 years old or older.

Because of the large number of properties transferred, our Section of Environmental Analysis (SEA) attempted to reach a ''programmatic agreement'' (36 CFR 800.13) or ''memorandum of agreement'' (36 CFR 800.5) with the various State Historic Preservation Officers (SHPOs) involved and the Advisory Council on Historic Preservation (ACHP)[2] to limit this process to historic properties that might actually be adversely affected by the transfer, so that we could craft appropriate mitigation conditions for them. As we detailed in our notice, however, this effort proved unsuccessful. We then used a case-by-case historic preservation process for each particular property that Wisconsin Central has subsequently sought to sell or demolish. This process has typically been very slow, and has often taken several years.

As we pointed out in our notice, the 1991 revisions to our historic preservation rules now require a historic preservation process in line sale cases only where, at the time of the transfer, the applicant plans to dispose of or alter properties subject to our jurisdiction that are 50 years or older.[3] *Implementation of Environmental Laws,* 7 I.C.C.2d 807, 828 (1991). Carriers need not file a historic report for rail line sales ''where . . . there are no plans to dispose of or alter properties subject to ICC jurisdiction that are 50 years old or older.'' 49 CFR 1105.8(b)(1). Nor are historic preservation conditions imposed absent such plans.

In our notice, we explained that, under our new rules, if a condition were imposed in a line sale case such as this one, it would apply only to properties that are used or useful in rail service and that the buyer has plans to dispose of or alter as a result of the acquisition and outside the context of a further abandonment or sale application.[4] As we noted there, these rules have been applied in about 100 cases and have worked well in narrowing the focus of the historic review process to rail properties that may actually be affected by a sale transaction.

The broad condition imposed here has outlived its usefulness. Before Wisconsin Central can dispose of any of the properties it obtained from Soo in 1987, it must complete a lengthy historic preservation process for each particular property. This situation would continue indefinitely, because unless we amend the condition, it would cover all of Wisconsin Central's properties as long as it remains a railroad.[5]

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[2] Legislation to terminate the Commission on December 31, 1995, is now pending enactment. Until further notice, the parties submitting pleadings should continue to use the current name and address.

[1] *See Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Company,* Finance Docket No. 31102 (ICC served July 28, 1988). The exemption removes certain regulatory requirements associated with filing a formal application under 49 U.S.C. 10901.

[2] A programmatic agreement, negotiated between the ACHP and the responsible agency official in consultation with the appropriate SHPO, may be sued to determine proper historic preservation measures for projects when ''effects on historic properties are similar and repetitive.'' The programmatic agreement is a contract that must be agreed to in writing by ACHP, the SHPO, and the agency, to be effective.

A memorandum of agreement (MOA) may be used, usually for a single project, where the agency and the SHPO agree on a course of action. ACHP must have an opportunity for comment.

[3] These rule changes were made in consultation with the ACHP. It is unclear whether Wisconsin Central would have had to file a historic report or be subject to historic preservation conditions under this new standard, because it is not clear whether Wisconsin Central anticipated disposing of any properties at the time.

[4] If subsequent abandonment or sale authority is required for the disposition of properties, the appropriate NHPA review will take place in the context of those proceedings.

[5] We note that the problem relates to sales of properties that are not part of a line for which abandonment authority is sought. In abandonment proceedings, historic structures would be documented in any event.

The Comments

In response to our notice, we received comments only from ACHP and from the Minnesota and Michigan SHPOs. ACHP expresses disappointment that it and the Commission were not able to work out some kind of programmatic agreement. ACHP maintains that it would be premature to remove the condition without requiring that the Commission and the Wisconsin Central demonstrate that they have made a good faith effort to reach a programmatic agreement.

The Michigan SHPO argues that removal of the historic preservation condition now would nullify the Commission's compliance with the National Historic Preservation Act, and that the agency should continue to attempt to reach a suitable programmatic agreement. The Minnesota SHPO is concerned that there is at least one historic property on the 20-mile segment of the Wisconsin Central that is in Minnesota that may be adversely affected by the proposal.

Discussion and Conclusions

Eight years have now passed since Wisconsin Central acquired these properties. No comment has been filed challenging our assertion that from this point forward, Wisconsin Central's sale or demolition of properties should no longer be considered to be the result of the original purchase from the Soo. Rather, because of the passage of time, these decisions more appropriately are considered to be the normal result of the carrier's continuing ownership and management of these properties. If this transaction were to take place today, we would impose a historic condition only with regard to particular properties that the carrier identifies at the outset that it contemplates selling or altering. Thus, it would be unfair to continue to impose a greater burden on Wisconsin Central than we would now impose on other railroads.

There would be no point in entering into a programmatic or a memorandum of agreement now, nor do we believe that continuing the condition is necessary for compliance with NHPA. SEA and Wisconsin Central have already undertaken the historic preservation process for every property that the carrier has altered or disposed of since these properties were acquired. That should cover all of the properties that are affected by the sale. Future property dispositions, with the exception set forth in the following paragraph, will not be deemed to result from the sale.

Accordingly, we are reopening this proceeding and modifying the condition to require completion of the historic review process only with regard to specific properties for which that process is already underway or of which the carrier has already informed SEA that it plans to dispose.[6] The disposal or alteration of other properties is outside the scope of this proceeding.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. This proposal should not have any adverse impact on small entities.

Decided: December 1, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30240 Filed 12–12–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed Consent Decree in *United States* versus *Wheeling-Pittsburgh Steel Corp.*, Civil Action No. 93–0195W (N.D.WVA), was lodged on December 6, 1995, with the United States District Court for the Northern District of West Virginia. The decree addresses the violations of Wheeling-Pittsburgh (''Wheeling-Pitt''), at its Follansbee Coke Plant in Follansbee, West Virginia, of the West Virginia State Implementation Plan (''SIP''), enforced pursuant to Section 113 of the Clean Air Act, 42 U.S.C. 7413, and certain reporting requirements contained in the National Emission Standard for Hazardous Air Pollutants (''NESHAP'') for Benzene Emissions from Coke By-Product Recovery Plants, 40 C.F.R. Part 61, Subpart L. Wheeling-Pitt violated the SIP by combusting coke oven gas which had not been desulfurized (as a result of unplanned outages at the Follansbee furnace by-product recovery plant, where hydrogen sulfide is stripped from coke oven gas during normal operations), by allowing raw coke oven gas to be emitted (''vented'') into the ambient air during two emergencies caused by elevated gas pressure within coke oven batteries, and by occasional failures to comply with the SIP's pushing standards.

Under the proposed Consent Decree, Wheeling-Pitt will pay a civil penalty of $700,000 and has agreed to detailed injunctive provisions. Wheeling-Pitt has abated all of the SIP violations. As to the SIP's desulfurization requirements, the Decree requires that, within 45 days of entry of the Decree, Wheeling-Pitt must have demonstrated full compliance with the SIP for seven consecutive days. Further, if the continuous emissions monitor (''CEM'') used to measure compliance with the desulfurization standards should malfunction, and is out of service for two consecutive hours, then Wheeling-Pitt must use a backup CEM, or, failing that, must measure and report certain parameters of the desulfurization process so that EPA may gauge Wheeling-Pitt's compliance. The Decree contains, in addition, requirements for Wheeling-Pitt to install, and properly operate and maintain, a new hydrogen sulfide scrubber and CEM at the recovery plant. Finally, to ensure that the recovery plant is operated and maintained adequately, the Decree contains detailed requirements regarding preventative maintenance, spare parts inventories, and standard operating procedures.

As to pushing, Wheeling-Pitt must, within 45 days of entry of the Decree, demonstrate compliance with the SIP's pushing standard for five consecutive days. Further, the company must continue to monitor its pushing operations weekly until it has produced twelve consecutive weeks of data showing 100% compliance. To correct its violations of the SIP's pushing standards, Wheeling-Pitt has installed a number of improvements, including tighter boot seals at the top of the coke battery wall and a modified hood for the quench car. To abate its venting violations, Wheeling-Pitt has installed flares at its coke batteries, as now required under the Coke Oven Battery NESHAP.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *Wheeling-Pittsburgh Steel Corp.*, DOJ Ref. #90–5–2–1–1868.

The proposed consent decree may be examined at the office of the United States Attorney, 1100 Main Street, Suite 200, Wheeling, West Virginia 26003; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania

[6] Wisconsin Central should submit a list of such properties within 30 days.

19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–30395 Filed 12–12–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. American Bar Association, Civ. No. 95–1211 (CR) (D.D.C.); Supplemental Response of the United States to Two Additional Public Comments Concerning the Proposed Final Judgment

Pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), the United States publishes below two additional written comments received on the proposed Final Judgment in *United States* v. *American Bar Association,* Civil Action No. 95–1211 (CR), United States District Court for the District of Columbia, together with its response thereto.

Copies of the written comments and the response are available for inspection and copying in Room 3235 of the Antitrust Division, United States Department of Justice, Tenth Street and Constitution Avenue, N.W., Washington, D.C. 20530 (telephone 202/514–2481) and the inspection at the Office of the Clerk of the United States District Court for the District of Columbia, Room 1825A, United States Courthouse, Third Street & Constitution Avenue, N.W., Washington, D.C. 20001.

Rebecca P. Dick,

Deputy Director of Operations.

United States' Supplemental Response to Two Additional Public Comments

The United States is filing this Supplemental Response to respond to letters from law professors Marina Angel and Leslie Espinoza to the Attorney General about the proposed Final Judgment. The Antitrust Division's notice under the Antitrust Procedures and Penalties Act (''APPA'') directed that public comments be sent to John F. Greaney, Chief, Computers and Finance Section, Department of Justice, Antitrust Division. Because Professors Angel and Espinoza sent their letters to the Attorney General instead of Mr. Greaney, we had not received those letters when we filed our ''Response To Public Comments'' on October 27. Since the Government's Response states that it will treat as timely all comments received up to the time of filing that response, we provide this Supplemental Response to these two letters from law faculty.[1]

The Government has carefully reviewed the letters from Professors Angel and Espinoza. Entry of the proposed Final Judgment remains in the public interest.

1. Professor Marina Angel (Exhibit 1)

Professor Angel is under the impression that the Antitrust Division seeks to eliminate enforcement of the American Bar Association's (''ABA'') antidiscrimination accreditation standards. ABA Accreditation standards 211–213, dealing with discrimination, are not affected by the proposed Final Judgment. Nor is the enforcement of those standards. Law schools will continue to maintain faculty salary records. Accreditation inspection teams may review these records to investigate discrimination complaints. The proposed Final Judgment prevents the ABA, but not other organizations, from collecting and disseminating salary data. Additionally, site inspection teams may not compare salary levels at one law school with those at another, since the Complaint alleges that this had been done to raise salaries illegally, but may review the records of the inspected school to resolve discrimination allegations.

2. Professor Leslie G. Espinoza (Exhibit 2)

Professor Espinoza is concerned that the consent decree would prevent the Society of American Law Teachers from collecting salary data from law schools that may be used to determine if salary levels are discriminatory. The consent decree is not intended to relax the ABA's antidiscrimination accreditation standards, and it will not have that effect. The Society of American Law Teachers procures salary data from law school deans that may be used to ascertain whether salary levels are discriminatory. While the ABA will no longer be permitted to collect and disseminate faculty salary data and to use it in the accreditation process to increase faculty salaries, law schools will continue to maintain salary data and other organizations may collect it. In this regard, we realize that organizations, such as the American Association of University Professors, have collected and published faculty salary data for many years. While the ABA may not collect and use salary data to raise general salary levels, accreditation inspection teams may fully investigate allegations of discrimination at a law school, including allegations of discriminatory salaries, and may review salary records at that law school to resolve the discrimination allegations.

Conclusion

The ABA used the accreditation process to fix and raise faculty salaries. They collected extensive salary data and used it to pressure schools to raise their salaries to an artificial level. The consent decree is narrowly tailored to prevent such illegal collusion in the future. It does not affect the ABA's enforcement of antidiscrimination accreditation standards.

Dated: November 3, 1995.

Respectfully submitted,

Anne K. Bingaman,

Assistant Attorney General, Antitrust Division.

John F. Greaney,

D. Bruce Pearson,

Jessica N. Cohen,

James J. Tierney,

Molly L. DeBusschere,

U.S. Department of Justice, Antitrust Division, Computers and Finance Section, Judiciary Center Building, 555 Fourth Street, N.W., Washington, DC 20001, 202/307–6122.

Temple University, School of Law

1719 N. Broad Street (055–00), A Commonwealth University, Philadelphia, Pennsylvania 19122, (215) 204–7861, Fax: (215) 204–1185

October 16, 1995.

The Honorable Janet Reno,

Attorney General, Department of Justice, R. 4400, Tenth and Constitution Avenue, N.W., Washington, DC 20530, FAX 202–514–4371

Dear Attorney General Reno: I was shocked to learn that the Justice Department is seeking to eliminate enforcement of the antidiscrimination Accreditation Standards of the ABA.

I didn't substantially financially support the election of President Clinton to have you destroy what limited antidiscrimination protection law school faculty, staff and students currently enjoy.

I suggest you explain your antidiscrimination position to your Antitrust Division.

[1] As the deadline for public comments has expired, any future letters received by the Justice Department will be treated as citizen letters and will not be filed with the Court.

Sincerely,

Marina Angel,

Professor of Law.

MA/teb
Enclosure

Boston College

885 Centre Street, Newton, MA 02159–1163, Law School, (617) 552–8550, FAX (617) 552–2615

By Facsimile: 202–514–4371

October 17, 1995.

The Honorable Janet Reno,
Attorney General, Department of Justice, R. 4400, Tenth and Constitution Avenue, N.W., Washington, D.C. 20530

Dear Attorney General Reno: I am very disturbed that the consent judgment proposed in the matter involving the ABA Accreditation Standards and your antitrust division would eliminate the most important antidiscrimination provision of the ABA standards: review of salary and/or fringe benefits by race and gender.

The ability of the ABA Standards to put teeth in antidiscrimination policy is important. The ability of review teams to have access and to force disclosure of actual data is crucial. Last January, I testified before the ABA Special Commission to review accreditation standards. I have enclosed a copy of my testimony. I hope that it will help illuminate what an important role accreditation plays in the integration of law schools, and ultimately the profession.

I also am a member of the Board of Directors of the Society of American Law Teachers (SALT). SALT has long been concerned about the systematic salary discrimination against women and minorities. Indeed, SALT publishes an annual nationwide salary survey. That survey has been used by many women and minorities to address salary inequity in their own law school. SALT obtains the data from law school deans. The deans are generally willing to release it because it is released in any event in the ABA accreditation process. The deans also are unable to claim they do not have it—because the ABA process requires them to keep it.

I hope that the Clinton administration will take a second look at the proposed consent judgment. As so often happens, those who are most affected by certain provisions are outsiders to the power process that negotiated the proposed judgment. Please do not hesitate to call with any questions.

Sincerely,

Leslie G. Espinoza,

Professor of Law.

AALS Section on Minority Groups Newsletter

May 1995.

Testimony Before the Special Commission To Review the Substance and Process of the American Bar Association's Accreditation of American Law Schools

Professor Leslie G. Espinoza, Chair, AALS Section on Minority Groups, January 6, 1995

Good Afternoon, I would like to thank the Commission for affording the AALS Section on Minority Groups this opportunity to comment on the ABA/AALS Accreditation process. Within the time frame permitted by these hearings, I will make two points.

First, in addressing issues of accreditation the legal community, particularly those of us in the academy, should be mindful of the monopoly power we exercise. Our monopoly control is profound. Indeed, it is protected and perpetuated by us. Persons who engage in the unauthorized practice of law can be prosecuted—under the law.

And the ability to determine who is authorized to practice law is primarily controlled by the law school community. We are the gatekeepers to the profession. For admission to practice, nearly all state bars require graduation from an ABA accredited law school. Admission to law school is controlled by individual law schools through their admissions offices. Admission is also controlled nationally through the consortium of laws schools that forms the Law School Admissions Council. The LSAC is the organization that designs and administers the LSAT. At the other end of the process, law school curriculum largely drives the content of bar examinations—increasingly so since the universalization of the Multistate Bar Examination.

With the privilege of power comes responsibility. Access to law is fundamental for the protection of personal and public rights. Indeed it is often lawyers who are responsible for the recognition or creation of those rights. Lawyers dominate legislatures as both elected officials and legislative staff. It is the duty of law schools, encouraged and enforced through the accreditation process, to ensure that the future legal community is responsive to the society as a whole.

The need to be legally relevant and responsive to the whole community is the second point I will make today. Historically exclusion of persons of color from law was nearly complete. This was particularly true for women of color. Frankly, this is still largely the case. Richard Chused's study in 1986 documented the absence of outsiders in the academy. One third of law schools had no minority professors, one third had only one. In 1992, Professors Merrit and Reskin empirically documented the double standard in the hiring of minority women in the academy. The exclusion of persons of color from the academy continues.

The impact of those outsiders who have gained entry is significant given our small numbers. We have worked to increase the number of and to support minority law students. We have contributed to the legal literature, in theory, substance and method. We have changed the discourse by bringing our voice to the law. Despite these contributions, there is much more work to do.

Accreditation has been the foundation for our inclusion in the academy. It forces accountability. Importantly, accreditation requires law schools to have historic accountability. Self studies and site team reports view processes in the law school. The standards require scrutiny of admissions, placement, curriculum, hiring of faculty, tenuring process and results and administration. Thus the accreditation process has been the only forum for addressing issues of inclusion and discrimination in all aspects of the institution.

I will end with reference to the letter by the consortium of fourteen deans that gave rise to these hearings. The members of the Section on Minority Groups fear that what underlines the deans' challenge to accreditation. The letter questions the need for law schools to explain, ''any departure from the pattern that has been prescribed for all schools—why, for instance, the clinical faculty are treated differently than the research faculty in some respect, or what plans exist for increasing square footage in the library, or how the 'right' composition of the faculty will be achieved.'' The members of the Section on Minorities do not doubt that this is coded language for an attack on the ''diversity'' or ''multicultural'' requirements in the ABA standards.

Finally, the letter from the 14 deans indicates that there are some law schools at the apex of the pyramid of all law schools—''schools with unquestionably strong educational programs [that] are not quickly given the ABA's seal of approval * * *'' These law schools, the letter implies, should be beyond the review of accreditation. The Second on Minority Groups strongly disagrees. Indeed, the arrogance of many of the elite schools has too often blinded them to their own exclusionary practices in hiring and student composition. The accreditation process must apply uniformly to all law schools in order to ensure a diverse and relevant legal profession for the next century.

[FR Doc. 95–30289 Filed 12–12–95; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Arrayed Primer Extension (APEX) Research Consortium

Notice is hereby given that, on September 26, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Arrayed Primer Extension (APEX) Research Consortium, a joint venture formed as a cooperative research consortium by the parties set forth in this notice (the ''Joint Venture''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Joint Venture and (2) the nature and objectives of the Joint Venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiff to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Pharmacia Biotech, Inc., Piscataway, NJ; Baylor College of Medicine, Houston, TX; Duke University, Durham, NC; and

Indentigene, Inc., Houston, TX. The general area of planned activity is to develop and demonstrate arrayed primer extension DNA analysis systems for sequencing in DNA diagnosis.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30284 Filed 12–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production act of 1993—HDTV Broadcast Technology Consortium

Notice is hereby given that, on September 11, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), HDTV Broadcast Technology Consortium has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the partnership. The notifications were filed for the purpose of limiting recovery of plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Advanced Modular Solutions, Inc., Acton, MA; Comark Communications, Inc., Southwick, MA; David Sarnoff Research Center, Inc., Princeton, NJ; International Business Machines, Inc., Yorktown Heights, NY; MCI Network Architecture, Richardson, TX; National Broadcasting Company, Inc., New York, NY; Philips Laboratories, Briarcliff Manor, NY; Sun Microsystems Federal, Inc., Mountain View, CA; and Thomson Consumer Electronics, Inc., Washington, DC.

The purpose of the Joint Venture is to develop and demonstrate ''HDTV Broadcast Technology''. The activities of the Joint Venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30285 Filed 12–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Realtime-Micro-PCR-Analysis System

Notice is hereby given that, on August 21, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Realtime-Micro-PCR-Analysis System, a joint venture formed as a cooperative research company by the parties set forth in this notice (the ''Joint Venture''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Joint Venture and (2) the nature and objectives of the Joint Venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Perkin Elmer Corp., Norwalk, CT; EG&G IC Sensors, Inc., Milpitas, CA; Cornell University Medical College, New York, NY; University of Minnesota, Minneapolis, MN; and Louisiana State University, Baton Rouge, LA. The general area of planned activity is to develop integrated systems for genetic analysis employing micromachined elements.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30286 Filed 12–12–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

This notice amends a petition document published in the Federal Register on November 13, 1995 (60 FR 57025), docket number M–95–156–C, Amax Coal Company and Clipmate Corporation, Chinook Mine (I.D. No. 12–00322). The petitioner filed a petition to modify the application of 30 CFR 77.1303(y) (1) and (2) (explosives, handling and use) instead of 30 CFR 75.1303(y) (1) and (2).

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. R.S. Coal Company

[Docket No. M–95–157–C]

R.S. Coal Company, 729–B West Shamokin Street, Trevorton, Pennsylvania 17881–1461 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its No. 1 Slope (I.D. No. 36–07108) located in Northumberland County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas not examined and which is currently mixing with the air in the intake haulage slope to ventilate the active working section, and to ensure the maintenance of air quality through the sampling of section intake air for carbon dioxide, methane, and oxygen deficiency at the gangway level during the preshift and on-shift examinations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. R.S. Coal Company

[Docket No. M–95–158–C]

R.S. Coal Company, 729–B West Shamokin Street, Trevorton, Pennsylvania 17881–1461 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 1 Slope (I.D. No. 36–07108) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. R.S. Coal Company

[Docket No. M–95–159–C]

R.S. Coal Company, 729–B West Shamokin Street, Trevorton, Pennsylvania 17881–1461 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4) and (5) (weekly examination) to its No. 1 Slope (I.D. No. 36–07108) located in Northumberland County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. R.S. Coal Company

[Docket No. M–95–160–C]

R.S. Coal Company, 729–B West Shamokin Street, Trevorton, Pennsylvania 17881–1461 has filed a petition to modify the application of 30 CFR 75.1100–2 (quantity and location of firefighting equipment) to its No. 1 Slope (I.D. No. 36–07108) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. R.S. Coal Company

[Docket No. M–95–161–C]

R.S. Coal Company, 729–B West Shamokin Street, Trevorton, Pennsylvania 17881–1461 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its No. 1 Slope (I.D. No. 36–07108) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnel. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. R.S. Coal Company

[Docket No. M–95–162–C]

R.S. Coal Company, 729–B West Shamokin Street, Trevorton, Pennsylvania 17881–1461 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 1 Slope (I.D. No. 36–07108) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Consolidation Coal Company

[Docket No. M–95–163–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Blacksville No. 2 Mine (I.D. No. 46–01968) located in Monongalia County, West Virginia. The petitioner proposes to use a high-voltage (4,160-volt) cable with an internal ground check conductor smaller than No. 10 (A.W.G.) as a part of its longwall mining system. The type of cable would be the CABLE/BICC Anaconda brand, 5 kV, 3/C, Type SHD+GC; Amercable Tiger brand, 3/C, 5 kV, Type SHD-CGC; Pirelli 5 kV, 3/C, Type SHD-CENTER-GC; or similar 5,000-volt cable with center ground check conductor, but otherwise manufactured to the ICEA Standard S–75–381 for Type SHD, three-conductor cables accepted by MSHA as flame-resistant. The petitioner states that the cable would be constructed of symmetrical 3/C, 3/G, and 1/GC; the ground check conductor would be insulated flexible center conductor with a cross-sectional area not less than 1,800 circular mils; that all electrical personnel who perform maintenance on the longwall would receive training in the installation and repair of the cable; and that proposed revision(s) for the approved 30 CFR Part 48 training plan would be submitted to the Coal Mine Safety and Health District Manager and would specify task training, including review of the proposed terms and conditions of this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. The Pittsburg & Midway Coal Mining Company

[Docket No. M–95–164–C]

The Pittsburg & Midway Coal Mining Company, 6400 South Fiddler's Green Circle, Englewood, Colorado 80111–4991 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its North River No. 1 (I.D. No. 01–00759) located in Tuscaloosa County, Alabama. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Elk Run Coal Company, Inc.

[Docket No. M–95–165–C]

Elk Run Coal Company, Inc., Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.333(d)(1) (ventilation controls) to its Black King Mine (I.D. No. 46–08230), its White Knight Mine (I.D. No. 46–08055), and its Bishop 2 Mine (I.D. No. 46–08181) all located in Boone County, West Virginia; and its Laurel Alma Mine (I.D. No. 46–08457), and its Laurel Eagle Mine (I.D. No. 46–08383) both located in Raleigh County, West Virginia. The petitioner proposes to use electronically operated Roll-Down Doors constructed of rubber material similar to those used in conveyor belts to control ventilation within the air course in the main entries instead of heavy Metal Doors. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Cyprus Plateau Mining Corporation

[Docket No. M–95–166–C]

Cyprus Plateau Mining Corporation, Buchanan Ingersoll Professional Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Willow Creek Mine (I.D. No. 42–02113) located in Carbon County, Utah. The petitioner proposes to use the belt entry in its longwall development entries as a return entry during longwall development and to use the belt entry as an intake entry during longwall retreat mining and in some mains during and after development. The petitioner proposes to install carbon monoxide detectors as an early warning fire detection system in the longwall panel intake escapeway entry and the panel belt entry used as a return air course. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Cyprus Plateau Mining Corporation

[Docket No. M–95–167–C]

Cyprus Plateau Mining Corporation, Buchanan Ingersoll Professional Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables

and transformers) to its Willow Creek Mine (I.D. No. 42–02113) located in Carbon County, Utah. The petitioner proposes to use high-voltage (2,400 or 4,160 volt) cables to power longwall mining equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Cyprus Plateau Mining Corporation

[Docket No. M–95–168–C]

Cyprus Plateau Mining Corporation, Buchanan Ingersoll Professional Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its Willow Creek Mine (I.D. No. 42–02113) located in Carbon County, Utah. The petitioner proposes to use the belt entry in its longwall development entries as a return entry during longwall development. The petitioner proposes to install carbon monoxide detectors as an early warning fire detection system in the longwall panel intake escapeway entry and the panel belt entry used as a return air course. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 12, 1996. Copies of these petitions are available for inspection at that address.

Dated: December 6, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 95–30396 Filed 12–12–95; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–112]

Notice of Prospective Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective copyright license.

SUMMARY: NASA hereby gives notice that Collier Research & Development Corporation, of 45 Diamond Hill Road, Hampton, Virginia 23666, has applied for an exclusive copyright license for computer software entitled ''Structural Thermal Sizer (ST–SIZE).'' NASA received assignment of the copyright on September 7, 1995, from Lockheed Engineering and Sciences Company. Written objections to the prospective grant of a license should be sent to Ms. Robin W. Edwards, Patent Attorney, NASA Langley Research Center.

DATES: Responses to this Notice must be received by February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Robin W. Edwards, Patent Attorney, NASA Langley Research Center, Mail Code 212, Hampton, VA 23681–0001; telephone (804) 864–3230.

Dated: December 5, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–30271 Filed 12–12–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment. The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission (new, revision, or extension): Revision

2. The title of the information collection: 10 CFR Part 20, Proposed Rule, Constraint Level for Air Emissions of Radionuclides.

3. The form number if applicable: N/A

4. How often the collection required: A notification is required if a licensees air emissions exceed a level that would result in a dose in excess of 10 mrem TEDE in any year, to the individual likely to receive the highest dose.

5. Who will be required or asked to report: NRC licensees other than operators of nuclear power reactors.

6. An estimate of the number of responses: 1

7. The estimated number of annual respondents: 1

8. An estimate of the number of hours needed annually to complete the requirement or request: 80

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not Applicable.

10. Abstract: The Nuclear Regulatory Commission (NRC) is proposing to establish a constraint of 10 mrem/yr TEDE for dose to members of the public from air emissions of radionuclides from NRC licensed facilities other than power reactors. This action would provide assurance to the EPA that future emissions from NRC licensees will not exceed levels that will provide an ample margin of safety. This action is expected to be the final step in providing EPA with a basis upon which to rescind 40 CFR 61 ''National Emission Standards for Hazardous Air Pollutants'', Subpart I as it applies to NRC licensed facilities other than power reactors, thereby relieving these NRC licensees from unnecessary dual regulations.

Submit by February 12, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library) NRC

subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions can be directed by mail to the OMB reviewer by January 12, 1996.

Troy Hillier, Office of Information and Regulatory Affairs (3150–0014), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 7th day of December, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–30336 Filed 12–12–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–325 and 324]

Carolina Power and Light Company (Brunswick Steam Electric Plant); Exemption

I.

Carolina Power and Light Company (CP&L, the licensee) is the holder of Facility Operating License Nos. DPR–71 and DPR–62, which authorize operation of Brunswick Steam Electric Plant (BSEP), Unit Nos. 1 and 2, at power levels not in excess of 2436 megawatts thermal. The facility consists of two boiling water reactors at the licensee's site in Brunswick County, North Carolina. The operating license provides, among other things, that BSEP is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II.

Pursuant to 10 CFR 55.35(a), an applicant whose application for an operator license has been denied because of failure to pass the written examination or operating test, or both, may file a new application two months after the date of denial.

III.

By letter dated November 8, 1995, CP&L requested an exemption under 10 CFR 55.11 on behalf of its employee, an applicant for a Senior Reactor Operator license (applicant) under Subpart D of 10 CFR Part 55, from the requirements of 10 CFR 55.35(a). The schedular exemption requested would allow the applicant to file a new application before the two month waiting period expires and, thereafter, to be re-administered a written examination during the week of December 18, 1995. The applicant was notified that he had not passed his written examination (taken the week of October 23, 1995) by letter from Region II dated November 16, 1995, which would make the applicant eligible for re-examination no earlier than January 16, 1995.

The Code of Federal Regulations at 10 CFR 55.11 states that, ''The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest.''

In support of its request for exemption, CP&L indicated that the applicant has entered a remediation process, and will be ready for re-examination the week of December 18, 1995.

IV.

The Commission has determined that, pursuant to 10 CFR 55.11, granting this exemption to the applicant from the requirements in 10 CFR 55.35(a) is authorized by law and will not endanger life or property and is otherwise in the public interest. This one-time exemption will allow the applicant to be administered a written re-examination during the week of December 18, 1995, prior to the expiration of the two month time period from the date of notification of the results of his first written examination. This re-examination would be scheduled to coincide with a previously scheduled NRC initial examination visit. Accordingly, the Commission hereby grants the applicant an exemption on a one-time only basis from the schedular requirements of 10 CFR 55.35(a).

Pursuant to 10 CFR 51.32, the Commission has also determined that the issuance of the exemption will not have a significant effect on the quality of the human environment. An Environmental Assessment and Finding of No Significant Impact was noticed in the Federal Register on December 6, 1995 (60 FR 67483).

This exemption is effective upon issuance and expires on January 16, 1996.

Dated at Rockville, Maryland this 7th day of December 1995.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Controls and Human Factors, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30335 Filed 12–12–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 1:00 p.m., December 13, 1995.

PLACE: OPM Conference Center, Room 1350, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located on the first floor. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

STATUS: This meeting will be open to the public from 1:00 p.m. until approximately 1:30 p.m. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: National Partnership Council (NPC) Training and Facilitation Handbook; selection of NPC Award winners.

PORTION OPEN TO THE PUBLIC: Discussion of the NPC Training and Facilitation Handbook and other items referred to in the strategic action plan for 1995 that was adopted at the January 10, 1995, meeting. This portion of the meeting will run from 1:00 p.m. until approximately 1:30 p.m.

PORTION CLOSED TO THE PUBLIC: Under 5 U.S.C. § 552b(c)(9)(B) of the Government in the Sunshine Act, the discussion and selection of NPC Partnership Award winners, beginning at approximately 1:30 p.m., will be closed to the public. Because of the desire to keep the final selection of the NPC award winners confidential until they are officially notified and the awards are announced, disclosure of the NPC's deliberations and final selection of award winners would significantly frustrate implementation of the awards program.

CONTACT PERSON FOR MORE INFORMATION: Douglas K. Walker, National Partnership Council, Executive Secretariat, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW.,

Room 5315, Washington, DC 20415–0001, (202) 606–1000.

SUPPLEMENTARY INFORMATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Mr. Douglas K. Walker at the address shown above. Written comments should be received by December 8 in order to be considered at the December 13 meeting.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–30296 Filed 12–12–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36559; File No. SR–GSCC–95–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Modifying GSCC's By-laws To Provide Indemnification Protection for Members of Committees

December 6, 1995.

On August 25, 1995, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–GSCC–95–04) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on November 6, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

GSCC has amended its by-laws to provide indemnification protection for members of committees established by GSCC's Board of Directors who are not officers or directors of GSCC. Article IV, Section 4.1, of GSCC's by-laws currently requires that GSCC indemnify to the full extent permitted by law a present or past director or officer of GSCC who is made a party to any action or proceeding, whether civil or criminal, by reason of the fact that such person is or was a director or officer of GSCC.

The indemnification obligation under Article IV, Section 4.1, did not extend to members of committees established by GSCC's Board of Directors if the members of the committees were not directors or officers of GSCC. Thus, for example, the indemnification protection in GSCC's by-laws did not cover most of the members of GSCC's Risk Management Committee who are senior credit officers of GSCC member firms.[3] The amendment provides members of Board-established committees with indemnification protection comparable to the protection currently given to GSCC's directors and officers.

II. Discussion

Section 17A(b)(3)(F)[4] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes GSCC's proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) because the proposal, by affording appropriate protection to committee members, should enable GSCC to obtain the services of qualified individuals on its Board-established committees and should help ensure that such individuals may act freely and objectively in the exercise of their duties. By enhancing the selection and objectivity of its committee members, GSCC's committees may better fulfill their obligations to limit credit and market risks to GSCC's system thus assuring GSCC's ability to safeguard securities and funds under its control.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–95–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30301 Filed 12–2–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36435 (October 30, 1995), 60 FR 56082.

[3] The Risk Management Committee provides advice to GSCC on the creditworthiness of individual applicants for netting system membership, on the assessment of the financial status of current netting system members, and on market conditions affecting the government securities market.

[4] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[5] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36557; File No. SR–MBSCC–95–8]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing Relating to Eligibility Changes for Settlement Balance Order Settlement

December 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 17, 1995, MBS Clearing Corporation (''MBSCC'') 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 primarily by MBSCC. On November 1, 1995, MBSCC filed an amendment to its proposed rule change.[2] 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 proposed rule change consists of modifications to MBSCC's Procedures relating to eligibility for Settlement Balance Order (SBO) settlement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will modify MBSCC's Procedures relating to eligibility for SBO settlement. Specifically, the purpose of the proposed rule change is to enable MBSCC to reject trades destined for SBO settlement between multiple accounts of a participant as well as between a participant's account and an account of

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from Anthony H. Davidson, MBSCC, to Michele J. Bianco, Division of Market Regulation, Commission (November 1, 1995).

[3] The Commission has modified parts of these statements.

a related participant.[4] The SBO settlement netting process was not intended for trades between multiple accounts of a participant or between a participant's account and an account of a related participant. The inclusion of these types of trades was not contemplated when the MBSCC cash adjustment procedures were developed, and the inclusion could cause a perception that participants might receive greater or lesser amounts than originally intended depending upon the amount of internal trades submitted. Participants may record such trades on a trade-for-trade basis.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.[5]

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

MBSCC advised participants by an administrative bulletin dated October 6, 1995, that it would file the proposed rule change with the Commission. No written comments relating to the proposed rule change have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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.

[4] The term ''related participant'' means any affiliate (as defined in Rule 12b–2 of the Act) or entity that is used or intended to be used in whole or in part to contravene the purposes of the proposed rule change. Letter from Anthony H. Davidson, MBSCC, to Michele J. Bianco, Division of Market Regulation, Commission (November 1, 1995).

[5] 15 U.S.C. § 78q–1 (1988).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number SR–MBSCC–95–08 and should be submitted by January 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30300 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36563; File No. SR–NASD–95–57]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Policy Statement on Market Closings

December 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 22, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend its Policy Statement on Market Closings (''Statement'' or ''Policy Statement''), adopted pursuant to Article VII, Section 3 of the NASD By-Laws, to: (1) extend the expiration date of the Statement to December 31, 1997; and (2) reflect regulatory developments since the Statement was first adopted in 1988. The amended Statement is as follows (additions are italicized; deletions are bracketed):

NASD Board of Governors Policy Statement on Market Closing

September 20, 1988

Amended [insert date] 1995

In 1988, [T] *t*he Board of Governors of the National Association of Securities Dealers, Inc. [has] carefully considered the numerous proposals resulting from the October 1987 market break including the Report of the NASD Committee on the Quality of Markets and the ''circuit breaker'' proposal recommended by the President's Working Group on Financial Markets. The Working Group proposal recommend[s]*ed* that all U.S. markets for equity and equity-related products, i.e., stocks, individual stock options, and stock index options and futures, halt trading for [one hour] *certain specified periods* if the Dow Jones Industrial Average [(''DJIA'')] decline[s]*d* 250 points *or 400 points* from its previous day's closing level [and for two hours if the DJIA declines 400 points]. The proposal also recommend[s]ed specific reopening procedures and consistent index futures price limit requirements. *Subsequently, the major securities exchanges adopted the recommendations of the Working Group as trading halt rules, with uniform criteria established for the coordinated implementation of trading halts across all equity and equity-related markets in the event of extraordinary market movements. The exchanges have, from time-to-time, considered amendments to such rules.*

Having reviewed the [se numerous] *original* proposal[s] *of the Working Group, the trading halt rules adopted by the major securities exchanges and any modifications thereto,* the Board of Governors [has adopted] *reaffirms the position that is set forth below in* this Statement of Policy.

The Board notes that while progress has been made by the markets in areas involving systems capacity, margin requirements and information sharing, a

number of recommendations from the various proposals unfortunately have not yet been either fully considered or actively pursued. The Board believes that market closings are not the answer to the potential danger of precipitous declines in market prices and that it is more important to aggressively pursue other initiatives. Among these are:

1. Congress should vest regulatory authority for all equity derivative instruments in the Securities and Exchange Commission.

2. Congress should give the Securities and Exchange Commission authority to oversee the establishment of initial or maintenance margin requirements by self-regulatory organizations for all equity instruments. Relative margin levels for equities and equity derivative instruments should be consistent across all market places.

3. The activities of clearing and settlement systems should be coordinated across market places to reduce financial risk for all participants. Clearing and settlement facilities for all equity derivative instruments should be unified or linked as in the options and securities markets.

4. An intermarket self-regulatory coordinating policy group (with subgroups) composed of persons at the senior management level of all self-regulatory organizations should be established to plan, communicate and coordinate with each other in the surveillance, financial, operational and technology areas and, acting with federal regulators, to formulate contingency plans for market emergencies.

5. To the extent that legislation is needed to accomplish any of these objectives, Congress should be urged by all securities industry organizations to act promptly.

We believe implementation of these recommendations would provide a more permanent and appropriate response to the events of October 1987 than would market closings based upon arbitrary formulae. They should be adopted expeditiously. Because sufficient progress on all of these matters has not yet occurred, the Board recognizes the need to consider the Working Group's proposal on ''circuit breakers'' *and the trading halt rules adopted by the major securities exchanges* as an interim step.

The Board strongly believes that the Nation's securities markets should remain open and operating during normal market hours whenever possible. The Board is opposed in principle to the implementation of ''circuit breakers'' that mandate market closings on the basis of arbitrary formulae. The Board supports the [current] practice whereby individual market determine, after coordination with other markets and federal regulators, whether to close based on the character of a particular emergency situation.

The Board of Governors acknowledges that the risks imposed on any single market remaining open while all other U.S. markets have halted trading because of extraordinary price movements could be unacceptable. The Board therefore has determined that, at times when other major securities markets initiate market-wide trading halts in response to extraordinary market conditions, the NASD will, upon request from the Securities and Exchange Commission, act to halt domestic trading in all securities quoted in [the NASDAQ system] *The Nasdaq Stock Market* and domestic trading in equity or equity-related securities in the over-the-counter market.

This Policy Statement on Market Closings shall be effective until December 31, [1995] *1997* unless modified or extended prior thereto by the Board of Governors.

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 NASD 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 NASD 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 Policy Statement is adopted as a stated policy of the NASD under Article VII, Section 3 of the NASD By-Laws, which provides the Association with the authority, acting through a designated committee of the NASD Board of Governors, to take appropriate action in the event of an emergency or extraordinary market conditions. Article VII, Section 3 was adopted by the NASD as a result of the events of October 1987, and the provision was enacted to enable the NASD to respond to future crises with a maximum degree of flexibility, providing properly tailored responses to varying situations.[2] As originally approved, the Statement was to expire December 31, 1989, unless modified or extended prior thereto by the NASD Board of Governors.[3] The expiration date of the Policy Statement has previously been extended a number of times.[4]

Other groups, including the President's Working Group on Financial Markets (the ''Working Group''), have proposed more specific, formulaic responses to the events of October 1987. One such proposal is the Working Group's proposal for ''circuit breakers.'' The Commission requested the NASD to express its views on that proposal and the Policy Statement was adopted in response to that request.

It should be noted that the Policy Statement expresses the views of the NASD Board of Governors as of November 16, 1995 concerning progress made on the numerous proposals emanating from the October 1987 crisis. From time to time, the Board will review progress made on the recommendations set forth in the Statement as well as other developments as they may occur. The views of the Board may change and the NASD may modify or amplify the Statement accordingly.

It also should be noted that the Policy Statement sets forth the NASD's proposed response to a specific set of circumstances. The Statement does not in any way preclude the NASD from taking any other action that may be appropriate under other circumstances.

The NASD proposes to extend the expiration date of the Policy Statement two years until December 31, 1997. The NASD also proposes to make several minor modifications to the Policy Statement to reflect regulatory developments since the Statement was

[2] Specifically, in its release approving Article VII, Section 3 of the NASD By-Laws, the Commission stated that ''the Commission believes the proposal provides the NASD with the flexibility to deal with extraordinary market conditions such as existed in October 1987.'' *See* Securities Exchange Act Release No. 26072 (September 12, 1988), 53 FR 36143.

[3] Securities Exchange Release No. 26198 (October 19, 1988), 53 FR 41673.

[4] Securities Exchange Act Release Nos. 27370 (October 23, 1989), 54 FR 43881 (approving File No. SR–NASD–89–46, extending expiration date through December 31, 1990); 28694 (December 12, 1990), 55 FR 52119 (approving File No. SR–NASD–90–60, extending expiration date through December 31, 1991); 30113 (December 20, 1991), 56 FR 67341 (File No. SR–NASD–91–70, extending expiration date through January 31, 1992); 30304 (January 29, 1992), 57 FR 4658 (approving File No. SR–NASD–92–02, extending expiration date through December 31, 1993); 33292 (December 6, 1993), 58 FR 65214 (approving File No. SR–NASD–93–70, extending expiration date through December 31, 1994); and 35133 (December 21, 1994), 59 FR 67361 (approving File No. SR–NASD–94–63, extending expiration date through December 31, 1995).

adopted in 1988. Given the growth of U.S. equity markets since 1988, however, the NASD increasingly is concerned that circuit breakers may be activated based on smaller percentage moves in the Dow Jones Industrial Average (''DJIA'').[5] Accordingly, it is the intention of the NASD to reevaluate whether the 250- and 400-point thresholds contained in the circuit breakers are appropriate. Nevertheless, the NASD believes it is appropriate at this time to extend the effectiveness of the Policy Statement.

The NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, by extending the effectiveness of the Policy Statement, market participants will be afforded a reasonable opportunity to assess and rationally react to extreme market conditions. In addition, extension of the Policy Statement will help to ensure that circuit breakers are coordinated across all equity and equity-related markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause to accelerate the effectiveness of the proposed rule change pursuant to Section 19(b)(2) of the Act so that the effectiveness of the Policy Statement can continue uninterrupted. The NASD notes that its other proposals to extend the Statement have been subject to the full notice and comment period and that the Commission has received no adverse comments on the Statement. Accordingly, because the NASD believes that there are no changes to the Policy Statement that would necessitate the solicitation of public comment prior to Commission approval, because no adverse comments have been received in response to prior extensions of the Statement, and because the Policy will otherwise expire on December 31, 1995, the NASD requests that the Commission accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

IV. 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 the NASD, and, in particular, the requirements of Section 15A and the rules and regulations thereunder. Since the Commission approved the NASD's proposal in 1988, the Dow Jones Industrial Average has not experienced a one day market decline that would trigger a market halt. Nevertheless, the Commission continues to believe that circuit breaker procedures are desirable to deal with potential strains that may develop during periods of extreme market volatility, and accordingly, the Commission believes that the pilot program should be extended. The Commission also believes that circuit breakers represent a reasonable means to retard a rapid one day market decline that could have a destabilizing effect on the nation's financial markets and participants in these markets. Finally, the Commission believes that the proposed changes to the Policy Statement are minor and not of a nature to affect its operation.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register because there are no material changes being made to the current provisions, which originally were subject to the full notice and comment procedures, and accelerated approval would enable Policy Statement to continue uninterrupted. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 15A and 19(b) of the Act.[6]

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 3, 1996.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–95–57) is hereby approved until December 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30355 Filed 12–12–95; 8:45 am]

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[5] Specifically, when the 250- and 400-point circuit breakers were implemented in October 1988, a 250-point move in the DJIA was approximately 11.7 percent of the Index and a 400-point move was approximately 18.7 percent of the Index. However, given the expansion and growth of U.S. equity markets since 1988, 250- and 400-point movements in the NASD now represent a much smaller percentage move in the Index. Specifically, with the NASD at 5,000, a 250-point move represents 5 percent of the Index and a 400-point move represents 8 percent of the Index.

[6] The Commission reaffirms its request that the NASD implement its Policy Statement by implementing a trading halt as quickly as practicable whenever the New York Stock Exchange and other equity markets have suspended trading. *See* Securities Exchange Act Release No. 27370, *supra* note 4.

[7] 17 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36558; File No. SR–OCC–95–13]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Adjustments of Options for Ordinary Stock Dividends

December 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 19, 1995, The Options Clearing Corporation (''OCC'') 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 primarily by OCC. On October 16, 1995, OCC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will revise OCC's By-Laws to adopt a general rule of not adjusting options for ordinary stock dividends or distributions on the underlying security and will delete references to the review by the Commission of options adjustment decisions made by an OCC adjustment panel.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, OCC will amend Article VI, Section 11 of its By-Laws governing adjustments on options for ordinary stock dividends declared on the underlying security. Article VI, Section 11 sets forth general rules concerning adjustment that OCC may make to the standardized terms of option contracts when certain events occur. A specific adjustment is determined by the vote of an adjustment panel comprised of two designated representatives of each exchange that lists such option and the designee of OCC's Chairman. OCC's designee only votes in the case of a tie.

Currently, Article VI, Section 11(d) contains a general rule requiring that equity option contracts be adjusted in the case of a stock dividend, stock distribution, or stock split where one or more whole shares of the underlying security is issued with respect to each outstanding share. The adjustment is made by reducing the strike price and increasing each option contract by the same number of additional option contracts as the number of shares issued with respect to each outstanding share. The unit of trading stays the same. However, Section 11(c) states that there will be no adjustment for ordinary cash dividends. This is because ordinary cash dividends generally are paid on a quarterly basis and adjusting outstanding options each time a dividend is paid could create a massive proliferation of option series that would dilute market liquidity and would overtax price reporting and other systems.

Article VI, Section 11(j) grants authority to the adjustment panel to make such exceptions to any of the general adjustment rules as it deems to be appropriate. Recently, two adjustment panels exercised their exception authority and determined not to adjust outstanding option contracts to reflect a stock dividend. In both instances, the issuer evidenced a pattern of declaring a small stock dividend in conjunction with a quarterly cash dividend. In determining not to adjust the options, each adjustment panel considered the provision in the Options Disclosure Document that states a stock dividend may be treated as an ordinary cash dividend by an adjustment panel if the issuer of the underlying security announces or exhibits a policy of declaring regular stock dividends that do not individually exceed 10% of the market value of the underlying security.

The adjustment panels involved in making the two recent adjustments have requested that OCC amend its By-Laws to provide for a general rule that no adjustment will be made to reflect ordinary stock dividends. As a result, OCC is proposing to define in its By-Laws ordinary stock dividends as dividends that are paid on a quarterly basis by the issuer of the underlying security and that do not individually exceed ten percent of the market value of the underlying security. Because the proposed change only will apply to recurrent stock dividends, OCC anticipates that it will apply only in a small number of cases. OCC believes that formalizing a policy of not adjusting for recurrent stock dividends will eliminate potential problems associated with the creation of an undesirable proliferation of options series as well as eliminate the need to convene adjustment panels to make discretionary determinations for such dividends on a case-by-case basis.

OCC also proposes to amend its By-Laws to clarify when cash dividends will be considered ordinary. Under the proposal, cash dividends that do not exceed ten percent of the market value of the underlying security will be deemed to be ordinary whether or not they are paid on an ordinary basis.

Finally, pursuant to a request from Commission staff, OCC proposes to delete language from Article VI, Section 11 that provides for Commission review of the determinations made by an OCC adjustment panel.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because the proposal will provide for the prompt and accurate settlement of options transactions and will provide for the safeguarding of related securities and funds.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC 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

Written comments were not and are not intended to be solicited with respect

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The original filing required that dividends or distributions (i) not exceed ten percent of the market value of the underlying security and (ii) be paid on a regular basis in order to be deemed ''ordinary.'' OCC amended its proposal with respect to cash dividends by eliminating the requirement that cash dividends of less than ten percent be paid on a regular basis in order to be deemed ordinary for purposes of determining whether to adjust the option. OCC also amended the proposal to require that stock dividends of less than ten percent of the market value of the underlying security be paid on a quarterly basis, as opposed to regularly, in order to be deemed ordinary. Letter from Jacqueline R. Luthringshausen, OCC, to Jerry W. Carpenter, Associate Director, Division of Market Regulation, Commission (October 11, 1995).

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] 15 U.S.C. 78.q–1 (1988).

to the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 OCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–95–13 and should be submitted by January 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30299 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21571; 811–7105]

CUNA Mutual Funds, Inc.; Notice of Application

December 6, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: CUNA Mutual funds, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 28, 1995 and amended on October 27, 1995, and 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 100 East Pratt Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company that was organized under the laws of Maryland. Applicant consists of three portfolios, CUNA Mutual U.S. Government Income Fund, CUNA Mutual Cornerstone Fund, and Mutual Tax-Free Intermediate-Term Fund. On October 8, 1993, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on December 30, 1993 and applicant began a public offering thereafter.

2. On March 27, 1995, applicant's board of directors approved the liquidation and dissolution of applicant. The board of directors approved the liquidation because, among other things, they did not expect assets under management to rise to a level that would allow applicant to operate productively. At all times, affiliated persons of applicant held a majority of the outstanding shares of each portfolio.

3. Between March 17 and March 30, 1995, letters were sent to all public shareholders notifying them of applicant's intent to liquidate all accounts effective May 12, 1995. On May 12, 1995, the remaining public shareholders of each portfolio received cash distributions equal to the net asset value of their accounts as of the close of business on that day. CMC–T.Rowe Price Management, LLC (''CMC''), applicant's administrator and a shareholder of applicant, made the decision to absorb all the expenses and costs of the liquidation and winding up of the business of applicant. Accordingly, applicant's affiliated persons received their distributions after the public shareholders to ensure that all costs and expenses of the liquidation (such as brokerage, taxes, etc.) would be absorbed by the affiliated parties and not the public shareholders. CMC was the sole remaining shareholder on May 26, 1995, and did in fact bear all expenses and costs of winding up the business of applicant. CMC also paid all of applicant's organizational expenses.

4. The liquidation was approved by CMC, the sole remaining shareholder of applicant's stock, on May 26, 1995. On that date, CMC redeemed its shares at net asset value and received applicant's remaining assets.

5. With one exception, all portfolio securities were sold in the usual course. A total of $2,071.17 in brokerage commissions was incurred. The one exception involved a cross transaction with an affiliated mutual fund which followed the procedures set forth in rule 17a–7 under the Act.[1]

6. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. On June 30, 1995, applicant filed articles of dissolution with Maryland authorities.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

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[5] 17 CFR 200.30–3(a)(12) (1994).

[1] Rule 17a–7 exempts purchase or sales transactions between an investment company and other affiliated investment companies provided that certain conditions are met.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30298 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21586; File No. 812–9386]

Massachusetts Mutual Life Insurance Company, et al.

December 7, 1995.

AGENCY: U.S. Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Massachusetts Mutual Life Insurance Company (''MassMutual''), Massachusetts Mutual Variable Life Separate Account I (''Separate Account'') and MML Investors Services, Inc. (''MMLISI'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act for exemptions from Sections 27(a)(3) and 27(c)(2) of the 1940 Act and Rules 6e–3(T)(b)(13)(ii) and 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF THE APPLICATION: Applicants seek an order: (1) to permit them to deduct from premium payments received in connection with certain flexible premium variable life insurance policies (''Policies'') issued by MassMutual and any other flexible premium variable life insurance policies (''Other Policies'') issued by MassMutual in the future and made available through the Separate Account or any other separate account established in the future by MassMutual to support flexible premium variable life insurance contracts (''Future Accounts''), an amount less than or approximately equal to the amount by which MassMutual's federal tax liabilities will be increased as a result of its receipt of those premium payments; and (2) to permit the deduction from premium payments in amounts less than or equal to the minimum planned premium under the Policies of a sales load that is greater than the sales load previously deducted from premium payments in amounts exceeding the minimum planned premium.

FILING DATES: The application was filed on December 23, 1994, and amended on June 28, 1995, and September 12, 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 by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 2, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Thomas F. English, Esq., Massachusetts Mutual Life Insurance Company, 1295 State Street, Springfield, Massachusetts 01111.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

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. MassMutual is a mutual life insurance company organized under Massachusetts law.

2. The Separate Account was established as a separate investment account of MassMutual for the purpose of investing net premium payments received under variable life insurance contracts. It is registered under the 1940 Act as a unit investment trust.

3. MMLISI serves as the principal underwriter for the Policies. MMLISI is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc. MMLISI may serve as principal underwriter for Other Policies issued by MassMutual in the future.

4. The Policies are flexible premium variable life insurance policies available on a ''Case'' or on an individual basis. Insureds purchasing a Policy on a ''Case basis'' share a common employment or other institutional relationship. All Policies in any Case are aggregated for purposes of determining issue dates, policy dates, underwriting requirements and sales load percentages. Individual insureds with Case Policies may exercise all rights and privileges under the Policy through their employer or other sponsoring entity acting as Case administrator. After termination of the employment or other relationship, an individual Policy owner may exercise such rights and privileges directly. The minimum Case premium is $250,000 of first year annualized premiums for all Policies in a Case.

5. The sales load component of the premium deduction is based on the aggregate initial premiums paid for all Policies in a Case (''Initial Case Premium''). For Policies issued in a Case with an Initial Case Premium of at least $1,000,000, the sales load remains level over the life of the Policies. For Policies issued in a Case with an Initial Case Premium of less than $1,000,000, the sales load applied to any premium payment not exceeding the minimum planned Policy premium amount will be set at one level for the first five Policy years, and then reset at a lower, level amount after the fifth Policy year. During the first five Policy years, premiums are tracked on an annual cumulative basis for each Policy, and the sales load will be assessed at a higher level for premium payments made at or below the specified minimum planned Policy premium.

6. No surrender charge is imposed under the Policies.

7. MassMutual deducts a state premium tax charge from each premium payment made under the Policies. The level of such charge varies from state to state. Currently, state premium tax rates range from 2% to 3.5%.

8. MassMutual proposes to deduct from premium payments a charge for the federal tax burden imposed by deferred acquisition costs (''DAC tax'') in the amount of 1% of premium payments. This amount is, at most, approximately equal to or less than the increase in MassMutual's federal income tax obligations based upon premiums received under the Policies.

9. In the Omnibus Budget Reconciliation Act of 1990 (''OBRA''), Congress amended Section 848 of the Internal Revenue Code of 1986 (the ''Code''). In relevant part, Section 848 requires insurance companies to capitalize and amortize over a period of ten years certain general expenses for the current year. Under prior law, those expenses would have been deductible in full from an insurance company's gross income in the current tax year.

10. The amount of deductions that would have to be capitalized and amortized over ten years is based upon ''net premiums'' received in connection with certain types of insurance 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 amount of general deductions that must be capitalized varies, depending upon the type of contract to which the premiums received relate, according to a schedule set forth in Section 848. The Policies fall into the category of individual life insurance contracts under Section 848 for which 7.7% of net premiums received must be capitalized and amortized.

11. The impact of the DAC tax on MassMutual may be quantified as follows. For each $10,000 of premiums received by MassMutual under the Policies in a given year, MassMutual must capitalize $770 (*i.e.,* 7.7% of $10,000); $38.50 (one-half year's portion of the ten-year amortization) of this amount may be deducted in the current year. The remaining $731.50 (*i.e.*, $770 minus $38.50) is subject to taxation at the corporate tax rate of 35 percent. As a result, MassMutual would owe approximately $256.03 more in taxes for the current year than before the OBRA tax changes. However, this current tax increase will be offset partially by deductions allowed during the next ten years as a result of amortizing the remainder of the $770–$77 in each of the following nine years, and $38.50 in year ten. When estimating the economic impact of the tax increase, the benefit to MassMutual of being able to deduct $77.00 per year for each of the subsequent nine years and $38.50 for the tenth year must be discounted, so that only the present value of those deductions would be subtracted from the $256.03.

12. To the extent that capital must be used by MassMutual to satisfy its increased federal tax burden under Section 848, such capital used to satisfy this increased federal tax burden under Section 848 is, in essence, MassMutual's after tax rate of return—*i.e.,* the return MassMutual seeks on invested capital—of at least 8 percent. Accordingly, in the business judgment of MassMutual, a discount rate of at least 8% is appropriate for use in calculating the present value of MassMutual's future tax deductions resulting from the amortization described above. To the extent that the 8% discount rate is lower than MassMutual's actual after tax rate of return, Applicants submit that a measure of comfort is provided that the calculation of MassMutual's increased tax burden attributable to the receipt of premiums will continue to be reasonable over time, even if the corporate tax rate applicable to MassMutual is reduced, or its after tax rate of return is lowered.

13. MassMutual considered a number of factors in determining the expected after tax rate of return used in arriving at this discount rate. For example, MassMutual identified the level of investment return that can be expected to be earned over the long term on various types of fixed income securities, including the expected yield on 30-year U.S. Treasury bonds and high-grade corporate bonds, and adjusted these rates in an amount considered appropriate to compensated it for the risks associated with allocating capital to a lien of business, esp0ecially a newer line of business without a performance history. MassMutual also considered whether this expected after tax rate of return is within the normal range in the life insurance industry.

14. Assuming a corporate tax rate of 35 percent, and applying a discount rate of 8 percent, the present value of the federal income tax effect of the increased deductions allowable in the following ten years is $174.60. Because this amount partially offsets the increased tax burden, Section 848 imposes an increased tax burden on MassMutual with a present value equal to $81.43 (*i.e.,* $256.03 minus $174.60) for each $10,000 of net premiums received.

15. Because state premium taxes are deductible in computing federal income taxes, MassMutual does not incur incremental income tax when it passes on state premium taxes to Policy owners. In contrast, federal income taxes are *not* deductible in computing MassMutual's federal income taxes. To offset fully the impact of Section 848, MassMutual must impose an additional charge that would make it whole not only for the $81.43 additional tax burden attributable to Section 848, but also for the tax on the additional $81.43 itself. This additional charge may be determined by dividing $81.43 by the complement of the 35% federal corporate income tax rate (*i.e.,* 65%), resulting in an additional charge of $125.28 for (*i.e.,* 1.25% of) each $10,000 of net premiums.

16. Based on prior experience, MassMutual believes that it is reasonable to expect that virtually all future deductions will be fully taken. MassMutual submits that a charge of 1% will reimburse it for the impact of Section 848 on its federal tax liabilities. Applicants represent that a 1% charge is reasonably related to MassMutual's increased federal tax burden under Section 848, taking into account the benefit to MassMutual of the amortization permitted by Section 848 and the use by MassMutual of a discount rate of 8% in computing the future deductions resulting from such amortization.

17. Applicants also represent that the charge to be deducted under Other Policies by MassMutual pursuant to the relief requested will be reasonably related to MassMutual's increased federal tax burden under Section 848, taking into account the benefit to MassMutual of the amortization permitted by Section 848, and the use by MassMutual of an appropriate discount rate (*i.e.,* a rate not less than MassMutual's expected after tax rate of return) in computing the cost of the increased tax burden ad the present value of the future deductions resulting from such amortization.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act, in relevant part, authorizes the Commission, by order upon application to exempt any person or transaction or class of persons or transactions from the provisions of the 1940 Act or 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) of the 1940 Act 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 deductions from premium payments received in connection with the Policies and Other Policies an amount that is reasonable in relation to MassMutual's 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 sales load.

3. Applicants also request that the Commission grant an order exempting them from the ''stair step'' provisions of Section 27(a)(3) of the 1940 Act and Rule 6e–3(T)(b)(13)(ii) thereunder in connection with the sale of units of interest in the Separate Account under the Policies.

Section 27(c)(2) and Rule 6e–3(T)(c)(4)—DAC Tax Exemption

1. The Separate Account is, and the Future Accounts will be, regulated under the 1940 Act as if they were the issuers of periodic payment plan certificates. Accordingly, the Separate Account, the Future Accounts, MassMutual (as the depositor for the Separate Account) and MMLISI (as principal underwriter of the Policies)

are deemed to be subject to Section 27 of the 1940 Act.

2. 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 Section 26(a) (2) and (3) of the 1940 Act. Sections 27(a)(1) and 27(h)(1) of the 1940 Act limit sales loads on periodic payment plan certificates to 9% of total payments to be made.

3. Rule 6e(3)(T) provides a broad range of exemptive relief for the offering of flexible premium variable life insurance policies such as the Policies and the Other Policies. Paragraph (b)(13)(iii) of Rule 6e–3(T) provides relief from 27(c)(2) of the 1940 Act to the extent necessary to permit ''[t]he deduction of premium or other taxes imposed by any state or other governmental entity.'' Applicants submit that the exemptive relief needed to permit the deduction of a DAC tax charge is provided without regard to whether the taxes are imposed by states or other governmental entities. However, Applicants acknowledge the argument that, although it increases an insurance company's tax liability because of the type of premium payments received, Section 848 of the Code does not purport to impose a tax on life insurance companies. Accordingly, Applicants request an exemption from Section 27(c)(2) to address any concern that the proposed DAC tax charge might not be deemed to be entitled to the exemptive relief from that Section provided by Rule 6e–3(T)(b)(13)(iii).

4. Rule 6e–3(T)(c)(4) defines ''sales load'' as the excess of premium payments over certain itemized charges and deductions. A deduction for an insurer's DAC tax expense as described above does not fall squarely into any of those itemized charges or deductions. Arguably, then, such a deduction may be treated as ''sales load'' under a literal reading of Rule 6e–3(T)(c)(4). Applicants request an exemption from Rule 6e–3(T)(c)(4)(v) to permit the proposed DAC tax charge to be assessed without treating the charge as a deduction to cover sales and distribution expenses.

5. Applicants submit that there is no public policy reason for treating as deductions made to pay costs attributable to federal taxes (*e.g.*, the proposed DAC tax charge) as sales load. Applicants also assert that language in the releases in which the Commission adopted and amended Rule 6e–3(T) does not suggest that such a result was intended, despite the literal wording of paragraph (c)(4) of the Rule.

6. Applicants assert that the public policy that underlies Section 27(a)(1) of the 1940 Act 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 DAC tax charge as sales load would not further this legislative purpose. Applicants state that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of ''sales load'' in paragraph (c)(4) of Rule 6e–3(T).

7. Applicants asset that, in evaluating whether it is consistent with the purposes and policies of the 1940 Act for deductions made to pay federal taxes to be excluded from sales load, it is helpful to examine the definition of ''sales load'' in Section 2(a)(35) of the 1940 Act. Section 2(a)(35) of the 1940 Act defines ''sales load'' as the difference between the price of a security offered to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. Applicants note that both Section 2(a)(35) and Rule 6e–3(T)(c)(4) define ''sales load'' derivatively.

8. Applicants further assert that Section 2(a)(35) excludes from the definition of ''sales load'' under the 1940 Act deductions from payments for ''issue taxes.'' Applicants submit that issue taxes incurred as a result of selling an investment company security would be similar to premium taxes incurred as a result of the sale of a variable life insurance policy. This suggests that it is consistent with the 1940 Act's policies to exclude from the definition of ''sales load'' in Rule 6e–3(T) deductions made to pay federal tax obligations incurred as a result of receipt of premiums.

9. Applicants submit that the reference in Section 2(a)(35) to administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' suggests that the only deductions intended to fall within the definition of ''sales load'' are those that are properly chargeable to such activities. Because the proposed deductions will be used to compensate MassMutual for its increased federal tax burdens attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, Applicants assert that the language in Section 2(a)(35) indicates that treating the proposed DAC tax charge as other than sales load is consistent with the policies of the 1940 Act.

10. Finally, Applicants state that the limitation to state premium taxes of the premium tax exclusion from the definition of ''sales load'' in Rule 6e–3(T)(c)(4)(v) probably is an historical accident. When Rule 6e–3(T) was adopted and later amended, the federal government did not impose taxes based upon receipt of premiums. Applicants note that nothing in the Commission releases dealing with Rule 6e–3(T) suggests that the exclusion of premium tax deductions from the definition of sales load was based on the type of governmental entity imposing such taxes.

11. Applicants assert that the requested relief with respect to the Policies or Other Policies issued through the Separate Account or Future Accounts is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for MassMutual to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to seek exemptive relief repeatedly would impair MassMutual's ability to take advantage effectively of business opportunities as they arise. In addition, Applicants state that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If Mass Mutual was required to seek exemptive relief repeatedly with respect to the same issues addressed in this request for relief, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of MassMutual's increased overhead expenses.

Conditions for Relief

1. Applicants represent that MassMutual will monitor the reasonableness of the 1% charge.

2. Applicants represent that the registration statement for each Policy or Other Policy under which the 1% 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 MassMutual's increased federal tax burden as a result of applying Section 848 of the Code.

3. Applicants represent that the registration statement for each Policy or Other Policy under which the 1%

charge is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to MassMutual's increased federal tax burden resulting from the application of Section 848 of the Code; (ii) the reasonableness of the expected after tax rate of return that is used in calculating the charge; and (iii) the appropriateness of the factors used to determine MassMutual's expected after tax rate of return.

Section 27(a)(3) and Rule 6e–3(T)(b)(13)(ii)—''Stair Step'' Exemption

1. Section 27(a)(3) of the 1940 Act provides that the amount of sales load which may be deducted from any of the first twelve monthly payments on a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment, and that the sales load deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment.

2. Rule 6e–3(T)(b)(13)(ii) provides an exemption from Section 27(a)(3), provided that the proportionate amount of sales load deducted from any payment does not exceed the proportionate amount deducted from any prior payment, unless an increase is caused by reductions in the annual cost of insurance or in sales load for amounts transferred to a variable life insurance policy from another plan of insurance.

3. Under MassMutual's proposed sales load structure for Policies issued in a Case with an Initial Case Premium of less than $1,000,000, during the first five Policy years, MassMutual assesses a front-end sales load of 15% of premium payments made which are less than or equal to the minimum planned Policy premium, and 6% of premium payments made which exceed the minimum planned Policy premium. After the fifth Policy Year, the sales load percentages for these Policies will decrease to 6% on all premium payments. Thus, if during the first four years of a Policy for which the Initial Case Premium paid was less than $1,000,000, a Policy owner makes a premium payment which exceeds the minimum planned Policy premium, the percentage of sales load deducted (in the next Policy Year) from that portion of any premium payment which is less than or equal to the minimum planned Policy premium would exceed that deducted from the prior premium payment. Applicants request an exemption from the requirements of Section 27(a)(3) of the 1940 Act and Rule 6e–3(T)(b0(13)(ii) thereunder because the sales load structure under the Policies appears to violate the ''stair-step'' provisions articulated in Section 27(a)(3) of the 1940 Act. Moreover, Applicants note, the exemption from Section 27(a)(3) provided by Rule 6e–3(T)(b)(13)(ii) does not appear to cover the case at hand.

4. Applicants represent that MassMutual has designed the Policies so that they comply with Rule 6e–3(T)'s sales load limitations and are ''refund proof'': i.e., sales load deductions from premium payments will not exceed the sales load limitations specified in Rule 6e–3(T)(b)(13)(i)(A) and will never require the repayment of any sales charges pursuant to Rule 6e–3(T)(b)(13)(v)(A).

5. Applicants further represent that MassMutual has designed the sales load structure under the Policies to give Policy owners significant flexibility with respect to the timing and amount of premium payments, while permitting MassMutual to deduct only those charges deemed necessary to defray distribution expenses and support the benefits under the Policies.

6. Applicants represent that the proposed sales load design provides a significant benefit to Policy owners by passing through to them a portion of MassMutual's savings resulting from the lower distribution costs associated with Policies having an Initial Case Premium of $1,000,000 or less and for which premium payments are made during the first five Policy Years which exceed the minimum planned Policy premium set for that Policy year. Applicants submit that it would not be in the interest of Policy owners to require the imposition of a sales charge on premium payments in excess of the minimum planned Policy premium, or subsequent premium payments that are higher than Applicants deem necessary.

7. Applicants assert that Section 27(a)(3) was designed to address abuses involving periodic payment plans under which large amounts of front-end sales load are deducted so early in life of the plan that an investor redeeming in the early periods would recoup little of his or her investment. MassMutual anticipates that: (i) a substantial number of the Policies will be sold in connection with rollover transactions effectuated pursuant to Section 1035 of the Code; and (ii) under such a scenario, there will be a higher occurrence of premium payments made in the first Policy year which exceed the minimum planned premium payment by Policy owners purchasing Policies having an Initial Case Premium of less than $1,000,000. For these reasons, Applicants submit that the proposed sales load structure would not present the type of abuse that Section 27(a)(3) was designed to prevent.

8. Moreover, Applicants assert that, to the extent that owners of Policies with an Initial Case Premium of less than $1,000,000 make premium payments during the first Policy year which exceed the minimum planned Policy premium, MassMutual's proposed sales load structure will cause a greater proportion of the Policies' sales charges to be deducted later than they otherwise might have been deducted. In this regard, Applicants note that MassMutual could have decided to assess a sales load of 30% on premium payments less than or equal to the minimum planned Policy premium made during the first Policy year, and 7.89% on premium payments made thereafter. Applicants submit that, by spreading sales charges more evenly over the life of a Policy, MassMutual's sales load structure furthers the purposes of Section 27(a)(3) of the 1940 Act.

Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the requested exemptions would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies 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. 95–30356 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–9973]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (The Middleby Corporation, Common Stock, $0.01 Par Value)

December 7, 1995.

The Middleby Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors unanimously approved resolutions on October 24, 1995 to withdraw the Security from listing on the Amex and instead, to list the Security on the National Association of Securities Dealers Automated Quotations National Market System (''Nasdaq/MMS).

The decision of the Board followed a thorough study of the matter and was based upon the belief that listing the Security on the Nasdaq/NMS will be more beneficial to the Company's stockholders than the present listing on the Amex for the following reasons.

(1) According to the Company, its Board of Directors determined that a listing on Nasdaq/NMS would provide greater coverage for the Security; and

(2) According to the Company, its Board of Directors determined that a listing on the Nasdaq/NMS would provide improved liquidity to the Company's shareholders.

Any interested person may, on or before December 29, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30302 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21573; 811–7476]

The 231 Funds; Notice of Application

December 6, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The 231 Funds.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 7, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 125 West 55th Street, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, management investment company organized as a Massachusetts business trust. On February 10, 1993, applicant registered under the Act as an investment company, and filed a registration statement under the Securities Act of 1933 registering an indefinite number of shares. The registration statement was declared effective on August 20, 1993. Applicant issued shares in two portfolios, the Prime Fund (''231 Prime Fund'') and the Treasury Fund (''231 Treasury Fund''), each of which issued two classes of shares (Institutional Shares and Service Shares). Institutional Shares were first issued on September 1, 1993 for both portfolios and Service Shares were first issued on March 1, 1994 for the 231 Prime Fund and April 5, 1994 for the 231 Treasury Fund.

2. At a meeting held on June 13, 1995, applicant's Board of Trustees approved on Agreement and Plan of Reorganization (the ''Reorganization Agreement'') between applicant and Pacific Horizon Funds, Inc. (''Pacific Horizon'') whereby Pacific Horizon's Prime Fund (''PH Prime Fund'') and Treasury Fund (''PH Treasury Fund'') would acquire all of the assets and liabilities of 231 Prime Fund and 231 Treasury Fund, respectively, in exchange for Horizon Shares and Horizon Service Shares of PH Prime Fund and PH Treasury Fund. Applicant's Board of Trustees determined that the interests of applicant's shareholders would best be served by approving the Reorganization Agreement. In reaching this determination, the Board of Trustees considered the anticipated loss of applicant's assets as a result of the sale of the institutional trust business of Bank of America Illinois, applicant's investment adviser (''Adviser''). The Board of Trustees concluded that, among other advantages, the reorganization would be likely to provide shareholders with an interest in a larger and more diversified portfolio while reducing the total expense ratio that would exist absent voluntary reimbursements.

3. Proxy materials were filed with the SEC and were distributed to applicant's shareholders on or about July 21, 1995. At a special meeting held on August 24, 1995, shareholders of the 231 Prime Fund and the 231 Treasury Fund approved the reorganization.

4. On August 25, 1995, the assets and liabilities of the 231 Prime Fund and 231 Treasury Fund were transferred to and assumed by PH Prime Fund and PH Treasury Fund in exchange for full and fractional Horizon Shares and Horizon Service Shares of the PH Prime Fund and PH Treasury Fund. The shares exchanged were equal in number and value to the number of full and fractional Institutional Shares and Service Shares of the 231 Prime Fund and 231 Treasury Fund. Following the transfer, applicant distributed the Horizon Shares and Horizon Service Shares to the holders of Institutional Shares and Service Shares of applicant in liquidation of the 231 Prime Fund and 231 Treasury Fund. Applicant did not incur any brokerage commission in connection with disposition of its portfolio securities and other assets.

5. Aggregate expenses of $50,000 were incurred by applicant in connection with the reorganization. Applicant, Concord Financial Services, Inc. (Pacific Horizon's transfer agent), and the Adviser shall each pay one-third of these expenses. Pacific Horizon, Concord, and the Adviser shall each pay one-third of the expenses incurred by Pacific Horizon in connection with the reorganization.

6. At the time of the filing of the application, applicant had no assets or liabilities, was not a party to any litigation or administrative proceeding, and had no shareholders. Applicant is

neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant intends to terminate its existence as a Massachusetts business trust upon receipt of an order from the SEC Declaring that applicant has ceased to be an investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30297 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Agency Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. chapter 35): SSS Form No. and Title:

SSS Form 152, Alternative Service Employment Agreement
SSS Form 153, Employer Data Sheet
SSS Form 156, Skills Questionnaire
SSS Form 157, Alternative Service Job Data Form
SSS Form 160, Request for Overseas Job Assignment
SSS Form 163, Employment Verification Form
SSS Form 164, Alternative Service Worker Travel Reimbursement Request
SSS Form 166, Claim for Reimbursement for Emergency Medical Care

Copies of the above identified forms can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia, 22209–2425.

No changes have been made to the above identified forms. OMB clearance is limited to requesting a three-year extension of the current expiration dates.

Written comments should be sent within 60 days after the publication of this notice, to: Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia, 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, room 3235, Washington, DC 20435.

Dated: December 5, 1995.

Gil Coronado,

Director.

[FR Doc. 95–30397 Filed 12–12–95; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–086]

Merchant Marine Personnel Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applicants for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). The Committee is a 19-member Federal Advisory committee that advises the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

DATES: Membership applications should be received no later than February 12, 1996.

ADDRESSES: Persons interested in applying for membership on MERPAC may obtain an application form by writing to Commandant (G–MOS–1), room 1210, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593–0001, or by calling (202) 267–0229 between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Requests may also be submitted by facsimile at (202) 267–4570.

FOR FURTHER INFORMATION CONTACT: CDR Jon Sarubbi, Executive Director, or Mr. Mark Gould, Assistant Executive Director, MERPAC, room 1210, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC, 20593–0001, (202) 267–0229.

SUPPLEMENTARY INFORMATION: MERPAC is chartered under the Federal Advisory Committee Act (5 U.S.C. App. 2) to advise the Coast Guard on merchant marine personnel issues. Six positions are either vacant or the current appointments will expire in 1996.

Applicants with one or more of the following backgrounds are needed to fill the positions:

(a) Shipping company representative.
(b) Deck Officer (inland/river route).
(c) Engineering Officer (limited Chief Engineer or Designated Duty Engineer).
(d) Maritime Academy representative.
(e) Pilot.
(f) Unlicensed Seaman (Able Bodied Seaman).

The membership term is 3 years. No member may hold more than two consecutive 3-year terms.

The Coast Guard is seeking greater representation from the inland and rivers maritime communities, particularly in the positions of Deck Officer (inland/river route) and Engineering Officer (limited Chief Engineer or Designated Duty Engineer). Although the Coast Guard was seeking increased representation from these same communities during the last selection process, it chose to retain the incumbent members due to their special expertise. Individuals who submitted an application for selection to the committee in response to the notice in the May 11, 1995 Federal Register (60 FR 25257; CGD 95–020) need not reapply. Their applications will be reconsidered during this selection process.

To achieve the desired balance of membership, the Coast Guard is especially interested in receiving applications from minorities and women. The members of the Committee serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided. The Committee normally meets in Washington, D.C., with working group meetings for specific problems as required.

Applicants may be required to complete an Executive Branch Confidential Financial Disclosure Report (SF 450).

Dated: December 7, 1995.

J. Angelo,

Director for Standards.

[FR Doc. 95–30401 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Correction to Notice of Intent To Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Baton Rouge Metropolitan Airport, Baton Rouge, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to Federal Register Notice of intent to rule on application.

SUMMARY: The FAA proposed to rule and invited public comment on the application to use the revenue from a PFC at Baton Rouge Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14

CFR Part 158) in the Federal Register dated November 22, 1995. The PFC application number was misstated as 95–03–U–00–BTR. The correct PFC application number is 96–03–U–OO–BTR.

DATES: The deadline for comments on this application is December 22, 1995.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610.

Issued in Fort Worth, Texas, on November 29, 1995.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 95–30365 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Little Rock National Airport, Little Rock, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Little Rock National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

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

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Deborah S. Ledwell, Manager of Little Rock National Airport, at the following address: Deborah S. Ledwell, Airport Manager, Little Rock National Airport, One Airport Drive, Little Rock, Arkansas 72202.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Little Rock National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 29, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 15, 1996.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00

Charge effective date: May 1, 1995

Proposed charge expiration date: May 31, 2003

Total estimated PFC revenue: $32,765,055

PFC application number: 96–02–U–00–LIT

Brief description of proposed project(s):

Projects To Use PFC's

Extend Runway 4L–22R, and Relocate Approach Lighting System and Instrument Landing System on Runway 22R.

The class or classes of air carriers to be exempted from collecting PFC's: All Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Little Rock National Airport.

Issued in Fort Worth, Texas, on November 29, 1995.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 95–30364 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: City of Manassas and Prince William County, VA

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed railroad improvement in the City of Manassas and Prince William County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Roberto Fonseca-Martinez, Division Administrator, Federal Highway Administration, 1504 Santa Rosa Road, Suite 205, Richmond, Virginia 23229, Telephone (804) 281–5100.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation and the Virginia Department of Rail and Public Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve the Norfolk Southern Railway's and the Virginia Railway Express' operations in the City of Manassas and Prince William County. The proposed improvement will involve the rerouting of the Norfolk Southern Railway's through freight trains onto a new alignment and/or improving the existing corridor.

Improvements to the existing corridor are considered necessary to improve safety and relieve traffic congestion at several at-grade crossings caused by freight operations in the City of Manassas, and the developing areas of Prince William County south and west of the City of Manassas, and to expand commuter train service to Gainsville, Virginia. Alternatives under consideration include (1) taking no action; (2) improving existing rail; and (3) rail relocation.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A series of public meetings and a Location Public Hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No

formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions on this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Edward S. Sundra,

Environmental Specialist, Richmond, Virginia.

[FR Doc. 95–30283 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TREASURY

Internal Revenue Service

Commissioner's Advisory Group: Public Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Public Meeting of Commissioner's Advisory Group.

SUMMARY: Public meeting of the Commissioner's Advisory Group will be held in Washington, D.C. This meeting is being scheduled due to the cancellation of the previously announced November 16, 1995, CAG meeting.

DATES: The meeting will be held January 30, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia Washburn, C:I, 1111 Constitution Avenue, N.W., Room 7046 IR, Washington, D.C. 20224. Telephone No. (202) 622–5026 (not a toll-free number).

Notice is hereby given that a public meeting of the Commissioner's Advisory Group previously scheduled for November 16, 1995, beginning at 10:00 am in Room 3313, main Internal Revenue Service building, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, was cancelled due to the Federal government shutdown.

Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the Commissioner's Advisory Group will be held on January 30, 1996, beginning at 10:00 am in Room 3313, main Internal Revenue Service building, 1111 Constitution Avenue, N.W. Washington, D.C. 20224.

The agenda will include the following topics:

Filing Season Readiness

Improving Services to Customers
Small Business Issues and Initiatives
Compliance Issues
Corporate Education Issues

Note: Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice.

The meeting will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Lorenza Wilds, no later than January 23, 1996. Ms. Wilds can be reached on (202) 622–5026 (not toll-free).

If you would like to have the Committee consider a written statement, please call or write: Patricia Washburn, Office of Public Liaison, C:I, Internal Revenue Service, 1111 Constitution Avenue, N.W., Room 7046 IR, Washington, D.C. 20224.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30274 Filed 12–12–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances (Butyl Benzyl Phthalate); Filing of Petition

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, of a petition requesting that butyl benzyl phthalate be added to the list of taxable substances in section 4672(a)(3). Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Submissions must be received by February 12, 1996. Any modification of the list of taxable substances based upon this petition would be effective April 1, 1991.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (Petition), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (Petition), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on June 25, 1990. The petitioner is Monsanto Company, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 2917.39.2000
CAS number: 85–68–7

Butyl benzyl phthalate is derived from the taxable chemicals methane, propylene, xylene, toluene, and chlorine and is a liquid produced predominantly by the reaction of n-butanol and phthalic anhydride, followed by a reaction with benzyl chloride in the presence of a catalyst. n-butanol is manufactured by the hydrogenation of n-butyraldehyde, which is derived from propylene and synthesis gas (hydrogen and synthesis gas are derived from natural gas). Benzyl chloride is produced by direct photochemical chlorination of toluene. Phthalic anhydride is produced by the reaction of o-xylene with air in the presence of a catalyst.

The stoichiometric material consumption formula for this substance is:

CH_4 (methane)+C_3H_6 (propylene)+C_8H_{10} (xylene)+3 O_2 (oxygen)+C_7H_8 (toluene)+Cl_2 (chlorine) ——–> $C_{19}H_{20}O_4$ (butyl benzyl phthalate)+2 HCl (hydrochloric acid)+H_2 (hydrogen)+2 H_2O (water)

According to the petition, taxable chemicals constitute 77.25 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $5.54 per ton. This is based upon a conversion factor for methane of 0.05, a conversion factor for propylene of 0.17, a conversion factor for xylene of 0.47, a conversion factor for toluene of 0.32, and a conversion factor for chlorine of 0.26.

Comments and Requests for a Public Hearing

Before a determination is made, consideration will be given to any written comments (a signed original and

eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–30273 Filed 12–12–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Programs

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of renewal—VA/IRS Match Program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA), Veterans Health Administration (VHA), intends to renew the computer matching program comparing Internal Revenue Service (IRS) and Social Security Administration (SSA) income records with VA patient income data which is contained in the patient medical records.

The goal of these matches is to compare income, social security number, and employment status as reported to VHA with income records maintained by IRS and SSA. For the information of all concerned, a summary report of the VHA matching program describing the computer matches follows. In accordance with 5 U.S.C. 552a(o)(2), copies of the computer matching report are being sent to both houses of Congress. These matches are expected to commence on or about January 1, 1996, but start no sooner than 30 days after publication of this notice in the Federal Register or 40 days after copies of this notice and the agreement are submitted to Congress and the Office of Management and Budget whichever is later. These matches may be extended by the involved Data Integrity Boards for a twelve month period provided all agencies involved certify to the Data Integrity Boards, within three months of the termination date of the original match, that the matching program will be conducted without change and the matching programs have been conducted in compliance with the original matching agreements. The matches will not continue past the legislative authorized date to obtain this information. However, expiration of this agreement is June 30, 1997.

ADDRESSES: Interested individuals may comment on the matches by writing to the Chief Administrative Officer (161D), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Janice E. Wheeler (202) 273–6276, Program Analyst, Income Verification Match Policy Service.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by Title 5 U.S.C. 552a(e)(12), the Privacy Act of 1974, as amended. A copy of this notice has been provided to both houses of Congress and the Office of Management and Budget.

Approved: December 4, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

Report of Matching Program

Department of Veterans Affairs Patient Medical Records With Income Records Maintained by the Internal Revenue Service and the Social Security Administration

a. *Authority:* Title 38 U.S.C. 5106 and 5317; Pub. L. 101–508 as amended by Pub. L. 102–568.

b. *Program Description:*

(1) *Purpose:* (a) The Department of Veterans Affairs (VA), Veterans Health Administration (VHA) plans to match the household income information contained in the medical records of certain nonservice-connected veterans, with the income records for those persons maintained by the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Those nonservice-connected veterans subject to income verification matching are those veterans who are receiving VA medical care in a mandatory eligibility category due to a finding of low income subsequent to means testing.

(b) Currently, information about a veterans household income (i.e., veterans and spouses receipt of wage, self-employment and other income as well as employment status, health insurance coverage and number of dependents) is obtained when the veteran makes application for medical care at a VA medical care facility. The household income and dependent data is evaluated in a ''means test'' which takes into account deductions of certain income not counted as such for Veterans Health Administration eligibility purposes. Once a net income for the veteran is established, it is applied against means test thresholds, or levels of income establishing mandatory or discretionary eligibility for medical care. If the veterans net income falls below the applicable means test threshold, he or she is eligible for mandatory care (i.e., no-cost care); however, if the net income falls over the applicable threshold, the veteran is given a discretionary eligibility. Veterans who are eligible for discretionary care are provided care if the VA medical facility has the resources to treat discretionary veterans, and if the veteran agrees to make a co-payment for such care. The proposed matching programs will enable VA to verify the accuracy of reported income and employment status and therefore more accurately determine eligibility for medical care.

(2) *Procedures:* VA's Veterans Health Administration has established an Income Verification Match (IVM) Center. The IVM Center will electronically extra demographic and income data from each VA medical care facility's database on nonservice-connected veterans found eligible for mandatory care based solely on low income. The VHA IVM extract file will be matched against IRS and SSA income records. If a VHA record and SSA or IRS record match on social security number and name, the IVM Center will begin an extensive case development and verification process. This process will assure the validity of the matched cases by verifying the IRS/SSA reported income amount with the payer(s) and recipients of the income. Each veteran and/or spouse identified by the match will be contacted in order to notify the veteran and/or spouse of any income discrepancy identified by the match, to verify the discrepancy, and to advise him or her of potential changes to the veterans' medical care eligibility at the VA medical center, and the potential billing action for co-payments. Before any adverse action is taken, the individual(s) identified by the match will be given the opportunity to contest the findings. Where there are reasonable grounds to believe that there has been a violation of criminal laws, the matter will be referred for prosecution consideration in accordance with existing VA policies.

c. *Records to be Matched.* The VA records involved in the match are patient medical records maintained in the ''Patient Medical Record-VA (24VA136)'' published at 40 FR 38095 (8/26/75) and amended at 40 FR 52125 (11/7/75), 41 FR 2881 (1/20/76), 41 FR 11631 (3/19/76), 42 FR 30557 (6/15/72),

44 FR 31058 (5/30/79), 45 FR 77220 (11/21/80), 46 FR 2766 (1/12/81), 47 FR 28522 (6/30/82), 47 FR 51841 (11/17/82), 50 FR 11610 (3/22/85), 51 FR 25968 (7/17/86), 51 FR 44406 (12/9/86), 52 FR 381 (1/5/87), 53 FR 49818 (12/13/90), 55 FR 5112 (2/13/90), 55 FR 37604 (9/12/90), 55 FR 42534 (10/19/90), 56 FR 1054 (1/10/91), 57 FR 28003 (6/23/92), 57 FR 4519 (10/1/92), 58 FR 29853 (5/24/93), 58 FR 40852 (7/30/93) and 58 FR 57674 (10/26/93). The IRS records are from the Wage and Information Returns (IRP) Master File, Privacy Act system Treas/IRS 22.061. The SSA records are from the Earnings Recording and Self-Employment Income system, HHS/SSA/OSR 09–60–0059.

d. *Period of Match:* The initial data exchanges are expected to begin 40 days after the matching agreements are signed by the Data Integrity Boards (DIB's) and Congressional Offices and OMB have been notified, and 30 days from the date of publication of notice in the Federal Register or 40 days from the date this notice is approved, whichever is later. These matches may be extended by the involved DIB's for a twelve month period provided the agencies participating in the match certify to the DIB's, within three months of the determination date of the original match, that the matching program will be conducted without change and the matching programs have been conducted in compliance with the original matching agreements. The matches will not continue past the date legislative authority to obtain this information expires.

[FR Doc. 95–30137 Filed 12/12/95 8:45 am]
BILLING CODE 8320–01–M

Privacy Act of 1974; New System of Records—Automated Customer Registration System (ACRS)—VA (87VA045)

AGENCY: Department of Veterans Affairs.

ACTION: Notice, new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the Federal Register a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is adding a new system of records entitled ''Automated Customer Registration System (ACRS)—VA (87VA045)''.

Federal computer security regulations require that managers and operators of Government computer systems maintain control over who accesses the resources of those systems. This system of records, which will replace the PROS/Keys system (67VA30), consists of the administrative paperwork involved in adding, modifying or deleting access privileges to the computer resources at the VA Austin Automation Center (AAC), as well as a computer database used to grant access to those resources.

The information maintained in this system of records in hard copy and electronic form will include the names and social security numbers of VA employees, employees of other Government agencies and selected authorized vendors who require access to the computer resources at the AAC. The records will also include business address and telephone number, job title and information relating to data file and computer system access permissions granted to that individual.

Release of information from these records will only be made in accordance with the provisions of the Privacy Act of 1974 for investigatory, judicial and administrative uses. VA has determined that release of information for these purposes is a necessary and proper use of information in this system of records and that specific routine uses for transfer of this information are appropriate.

DATES AND ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposed system of records to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420. All relevant material received before January 12, 1996, will be considered. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1176, 801 I Street NW, Washington, DC 20001, between 9 a.m. and 4 p.m. only, Monday through Friday (except Federal holidays) until January 22, 1996.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the Federal Register by VA, the routine use statements included herein are effective January 12, 1996, and all other provisions included herein are effective January 12, 1996.

SUPPLEMENTARY INFORMATION: A ''Report of Intention to Publish a Federal Register Notice of New System of Records'' and an advance copy of the new system notice have been provided to the Chairmen of the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs, and the Director, Office of Management and Budget (OMB), as required by the provisions of 5 U.S.C. 522(r) (Privacy Act), guidelines issued by OMB (50 FR 52730), December 24, 1985, Pub. L. 100–503, and follow-up OMB guidelines issued July 25, 1994 (59 FR 37917).

FOR FURTHER INFORMATION CONTACT: Nelda Cook (045/200B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, telephone number (202) 565–8045.

Approved: December 1, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

87VA045

SYSTEM NAME:

Automated Customer Registration System (ACRS)—Department of Veterans Affairs (VA).

SYSTEM LOCATION:

The automated records are maintained by the VA Automation Center, 1615 Woodward Street, Austin, TX 78772. The paper records will be maintained at each VA field station that has a responsibility for ACRS input.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of Veterans Affairs employees, employees of other Government agencies and authorized contractor personnel who have requested and have been granted access to the automated resources of the VA's Austin Automation Center (AAC).

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in this system, in both paper and electronic form, will include the names and social security numbers of all personnel who have requested and been granted access to the automated resources at the AAC. The records will also include business address and telephone number, job title and information relating to data file and computer system access permissions granted to that individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, U.S.C. 501.

PURPOSE:

The purpose of this system of records is to allow the VA Austin Automation Center (AAC) in Austin, TX, to maintain a current list of all VA employees, employees of other Government agencies and authorized contractor personnel who require access to the computer resources of the AAC, in accordance with Federal computer security requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. At the initiative of VA, pertinent information may be disclosed to appropriate Federal, State or local agencies responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders, where VA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. Disclosure of specific information may be made to a Federal agency, in response to its request, to the extent that the information requested is relevant and necessary to the requesting agency's decision in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation on an individual, classifying jobs, awarding a contract or issuing a license, grant or other benefit.

3. Information may be provided to a congressional office in response to an inquiry from that congressional office made at the request of the individual and concerning that individual's record in this system.

4. Disclosure of information may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties, and the request is not in connection with a law enforcement investigation.

5. The Department of Veterans Affairs (VA) may disclose records in this system or records in proceedings before a court or adjudicative body before which VA is authorized to appear when VA, a VA official or employee, the United States, or an individual or entity for whom the United States is providing representation is a party to litigation or has an interest in such litigation, and VA determines that the use of such records is relevant and necessary to the litigation, *provided*, however, that in each case, the agency determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

6. The Department of Veterans Affairs (VA) may disclose records in this system of records to the Department of Justice when VA, a VA official or employee, the United States, or an individual or entity for whom the United States is providing representation is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by VA to be relevant and necessary to the litigation, *provided,* however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

7. Disclosure may be made during reviews by the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each field station responsible for inputting records into the system will retain the original signed paper copies of requests for system access in locked containers. Data files supporting the automated system are stored in a secure area located at the Austin Automation Center. Data files are stored on magnetic disk and, for archival purposes, on magnetic tape.

RETRIEVABILITY:

Paper records are maintained in alphabetical order by last name of the requester. Automated records are retrieved by individual name or by a specific automated resource.

SAFEGUARDS:

Paper records in progress are maintained in a manned room during working hours. Paper records maintained for archival purposes are stored in locked containers until needed. During non-working hours, the paper records are kept in a locked container in a secured area. Access to the records is on a need-to-know basis only.

Access to the automated system is via computer terminal; standard security procedures, including a unique customer identification code and password combination, are used to limit access to authorized personnel only. Specifically, in order to obtain access to the automated records contained in this system of records, an individual must:

(1) Have access to the automated resources of the AAC. An individual may not self-register for this access. Formal documentation of the request for access, signed by the employee's supervisor, is required before an individual may obtain such access. Authorized customers are issued a customer identification code and one-time password.

(2) Be an authorized official of the ACRS system. Only two individuals per field station may be designated ACRS officials with access to add, modify or delete records from the system. These individuals require a specific functional task code in their customer profile; this functional task can only be assigned by the AAC. A limited number of supervisory or managerial employees throughout VA will have read-only access for the purpose of monitoring ACRS activities.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration and published in Agency Records Control Schedules. Paper records will be destroyed by shredding or other appropriate means for destroying sensitive information. Automated storage records are retained and destroyed in accordance with a disposition authorization approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, VA Austin Automation Center, 1615 Woodward Street, Austin, TX 78772. The phone number is (512) 326–6000.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier or who wants to determine the contents of such records should submit a written request or apply in person to the Director, VA Austin Automation Center, 1615 Woodward Street, Austin, TX 78772.

RECORD ACCESS PROCEDURES:

An individual who seeks access or wishes to contest records maintained under his or her name or other personal identifier may write, call or visit the System Manager.

CONTESTING RECORD PROCEDURES:

See record access procedures above.

RECORD SOURCE CATEGORIES:

Individuals who have applied for and been granted access permission to the resources of the Austin Automation Center (AAC).

[FR Doc. 95–30329 Filed 12–12–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 239
Wednesday, December 13, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Friday, December 15, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, December 15, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—International—Title: Sprint Corporation Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended (File No. I-S-P–95–002). Summary: The Commission will consider action regarding Sprint's Petition for Declaratory Ruling that proposed equity investments by France Telecom and Deutsche Telekom in Sprint do not result in a transfer of control under Section 310(d), are permissible under Section 310(b)(4), and are otherwise consistent with the public interest.

2—Office of Engineering and Technology—Title: Amendment of Parts 2, 15 and 97 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications (ET Docket No. 94–124, RM- 8308). Summary: The Commission will address standards for operation above 40 GHz for vehicle radar systems and unlicensed general applications. It will also consider restrictions on operation in the 76–77 GHz band, limits on emissions above 200 GHz, and spectrum etiquette standards.

3—Office of Engineering and Technology—Title: Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands (RM–8553); and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 37.0–38.6 GHz and 38.6–40.0 GHz (PP Docket No. 93–253). Summary: The Commission will consider a channeling plan and licensing and technical rules for fixed point-to-point microwave operations in the 37.0–38.6 GHz band, and the revision of licensing and technical rules for fixed point-to-point microwave operations in the 38.6–40.0 GHz (39 GHz) band.

4—Wireless Telecommunications—Title: Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band (PR Docket No. 93–144, RM–8117, RM–8030 and RM–8029); Implementation of Sections 3(n) and 322 of the Communications Act—Regulatory Treatment of Mobile Services (GN Docket No. 93–252) and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253). Summary: The Commission will consider action concerning service, licensing, and auction rules for licensing of the 800 MHz Specialized Mobile Radio (SMR) service.

5—Cable Services—Title: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 93–215); and Adoption of a Uniform Accounting System for Provision of regulated Cable Service (CS Docket No. 94–28). Summary: The Commission will address petitions for reconsideration of the interim rules governing cost of service showings filed by cable operators seeking to establish or justify initial rates for regulated cable services and consider whether to adopt permanent cost of service rules.

6—Cable Services—Title: Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring (MM Docket No. 92–260). Summary: The Commission will consider petitions for reconsideraton of the Commission's cable wiring rules.

7—Cable Services and Common Carrier—Title: Telecommunications Services Inside Wiring. Summary: The Commission will consider revisions to the cable and telephone inside wiring rules as the technologies used to deliver cable and telephone service become more similar.

8—Common Carrier—Title: Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers (CC Docket No. 94–54). Summary: The Commission will consider action concerning interconnection compensation arrangements between local exchange companies and commercial mobile radio service providers.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated: December 8, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30452 Filed 12–11–95; 2:06 pm]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 3:07 p.m. on Thursday, December 7, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Personnel matters.

Matters relating to the Corporation's corporate and supervisory activities.

Recommendation regarding an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: December 8, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–30518 Filed 12–11–95; 3:14 pm]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 61736, December 1, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., December 8, 1995.

CHANGES IN THE MEETING: The following topic was withdrawn from the open portion of the meeting:

- Federal Home Loan Bank of Dallas' CIP Request.
- The Federal Home Loan Bank of Cincinnati Request for an Exception to the Limit on Charitable Contributions.

The following topic was added to the open portion of the meeting.

- Repeal of Finance Board Regulation on Charitable Donations by the FHLBanks.

The Board determined that agency business requires its consideration of these matters on less than seven days notice to the public and that no earlier notice of these changes in the subject matter of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–30444 Filed 12–11–95; 9:46 am]

BILLING CODE 6725–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, December 18, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 8, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–30441 Filed 12–8–95; 4:38 pm]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m. (EST), December 18, 1995.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 20, 1995, Board meeting
2. Thrift Savings Plan activity report by the Executive Director
3. Review of audit reports:
   ''Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Annuity Operations at the Metropolitan Life Insurance Company and the Federal Retirement Thrift Investment Board.''
   ''Pension and Welfare Benefits Administration Review of the Policies and Procedures of the Federal Retirement Thrift Investment Board Administrative Staff.''

''Federal Pensions: Thrift Savings Plan has Key Role in Retirement Benefits.''

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs (202) 942–1640.

Dated: December 11, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 95–30519 Filed 12–11–95; 3:14 pm]

BILLING CODE 6760–01–M

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on December 20, 1995, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Employer Status Determination—Hohorst Transportation Corp.—Request for Waiver of Retroactive RUIA Contributions.

(2) Regulations—Proposing Revisions to Parts 211 and 261 (Finality of Decisions Regarding Railroad Retirement Annuities) and Part 255 (Recovery of Overpayments).

Portion Closed to the Public

(A) Recommended Reassignments of Agency Personnel.

(B) Appeal of Mr. & Mrs. Lawrence Zea.

(C) Appeal of David W. Persinger.

(D) Appeal of Kathleen T. O'Toole.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: December 8, 1995.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–30462 Filed 12–11–95; 2:06 pm]

BILLING CODE 7905–01–M

Federal Register

Wednesday
December 13, 1995

Part II

Department of Energy

Request for Expressions of Interest for Tritium Production; Notice

DEPARTMENT OF ENERGY

Request for Expressions of Interest for Tritium Production

AGENCY: Department of Energy (DOE).

ACTION: Request for expressions of interest.

SUMMARY: Tritium is an essential material in all nuclear weapons in the U.S. nuclear stockpile. Because the U.S. is not currently producing tritium, development of a new tritium supply will be essential for maintaining the U.S. nuclear deterrent. The Department of Energy's preferred strategy for acquiring new supplies of tritium is to pursue the two most promising production alternatives: (1) use of one or more existing Commercial Light Water Reactors (CLWRs); and (2) to design, build and test critical components of an Accelerator-Produced Tritium (APT) system to be used for tritium production. By this Notice, DOE is requesting expressions of interest concerning DOE's possible acquisition of one or more CLWRs, or acquisition of irradiation services from CLWRs, for the production of tritium. In addition, this request will solicit interest regarding the future potential use of mixed oxide fuel from surplus weapons plutonium either coincident with or separate from tritium production. The use of mixed oxide fuel is not part of DOE's preferred strategy for acquiring new supplies of tritium and no firm decisions have been made regarding the use of such fuel. Nevertheless, DOE is seeking to ascertain industry interest in the possible use of mixed oxide fuel for disposal of surplus weapons plutonium.

DATES: Initial expressions of interest should be submitted on or before January 29, 1996. Supplementary information regarding the expressions of interest should be submitted on or before February 26, 1996.

ADDRESSES: Requests for information, and submittal of initial and supplemental expressions of interest (original plus five (5) copies, citing this Notice), should be directed to: Stephen M. Sohinki, Director, Office of Reconfiguration, DP–25, United States Department of Energy, 1000 Independence Ave. SW., Washington D.C. 20585, Attention: Tritium EOI, Telephone: (202) 586–0838.

Answers to questions that, in DOE's judgment, are of general interest and applicability to all potential respondents will be made available for review in DOE's Public Reading Room at DOE Headquarters in Washington, D.C.

I. Purpose

A. Dual Path Strategy for Tritium Supply

Tritium, an essential material in U.S. nuclear weapons, decays at a rate of approximately five percent per year (12.3 year half life). The U.S. is not currently producing tritium. Resumption of tritium production will be essential for maintaining the U.S. nuclear weapons stockpile and the U.S. nuclear deterrent. Tritium could be required as early as 2005 should the START II treaty not be ratified and implemented according to its terms. If the START II treaty is ratified and implemented as written tritium would be required in 2011.

DOE distributed its Tritium Supply and Recycling Programmatic Environmental Impact Statement in October, 1995, in which it announced its preferred ''dual path'' strategy for acquiring a new supply of tritium. That strategy is to begin work on the two most promising production alternatives: (1) to procure an option or options to purchase or lease one or more existing CLWRs or procure CLWR irradiation services for tritium production; and (2) to design, build and test critical components of an APT system for tritium production. A decision to implement the DOE's preferred dual path strategy for tritium production, based upon the Programmatic Environmental Impact Statement and related cost, schedule and technical analyses, was announced in a Record of Decision issued on December 5, 1995.

The CLWR and APT options present very different approaches and pose fundamentally different technical and institutional issues that must be evaluated to provide a basis for selection. During the next three years, DOE will be undertaking the research and analyses necessary to provide the technical, economic and regulatory bases for the selection of the primary and backup technology approaches by 1998. If the CLWR option is not selected as the primary source of tritium, however, DOE intends to go forward with some form of the CLWR option as a backup for the APT, as a contingency for U.S. national defense requirements.

B. Tritium Target Development

To produce tritium in a reactor, tritium target rods must be inserted into the reactor to capture neutrons and generate tritium. A lithium-aluminate, getter-barrier target design for use in a CLWR is currently under development. Tritium is produced via neutron capture in the lithium and the tritium generated is captured in a Zircaloy getter. The target rod outer cladding is stainless steel which has an aluminide inner coating to prevent tritium release. DOE's target development has focused on PWR technology, with target dimensions sized so that the target can be placed in either burnable poison or fuel rod locations. Following irradiation, target rods would be removed from the reactor as part of the refueling process and shipped to DOE's Savannah River Site where the tritium would be extracted. Depending on production requirements, between 2000 to 5000 target rods would be needed per fuel cycle. A single reactor or multiple reactors could be utilized. Target development work to date indicates that reactor fuel enrichment need not exceed five (5) percent.

DOE's target development work has progressed to the point that it is now appropriate to evaluate potential reactor candidates for the production mission.

C. Acquisition of Option

DOE is interested in acquiring one or more options to purchase or lease an existing commercial reactor or reactors, or to procure irradiation services from one or more such reactors. To accomplish this DOE will consider different types of options, as described in detail below. To facilitate assessing the feasibility of these options, DOE is requesting expressions of interest.

This Request for Expressions of Interest is not intended to be a solicitation for proposals, and it is not anticipated that an award will be made based on the expressions of interest received. Depending on the nature of the responses received and subsequent determinations by DOE, a formal solicitation for competitive proposals may be issued in the future, and awards may be made based upon an evaluation of proposals received pursuant to the evaluation criteria as stated in the solicitation. However, DOE may utilize the information received in response to this request to take any other action as authorized by law to fulfill the government's requirements for the production of tritium, and potential disposition of surplus weapons plutonium, including a noncompetitive process.

For the information of potential respondents, a preliminary procurement schedule is provided as an appendix to this Notice. The preliminary schedule provided in the appendix is tentative and depends upon a number of factors, including the nature of the responses to this Request, meetings which may be conducted with respondents, and the need for and schedule of necessary technical studies and analyses.

Respondents are encouraged to provide comments on the schedule so that DOE may be made aware of any concerns and attempt to alleviate them to the extent consistent with programmatic requirements.

D. Potential Use of Mixed Oxide Fuel From Surplus Weapons Plutonium

DOE is currently examining options for the disposal of surplus weapons plutonium and is preparing a Programmatic Environmental Impact Statement (PEIS) on storage and disposition of weapons-usable fissile materials, scheduled for completion in late 1996. However, to facilitate the Department's ongoing efforts to assess the feasibility of disposal of surplus weapons plutonium through the use of mixed oxide fuel in existing light water reactors, the Department is taking the opportunity of this request for expressions of interest to solicit information regarding the general level of industry interest in the potential future use of mixed oxide fuel from surplus weapons plutonium either coincident with (multipurpose) or separate from tritium production. *A reactor operator need not be interested in use of mixed oxide fuel, however, in order to respond to the request for expressions of interest for tritium production.*

II. Areas of DOE Interest

DOE is considering acquiring in 1997 or 1998 one or more options to:

- Purchase or lease an operating reactor or reactors, including options to purchase a complete facility, purchase a reactor without any power-generating systems, obtain a long-term lease of a facility or part of a facility or other similar arrangements, or purchase an uncompleted reactor or reactors; or
- Purchase target irradiation services, including all possibilities ranging from obtaining all tritium from a single reactor to using several reactors (the number of reactors to be utilized would depend, among other things, on the quantity of tritium required). An option to purchase irradiation services may also include an option to purchase the reactor or reactors being utilized to provide the services.

These options would be exercised after all necessary regulatory approvals have been obtained.

DOE may also desire an option to conduct irradiation and other testing of a Lead Test Assembly (LTA) target as a prelude to tritium production. Follow-on tritium production may be accomplished in the same reactor or reactors that were used for irradiation of the LTA, or in a different reactor or reactors. Reactors to be considered may need to be available for testing of tritium targets not later than July, 1997, and for mission use in about 2003, and would need to have sufficient remaining useful life to meet mission needs. Candidate reactors should have licenses with expiration dates of 2020 or later.

DOE's target development work has focused on targets for use in pressurized water reactors (PWRs). Although tritium targets could be developed for use in boiling water reactors (BWRs), significant additional development work would likely be required at substantial additional cost. DOE does not plan to develop such targets, given existing budget constraints and the need to complete target development and qualification in the required time frame. However, DOE has not ruled out the use of BWRs and would be interested in expressions of interest with respect to both the use of BWR plants and to the development of BWR tritium targets.

In addition to the above, if the option of using existing light water reactors were to be selected for the disposition of surplus weapons plutonium when the DOE completes its Programmatic Environmental Impact Statement (PEIS) on storage and disposition of weapons-usable fissile materials in late 1996, DOE would intend to embark on a mixed oxide fuel (MOX) test and demonstration program including regulatory review and testing of lead test assemblies. Thus, DOE requests that respondents indicate their interest, if any, in participating in such a potential test program.

Respondents should provide information that is as accurate as possible, but information provided will not be considered as binding nor all inclusive.

Respondents are requested to provide expressions of interest in two parts over a 75 day response period:

- Initial expressions of interest due at the end of the first 45 day response period; and
- Supplementary information due 30 days after submission of initial expressions of interest.

Respondents are requested to provide the following information in their initial expressions of interest:

- The reactor(s) it may wish to sell, lease, or offer for irradiation services.
- The reactor(s) age, location, specifications, operating schedule (including the anticipated refueling/outage schedule) and capacity factor for each year of operation.

Respondents are requested to provide as much of the following supplementary information as is feasible 30 days after the due date for initial expressions of interest:

- Proposed arrangements by which DOE would use the reactor or reactors to produce tritium, including a non-binding price estimate (or estimated range of prices), for each arrangement contemplated by respondent, assuming that DOE would begin tritium production in 2005. Discuss important variables that could affect the price or other terms of the arrangements.
- Equity- and debt-structure of owner(s)/co-owners, and approvals that would be needed and requirements (terms/conditions) that must be met before the respondent can enter into an agreement with DOE.
- Potential issues involving decontamination and decommissioning, or other technical or cost issues.
- Interest and issues concerning the potential use of mixed oxide fuel from surplus weapons plutonium.
- Nuclear Regulatory Commission (NRC) license requirements, Securities and Exchange Commission disclosure requirements and requirements of other federal, state or local regulatory authorities.
- The complete operating history of the reactor(s), and respondent's experience in operating the reactor(s).
- The NRC enforcement history with respect to the reactor(s).
- Major maintenance actions taken in the last 10 years and actions expected in the next 15 years for the reactor(s) and their actual or estimated costs, as appropriate.
- Any other issues specifically related to the particular reactor(s), fuel type or assumptions, facility or services identified in the response.
- Any additional information or other requirements necessary for developing a complete response to a future solicitation by DOE for the use of CLWRs to produce tritium, including the potential use of mixed oxide fuel from surplus weapons plutonium either coincident with or separate from the production of tritium.

III. Expressions of Interest Format

There is no minimum length for expressions of interest. Maximum aggregate length is fifty (50) pages for both initial and supplementary responses, including enclosures or attachments. It is left to the respondent to determine how best to use the fifty (50) page maximum. It would, however, facilitate review if initial and supplementary expressions of interest are divided into sections that correspond to the categories of information identified in Section II., above.

Proprietary Information

If the initial or supplementary expression of interest contains information that is privileged or confidential and which the respondent does not want disclosed to the public, the respondent should place the following notice on the expression of interest:

The information contained in pages _____ of this Expression of Interest has been submitted in confidence and contains trade secrets or commercial or financial information that is confidential or privileged, and such information should be used or disclosed by the Government or its contractors, only for purposes of consideration of this Expression of Interest. This restriction does not limit the Government's right to use or disclose other information obtained without proprietary restrictions from any source, including other information provided by the respondent.

Submission

Each submittal should consist of one original and five (5) photocopies. DOE is under no obligation to pay for any costs associated with the preparation or submission of expressions of interest in response to this Notice. DOE reserves the right to respond, or not respond to all or any portion of any expression of interest submitted in response to this Notice. DOE intends to conduct a public meeting regarding this notice 30 days from the date of its publication. Following receipt of initial or supplementary responses, DOE may also conduct one or more scoping meetings with all respondents to disseminate additional information on this effort, and may also conduct meetings with individual respondents for clarification of their responses or to obtain additional information.

Issued in Washington, D.C. on December 5, 1995.

Hazel R. O'Leary,

Secretary.

APPENDIX—PRELIMINARY PROCUREMENT SCHEDULE

Activity	Completion date
Receipt of Initial Responses.	Jan. 19, 1996.
Receipt of Supplemental Information.	Feb. 20, 1996.
Complete Review of EOIs .	Mar. 15, 1996.
Issue Request for Proposals.	Jun. 1, 1996.
Proposals Due Date	Sep. 1, 1996.
Evaluate Proposal's and Select Competitive Range.	Dec. 1, 1996.
Conduct Discussions and Request and Receive Best and Final Offers.	Apr. 1, 1997.
Make Conditional Selection	Jun. 1, 1997.

[FR Doc. 95–30237 Filed 12–12–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Wednesday
December 13, 1995

Part III

Department of Education

34 CFR Part 646

Student Support Services Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 646

RIN 1840–AC24

Student Support Services Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Student Support Services Program. The proposed regulations clarify and simplify requirements governing the program. The selection criteria, prior experience criteria, and grantee accountability provisions are affected by these proposed changes.

The Student Support Services Program supports the educational needs of students from disadvantaged backgrounds. Performance outcomes for the program are designed to demonstrate the progress and performance of eligible students in successfully completing their postsecondary education.

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

ADDRESSES: All comments concerning these proposed regulations should be addressed to Richard T. Sonnergren, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202–5249. Comments may also be sent through the Internet to TRIO@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Virginia A. Mason, Division of Student Services, U.S. Department of Education, 600 Independence Avenue, S.W., The Portals Building, Suite 600D, Washington, D.C. 20202–5249. Telephone: (202) 708–4804. Individuals who use telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Student Support Services program provides grants to institutions of higher education for projects offering support services to low-income, first generation, or disabled college students. These support services should enhance their academic skills, increase their retention and graduation rates, facilitate their entrance into four-year colleges or graduate and professional programs, and foster an institutional climate supportive of the success of low-income and first generation college students and students with disabilities.

Projects assisted under this program may provide: (1) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond high school; (2) personal counseling; (3) academic advice and assistance in course selection; (4) tutorial services and peer counseling; (5) exposure to cultural events and academic programs not usually available to disadvantaged students; (6) activities designed to assist students participating in the project in securing admission and financial assistance for enrollment in graduate and professional programs; (7) activities designed to assist students currently enrolled in two-year institutions in securing admission and financial assistance for enrollment in a four-year program of postsecondary education; (8) mentoring programs involving faculty or upper class students, or a combination thereof; and (9) programs and activities specially designed for students of limited proficiency in English.

These proposed regulations have been revised to address the President's regulatory reinvention initiative. Specifically, §§ 646.7, 646.10, 646.20, 646.21, 646.22 and 646.32 simplify the selection criteria and increase grantee accountability through revised prior experience criteria and stronger project evaluation requirements. On October 1, 1993, the Secretary published revisions to the Student Support Services Program regulations to implement changes required by the Higher Education Amendments of 1992 (58 FR 51521–22). This notice of proposed rulemaking proposes program improvements that were not covered by the October 1, 1993 regulations. Major changes in the current regulations are proposed in the following sections:

• *Definitions (§ 646.6).* These regulations would provide definitions for terms used in the program statute and these proposed regulations. The following definitions have been added: academic need, different campus, different population of participants, combination of institutions of higher education, participant, sufficient financial assistance. In addition, we have revised the definition of the term ''limited proficiency in English.'' These definitions are needed to provide standard definitions used in data collection instruments and to implement changes required by the 1992 Higher Education Amendments. Specifically, the definitions for ''academic need'' and ''sufficient financial assistance'' are intended to ensure grantees the flexibility to customize their projects to meet the special needs of the participants served. The definitions for ''different campus'' and ''different population of participants'' are intended to implement policies and practices that have been used in governing the program. The term ''limited proficiency in English'' is defined to provide clarity and intended to be more practical.

• *Selection criteria (§ 646.21).* The proposed regulations would revise the application selection criteria to simplify and clarify the requirements and increase grantee accountability by establishing performance indicators and a standard for evaluating project services.

• *Prior experience (§ 646.22).* The proposed regulations would revise the criteria for the evaluation of a grantee's prior experience to focus on project outcomes. The changes are intended to eliminate data requested on administrative compliance matters and collect only the information necessary to assess the impact of services on project outcomes.

• *Other requirements of a grantee (§ 646.32).* The proposed regulations would prohibit a grantee from serving any individual who is simultaneously receiving services from another Federal TRIO program and would clarify provisions for project coordination. In addition, the proposed regulations would require grantees to track student performance and define the basis for determining academic need. These regulations are needed to assist projects with the implementation of the statutory provision to coordinate services with similar programs and provide parameters for collecting the types of information projects need to evaluate services. The uniformity in student service delivery and evaluation are expected to allow the Secretary to more effectively assess the impact of the program.

Executive Order 12866

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 646.20 *How does the Secretary decide which new grants to make*? (4) Is the description of the proposed regulations in the ''Supplementary Information'' section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small institutions of higher education that receive Federal funds under this program.

However, the regulations would not have a significant economic impact on the small entities affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

Sections 646.11, 646.21, 646.22, and 646.32 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Student Support Services Program—Program Regulations.

Institutions of higher education and combinations of those institutions are eligible to apply for grants under these regulations. The information to be collected includes: assurances to meet certain statutory requirements; a description of each proposed project; specific information regarding each project (such as the need for the project, proposed collaboration with similar or related projects; criteria to be used to measure progress and outcomes, data regarding persons to be served); and information to be included in an annual report to the Secretary. The Department needs and uses the information to make grants.

All information is to be collected annually from each applicant. Annual reporting and recordkeeping burden for this collection of information is estimated to average 20 hours for each response for 706 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 14,120 hours.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period at 1250 Maryland Avenue, SW., The Portals Building, Suite 600D, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 646

Colleges and universities, Disadvantaged students, Educational programs, Discretionary grants, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.042 Student Support Services Program.)

Dated: November 28, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 646 to read as follows:

PART 646—STUDENT SUPPORT SERVICES PROGRAM

Subpart A—General

Subpart B—How Does One Apply for an Award?

Subpart C—How Does the Secretary Make a Grant?

Subpart D—What Conditions Must Be Met by a Grantee?

Authority: 20 U.S.C. 1070a–11 and 1070a–14, unless otherwise noted.

Subpart A—General

§ 646.1 What is the Student Support Services Program?

The Student Support Services Program provides grants for projects designed to—

(a) Provide support services to eligible students to enhance their academic skills, increase their retention and graduation rates, and, as appropriate, facilitate their entrance into four-year colleges or graduate and professional programs; and

(b) Foster an institutional climate supportive of the success of low-income and first generation college students and individuals with disabilities through services such as those described in § 646.4.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.2 Who is eligible to receive a grant?

An institution of higher education or a combination of institutions of higher education are eligible to receive a grant to carry out a Student Support Services project.

(Authority: 20 U.S.C. 1070a–14)

§ 646.3 Who is eligible to participate in a Student Support Services project?

A student is eligible to participate in a Student Support Services project if the student meets all of the following requirements:

(a) Is a citizen or national of the United States or meets the residency requirements for Federal student financial assistance.

(b) Is enrolled at the grantee institution or accepted for enrollment in the next academic term at that institution.

(c) Has a need for academic support, as determined by the grantee, in order to pursue successfully a postsecondary educational program.

(d) Is—

(1) A low-income individual;

(2) A first generation college student; or

(3) An individual with disabilities.

(Authority: 20 U.S.C. 1070a–14)

§ 646.4 What activities and services may a project provide?

A Student Support Services project may provide the following services:

(a) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond secondary school.

(b) Personal counseling.

(c) Academic advice and assistance in course selection.

(d) Tutorial services and counseling and peer counseling.

(e) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(f) Activities designed to acquaint students participating in the project with the range of career options available.

(g) Activities designed to secure admission and financial assistance for enrollment in graduate and professional programs.

(h) Activities designed to assist students currently enrolled in two-year institutions in securing admission and financial assistance for enrollment in a four-year program of postsecondary education.

(i) Mentoring programs involving faculty or upper class students, or any combination of faculty members and upper class students.

(j) Programs and activities as described in paragraphs (a) through (i) of this section that are specifically designed for students of limited English proficiency.

(k) Other activities designed to meet the purposes of the Student Support Services Program stated in § 646.1.

(Authority: 20 U.S.C. 1070a-14)

§ 646.5 How long is a project period?

(a) Except as provided in paragraph (b) of this section, a project period under the Student Support Services program is four years.

(b) The Secretary approves a project period of five years for applicants that score in the highest ten percent of all applicants approved for new grants under the criteria in § 646.21.

(Authority: 20 U.S.C. 1070a–11)

§ 646.6 What regulations apply?

The following regulations apply to the Student Support Services Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85 and 86; and

(b) The regulations in this part 646.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.7 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in sections 402(A)(g), 481, or 1201(a) of the Higher Education Act (HEA) of 1965, as amended.

First generation college student.

Institution of higher education.

Low-income individual.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget Period
Department
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Grant Period
Project
Project period
Public
Secretary
Supplies

(c) *Other definitions.* The following definitions also apply to this part:

Academic need with reference to a student means a student whom the grantee determines needs one or more of

the services stated under § 646.4 to succeed in a postsecondary educational program.

Cohort rate means a statistical measure used to compare the characteristics or outcomes of a specified group of students over time with other groups for which similar rates have been calculated.

Combination of institutions of higher education means two or more institutions of higher education that have entered into a cooperative agreement for the purpose of carrying out a common objective, or an entity designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

Different campus means an institutional site that is geographically apart from and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location—

(1) Is permanent in nature;

(2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;

(3) Has its own faculty and administrative or supervisory organization; and

(4) Has its own budgetary and hiring authority.

Different population of participants means a group of either—

(1) Low-income, first-generation college students; or

(2) Disabled students.

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in the educational experiences and opportunities offered by the grantee institution.

Limited proficiency in English with reference to an individual means an individual whose native language is other than English and who has sufficient difficulty speaking, reading, writing, or understanding the English language to deny that individual the opportunity to learn successfully in classrooms in which English is the language of instruction.

Participant means an individual who—

(1) Is determined to be eligible to participate in the project under § 646.3; and

(2) Receives project services on a continual basis for a period of more than one full grading period at the grantee institution.

Sufficient financial assistance means the amount of financial aid offered a Student Support Services student, inclusive of Federal, State, local, private, and institutional aid which, together with parent or student contributions, is equal to the cost of attendance as determined by a financial aid officer at the institution.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

Subpart B—How Does One Apply for an Award?

§ 646.10 How many applications for a Student Support Services award may an eligible applicant submit?

The Secretary accepts more than one application from an eligible applicant so long as each additional application describes a project that serves a different campus, or a different population of participants who cannot readily be served by a single project.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.11 What assurances must an applicant include in an application?

An applicant shall assure in its application that—

(a) At least two-thirds of the students it will serve in its Student Support Services project will be—

(1) Low-income individuals who are first generation college students; or

(2) Individuals with disabilities;

(b) The remaining students it will serve will be low-income individuals, first generation college students, or individuals with disabilities;

(c) Not less than one-third of the individuals with disabilities will be low-income individuals; and

(d) Each student participating in the project will be offered sufficient financial assistance to meet that student's full financial need.

(Authority: 20 U.S.C. 1070a–14)

Subpart C—How Does the Secretary Make a Grant?

§ 646.20 How does the Secretary decide which new grants to make?

(a) The Secretary evaluates an application for a new grant as follows:

(1) (i) The Secretary evaluates the application on the basis of the selection criteria in § 646.21.

(ii) The maximum score for all the criteria in § 646.21 is 00 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2) (i) If an application for a new grant proposes to continue to serve substantially the same population or campus that the applicant is serving under an expiring grant, the Secretary evaluates the applicant's prior experience in delivering services under the expiring grant on the basis of the criteria in § 646.22.

(ii) The maximum score for all the criteria in § 646.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(b) The Secretary makes new grants in rank order on the basis of the applications' total scores under paragraphs (a)(1) and (a)(2) of this section.

(c) If the total scores of two or more applications are the same and there is insufficient money available to fully fund them both after funding the higher-ranked applications, the Secretary chooses among the tied applications so as to serve geographic areas that have been underserved by the Student Support Services Program.

(d) The Secretary does not make grants to applicants that carried out a Federal TRIO program project that involved the fraudulent use of funds.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Need for the project* (24 points). The Secretary evaluates the need for a Student Support Services project proposed at the applicant institution on the basis of the extent to which the application contains clear evidence of—

(1) A high number or percentage, or both, of students enrolled or accepted for enrollment at the applicant institution who meet the eligibility requirements of § 646.3;

(2) The academic and other problems that eligible students encounter at the applicant institution; and

(3) Students eligible for Student Support Services projects who are less likely to succeed as compared to the total enrollment at the applicant institution based upon the following indicators:

(i) Retention and graduation rates.

(ii) Grade point averages.

(iii) Graduate and professional school enrollment rates (four-year colleges only).

(iv) Transfer rates from two-year to four-year institutions (two-year colleges only).

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's proposed project objectives on the basis of the extent to which they—

(1) Include both process and outcome objectives relating to each of the

purposes of the Student Support Services Program stated in § 646.1;

(2) Address the needs and aspirations of the proposed project participants;

(3) Are clearly described, specific, and measurable; and

(4) Are ambitious but attainable within each budget period and the project period given the project budget and other resources.

(c) *Plan of operation* (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (3 points) The plan to inform the institutional community (students, faculty and staff) of the goals, objectives, and services of the project and the eligibility requirements for participation in the project.

(2) (3 points) The plan to identify, select and retain project participants with academic need and ensure their participation without regard to race, color, national origin, or gender.

(3) (4 points) The plan for assessing individual participants' need for specific services and monitoring their academic progress.

(4) (10 points) The plan to provide services that address the goals and objectives of the project.

(5) (10 points) The applicant's plan to ensure proper and efficient administration of the project, including the organizational placement of the project; the time commitment of key project staff; the specific plans for financial management, student records management, and personnel management; and, where appropriate, its plan for coordination with other programs for disadvantaged students.

(d) *Institutional commitment* (16 points). The Secretary evaluates the institutional commitment to the proposed project on the basis of the extent to which the applicant has—

(1) (6 points) Committed facilities, equipment, supplies, personnel, and other resources to supplement the grant and enhance project services;

(2) (6 points) Established administrative and academic policies that enhance participants' retention at the institution and improve their chances of graduating from the institution;

(3) (2 points) Demonstrated a commitment to minimize the dependence on student loans in developing financial aid packages for project participants by committing institutional resources to the extent possible; and

(4) (2 points) Assured the full cooperation and support of the Admissions, Student Aid and Registrar functional components of the institution.

(e) *Quality of personnel* (9 points). To determine the quality of personnel the applicant plans to use, the Secretary looks for information that shows—

(1) The qualifications required of the project director, including formal education and training in fields related to the objectives of the project, and experience in designing, managing, or implementing Student Support Services or similar projects;

(2) The qualifications required of other personnel to be used in the project, including formal education, training, and work experience in fields related to the objectives of the project; and

(3) The quality of the applicant's plan for employing personnel who have succeeded in overcoming barriers similar to those confronting the project's target population.

(f) *Budget* (5 points). The Secretary evaluates the extent to which the project budget is reasonable, cost-effective, and adequate to support the project.

(g) *Evaluation plan* (8 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project and include both quantitative and qualitative evaluation measures;

(2) Examine in specific and measurable ways, using appropriate baseline data, the success of the project in improving academic achievement, retention and graduation of project participants; and

(3) Compares project outcomes with institutional data on student cohorts not served by the project.

(Authority: 20 U.S.C. 1070a–14)

§ 646.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 646.20(a)(2)(i), the Secretary reviews information relating to an applicant's performance under its expiring Student Support Services project. This information may come from performance reports, site visit reports, project evaluation reports, and any other verifiable information submitted by the applicant.

(b) The Secretary evaluates the applicant's prior experience in achieving the goals of the Student Support Services Program on the basis of the following criteria:

(1) (4 points) The extent to which project participants persisted toward completion of the academic programs in which they were enrolled.

(2) (4 points) The extent to which project participants met academic performance levels required to stay in good academic standing at the grantee institution.

(3) (4 points) The extent to which project participants graduated from the grantee institution.

(4) (3 points) The extent to which project participants either transferred from two-year to four-year institutions (two-year colleges only) or enrolled in graduate or professional schools (four-year colleges only).

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.23 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for new grants; and

(2) 34 CFR 75.253, for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant beginning in fiscal year 1995 at the lesser of—

(1) $170,000; or

(2) The amount requested by the applicant.

(Authority: 20 U.S.C. 1070a–11)

Subpart D—What Conditions Must Be Met By a Grantee?

§ 646.30 What are allowable costs?

The cost principles that apply to the Student Support Services Program are in 34 CFR part 74, subpart Q. Allowable costs include the following if they are reasonably related to the objectives of the project:

(a) Cost of remedial and special classes if—

(1) These classes are not otherwise available at the grantee institution;

(2) Are limited to eligible project participants; and

(3) Project participants are not charged tuition for instruction paid for the classes.

(b) Courses in English language instruction for students of limited proficiency in English if these classes are limited to eligible project participants and not otherwise available at the grantee institution.

(c) In-service training of project staff.

(d) Activities of an academic or cultural nature, such as field trips, special lectures, and symposiums, that have as their purpose the improvement of the participants' academic progress and personal development at the institution.

(e) Transportation of participants and staff to and from approved educational

and cultural activities sponsored by the project.

(f) Purchase of computer hardware, computer software, or other equipment to be used for student development, student records and project administration if the applicant demonstrates to the Secretary's satisfaction that the equipment is required to meet the objectives of the project more economically or efficiently.

(g) Professional development travel for staff if directly related to the project's overall purpose and activities, except that these costs may not exceed four percent of total project salaries. The Secretary may adjust this percentage if the applicant demonstrates to the Secretary's satisfaction that a higher percentage is necessary and reasonable.

(Authority: 20 U.S.C. 1070a–14)

§ 646.31 What are unallowable costs?

Costs that may not be charged against a grant under the Student Support Services Program include, but are not limited to, the following:

(a) Costs involved in recruiting students for enrollment at the institution.

(b) Tuition, fees, stipends, and other forms of direct financial support for staff or participants.

(c) Research not directly related to the evaluation or improvement of the project.

(d) Construction, renovation, or remodeling of any facilities.

(Authority: 20 U.S.C. 1070a–14)

§ 646.32 What other requirements must a grantee meet?

(a) *Eligibility of participants.* (1) A grantee shall determine the eligibility of each participant in the project when the individual is selected to participate. The grantee does not have to revalidate a participant's eligibility after the participant's initial selection.

(2) A grantee shall determine the low-income status of an individual on the basis of the documentation described in section 402A(e) of the Higher Education Act.

(3) A grantee shall not serve any individual who is receiving services from another Federal TRIO Program.

(b) *Recordkeeping.* A grantee shall maintain participant records that show—

(1) The basis for the grantee's determination that each participant is eligible to participate in the project under § 646.3;

(2) The grantee's basis for determining the academic need for each participant;

(3) The services that are provided to each participant; and

(4) The performance and progress of each participant for the duration of the participant's attendance at the grantee institution.

(c) *Project director.* (1) A grantee shall employ a full-time project director unless paragraph (c)(3) of this section applies.

(2) The grantee shall give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirement in paragraph (c)(1) of this section if the applicant demonstrates that the requirement will hinder coordination—

(i) Among the Federal TRIO Programs; or

(ii) Between the programs funded under sections 404A through 410 of the Higher Education Act and similar programs funded through other sources.

(d) *Project coordination.* (1) The Secretary encourages grantees to coordinate project services with other programs for disadvantaged students operated by the grantee institution provided the Student Support Services grant funds are not used to support activities reasonably available to the general student population.

(2) To the extent practical, the grantee may share staff with programs serving similar populations provided the grantee maintains appropriate records of staff time and effort and does not comingle grant funds.

(3) Costs for special classes and events that would benefit Student Support Services students and participants in other programs for disadvantaged students may be proportionately divided among the projects that receive the benefits.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

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FEDERAL REGISTER PAGES AND DATES, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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

Avocados grown in Florida; published 11-13-95

ARTS AND HUMANITIES, NATIONAL FOUNDATION

National Foundation on the Arts and the Humanities

Grants:

General operating and conservation project support grant programs; Museum Services Institute; published 12-13-95

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Comments Due Next Week

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2519/P.L. 104–62

Philanthropy Protection Act of 1995 (Dec. 8, 1995; 109 Stat. 682)

H.R. 2525/P.L. 104–63

Charitable Gift Annuity Antitrust Relief Act of 1995 (Dec. 8, 1995; 109 Stat. 687)

Last List December 5, 1995