12–19–95
Vol. 60 No. 243
Pages 65235–65504

federal register

Tuesday
December 19, 1995

Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

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

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

Printed on recycled paper containing 100% post consumer waste

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

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

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

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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

Official/Unofficial Weighing Service

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending portions of Part 800, General Regulations under the United States Grain Standards Act, as amended (USGSA). The action is being taken to reinstate the regulations contained in 7 CFR Part 800 prior to the effective date of the direct final rule that was published in the Federal Register on August 2, 1995 (60 FR 39242). The action is necessary because we received adverse comments on the direct final rule, and we were unable to withdraw it before the effective date. We will follow this action with a proposed rule to provide adequate opportunity to comment on proposed changes contained in the direct final rule.

DATES: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: George Wollam, USDA–GIPSA, Room 0623–South Building, 1400 Independence Avenue, S.W., Washington, D.C. 20090–6454, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purpose of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This amended rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restriction concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

James R. Baker, Administrator, GIPSA, has determined that this rule will not have a significant economic impact on a substantial number of small entities. Most users of the official inspection and weighing services and those persons that perform those services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and Recordkeeping requirements in Part 800 have been approved previously by OMB and assigned OMB No. 0580–0013.

Background

The direct final rule published August 2, 1995, (60 FR 39242) notified the public of amendments to those regulations that prohibit official agencies to provide official weighing service when they provide similar unofficial service. GIPSA had planned to allow agencies to do both official and unofficial weighing within their assigned areas. Two written adverse comments in response to the direct final rule were received. The direct final rule was inadvertently not withdrawn prior to its effective date. The rule became effective on October 2, 1995. This final rule amends the regulations by reinstating the regulations that were in effect prior to the effective date of the direct final rule. The agency now plans to publish a proposed rule for public comment before taking further action to change the regulations.

Pursuant to 5 U.S.C. 553, it also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to implementing this action and that good cause exist for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action reinstates the regulations prior to effective date of the direct final rule the was inadvertently not withdrawn; and (2) a proposed rule will be published before any further changes to the regulations are made and the public will be afforded the opportunity to comment.

Final Action

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Conflict of interests, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR Part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

2. Section 800.76(a) is revised as follows:

§ 800.76 Prohibited services; restricted services.

(a) *Prohibited services.* No agency shall perform any function or provide any service on the basis of unofficial standards, procedures, factors, or criteria if the agency is designated or authorized to perform the service or provide the service on an official basis under the Act.

* * * * *

3. Section 800.186(c)(3) introductory text is revised to read as follows:

§ 800.186 Standards of conduct.

* * * * *

(c) * * *

(3) Engage in any outside (unofficial) work or activity that:

* * * * *

4. Section 800.195(f)(5)(ii) is revised to read as follows:

§ 800.195 Delegations.

* * * * *

(f) * * *

(5) * * *

(ii) *Unofficial activities.* The delegated State or personnel employed by the State shall not perform any unofficial service that is the same as any of the official services covered by the delegation.

5. Section 800.196(g)(6)(ii) is revised to read as follows:

§ 800.196 Delegations

* * * * *

(g) * * *

(6) * * *

(ii) *Unofficial activities.* The agency or personnel employed by the agency shall not perform any unofficial service that is the same as the official services covered by the designation.

* * * * *

Dated: December 8, 1995.

James R. Baker,

Administrator.

[FR Doc. 95–30593 Filed 12–18–95; 8:45 am]

BILLING CODE 3410–EN–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (Commission) is issuing this Order pursuant to which Option Contracts on a spot foreign exchange operation between the Deutsche Mark and the French Franc (DEM/FRF) traded on the Marche a Terme International de France (MATIF) may be offered or sold to persons located in the United States. This Order makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States and the procedures established by the Mutual Recognition Memorandum of Understanding (MRMOU) with the French Commission des Operations de Bourse.

EFFECTIVE DATE: January 18, 1996.

FOR FURTHER INFORMATION CONTACT: Warren R. Gorlick, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street N.W., Washington, D.C. 20581. Telephone: (202) 418–5435.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Pursuant to the Mutual Recognition Memorandum of Understanding with the French Commission des Operations de Bourse and Rule 30.3(a) Permitting Option Contracts on the DEM/FRF Traded on the Marche a Terme International de France (MATIF) to Be Offered or Sold to Persons Located in the United States Thirty Days After Publication of This Notice in the Federal Register Absent Further Notice

By Order issued on December 17, 1991 (Initial Order) [1], the Commission authorized, pursuant to the Mutual Recognition Memorandum of Understanding (MRMOU) [2] and Commission rule 30.3(a),[3] certain option products traded on the MATIF to be offered or sold in the United States.

By letter dated October 24, 1995, MATIF notified the Commission that on October 23, 1995 it would be introducing Option Contracts based on the DEM/FRF and requested that the Commission supplement its Initial Order authorizing the offer and sale in the United States of Options on the Notional Bond, the 3-month PIBOR, the 3-month EURODEM Futures Contracts; a Supplemental Order, 57 FR 10987 (April 1, 1992), authorizing the offer and sale in the United States of Options on the Long-Term ECU Bond Futures Contracts; a Supplemental Order, 59 FR 22971 (May 4, 1994), authorizing the offer and sale in the United States of Options on the USD/DEM and USD/FRF; and a Supplemental Order, 60 FR 34458 (July 3, 1995), authorizing the offer and sale in the United States of Options on the GBP/DEM and the DEM/ITL by also authorizing the MATIF's Option Contracts on the DEM/FRF to be offered or sold to persons located in the United States.[4] Based upon the foregoing, and pursuant to the terms of the MRMOU, the Commission hereby publishes this Order in the Federal Register pursuant to which the particular Option Contracts specified herein may be offered or sold thirty days after the publication of this Order.

Accordingly, pursuant to Commission rule 30.3(a), 17 CFR 30.3(a), and Article II, paragraph 6(b) and Article V, paragraph 6 of the MRMOU signed by the Commission on June 6, 1990 (55 FR 23902 (June 13, 1990)), and subject to the terms and conditions specified in the MRMOU, the Commission hereby issues this Order pursuant to which Option Contracts based on the DEM/FRF traded on the MATIF may be offered or sold to persons located in the United States thirty days after publication of this Order in the Federal Register, unless prior to that date the Commission receives any comments which may result in a determination to delay the effective date of the Order pending review of such comments. Under such circumstances the Commission will provide notice.

Contract Specifications

DEM/FRF Option

Type

European style

Underlying Interest

Spot currency transaction DEM against FRF

Contract Size

DEM 100,000

Strike Price

Expressed in FRF, with 2 decimals.

Strike price intervals: 1 Centime (3.40–3.41)

Quotation

Premium in % of the DEM nominal, with 2 decimals.

Ex: 0.45% stands for 100,000 × 0.45/100 = DEM 450.

In specific cases, premium with 3 decimals.

Tick

Size: 0.01%

Value: 0.01/100 × 100,000 = DEM 10

Expiration

3 monthly + 3 quarterly expirations from March (H), June (M), September (U), December (Z)

Last Trading Day

Thursday following the 3rd Wednesday of expiration month at 9:00 am (New York time)

[1] See 56 FR 66345 (December 23, 1991).

[2] See 55 FR 23902 (June 13, 1990). Among other things, this arrangement provides a mechanism pursuant to which certain option products traded on the Marche a Terme International de France (MATIF) may be offered or sold to customers resident in the United States thirty days after publication in the Federal Register of a notice specifying the particular option contracts to be offered or sold.

[3] Commission rule 30.3(a), 17 CFR 30.3(a), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

[4] See letter dated October 24, 1995 from Catherine Langlais, MATIF, to Jane C. Kang, Esq., Division of Trading and Markets. See also letter dated November 6, 1995 from Frederic Perier, Commission des Operations de Bourse, to Andrea M. Corcoran, Director, Division of Trading and Markets.

First Trading Day

First business day following an expiration date

Exercise

After settlement of a spot-fixing on the expiration date, automatic exercise of in-the-money options.

Exercise: exchange of underlying currencies

Trading Hours

Open outcry: 9:15 am to 5:00 pm (Paris time)

THS (after hours trading): 5:00 pm to 9:15 am

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign transactions.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by adding the following entry after the existing entries for the ''Marche a Terme International de France'' to read as follows:

Appendix B to Part 30—Option Contracts Permitted to be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
Marche a Terme International de France	Option Contracts on the Deutsche Mark and the French Franc (DEM/FRF).	December 19, 1995; 60 FR 65237
*	* * * *	* *

Issued in Washington, D.C. on December 6, 1995.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 95–30361 Filed 12–18–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 8634]

RIN 1545–AT12

Withholding on Distributions of Indian Gaming Profits to Tribal Members

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the income tax withholding requirement on distributions of profits from certain gaming activities made to members of Indian tribes under section 3402(r) of the Internal Revenue Code of 1986. Those affected by the regulations are persons, including Indian tribes, making payments to members of Indian tribes from net revenues of certain gaming activities conducted or licensed by the tribes. Also affected are members of Indian tribes who receive the payments.

DATES: These regulations are effective December 19, 1995.

For date of applicability, see § 31.3402(r)–1(b).

FOR FURTHER INFORMATION CONTACT: Rebecca Wilson (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Employment Tax Regulations (26 CFR part 31) under section 3402(r). Section 3402(r) was added by section 701 of the Uruguay Round Agreements Act, which approved the trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) and the Statement of Administrative Action to implement the Agreements.

On December 22, 1994, temporary regulations (TD 8574) relating to withholding on distributions of Indian gaming profits to tribal members under section 3402(r) were published in the Federal Register (59 FR 65939). A notice of proposed rulemaking (EE–60–94) cross-referencing the temporary regulations was published in the Federal Register for the same day (59 FR 65982). No public hearing was requested or held.

Also on December 22, 1994, the IRS mailed a copy of Notice 1026, providing withholding tables for use in 1995, to Indian tribes and gaming establishments listed with the National Indian Gaming Commission. For 1996 and subsequent years, tables will be printed in a supplement to Circular E.

The IRS received written comments responding to the notice of proposed rulemaking. After consideration of the comments, the regulations proposed by EE–60–94 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are withdrawn. The regulations contain no substantive changes.

Explanation of Provisions

1. *Indian Gaming Regulatory Act.* Net revenue from certain gaming activities conducted or licensed by an Indian tribe may be used to make taxable distributions to members of the Indian tribe. The tribe must notify its members of the tax liability at the time the payments are made. 25 U.S.C. 2710 (b)(3) and (d)(1).

2. *Prior law.* Prior to the addition of section 3402(r) in 1994, a tribe was not required to withhold on these distributions to tribal members except to the extent backup withholding rules applied under section 3406.

3. *Code section 3402(r).* Section 3402(r) generally requires that, for payments made after December 31, 1994, persons, including Indian tribes, making payments to members of Indian tribes from the net revenues of certain gaming activities conducted or licensed by the tribes deduct and withhold income taxes from those payments. Section 3402(r) provides that the withholding amount be calculated assuming that the taxpayer is single and has one exemption.

4. *Legislative history.* The legislative history of section 3402(r) indicates that the goal of the new withholding requirement was to make it easier for tribal members who receive gaming distributions to meet their tax responsibilities:

Distributions of net revenues from gaming activity by an Indian tribe may result in significant tax liability to the tribe's members. Establishing withholding on such payments will more closely match estimated tax payments to ultimate tax liability. For some tribal members, this change may eliminate the need to make quarterly

estimated tax payments. For others, it will reduce the likelihood that they will face penalties for underpayment of tax at the time of tax filing.

H.R. Rep. No. 826, 103d Cong., 2d Sess., pt.1, at 170–171 (1994).

5. *Proposed regulations.* The proposed regulations implement the withholding method prescribed by section 3402(r). They also permit additional withholding by agreement between the tribal member and the tribe.

6. *Comments and final regulations.* The IRS received only two written comments on the proposed regulations. After consideration of both comments, the proposed regulations are adopted with no substantive changes.

No comments were received from the Chief Counsel for Advocacy of the Small Business Administration.

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 the regulations is Rebecca Wilson, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by removing the entry for section 31.3402(r)–1T and adding an entry in numerical order to read as follows:

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

Section 31.3402(r)–1 also issued under 26 U.S.C. 3402(p) and (r), * * *

Par. 2. Section 31.3402(r)–1 is added to read as follows:

§ 31.3402(r)–1 Withholding on distributions of Indian gaming profits to tribal members.

(a) (1) *General rule.* Section 3402(r)(1) requires every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of any class II or class III gaming activity, as defined in 25 U.S.C. 2703, conducted or licensed by such tribe to deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax, as that term is defined in section 3402(r)(3).

(2) *Withholding tables.* Except as provided in paragraph (a)(4) of this section, the amount of a payment's proportionate share of the annualized tax shall be determined under the applicable table provided by the Commissioner.

(3) *Annualized amount of payment.* Section 3402(r)(5) provides that payments shall be placed on an annualized basis under regulations prescribed by the Secretary. A payment may be placed on an annualized basis by multiplying the amount of the payment by the total number of payments to be made in a calendar year. For example, a monthly payment may be annualized by multiplying the amount of the payment by 12. Similarly, a quarterly payment may be annualized by multiplying the amount of the payment by 4.

(4) *Alternate withholding procedures*—(i) *In general.* Any procedure for determining the amount to be deducted and withheld under section 3402(r) may be used, provided that the amount of tax deducted and withheld is substantially the same as it would be using the tables provided by the Commissioner under paragraph (a)(2) of this section. At the election of an Indian tribe, the amount to be deducted and withheld under section 3402(r) shall be determined in accordance with this alternate procedure.

(ii) *Method of election.* It is sufficient for purposes of making an election under this paragraph (a)(4) that an Indian tribe evidence the election in any reasonable way, including use of a particular method. Thus, no written election is required.

(5) *Additional withholding permitted.* Consistent with the provisions of section 3402(p), a tribal member and a tribe may enter into an agreement to provide for the deduction and withholding of additional amounts from payments in order to satisfy the anticipated tax liability of the tribal member. The agreement may be made in a manner similar to that described in § 31.3402(p)–1 (with respect to voluntary withholding agreements between employees and employers).

(b) Effective date. This section applies to payments made after December 31, 1994.

§ 31.3402(r)–1T [Removed]

Par. 3. Section 31.3402(r)-1T is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 28, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30683 Filed 12–18–95; 8:45 am]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 20

Interim Rule Amending International Mail Manual Subchapter 790, Items Mailed Abroad by or on Behalf of Senders in the U.S. and Certain Other Countries

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: On March 10, 1994, the Postal Service published in the Federal Register (59 FR 11188–11193) amendments to certain rules in International Mail Manual (IMM) subchapter 790 to clarify when a mailing in a foreign country is by or on behalf of a resident of the United States for the purposes of collecting U.S. domestic postage; and to authorize the collection of U.S. domestic postage on certain mail posted in a foreign country by or on behalf of a person who is not a resident of that foreign country. This document amends IMM subchapter 790 to remove the threshold of 1,000 pieces mailed abroad in a 30-day period by a U.S. resident and to remove the standards relative to the collection of U.S. domestic postage on ''A-B-C remail''.The basis for the amended rules is contained in article 25, Posting Abroad of Letter-Post Items, of the Universal Postal Convention (Washington, 1989).

DATES: The interim rule is effective January 1, 1996. Comments must be received on or before January 18, 1996.

ADDRESSES: Written comments should be mailed or delivered to the Manager,

International Pricing, U.S. Postal Service, 475 L'Enfant Plaza SW RM 4400–EB, Washington, DC 20260–6500. Copies of all written comments will be available at the above address for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John F. Alepa, (202) 268–4071.

SUPPLEMENTARY INFORMATION: In 1994, the Universal Postal Union (UPU) met in Congress in Seoul, Korea, to amend and adopt the Acts of the Universal Postal Union. The Acts come into force on January 1, 1996. The United States is a member of the UPU. By virtue of that membership, the U.S. Postal Service must adhere to the Agreements of the UPU to which it is a signatory.

The UPU adopted revisions to the Acts of the Universal Postal Union, including article 25 of the Universal Postal Convention. Article 25 no longer contains a provision permitting the Postal Service to collect U.S. domestic postage from a resident of the United States when mailings made abroad for that resident exceed 1,000 pieces in a 30-day period without regard to whether the postage paid in the foreign country is less than the applicable U.S. domestic postage. In addition, article 25 no longer grants authority to the Postal Service to collect U.S. domestic postage for items for delivery in the United States from a mailer who posts, or causes to be posted, such items in a country other than the country of that mailer's residence. Rather, any charge will be due from the dispatching postal administration.

As a result of the revisions to article 25, the Postal Service is amending IMM subchapter 790 to remove the threshold of 1,000 pieces mailed abroad in a 30-day period by a U.S. resident and to remove the standards relative to the collection of U.S. domestic postage on ''A–B–C remail'' (that is, a method of mailing in which a person or firm mails from a country other than the one of which it is a resident to a third country in order to benefit from lower international postage rates in the country of mailing).

Specifically, the 1994 Congress amended article 25, Posting Abroad of Letter-Post Items, which contains four paragraphs. Paragraphs 1 through 3 relate to items mailed from abroad back into the country of residence of the sender. Paragraph 4 relates to items mailed by residents of one country from a second country for delivery in a third country. This method of mailing (as discussed above) is commonly referred to as ''A–B–C remail.''

Paragraph 1 was amended to remove the provision that permitted postal administrations to invoke action against a person or firm mailing to that person's or firm's country of residence from another country solely on the basis of the number of items mailed. Article 25, paragraph 1, requires that the mailing be made ''with the object of profiting by more favorable rate conditions there.'' To comply with this revision, the Postal Service is removing from IMM subchapter 790 the provision that provides that applicable U.S. domestic postage is due when ''1,000 or more such items are mailed in a 30-day period regardless of whether the foreign postage is lower than the comparable U.S. postage.''

Paragraph 4 regulates ''A–B–C remail.'' This method of mailing occurs when a resident of country A mails from country B mail destinating in country C. This method is generally economically feasible because of differences in the terminal dues system provided by the Universal Postal Convention. Most developing countries (which generally originate small volumes of outgoing international mail) are assigned a lower terminal dues rate than developed countries (which generally originate large volumes of outgoing international mail).

Under the current terminal dues system, for example, two countries each annually exchanging more than 150 tons of mail would pay terminal dues equivalent to 25 cents for a ½-ounce item. By contrast, two countries each annually exchanging 150 tons or less of mail would pay terminal dues equivalent to only 6 cents for the same ½-ounce item.

When ''A–B–C remail'' is used, that mailing method harms both country A (because it loses revenue and mail volume) and country C (because it receives less in terminal dues from country B than it would receive from country A). This lower rate of terminal dues generally does not compensate the delivering country for the actual cost of handling such mail.

To correct this situation, the 1994 Universal Postal Congress adopted a new terminal dues system and introduced a separate rate for ''bulk mail,'' regardless of where that mail originates. The delivering country will be able to collect the same rate in terminal dues without regard to the country originating the mail. This revised system should reduce considerably the volume of mail migrating from developed countries to developing countries solely to take advantage of lower international rates made possible from different terminal dues rates.

In some cases, the 1994 Congress recognized that even this ''bulk mail'' rate of terminal dues would not provide full compensation to the delivering postal administration and that migration of mail might continue. Accordingly, article 25, paragraph 4, allows the delivering postal administration to collect the equivalent of ''bulk mail'' terminal dues from the dispatching postal administration if the delivering administration is not receiving appropriate remuneration. However, the delivering administration will no longer be able to collect extra compensation from the sender of the items. Remuneration is strictly between the dispatching and delivering postal administrations. Therefore, the Postal Service is eliminating its rules in IMM subchapter 790 concerning the collection of U.S. domestic postage from the sender of so-called ''A–B–C remail.''

Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), the Postal Service invites public comment.

The Postal Service adopts on an interim basis, pending receipt and consideration of public comment, the following amendments to subchapter 790 of the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended by revising subchapter 790, Items Mailed Abroad by or on Behalf of Senders in the U.S. and Certain Other Countries, to read as follows:

790 Items Mailed Abroad by or on Behalf of Senders in the United States

791 Postage Payment Required

Payment of U.S. postage is required to secure delivery of mail when the mailing is by or on behalf of a person or firm that is a resident of the United States and the foreign postage rate applied to such items is lower than the comparable U.S. domestic postage rate.

792 Definition of Terms

792.1 Resident

A resident of the United States includes any firm that has a place of business in the United States or is incorporated or otherwise organized in the United States, its territories, or its possessions.

792.2 By or on Behalf

A mailing is made by or on behalf of a person or firm that is a resident of the United States if such a resident seeks or expects to derive economic benefit or advantage from that mailing.

792.3 Place of Business

A place of business in the United States is any location in the United States, its territories, or its possessions where a firm's employees or agents regularly have personal contact with other individuals for conducting the firm's business. For the purposes of this section, a firm whose employees or agents have personal contact with others for conducting the firm's business in different places in the United States for short periods (for example, at hotels in different cities for 1 or 2 days at a time) is considered to have a place of business in the United States if the aggregate amount of time spent in the United States is 180 days or more within 12 consecutive months.

792.4 Agent

The use of a nonexclusive agent in the United States for the sole purpose of accepting orders and remissions for transmission to a firm in another country or for the sole purpose of distributing merchandise manufactured in another country and shipped to the United States in bulk does not by itself establish a place of business in the United States.

793 Advance Payment Required

793.1 Sample Mailpiece

A sender affected by the provisions in 791 must submit a sample mailpiece (envelope and contents) from the proposed mailing; a statement about the number of items to be mailed, the date of mailing, and the place of mailing; and a check, made payable to the U.S. Postal Service, to cover the amount of the applicable U.S. postage. The sample mailpiece, statement, and check must be sent to: Manager, International Pricing, U.S. Postal Service, 475 L'Enfant Plz. SW., Washington, DC 20260–6500.

793.2 Headquarters Notification

Headquarters provides notification of postage acceptance and approval of the mailing to the sender and to the receiving U.S. exchange office. This notification permits the items in the mailing to go forward to the addressees without delay when the items reach the United States.

794 Advance Payment Not Made

794.1 Return or Disposal of Items

Items may be returned to origin or disposed of in accordance with postal regulations if U.S. postage is not paid.

794.2 Mailings Without Advance Payment

A mailing subject to the provisions in 791 received without advance payment of U.S. domestic postage is held at the receiving U.S. exchange office. The exchange office reports the mailing to the manager of International Pricing, USPS Headquarters. (The exchange office is advised to release the mail when the applicable postage is paid.) The report must contain the following information:

a. Title and/or nature of the items.
b. Identity of the sender.
c. Number of items detained.
d. Weight of a single item.
e. Foreign postage paid per item.
f. Country of mailing.

795 Report of Mailings

The receiving U.S. exchange office must report any mail appearing to be subject to the provisions of this subchapter to the manager of International Pricing, USPS Headquarters.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–30668 Filed 12–18–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA44–1–7167a; A–1–FRL–5314–6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Best Available Controls for Consumer and Commercial Products (Including Architectural and Industrial Maintenance Coatings)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires VOC emission standards for architectural and industrial maintenance coatings and 10 categories of consumer products. The intended effect of this action is to approve a revision to Massachusetts SIP which reduces VOC emissions from architectural and industrial maintenance coatings and 10 categories of consumer products. This action is being taken in accordance with Section 183(e) of the Clean Air Act.

DATES: This action is effective February 20, 1996, unless notice is received by January 18, 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 Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove, (617) 565–3246.

SUPPLEMENTARY INFORMATION: Under the Clean Air Act, EPA is required to (1) study emissions of VOCs from consumer and commercial products; (2) list those categories of products that account for at least 80 percent of the total VOC emissions from consumer and commercial products in areas of the country that fail to meet the national air quality standards set for ground-level ozone; and (3) divide the list into four groups, and regulate one group every two years using best available controls, as defined by the Clean Air Act.

In March 1995, EPA issued a report to Congress, *Study of Volatile Organic Compound Emissions from Consumer and Commercial Products,* which evaluated the contribution of VOC emissions from consumer and commercial products on ground-level ozone levels, and established criteria and a schedule for regulating these products under the Clean Air Act. Architectural coatings and consumer and commercial products (24 categories of household products) are in the first

group of products to be regulated by EPA no later than March 1997. Massachusetts decided to adopt rules for consumer and commercial products in advance of a federal rule, to get credit for reductions from this category in its 15% plan.

Massachusetts was required to submit, by November 15, 1993, a SIP revision for Reasonable Further Progress (RFP) for 15% reduction of VOCs as necessary for moderate areas and above. The entire state of Massachusetts is classified as serious nonattainment area, therefore the 15% plan must cover the entire state.

On May 6, 1994, the Massachusetts DEP submitted to EPA for comment, proposed amendments to the SIP to address the RFP requirements including new air pollution control regulations entitled ''Control of Volatile Organic Compounds from Consumer and Commercial Products'' and ''Control of VOCs from Architectural and Industrial Maintenance Coating.'' Massachusetts held a public hearings on May 6, 10, 11, and 13, 1994 throughout the State for its proposed architectural and industrial maintenance coatings rule. Public hearings were held June 22 and 24 for Massachusetts' proposed consumer and commercial products rule. EPA submitted written comments regarding the proposed regulations on May 19, 1994 and June 22, 1994. Subsequent to the public hearings, Massachusetts decided to consolidate the architectural and industrial maintenance coatings rule and the consumer and commercial products rule into a single rule. The consolidated rule was effective on November 18, 1994, upon publication in the Massachusetts Register.

On January 9, 1995, the Commonwealth Massachusetts submitted a formal revision to its State Implementation Plan (SIP). The SIP revision amends 310 CMR 7.00 by adding Section 310 CMR 7.25, Best Available Controls for Consumer and Commercial Products .

The adopted regulation 310 CMR 7.25, ''Best Available Controls for Consumer and Commercial Products,'' regulates the VOC content of consumer and commercial products. The regulation applies to any person who sells, offers for sale, or manufactures for sale within Massachusetts consumer and commercial products and architectural or industrial maintenance coatings specified in 310 CMR 7.25.

Summary of SIP Revision

''Consumer product'' is defined by Massachusetts as: ''A chemically formulated product used by household, commercial, and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; and automotive specialty products. This definition of ''consumer product'' excludes architectural coatings.''

''Architectural Coating'' is defined as: ''Any coating which is applied to stationary structures or their appurtenances, mobile homes, pavements, or curbs.''

The consumer products portion of the rule, section 7.25(12), contains limits that specify the maximum allowed VOC content (%VOC by weight) for the following categories of commercial and consumer products: air fresheners, cleaners, engine degreasers, floor polishes/waxes, furniture maintenance products, general purpose cleaners, glass cleaners, hair spray, insecticides, laundry prewash, antiperspirants and deodorants. Manufacturers must comply with these limits by October 1, 1995.

The Architectural and Industrial Maintenance portion of the rule, section 7.25(11), requires manufacturers to comply with VOC limits (grams VOC/liter or lbs VOC/gal) by October 1, 1995, for the following categories of Architectural coatings: flat coatings, non-flat coatings, anti-graffiti coating, bituminous pavement sealer, bond breakers, calcimine recoating product, concrete curing compound, concrete/masonry conditioner, dry fog coating, fire retardant coating, form release compound, graphic arts coating (sign paint), high temperature industrial maintenance coating, industrial maintenance coating, lacquer, magnesite cement coating, mastic texture coating, metallic pigmented coating, multicolor coating, pretreatment wash primer, primer/sealer/undercoat, quick dry primer/sealer/undercoat, roof coating, sanding sealer, shellac, stains, opaque, swimming pool coating, tile-like glaze, traffic coating, varnish, waterproofing sealer, wood preservative, and any other architectural coating not otherwise specified.

EPA's evaluation is detailed in a memorandum, entitled ''Technical Support Document for Massachusetts Air Pollution Control Regulation , 310 CMR 7.25, Best Available Controls for Consumer and Commercial Products (including Architectural and Industrial Maintenance Coatings).''

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 20, 1996 unless adverse or critical comments are received by January 18, 1996.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on February 20, 1996.

Final Action

EPA is approving Section 310 CMR 7.25, Best Available Controls for Consumer and Commercial Products.

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.

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

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 183(e) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that

this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables.

The OMB has exempted this action from review under Executive Order 12866.

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

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

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 section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 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.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusett was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 21, 1995.

John P. DeVillars,

Regional Administrator, EPA New England.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(108) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(108) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on January 9, 1995.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated January 9, 1995 submitting a revision to the Massachusetts State Implementation Plan.

(B) The following portions of the Rules Governing the Control of Air Pollution for the Commonwealth of Massachusetts effective on November 18, 1994: 310 Code of Massachusetts Regulations Section 7.25 *U Best Available Controls for Consumer and Commercial Products.*

3. In § 52.1167, Table 52.1167 is amended by adding a new entry for 310 CMR 7.25 in numerical order to read as follows:

§ 52.1167 EPA-approved Massachussetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

[See Notes at end of table]

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.25 ..	Best available controls for consumer and commercial products.	11/18/94	December 19, 1995 ..	60 FR 65242	108	Includes architectural & industrial maintenance coatings.
*	*	*	*	*	*	*

[FR Doc. 95–30797 Filed 12–18–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 61

[FRL–5399–3]

Asbestos NESHAP Clarification Regarding Analysis of Multi-Layered Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of clarification to the final rule.

SUMMARY: This document provides clarification regarding the requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos. It is intended to address common questions regarding situations where one or more layers which may contain asbestos are present, and supplement the January 5, 1994 Federal Register clarification (59 FR 542).

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: For copies, contact Mr. Larry Tessier at 1–800–368–5888 or at (703) 305–5938. For questions about the clarification, please contact Mr. Tom Ripp at (202) 564–7003.

SUPPLEMENTARY INFORMATION: On November 20, 1990, the Federal Register published the Environmental Protection Agency's (the Agency's) revision of the National Emission Standards for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M, 55 FR 48406. The asbestos NESHAP applies to any facility as defined in 40 CFR 61.141. The Agency has learned that some of the regulated community have further questions concerning the analysis of samples which may contain multiple layers, any or all of which may be asbestos containing materials (ACM) under the asbestos NESHAP. Because these questions are frequently asked, EPA is making this clarification.

I. Clarification of Multi-Layered ACM System

At the time the original asbestos NESHAP was promulgated (April 6, 1973), a standardized reference method had not been developed to determine quantitatively the content of asbestos in a material. The definition for ''friable asbestos material'' was added in the October 14, 1975 asbestos NESHAP, but still did not specify an analytical method. EPA's unwritten policy based on the definition of ''friable asbestos material'' was that each layer in a multi-layered system was to be analyzed as a separate material (no averaging or dilution by combining layers of asbestos-containing material with nonasbestos-containing material was allowed). The November 20, 1990 revision of the asbestos NESHAP finally specified that Appendix A, Subpart F, 40 CFR Part 763, Section 1, Polarized Light Microscopy (PLM method) be used to determine whether or not a material contains greater that one percent asbestos. Section 1.7.2.1 of the PLM method states that ''* * * When discrete strata are identified, each is treated as a separate material so that fibers are first quantified in that layer only, and then the results for each layer are combined to yield an estimate of asbestos content for the whole sample.'' This language has led to considerable confusion as to how to analyze multi-layered samples for NESHAP purposes. EPA published a clarification regarding the analysis of multi-layered systems in the January 5, 1994 Federal Register. This clarification basically stated that all multi-layered systems except for wall systems where joint compound was used only at the joints and nail holes must be analyzed as separate materials, and results were not allowed to be combined to determine average asbestos content (continuing the policy that dilution of an asbestos-containing material is not allowed).

The Environmental Protection Agency has received many questions about analyzing multi-layered systems for asbestos content to determine the applicability of the asbestos NESHAP since its January 5, 1994 clarification (59 FR 542). This clarification reiterates EPA's position for analysis of multi-layered samples for applicability of the asbestos NESHAP.

This clarification applies to all multi-layered systems (other than wallboard systems where asbestos-containing joint compound is used only at the joints and nail holes) under both the NESHAP and the Asbestos Hazard Emergency Response Act (AHERA) (40 CFR Part 763) programs.

Any source sending multi-layered bulk samples to a lab may request that certain sample(s) or portions of sample(s) be composited for analysis first (to potentially reduce time and cost of sampling).

(Note: A composite sample does not mean that multiple samples may be composited into one sample. It means that multiple layers of one core sample may be composited for analysis.)

If this alternative method is chosen, then the following requirements must be followed. To analyze the composite sample, the procedures in EPA/600–93/116 ''Method for the Determination of Asbestos in Bulk Building Materials'' (''the Method''), specifically Section 2.3 ''Gravimetry,'' must be used. Additionally, for the composite sample, the recommendations in Appendix D of the method must be followed. This procedure is consistent with the procedures outlined in 40 CFR Part 763, Appendix E to Subpart E (formerly Appendix A to Subpart F), which is referenced in the asbestos NESHAP (40 CFR 61.141 and 61.146), but the procedures in the new method are more clear. EPA finds that this method is an acceptable alternative method of compliance under section 61.13(h)(1)(ii). EPA intends to amend the asbestos NESHAP in the near future to refer specifically to these procedures. When using the gravimetric procedures, the result may be recorded as percent asbestos by weight.

If the result of the composite analysis shows that the average content for the multi-layered system (across the layers) is greater than one percent, then the multi-layered system must be treated as asbestos-containing and analysis by layers is not necessary. If the result of the composite sample analysis indicates that the multi-layered system as a whole contains asbestos in the amount of one percent or less, but greater than none detected, then analysis by layers is required to ensure that no layer in the system contains greater than one percent asbestos. If any layer contains greater than one percent asbestos, that layer must be treated as asbestos-containing. This will have the effect of requiring all layers in a multi-layered system to be treated as asbestos-containing if the layers can not be separated without disturbing the asbestos-containing layer. Once any one layer is shown to have greater than one percent asbestos, further analysis of the other layers is not necessary if all the layers will be treated as asbestos-containing. If several of the layers will be removed without removing the entire system, then all layers that will be disturbed must be analyzed. This includes the material being removed; however, the material being removed may be analyzed using the composite analysis procedures. Please note that the same requirements to perform point counting as stated in our May 8, 1991 clarification (see enclosed memorandum) still apply for any layers being analyzed individually.

Dated: September 28, 1995.

Richard Biondi,

Acting Director, Manufacturing, Energy, and Transportation Division, Office of Compliance.

[FR Doc. 95–30790 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–468; RM–7380]

Radio Broadcasting Services; Wickenburg and Lake Havasu City, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This documents grants a Petition for Reconsideration filed by Interstate Broadcasting System of Arizona, Inc., licensee of Station KRDS-FM, Channel 287C2, Wickenburg, Arizona, directed to the *Report and Order* in this proceeding which had upgraded the Station KRDS-FM license to specify operation on Channel 287C1. *See* 56 FR 43884, September 5, 1991. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 26, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 776–1654.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 90– 468, adopted December 6, 1995, and released December 12, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 287C1 and adding Channel 287C2 at Wickenburg.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–30757 Filed 12–18–95; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 60, No. 243
Tuesday, December 19, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AH27

Prevailing Rate Systems; Redefinition of Certain Federal Wage System Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule that would redefine several Federal Wage System (FWS) wage areas for pay-setting purposes. OPM is engaged in an ongoing project to review the geographic definitions of selected FWS wage areas. Based on recent reviews of wage and survey area boundaries in a number of wage areas, OPM proposes redefinitions and/or renamings affecting the following FWS wage areas: Hagerstown-Martinsburg-Chambersburg, MD; Biloxi, MS; Columbus-Aberdeen, MS; Jackson, MS; Meridian, MS; Great Falls, MT; Pittsburgh, PA; Eastern Tennessee; Corpus Christi, TX; San Antonio, TX; and West Virginia.

DATES: Comments must be received on or before January 18, 1996.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–0824.

FOR FURTHER INFORMATION CONTACT: Mark Allen, (202) 606–2848.

SUPPLEMENTARY INFORMATION: OPM is engaged in an ongoing project to review the geographic definitions of selected FWS appropriated fund wage areas. Section 532.211 of title 5, Code of Federal Regulations, lists the following criteria for consideration when OPM defines FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

As part of the system-wide review of wage area boundaries, OPM is also considering whether the survey areas within each wage area should be expanded or reduced in size.

OPM recently completed reviews of the definitions of several FWS wage areas and, based on analyses of the regulatory criteria for defining wage areas, is proposing the changes described below. The Federal Prevailing Rate Advisory Committee, the statutory national-level labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with all of the changes described in this proposed rule.

Hagerstown-Martinsburg-Chambersburg, MD: OPM proposes to remove Fulton County, PA, from the Pittsburgh, PA, area of application and redefine the county to the Hagerstown-Martinsburg-Chambersburg, MD, area of application. An analysis of the regulatory criteria for defining FWS wage areas shows that, while other regulatory criteria are indeterminate, distance and commuting pattern criteria strongly favor definition of Fulton County to the Hagerstown-Martinsburg-Chambersburg wage area instead of to the Pittsburgh wage area. For example, an analysis of the distances between Fulton County and the Hagerstown-Martinsburg-Chambersburg and Pittsburgh survey areas shows that Fulton County is about 232 km (144 miles) away from Pittsburgh, but is only about 37 km (23 miles) away from Chambersburg, PA, the closest of the three main population centers in the Hagerstown-Martinsburg-Chambersburg survey area. Also, an analysis of the commuting patterns of Fulton County's resident workforce shows that about 55 percent of Fulton County's resident workforce commutes to work in the Hagerstown-Martinsburg-Chambersburg survey area, and less than 1 percent of Fulton County's resident workforce commutes to work in the Pittsburgh survey area.

This change would be effective for the next full-scale wage survey in the Hagerstown-Martinsburg-Chambersburg wage area, which is scheduled to begin in January 1996. There are currently no FWS employees stationed in Fulton County. No other changes are proposed for the Hagerstown-Martinsburg-Chambersburg wage area.

Biloxi, MS: For the following reasons, OPM proposes that Stone County, MS, be removed from the Biloxi survey area: No FWS employees are stationed in Stone County; the county is no longer defined as part of a Metropolitan Statistical Area (MSA); and the wage survey data yield from private industrial establishments located in Stone County accounted for less than 1 percent of the Biloxi wage area's survey data during the last full-scale wage survey in the wage area.

This change would be effective for the next full-scale wage survey in the Biloxi wage area, which is scheduled to begin in November 1997. Stone County would remain in the Biloxi area of application. No other changes are proposed for the Biloxi wage area.

Columbus-Aberdeen, MS: Based on current FWS employment patterns in the Columbus-Aberdeen wage area, OPM proposes to add Grenada and Leflore Counties, MS, to the Columbus-Aberdeen survey area. Grenada and Leflore Counties are currently defined to the Columbus-Aberdeen area of application. A majority of the FWS employees currently stationed in the Columbus-Aberdeen wage area—about 70 percent—work in the Columbus-Aberdeen wage area's area of application rather than its survey area. Grenada and Leflore Counties are located in the central and western portions of the Columbus-Aberdeen wage area and are the only non-surveyed counties in the wage area with substantial FWS employment. With the addition of Grenada and Leflore Counties to the Columbus-Aberdeen survey area, about 82 percent of wage area employees would be included within the survey area.

This proposed survey area expansion would not create an undue survey burden on the lead agency for the wage area (the Department of Defense) and is strongly justified by the geographic distribution of local FWS employment. To more accurately reflect the broader geographic coverage of the expanded survey area, OPM proposes to rename the Columbus—Aberdeen wage area ''Northern Mississippi.'' These changes

would be effective for the next full-scale wage survey in the wage area, which is scheduled to begin in February 1996. No other changes are proposed for this wage area.

Jackson, MS: OPM proposes to remove Adams, Claiborne, and Jefferson Counties, MS, from the Jackson survey area. In 1973, the Civil Service Commission, based on the consensus recommendation of FPRAC, added Adams, Claiborne, and Jefferson Counties to the Jackson survey area. FPRAC recommended this change to allow the inclusion in local wage surveys of counties along the Mississippi River that had experienced recent industrial growth. Regional commuting patterns and transportation facilities were also cited as factors favoring expansion of the survey area.

Based on current FWS employment patterns in the Jackson wage area and the large size of the current Jackson survey area, OPM considers it unnecessary to continue surveying Adams, Claiborne, and Jefferson Counties. Only about nine FWS employees, or less than 2 percent of the Jackson wage area total, are currently stationed in the three counties considered for removal from the survey area. The wage survey data yield from Adams, Claiborne, and Jefferson Counties has been relatively low in past surveys; only about 11 percent of the Jackson survey data during the last full-scale wage survey came from private industrial establishments located in these three counties. Also, the three counties considered for removal from the survey area are inconveniently located for survey purposes. For example, the surveyable private industrial establishments in Adams County are located approximately 185 km (115 miles) away from the city of Jackson, the main population center and the main FWS employment location in the Jackson wage area.

This change in the Jackson survey area would be effective for the next full-scale wage survey in the Jackson wage area, which is scheduled to begin In February 1997. As explained below for the Meridian, MS, wage area, OPM also proposes to remove Lamar County, MS, from the Jackson area of application and redefine the county to the Meridian survey area. No other changes are proposed for the Jackson wage area.

Meridian, MS: OPM proposes to remove Lamar County, MS, from the Jackson, MS, area of application and redefine the county to the Meridian FWS survey area. An analysis of the regulatory criteria for defining FWS wage areas shows that, while other regulatory criteria are indeterminate, distance and commuting pattern criteria strongly favor definition of Lamar County to the Meridian wage area instead of the Jackson wage area. For example, an analysis of the distances between Lamar County and the Meridian and Jackson survey areas shows that Lamar County is about 179 km (111 miles) away from Jackson, but is only about 27 km (17 miles) away from Hattiesburg, MS, the closest of the two main population centers in the Meridian survey area. Also, an analysis of the commuting patterns of Lamar County's resident workforce shows that about 50 percent of Lamar County's resident workforce commutes to work in the Meridian survey area, but less than 1 percent of Lamar County's resident workforce commutes to work in the Jackson survey area.

While there are currently no FWS employees stationed in Lamar County, the addition of Lamar County to the Meridian survey area would provide a desirable increase in the number of surveyable private sector industrial establishments in the Meridian survey area—about 14 percent more than in the current Meridian survey area. Also, Lamar County is one of the two counties of the Hattiesburg, MS MSA. The other county of the Hattiesburg MSA, Forrest County, is already defined to the Meridian survey area.

This change would be effective for the next full-scale wage survey in the Meridian wage area, which is scheduled to begin in February 1997. No other changes are proposed for the Meridian wage area.

Great Falls, MT: The survey area of the Great Falls wage area explained in 1973 with the addition of Yellowstone County, MT, and again expanded in 1981 with the addition of Lewis and Clark County, MT. Because the Great Falls survey area currently includes both the Great Falls, MT MSA and the Billings, MT MSA, OPM proposes to rename the wage area ''Montana'' to better reflect the broader geographic coverage of the current survey area than is suggested by the current wage area name.

This change would be effective for the next full-scale wage survey in the wage area,which is scheduled to begin in July 1996. No other changes are proposed for this wage area.

Pittsburgh, PA: Based on current FWS employment patterns in the Pittsburgh wage area, OPM proposes to add Butler County, PA, to the Pittsburgh survey area. Butler County is currently defined to the Pittsburgh area of application. There are currently about 170 FWS employees—about 8 percent of the Pittsburgh wage area total—stationed in Butler County. Butler County is currently a non-surveyed part of the Pittsburgh, PA MSA. Three of the counties of the Pittsburgh MSA (Beaver, Washington, and Westmoreland) are currently included in the Pittsburgh survey area, but far fewer FWS employees are stationed in those three counties than in Butler County.

This proposed survey area expansion would not create an undue survey burden on the lead agency for the Pittsburgh wage area (the Department of Veterans Affairs) and is strongly justified by the geographic distribution of local FWS employment. This change in the Pittsburgh survey area definition would be effective for the next full-scale wage survey in the wage area, which is scheduled to begin in August 1997.

Also, as explained above for the Hagerstown-Martinsburg-Chambersburg, MD, wage area, OPM proposes to remove Fulton County, PA, from the Pittsburgh area of application and redefine the county to the Hagerstown-Martinsburg-Chambersburg, MD, area of application. No other changes are proposed for the Pittsburgh wage area.

Eastern Tennessee: As explained below for the West Virginia wage area, OPM proposes to remove Norton city from the Eastern Tennessee area of application and redefine the city to the West Virginia area of application. No other changes are proposed for the Eastern Tennessee wage area.

Corpus Christi, TX: OPM proposes to remove Brooks, Cameron, Hidalgo, Kenedy, Starr, and Willacy Counties, TX, from the San Antonio, TX, area of application and define these six counties to the Corpus Christi area of application. An analysis of the regulatory criteria for defining FWS wage areas shows that the distance criterion favors the definition of these counties to the Corpus Christi wage area much more than to the San Antonio wage area. Also, because the most favorable routes by road from the counties go through the present Corpus Christi wage area before reaching the San Antonio survey area, transportation facilities and geographic features criteria strongly favor the Corpus Christi wage more than the San Antonio wage area. Although all the other regulatory criteria are indeterminate, the redefinition of Brooks, Cameron, Hidalgo, Kenedy, Starr, and Willacy Counties to the Corpus Christi area of application is strongly justified by the extent to which the distance, transportation facilities, and geographic features criteria favor the Corpus Christi wage area.

The following agencies currently have FWS employees stationed in the six Texas counties proposed for redefinition

to the Corpus Christi area of application: The Department of Agriculture; the Department of the Army; the General Services Administration; the Department of the Interior; the International Boundary and Water Commission, United States and Mexico; and the Department of Justice. These changes would become effective when the final rule following this proposed rule becomes effective. No other changes are proposed for the Corpus Christi wage area.

West Virginia: OPM proposes to remove Norton city, an independent Virginia city, from the Eastern Tennessee area of application and redefine the city to the West Virginia area of application. Although Norton city is currently defined to the Eastern Tennessee area of application, the city is completely surrounded by Wise County, which is defined to the West Virginia area of application. Because of their special geographic relationship, Wise County and North city should be defined to the same area of application.

This change would be effective for the next full-scale wage survey in the West Virginia wage area, which is scheduled to begin in March 1997. There are no FWS employees currently stationed in North city. No other changes are proposed for the West Virginia wage area.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

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

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

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

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

2. Appendix C to subpart B is amended by revising the wage area listings for Hagerstown-Martinsburg-Chambersburg, MD; Biloxi, MS; Columbus-Aberdeen, MS; Jackson, MS; Meridian, MS; Great Falls, MT; Pittsburgh, PA; Eastern Tennessee; Corpus Christi, TX; San Antonio, TX; and West Virginia to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas.

* * * * *

Maryland

* * * * *

Hagerstown-Martinsburg-Chambersburg

Survey Area

Maryland:
  Washington
Pennsylvania:
  Franklin
West Virginia:
  Berkeley

Area of Application. Survey Area Plus

Maryland:
  Allegany
  Garrett
Pennsylvania:
  Fulton
Virginia (cities):
  Harrisonburg
  Winchester
Virginia (counties):
  Clarke
  Culpeper
  Frederick
  Greene
  Madison
  Page
  Rappahannock
  Rockingham
  Shenandoah
  Warren
West Virginia:
  Hampshire
  Hardy
  Jefferson
  Mineral
  Morgan

* * * * *

Mississippi

Biloxi

Survey Area

Mississippi:
  Hancock
  Harrison
  Jackson

Area of Application. Survey Area Plus

Mississippi:
  George
  Pearl River
  Stone

Jackson

Survey Area

Mississippi:
  Hinds
  Rankin
  Warren

Area of Application. Survey Area Plus

Mississippi:
  Adams
  Amite
  Attala
  Claiborne
  Copiah
  Covington
  Franklin
  Holmes
  Humphreys
  Issaquena
  Jefferson
  Jefferson Davis
  Lawrence
  Lincoln
  Madison
  Marion
  Pike
  Scott
  Sharkey
  Simpson
  Smith
  Walthall
  Wilkinson
  Yazoo

Meridian

Survey Area

Mississippi:
  Forrest
  Lamar
  Lauderdale
Alabama:
  Choctaw

Area of Application. Survey Area Plus

Mississippi:
  Clarke
  Greene
  Jasper
  Jones
  Kemper
  Leake
  Neshoba
  Newton
  Perry
  Wayne
Alabama:
  Sumter

Northern Mississippi

Survey Area

Mississippi:
  Clay
  Grenada
  Leflore
  Lee
  Lowndes
  Monroe
  Oktibbeha

Area of Application. Survey Area Plus

Mississippi:
  Alcorn
  Bolivar
  Calhoun
  Carroll
  Chickasaw
  Choctaw
  Coahoma
  Itawamba
  Lafayette [15]
  Montgomery
  Noxubee
  Panola
  Pontotoc [15]
  Prentiss
  Quitman
  Sunflower
  Tallahatchie

Tishomingo
Union [15]
Washington
Webster
Winston
Yalobusha

* * * * *

Montana

Montana

Survey Area

Montana:
Cascade
Lewis and Clark
Yellowstone

Area of Application. Survey Area Plus

Montana:
Beaverhead
Big Horn
Blaine
Broadwater
Carbon
Carter
Chouteau
Custer
Daniels
Dawson
Deer Lodge
Fallon
Fergus
Flathead
Gallatin
Garfield
Glacier
Golden Valley
Granite
Hill
Jefferson
Judith Basin
Lake
Liberty
Lincoln
McCone
Madison
Meagher
Mineral
Missoula
Musselshell
Park
Petroleum
Phillips
Pondera
Powder River
Powell
Prairie
Ravalli
Richland
Roosevelt
Rosebud
Sanders
Sheridan
Silver Bow
Stillwater
Sweet Grass
Teton
Toole
Treasure
Valley
Wheatland
Wibaux
Wyoming:
Big Horn
Park

* * * * *

Pennsylvania

* * * * *

Pittsburgh

Survey Area

Pennsylvania:
Allegheny
Beaver
Butler
Washington
Westmoreland

Area of Application. Survey Area Plus

Pennsylvania:
Armstrong
Bedford
Blair
Cambria
Cameron
Centre
Clarion
Clearfield
Clinton
Crawford
Elk
Erie
Fayette
Forest
Greene
Huntingdon
Indiana
Jefferson
Lawrence
McKean
Mercer
Potter
Somerset
Venango
Warren
Ohio:
Belmont
Carroll
Harrison
Jefferson
Tuscarawas
West Virginia:
Brooke
Hancock
Marshall
Ohio

* * * * *

Tennessee

Eastern Tennessee

Survey Area

Tennessee:
Carter
Hawkins
Sullivan
Unicoi
Washington
Virginia (city):
Bristol
Virginia (counties):
Scott
Washington

Area of Application. Survey Area Plus

Tennessee:
Cocke
Greene
Hancock
Johnson
Virginia:
Buchanan
Grayson
Lee
Russell
Smyth
Tazewell
North Carolina:
Alleghany
Ashe
Watauga
Kentucky:
Harlan
Letcher

* * * * *

Texas

* * * * *

Corpus Christi

Survey Area

Texas:
Nueces
San Patricio

Area of Application. Survey Area Plus

Texas:
Aransas
Bee
Brooks
Calhoun
Cameron
Goliad
Hidalgo
Jim Wells
Kenedy
Kleberg
Live Oak
Refugio
Starr
Victoria
Willacy

* * * * *

San Antonio

Survey Area

Texas:
Bexar
Comal
Guadalupe

Area of Application. Survey Area Plus

Texas:
Atascosa
Bandera
De Witt
Dimmit
Duval
Edwards
Frio
Gillespie
Gonzales
Jim Hogg
Karnes
Kendall
Kerr
Kinney
La Salle
McMullen
Maverick
Medina
Real
Uvalde
Val Verde
Webb

[15] Excluding Holly Springs National Forest.

Wilson
Zapata
Zavala

* * * * *

West Virginia

West Virginia

Survey Area

West Virginia:
Cabell
Harrison
Kanawha
Marion
Monongalia
Putnam
Wayne
Ohio:
Lawrence
Kentucky:
Boyd Greenup

Area of Application. Survey Area Plus

West Virginia:
Barbour
Boone
Braxton
Calhoun
Clay
Doddridge
Fayette
Gilmer
Grant
Greenbrier
Jackson
Lewis
Lincoln
Logan
McDowell
Mason
Mercer
Mingo
Monroe
Nicholas
Pendleton
Pleasants
Pocahontas
Preston
Raleigh
Randolph
Ritchie
Roane
Summers
Taylor
Tucker
Tyler
Upshur
Webster
Wetzel
Wirt
Wood
Wyoming
Ohio:
Athens
Gallia
Jackson
Meigs
Monroe
Morgan
Noble
Pike
Scioto
Vinton
Washington
Kentucky:
Carter
Elliott
Floyd
Johnson
Lawrence
Lewis
Magoffin
Martin
Pike
Virginia (city):
Norton
Virginia (counties):
Dickenson
Wise

* * * * *

[FR Doc. 95–30737 Filed 12–18–95; 8:45 am]

BILLING CODE 6325–01–M

FEDERAL RESERVE SYSTEM

5 CFR Chapter LVIII

12 CFR Part 264

[Docket No. R–0900]

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Board of Governors of the Federal Reserve System

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System, with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations for the officers and employees of the Board that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The proposed regulation is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to the Board. The regulation as proposed would establish rules relating to: financial interests and transactions; borrowing and extensions of credit; employment relationships of immediate family members; and outside employment. The Board is also proposing to replace its old employee conduct regulation with a residual cross-reference to the new provisions.

DATES: Comments are invited and must be received on or before February 20, 1996.

ADDRESSES: Comments should refer to Docket No. R–0900, and may be mailed to Williams W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Cary Williams, Managing Senior Counsel, Legal Division, Board of Governors of the Federal Reserve System, telephone (202) 452–3295, FAX (202) 452–3101. For the hearing impaired only, Telecommunications Device for the Deaf, Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees in the Executive Branch. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. The Executive Branch-wide Standards are now codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Board, with OGE's concurrence, has determined that the following proposed supplemental regulations are necessary to implement the Board's ethics program successfully, in light of the Board's unique programs and operations. The proposed supplemental rule addresses issues relevant to the Board's roles with respect to monetary policy and banking regulation. The Board is also proposing to delete the existing provisions of 12 CFR part 264 that its supplemental regulation, once finally adopted, and the Executive Branch-wide Standards supersede and to add in their place a residual cross-reference to the current provisions.

II. Analysis of the Proposed Regulations

Section 6801.101 General

Section 6801.101 explains that the proposed regulations contained in the rule would apply to all Board employees, including Board members, and are supplemental to the Executive Branch-wide Standards.

Section 6801.102 Definitions

For purposes of interpreting the provisions in this part, § 6801.102 sets forth a proposed definition of the terms ''affiliate,'' ''debt or equity interest,'' ''dependent child,'' ''depository institution,'' ''employee'' and ''primary government securities dealer'' and ''supervisory employee.''

Proposed § 6801.102 would include as an *affiliate* companies that control, are controlled by, or are under common control with, a depository institution. This definition was taken from the Bank Holding Company Act of 1956 and is intended to include any holding companies, subsidiaries or other affiliated companies of depository institutions.

The term *debt or equity interest* as proposed would include ''secured and unsecured bonds, debentures, notes, securitized assets, commercial paper, and preferred and common stock.'' It would extend to any right to acquire or dispose of any such debt or equity interest and to beneficial or legal interests derived from a trust. The proposed term does not, however, include deposit accounts, future interests created by someone other than the employee or the employee's spouse or dependent, or any right as a beneficiary of an estate that has not been settled.

The term *dependent child* is to be given the same meaning as in OGE's financial disclosure regulation at 5 CFR 2635.105(d).

The term *depository institution* is defined in proposed § 6801.102 as any institution that accepts deposits. This would include thrifts and foreign banks.

The term *employee* would include all Board employees, including Board members, but would not include special Government employees.

The term *primary government securities dealer* as proposed is defined as a firm with which the Federal Reserve conducts its open market operations.

The term *supervisory employee* would encompass Board members, all professional staff in the Division of Banking Supervision and Regulation, and professional staff in other divisions who participate substantially in supervisory matters involving depository institutions.

Section 6801.103 Prohibited Financial Interests

Section 6801.103(a) as proposed would prohibit a Board employee, and the spouse and minor child of a Board employee, from owning or controlling any debt or equity interest in a depository institution or its affiliates or of a primary government securities dealer or its affiliates. Under 5 CFR 2635.403(a), an agency may, by supplemental regulation, prohibit or restrict the holding of a financial interest by its employees and the spouses and minor children of those employees based on the agency's determination that the acquisition or holding of such financial interest would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. The Board has determined that, in light of the Board's sensitive bank regulatory and monetary policy functions, the restriction is necessary to: (1) Maintain public confidence in the impartiality and objectivity with which the Board executes its regulatory and monetary policy functions; (2) eliminate any concern that sensitive information provided to the Board might be misused for private gain; and (3) avoid the wide-spread disqualification of employees from official matters that might result in the Board's inability to fulfill its mission.

The Board's current rule prohibits employees from holding equity interests in banks or their affiliates. 12 CFR 264.735–6(d). This rule does not apply to debt interests in banks, such as bonds, or to equity interests in thrifts. The proposed prohibition in § 6801.103(a) would extend to debt and equity interests in all depository institutions regardless of whether the depository institution is regulated by the Board. The Board believes that this is appropriate in light of the Board's broad regulatory and supervisory authority. For example, the Board is responsible for setting reserve requirements for all depository institutions, and the Federal Reserve System provides liquidity to all depository institutions through the discount window. In connection with a discount window advance, the Board is authorized to examine any depository institution.

The Board's current rule also prohibits employees from holding equity interests in government securities dealers. 12 CFR 264.735–6(d). The proposed rule would clarify and expand this prohibition by extending to debt and equity interests in primary government securities dealers and their affiliates. The Federal Reserve conducts business with primary government securities dealers, which in turn are expected to facilitate the Federal Reserve's open market operations and to provide the Federal Reserve with information to assist it in performing its duties. Primary government securities dealers are required to submit reports reflecting their activities to the Federal Reserve on a regular basis, and must meet qualification requirements of the System and the Treasury Department

The proposed prohibition in § 6801.103(a) would apply to the spouse and minor children of a Board employee. In the past, spouses and minor children of Board employees have not been subject to the Board's rule on prohibited financial interests. As a result, there has been a need to disqualify employees from official matters in order to avoid violations of the criminal laws (18 U.S.C. 208) and in order to maintain public confidence in the objectivity and impartiality with which Board programs are carried out. Under 5 CFR 2635.403(a), any restriction on the holdings of financial interests by the spouses or minor children of agency employees must be based on the agency's determination that there is a direct and appropriate nexus between the restriction as applied to spouses and minor children and the efficiency of the service. Based on the experiences outlined above, and in order to avoid the potential appearance that an employee's spouse could trade on information obtained through the employee's position with the Board, the Board has determined that such a nexus exists.

Section 6801.103(b) as proposed would provide several exceptions to the proposed prohibition in § 6801.103(a) on financial interests. The proposed exceptions are intended to ease the restrictions on the financial interests of Board employees, their spouses and minor children, and to permit interests of a character unlikely to raise questions regarding the objective or impartial performance of Board employees' official duties or the possible misuse of their positions. The exception proposed for nonbanking holding companies would permit an employee to own stock in an automobile manufacturer or a retail company, for example, that owned a credit card bank or other depository institution, provided the company's principal line of business was not banking. The next two proposed exceptions would permit employees to own interests in depository institutions indirectly through investments in a publicly traded or available mutual fund (so long as it does not have a stated policy of concentrating in the financial services industry), or in a widely held, diversified pension plan.

Section 6801.103(c) of the proposed rule would authorize the Board's Designated Agency Ethics Official (DAEO), in consultation with Division

management, to waive the prohibition in § 6801.103(a) under certain limited circumstances. In general, a request for a waiver could be considered if the prohibited interest is acquired without specific intent, particularly if the owner of the interest is the employee's spouse or minor child. However, the standards for granting a waiver would be based, in part, on the policies of each division and, therefore, could vary among divisions. For example, because of the greater potential for an actual conflict of interest arising from depository institution stock ownership, the Board's Division of Banking Supervision and Regulation could be less inclined to consider a waiver request for these interests than another division having no regulatory responsibilities.

Proposed § 6801.103(d) would require employees to consult with the DAEO concerning the need for recusal as a result of holding any debt or equity interest based on an exception or a waiver exception in 6801.103(b)(1) or (c).

Section 6801.104 Speculative Dealings [Reserved]

A provision of the Board's current ethics rules prohibits Board employees from engaging in speculative dealings. See 12 CFR 264.735–6(d)(iii). The Office of Government Ethics has voiced concern regarding this provision's lack of notice to employees as to what constitutes speculative dealings. The Board is in discussion with OGE about this rule and may amend its supplemental rule, once it is adopted as a final rule, to include a provision on speculation at some point in the future. Board employees continue to be prohibited by the Standards of Ethical Conduct from engaging in a financial transaction using, or appearing to use, nonpublic information to further their own private interests or those of another. 5 CFR 2635.101(b)(14) and 2635.703.

Section 6801.105 Prohibition on Preferential Terms From Regulated Institutions

Proposed § 6801.105 would prohibit a Board employee from entering into a financial relationship with an entity regulated by the Board if such relationship is governed by terms more favorable than those available in like circumstances to members of the public. This provision has always been a part of the Board's ethics regulation (12 CFR 264.735–6(b)(2)(i)), and the Board has found that it has helped to remind employees of their responsibility to avoid receiving preferential treatment in their personal dealings with regulated entities.

Section 6801.106 Prohibition on Supervisory Employees From Seeking Credit From Institutions Involved in Work Assignments

Section 6801.106 as proposed would apply only to ''supervisory employees.'' The term ''supervisory employee'' is defined in proposed § 6801.102(g) as all professional staff at the Board with responsibilities in the area of banking supervision and regulation. This would include all professional staff in the Division of Banking Supervision and Regulation, the Legal Division, and the Division of Consumer and Community Affairs; professional staff in the Division of Research and Statistics who have responsibility for applications; professional staff in the Office of the Inspector General who are involved in evaluating the Supervision and Regulation function; and the Board members.

Section 6801.106(a) as proposed would prohibit a supervisory employee from seeking credit from, or renegotiating or rolling over existing credit with, a depository institution if the employee is assigned to a matter affecting that institution or if the employee is aware of the pendency of the matter and knows that he or she will participate in the matter. This prohibition would also apply for three months after the employee's participation in the matter has ended. In addition, proposed § 6801.106(b) provides that a supervisory employee must be disqualified from a matter if he or she learns that his or her spouse or other related persons or entities have borrowed from a depository institution that is a party to the matter while the matter is pending. Section 6801.106(c) provides a proposed exception to the application of these provisions with respect to borrowing through the use of a credit card on terms and conditions available to the general public, or to borrowing through overdraft protection. The Board's DAEO may grant a waiver of these provisions. The proposed temporary ban on seeking credit is necessary to prevent the potential appearance that supervisory employees might use their official position or their contacts with a depository institution resulting from their work on a matter involving that institution, to obtain loans or extensions of credit on favorable terms. The Board's current rule does not contain restrictions in this area.

Section 6801.107 Disqualification of Supervisory Employees From Matters Involving Lenders

A supervisory employee would be restricted by proposed § 6801.107 from participating in any matter in which a depository institution or an affiliate of a depository institution is a party if the supervisory employee or the spouse or dependent child of the supervisory employee, or certain related entities are indebted to the depository institution or its affiliate. Typical consumer credit, such as home mortgage loans and credit card debt, would not give rise to the disqualification requirement.

Section 6801.107 would supplement § 2635.502 of the Executive Branch-wide Standards. The restriction is necessitated by the frequent contact that supervisory employees have with lending institutions. The restriction as proposed is designed to ensure that supervisory employees do not benefit or appear to benefit from their official positions and do not lose or appear to lose their impartiality.

Exceptions to the proposed restriction related to borrowing relationships are set forth in § 6801.107(b). Under the exceptions, a supervisory employee could participate in matters involving depository institutions to which the supervisory employee, or the supervisory employee's spouse or dependent child, is indebted under one of the conditions indicated in subsection (b)(1)(i)–(iv) as proposed. The exceptions proposed in § 6801.107(b) are intended to ease the restrictions on supervisory employees' participation in particular matters in situations where a loan or extension of credit is unlikely to raise issues regarding the motivation of the lender or the objective or impartial performance of official duties by supervisory employees.

Proposed § 6801.107(c) would give the Board's DAEO authority to grant a written waiver from the prohibitions in § 6801.107 in accordance with 5 CFR 2635.502(d).

Section 6801.108 Restrictions Resulting From Employment of Family Members

Section 6801.108(a) as proposed would require a supervisory employee (as defined in § 6801.101(b)(2)) to report the employment of an immediate family member (spouse, child, parent or sibling) if the immediate family member is employed by a depository institution or a depository institution affiliate. The reporting requirement would be triggered immediately upon the

supervisory employee's discovery of the employment relationship.

Under proposed § 6801.108(c), a supervisory employee would be disqualified from participating in any matter involving an immediate family member's employer unless the supervisory employee received the appropriate authorization pursuant to the standard in § 2635.502(d) of the Executive Branch-wide Standards. This proposed requirement would eliminate the potential for any appearance of preferential treatment in those instances where employment of a family member would be likely to raise questions regarding the appropriateness of actions taken by the employee.

Section 6801.109 Prior Approval for Compensated Outside Employment

5 CFR 2635.803 provides that an agency may, by supplemental regulations, require its employees to obtain prior approval before engaging in outside employment when it has determined that such a requirement is necessary or desirable for the purpose of administering its ethics program. The Board's current regulation at 12 CFR 264.735–6(c) imposes a requirement for prior approval for outside business and teaching. Based on its finding that this requirement has helped to ensure that employees' outside activities conform to applicable statutes and regulations, the Board has determined to continue this requirement in a somewhat modified form. The proposed provision requires prior written approval before engaging in any compensated outside employment, a defined term that may provide more specific guidance to employees than ''outside business or teaching,'' the scope of which has not always been clear.

III. Proposed Repeal of the Board's Regulations on Employee Responsibilities and Conduct

The Board is also proposing to repeal its regulations on the Responsibilities and Conduct of Board Employees, 12 CFR part 264, and to add a residual cross-reference to the new provisions.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

This proposed rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 60 -day comment period.

Regulatory Flexibility Act

The Board has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small business entities because it affects only Board employees.

Paperwork Reduction Act

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

List of Subjects

5 CFR Part 6801

Conflict of interests, Government employees.

12 CFR Part 264

Conflict of interests, Federal Reserve System.

Dated: November 3, 1995.

William W. Wiles,

Secretary, Board of Governors of the Federal Reserve System.

Approved: November 13, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Board, with the concurrence with the Office of Government Ethics, is proposing to amend title 5 and chapter II of title 12 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter LVIII, consisting of part 6801, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER LVIII—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 6801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sec.
6801.101 Purpose.
6801.102 Definitions.
6801.103 Prohibited financial interests.
6801.104 Speculative dealings. [Reserved]
6801.105 Prohibition on preferential terms from regulated institutions.
6801.106 Prohibition on supervisory employees' seeking credit from institutions involved in work assignments.
6801.107 Disqualification of supervisory employees from matters involving lenders.
6801.108 Restrictions resulting from employment of family members.
6801.109 Prior approval for compensated outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 244, 248; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p.215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p.306; 5 CFR 2635.105, 2635.403(a), 2635.502, 2635.803.

§ 6801.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part supplement the Standards of Ethical Conduct for Employees of the Executive Branch found at 5 CFR part 2635. They apply to members and other employees of the Board of Governors of the Federal Reserve System (''Board'').

§ 6801.102 Definitions.

For purposes of this part:

(a) *Affiliate* means any company that controls, is controlled by, or is under common corporate control with another company.

(b) (1) *Debt or equity interest* includes secured and unsecured bonds, debentures, notes, securitized assets, commercial paper, and preferred and common stock. The term encompasses both current and contingent ownership interests therein; any such beneficial or legal interest derived from a trust; any right to acquire or dispose of any long or short position in debt or equity interests; any interests convertible into debt or equity interests; and any options, rights, warrants, puts, calls, straddles, and derivatives with respect thereto.

(2) *Debt or equity interest* does not include deposits; credit union shares; any future interest created by someone other than the employee, his or her spouse, or dependent; or any right as a beneficiary of an estate that has not been settled.

(c) *Dependent child* means an employee's son, daughter, stepson, or stepdaughter if:

(1) Unmarried, under the age of 21, and living in the employee's household; or

(2) Claimed as a ''dependent'' on the employee's income tax return.

(d) *Depository institution* means a bank, trust company, thrift institution, or any institution that accepts deposits, including a bank chartered under the laws of a foreign country.

(e) *Employee* means an officer or employee of the Board, including a Board member. It does not include a special Government employee.

(f) *Primary government securities dealer* means a firm with which the Federal Reserve conducts its open market operations.

(g) *Supervisory employee* means an employee who is a member of the professional staff at the Board with responsibilities in the area of banking supervision and regulation.

§ 6801.103 Prohibited financial interests.

(a) *Prohibited interests.* Except as permitted by this section, an employee, or an employee's spouse or minor child, shall not own or control, directly or indirectly, any debt or equity interest in:

(1) A depository institution or any of its affiliates; or

(2) A primary government securities dealer or any of its affiliates.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to the ownership or control of a debt or equity interest in the following:

(1) *Nonbanking holding companies.* A publicly traded holding company that:

(i) Owns a bank and either the holding company or the bank is exempt under the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.*, (for example, a credit card bank, a nonbank bank or a grandfathered bank holding company), and the holding company's predominant activity is not the ownership or operation of banks and thrifts;

(ii) Owns a thrift and its predominant activity is not the ownership or operation of banks and thrifts; or

(iii) Owns a primary government securities dealer and its predominant activity is not the ownership and operation of banks, thrifts or securities firms.

(2) *Mutual funds.* A publicly traded or publicly available mutual fund or other collective investment fund if:

(i) The fund does not have a stated policy of concentration in the financial services industry; and

(ii) Neither the employee nor the employee's spouse exercises or has the ability to exercise control over the financial interests held by the fund or their selection.

(3) *Pension plans.* A widely held, diversified pension or other retirement fund that is administered by an independent trustee.

(c) *Waivers.* The Board's Designated Agency Ethics Official, in consultation with Division management, may grant a written waiver permitting the employee to own or control a debt or equity interest prohibited by paragraph (a) of this section if:

(1) Extenuating circumstances exist, such as that ownership or control was acquired:

(i) Through inheritance, gift, merger, acquisition, or other change in corporate structure, or otherwise without specific intent on the part of the employee, spouse, or minor child to acquire the debt or equity interest; or

(ii) By an employee's spouse as part of a compensation package in connection with the spouse's employment or prior to marriage to the employee;

(2) The employee makes a prompt and complete written disclosure of the interest;

(3) The employee's disqualification from participating in any particular matter having a direct and predictable effect on the institution or any of its affiliates does not unduly interfere with the full performance of the employee's duties; and

(4) Granting the waiver would be consistent with Division policy.

(d) *Disqualification.* If an employee or an employee's spouse or minor child holds an interest in a holding company under paragraph (b)(1) or (c) of this section, the employee must consult the Designated Agency Ethics Official in order to determine whether the employee must be disqualified from participating in any particular matter involving that holding company or affiliate under the conflicts of interest rules of the Office of Government Ethics.

§ 6801.104 Speculative dealings. [Reserved]

§ 6801.105 Prohibition on preferential terms from regulated institutions.

An employee may not accept a loan from, or enter into any other financial relationship with, an institution regulated by the Board, if the loan or financial relationship is governed by terms more favorable than would be available in like circumstances to members of the public.

§ 6801.106 Prohibition on supervisory employees' seeking credit from institutions involved in work assignments.

(a) *Prohibition on supervisory employee's seeking credit.* (1) A supervisory employee may not, on his or her own behalf, or on behalf of his or her spouse or child or anyone else (including any business or nonprofit organization), seek or accept credit from, or renew or renegotiate credit with, a depository institution or any of its affiliates if the institution or affiliate is a party to an application, enforcement action, investigation, or other particular matter involving specific parties pending before the Board and:

(i) The supervisory employee is assigned to the matter; or

(ii) The supervisory employee is aware of the pendency of the matter and knows that he or she will participate in the matter by action, advice or recommendation.

(2) The prohibition in paragraph (a)(1) of this section also applies for three months after the supervisory employee's participation in the matter has ended.

(b) *Credit sought by spouse and other related persons.* A supervisory employee must disqualify himself or herself from participating (by action, advice or recommendation) in any application, enforcement action, investigation or other particular matter involving specific parties to which a depository institution or any of its affiliates is a party as soon as the supervisory employee learns that any of the following related persons are seeking or have sought or accepted credit from, or have renewed or renegotiated credit with, the depository institution or any of its affiliates while the matter is pending before the Board:

(1) The employee's spouse or dependent child;

(2) A company or business if the employee or the employee's spouse or dependent child owns or controls more than 10 percent of its equity; or

(3) A partnership if the employee, or the employee's spouse or dependent child is a general partner.

(c) *Exception.* The prohibition in paragraph (a) of this section and the disqualification requirement in paragraph (b) of this section do not apply with respect to credit obtained through the use of a credit card or overdraft protection on terms and conditions available to the public.

(d) *Waivers.* The Board's Designated Agency Ethics Official, after consulting with the relevant division director, may grant a written waiver from the prohibition in paragraph (a) of this section, or the disqualification requirement in paragraph (b) of this section, based on a determination that participation in matters otherwise prohibited by this section would not create an appearance of loss of impartiality or use of public office for private gain, and would not otherwise be inconsistent with the Office of Government Ethics' Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635) or prohibited by law.

§ 6801.107 Disqualification of supervisory employees from matters involving lenders.

(a) *Disqualification required.* A supervisory employee may not participate by action, advice or recommendation in any application, enforcement action, investigation, or other particular matter involving specific parties to which a depository institution or its affiliate is a party if any of the following are indebted to the depository institution or any of its affiliates:

(1) The employee;

(2) The spouse or dependent child of the employee;

(3) A company or business if the employee or the employee's spouse or dependent child owns or controls more than 10 percent of its equity; or

(4) A partnership if the employee or the employee's spouse or dependent child is a general partner.

(b) *Exceptions*—(1) *Consumer credit on nonpreferential terms.* Disqualification of a supervisory employee is not required by paragraph (a) of this section for the following types of indebtedness if payment on the indebtedness is current and the indebtedness is on terms and conditions offered to the public:

(i) Credit extended through the use of a credit card;

(ii) Credit extended through use of an overdraft protection line;

(iii) Amortizing consumer credit (e.g., home mortgage loans, automobile loans); and

(iv) Credit extended under home equity lines of credit.

(2) *Indebtedness of a spouse or dependent child.* Disqualification is not required with respect to any indebtedness of the employee's spouse or dependent child, or a company, business or partnership in which the spouse or dependent child has an interest described in paragraphs (a)(3) and (a)(4) of this section, if:

(i) The indebtedness represents the sole financial interest or responsibility of the spouse, child, company, business or partnership and is not derived from the employee's income, assets or activities; and

(ii) The employee has no knowledge of the identity of the lender.

(c) *Waivers.* The Board's Designated Agency Ethics Official, after consulting with the relevant division director, may grant a written waiver from the disqualification requirement in paragraph (a) of this section using the authorization process set forth in the Office of Government Ethics' Standards of Ethical Conduct at 5 CFR 2635.502(d).

§ 6801.108 Restrictions resulting from employment of family members.

(a) *Reporting certain employment relationships.* A supervisory employee who has knowledge that his or her spouse, child, parent or sibling is employed by a depository institution or its holding company shall report such employment to his or her supervisor and the Ethics Office within thirty days of the commencement of the supervisory employee's employment at the Board or promptly upon learning of the employment relationship.

(b) *Disqualification.* A supervisory employee may not participate in any particular matter to which a depository institution or its affiliate is a party if the depository institution or affiliate employs his or her spouse, child, parent or sibling unless the supervising officer, with the concurrence of the Board's Designated Agency Ethics Official, has authorized the employee to participate in the matter using the authorization process set forth in the Office of Government Ethics' Standards of Ethical Conduct at 5 CFR 2635.502(d).

§ 6801.109 Prior approval for compensated outside employment.

(a) *Approval requirement.* An employee shall obtain prior written approval from his or her division director (or the division director's designee) and the concurrence of the Board's Designated Agency Ethics Official before engaging in compensated outside employment.

(b) *Standard for approval.* Approval will be granted unless a determination is made that the prospective outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(c) *Definition of employment.* For purposes of this section, the term compensated outside employment means any form of compensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker.

TITLE 12—BANKS AND BANKING

CHAPTER II—FEDERAL RESERVE SYSTEM

2. 12 CFR part 264 is revised to read as follows:

PART 264—EMPLOYEE RESPONSIBILITIES AND CONDUCT

§ 264.101 Cross-reference to employees' ethical conduct standards and financial disclosure regulations.

Employees of the Board of Governors of the Federal Reserve System (Board) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635 and the Board's regulation at 5 CFR part 6801, which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

Authority: 5 U.S.C. 7301; 12 U.S.C. 244.

[FR Doc. 95–30581 Filed 12–18–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 1

[Docket No. 25767; Notice No. 95–16]

RIN 2120–AF92

Definitions of Special Use Airspace; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to the notice of proposed rulemaking.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (NPRM), 60 FR 58494, published on November 27, 1995. The correction to the address in the preamble reads as follows: Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 25767, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. Comments delivered must be marked Docket No. 25767. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

Issued in Washington, DC on December 13, 1995.

Harold W. Becker,

Acting Program Director for Air Traffic Rules and Procedures.

[FR Doc. 95–30777 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–141–AD]

Airworthiness Directives; Beech Model BAe 125–1000A and Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Beech Model BAe 125–1000A and Hawker 1000 series airplanes. This proposal would require a detailed visual inspection to detect chafing damage to the hydraulic pipes adjacent to the

hydraulic module, and various follow-on actions. This proposal is prompted by reports of chafing damage between hydraulic pipes at three locations in the rear equipment bay adjacent to the hydraulic module. The actions specified by the proposed AD are intended to prevent such chafing damage to the hydraulic pipe and subsequent hydraulic fluid leakage; this condition may lead to failure of essential airplane systems.

DATES: Comments must be received by January 25, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–141–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 Beech Aircraft Corporation, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–141–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–141–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Beech Model BAe 125–1000A and Hawker 1000 series airplanes. The CAA advises that it has received several reports of chafing damage between hydraulic pipes at three locations in the rear equipment bay adjacent to the hydraulic module. Investigation revealed the cause of such chafing damage has been attributed to the vibratory movement of the hydraulic pipes and their close proximity to other pipe runs, adjacent equipment, and structure in the rear equipment bay. These conditions, if not corrected, could result in chafing damage to the hydraulic pipe and subsequent hydraulic fluid leakage; this condition may lead to failure of essential airplane systems.

The manufacturer has issued Hawker Service Bulletin SB.29–95, dated March 24, 1995, which describes procedures for:

1. Performing a detailed visual inspection to detect chafing damage to the hydraulic pipes located aft of frame 21 and adjacent to the hydraulic module;

2. Performing a visual inspection to determine if adequate clearance exists between the pipes, and with other equipment or structure, if no chafing damage is detected;

3. Adjusting the pipe connections and/or clipping, if the clearance is inadequate;

4. Replacing the pipes with new pipes, if any chafing is detected beyond certain limits; and

5. Performing a pressure test, if any chafing damage is detected within certain limits, and replacement of the pipe with a new pipe, if necessary.

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a detailed visual inspection to detect chafing damage to the hydraulic pipes located aft of frame 21 and adjacent to the hydraulic module, and various follow-on actions (i.e., visual inspection, adjustment, replacement, pressure test). The actions would be required to be accomplished in accordance with the service bulletin described previously. If any chafing damage to other equipment or structure is found, repair would be required to be accomplished in accordance with a method approved by the FAA.

The FAA estimates that 27 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,620, or $60 per airplane.

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:

Beech Aircraft Corporation (Formerly DeHavilland; Hawker Siddeley; British Aerospace, plc; Raytheon Corporate Jets, Inc.): Docket 95–NM–141–AD.

Applicability: All Model BAe 125–1000A and Hawker 1000 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing damage to the hydraulic pipe and subsequent hydraulic fluid leakage; this condition may lead to failure of essential airplane systems; accomplish the following:

(a) Within 3 months after the effective date of this AD, perform a detailed visual inspection to detect chafing damage to the hydraulic pipes located aft of frame 21 and adjacent to the hydraulic module, in accordance with Hawker Service Bulletin SB.29–95, dated March 24, 1995.

(1) If no chafing damage is detected, prior to further flight, perform a visual inspection to determine if adequate clearance exists between the intersecting pipe runs, and between pipes and adjacent equipment or structure, in accordance with the service bulletin.

(i) If the clearance is adequate, no further action is required by this AD.

(ii) If the clearance is inadequate, prior to further flight, adjust the pipe connections and/or clipping in accordance with the service bulletin.

(iii) If any chafing damage to other equipment or structure is found, prior to further flight, repair it in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) If any chafing damage is detected and it is beyond the limits specified in paragraph 2.B.(4) of the service bulletin, prior to further flight, replace the damaged pipe with a new pipe in accordance with the service bulletin.

(3) If any chafing damage is detected within the limits specified in paragraph 2.B.(4) of the service bulletin, prior to further flight, perform a pressure test or replace the damaged pipe with a new pipe in accordance with the service bulletin.

(i) If the pipes are satisfactory, no further action is required by this AD.

(ii) If any pipe leaks and/or if any distortion occurs in or around the area of chafing damage, prior to further flight, replace the pipe with a new pipe in accordance with the service bulletin.

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

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

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

Issued in Renton, Washington, on December 13, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30748 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–172–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require a one-time measurement during refueling to determine the pressure in each collector tank; for certain airplanes, non-destructive test (NDT) inspections to detect cracking or deformations of the collector tank ribs on each wing, and repair, if necessary; and modification of top-hat stringers in each outer wing tank. This proposal is prompted by a report of damage to the ribs of the wing collector tank caused by over-pressure in the collector tank during refueling. The actions specified by the proposed AD are intended to prevent cracking and deformation of the wing collector tanks due to over-pressure, which could result in reduced structural integrity of the wing.

DATES: Comments must be received by January 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–172–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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–172–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–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises, that during scheduled maintenance on a Model F28 Mark 0100 series airplane, the ribs in the right-hand wing collector tank were found to be damaged. Investigation revealed that the damage was caused by over-pressure in the collector tank during refueling.

The top-hat stringers between the wing collector tank and the outer wing tank contain restriction blocks that are intended to close off, but still ventilate the collector tank. The four forward most top-hat stringers (2.32, 2.33, 2.34, and 2.35) should not contain these restriction blocks, which would enable fuel to flow from the wing collector tank to the outer wing tank. Subsequent investigation revealed that the over-pressure was due to the installation of restriction blocks in these four top-hat stringers, which adversely affected the fuel transfer capacity of these airplanes. This condition, if not corrected, could result in cracking and deformation of the ribs in the wing collector tank, which could lead to reduced structural integrity of the wing.

Fokker has issued Service Bulletin SBF 100–57–030, dated December 17, 1994, which describes procedures for conducting a one-time measurement during refueling to determine the pressure in each collector tank. The service bulletin also describes procedures for conducting non-destructive test (NDT) inspections of certain airplanes to detect cracking and deformations of the collector tank ribs at wing stations 1825, 2230, and 2635.

Fokker has also issued Service Bulletin SBF 100–57–029, Revision 1, dated March 23, 1995, which describes procedures for modification of the four top-hat stringers (2.32, 2.33, 2.34, and 2.35) in the outer wing tank area. This modification entails removal of the restriction blocks in the top-hat stringers.

The RLD classified both of these service bulletins as mandatory and issued the Netherlands airworthiness directive BLA 1994–172 (A), dated December 23, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a one-time measurement during refueling to determine the pressure in each collector tank; and modification of the four top-hat stringers in the outboard wing tank area. For certain airplanes, this proposed AD would require non-destructive test (NDT) inspections of the collector tank ribs to detect cracking or deformations. The actions would be required to be accomplished in accordance with the service bulletins described previously.

This AD also proposes to require repair of any cracking or deformations in accordance with a method approved by the FAA.

The FAA estimates that 58 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 85 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 $295,800, or $5,100 per airplane.

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

§ 39.13 [Amended]

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

Fokker: Docket 95–NM–172–AD.

Applicability: Model F28 Mark 0100 airplanes, serial numbers 11244 through 11277 inclusive, 11279, 11281 through 11287 inclusive, and 11289 through 11400 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) 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 over-pressurization and/or damage to the wing collector tanks, which could result in reduced structural integrity of the wings, accomplish the following:

(a) Within 45 days after the effective date of this AD, perform a one-time measurement during refueling to determine the pressure in each collector tank in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–030, dated December 17, 1994.

Note 2: Pressure Limits Categories are defined in Table 2 of Fokker Service Bulletin SBF100–57–030, dated December 17, 1994.

(b) For Pressure Limits Category 1: Within 2 years after the effective date of this AD, modify the four affected top-hat stringers (2.32, 2.33, 2.34, and 2.35) in each outer wing tank area by removing the restriction blocks, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–029, Revision 1, dated March 23, 1995.

(c) For Pressure Limits Categories 2 through 5: Except as provided by paragraph (d) of this AD, prior to the number of accumulated total flight cycles or within the time specified in Table 1 of Fokker Service Bulletin SBF100–57–030, dated December 17, 1994, whichever occurs earlier, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD.

(1) Perform the Non-Destructive Test (NDT) inspections specified in Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–030, dated December 17, 1994, to detect cracking or deformations of the collector tank ribs on each wing at wing stations 1825, 2230, and 2635. These inspections are to be performed in accordance with Fokker Service Bulletin SBF100–57–030, dated December 17, 1994.

(2) Modify the four affected top-hat stringers (2.32, 2.33, 2.34, and 2.35) in each outer wing tank area by removing the restriction blocks, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–029, Revision 1, dated March 23, 1995.

(d) For Pressure Limits Category 6, and for airplanes having pressure limits within the limits specified in Categories 3 through 5 and that have exceeded the number of accumulated total flight cycles specified in Table 1: Within 100 flight cycles, accomplish the requirements of paragraphs (d)(1) and (d)(2) of this AD.

(1) Perform the NDT inspections in accordance with the procedures of Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–030, dated December 17, 1994. The fueling pressure must not exceed 25 pounds per square inch (PSI) during refueling.

(2) Modify the four affected top-hat stringers (2.32, 2.33, 2.34, and 2.35) in each outer wing tank area by removing the restriction blocks, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–029, Revision 1, dated March 23, 1995.

(e) For Pressure Limits Category 7: Prior to further flight following the measurement required by paragraph (a) of this AD, accomplish the requirements of paragraphs (e)(1) and (e)(2) of this AD.

(1) Perform the NDT inspections in accordance with the procedures of Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–030, dated December 17, 1994.

(2) Modify the four affected top-hat stringers (2.32, 2.33, 2.34, and 2.35) in each outer wing tank area by removing the restriction blocks, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–029, Revision 1, dated March 23, 1995.

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

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

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

(h) Special flight permits may be issued in accordance with §§ 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 13, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30746 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–133–AD]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This proposal would require replacement of the flexible cables of the power and condition controls of the engines with new flexible cables. The proposal would also require installation of protective tape on the outside case of these flexible cables, and reidentification of the cables. This proposal is prompted by reports of stiff operation of the power and condition controls of the engines due to heat damage to and moisture contamination of the flexible cable. The actions specified by the proposed AD are intended to prevent heat damage and moisture contamination to the flexible cable, which could result in stiff operation of the power and condition controls and subsequent reduced engine control.

DATES: Comments must be received by January 25, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–133–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

Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

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–133–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–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that it has received reports of stiff operation of the power and condition controls of the engines on these airplanes. Investigation revealed that a protective sheath on the flexible cables can become damaged by heat, which allows water to enter the flexible cable. The water may then drain along the flexible cable to the cold area in the leading edge of the wing and freeze. These conditions, if not corrected, could result in stiff operation of the power and condition controls, and subsequent reduced engine control.

Jetstream has issued Service Bulletin J41–76–013, dated May 5, 1995, which describes procedures for checking the aircraft records to determine if any reports of stiff operation in freezing conditions have been recorded. The service bulletin also describes procedures for replacement of the flexible cables of power and condition controls of the engines with new flexible cables. The service bulletin also describes procedures for installation of protective tape on the outside case of the flexible cables of the power and condition controls of the engines, and reidentification of the assembly number of the cable. The service bulletin specifies that both the replacement of the flexible cables and installation of protective tape need to be accomplished on certain airplane, but specifies that only the protective tape installation needs to be accomplished on certain other airplanes. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require replacement of the flexible cables of power and condition controls of the engines with new flexible cables. The proposed AD would also require simultaneous installation of protective tape on the outside case of the new flexible cables of the power and condition controls of the engines, and reidentification of the assembly number of the cable. The actions would be required to be accomplished in accordance with the procedures contained in the service bulletin described previously.

Operators should note that, unlike the recommendations of the service bulletin, the proposed AD would not require checking the aircraft records to determine if any reports of stiff operation in freezing conditions have been recorded. The FAA finds that the Airplane Maintenance Log is the appropriate source of aircraft records for reports of stiff operation of the power and condition controls. However, operators are not required to retain these records [reference part 121 or 135 of the Federal Aviation Regulations (FAR) (14 CFR 121 or 135).]. Therefore, the FAA has determined that these aircraft records may not be available for review by maintenance personnel if attempting to comply with a requirement to accomplish such a review.

Operators should also note that, unlike the recommendations of the service bulletin, the proposed AD would require that the replacement of the flexible cables and installation of the protective tape be accomplished on *all* affected airplanes. The FAA finds that damage to the flexible cable sheath and subsequent moisture contamination to the flexible cables may still exist or develop even though there have been no previous reports of stiff operation of the power and condition controls. Airplanes with moisture contamination in the flexible cables may not yet have encountered the environmental conditions necessary to freeze the moisture and subsequently cause stiff operation. Therefore, the FAA has determined that accomplishing only the installation of the protective tape on cables (if no stiff operations have been reported) would not eliminate the unsafe condition, since water contamination of the flexible cable may still exist.

The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 11 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $16,500, or $660 per airplane.

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:

Jetstream Aircraft Limited: Docket 95–NM–133–AD.

Applicability: Model 4101 airplanes on which Jetstream Modification JM41478 or JM41485A has not been installed, 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 (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent heat damage and moisture contamination to the flexible cable, which could result in stiff operation of the power and condition controls and subsequent reduced engine control, accomplish the following:

(a) Within 6 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with Jetstream Service Bulletin J41–76–013, dated May 5, 1995. Both requirements must be accomplished at the same time.

(1) Replace the flexible cables of power and condition controls of the left and right engines with new flexible cables, in accordance with paragraphs 2.B. and 2.C. of the Accomplishment Instructions of the service bulletin; and

(2) Install protective tape on the outside case of the flexible cables of the power and condition controls of the left and right engines; and reidentify the assembly number of the cable; in accordance with paragraph 2.D. of the Accomplishment Instructions of the service bulletin.

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

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

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

Issued in Renton, Washington, on December 13, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30747 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 801, 803, 804, and 897

[Docket No. 95N–0253]

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products To Protect Children and Adolescents; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule, correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in Federal Register of August 11, 1995 (60 FR 41314). The document proposed new regulations governing the sale and distribution of nicotine-containing cigarettes and smokeless tobacco products to children and adolescents in order to address the serious public health problems caused by the use of and addiction to these products. The agency has identified some proofreading inaccuracies in the references listed in the document. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

In FR Doc. 95–20051 appearing on page 41314 in the Federal Register of Friday, August 11, 1995, the following corrections are made:

1. On page 41316, in Ref. 2, in the second column, in line 2, ''pp. 645–649'' is corrected to read ''pp. 77–81''.

2. On page 41316, in the second column, in Ref. 4, in line 4, ''pp. 645–649'' is corrected to read ''pp. 77–81''.

3. On page 41316, in Ref. 16, in the third column, in line 2, ''p. 32–47'' is corrected to read ''pp. 31–47''.

4. On page 41319, in the third column, in Ref. 5, in line 3, ''No. 50'' is corrected to read ''No. 20''.

5. On page 41321, in the first column, in Ref. 76, in line 16, ''No. 2'' is corrected to read ''No. 1''.

6. On page 41321, in the first column, in Ref. 83, in lines 6 and 7, ''pp. 100, 197'' is corrected to read ''pp. 100, 197–198''.

7. On page 41342, in the third column, in Ref. 41, in line 4, ''p. 23'' is corrected to read ''p. 24''.

8. On page 41343, in the first column, in Ref. 67, ''pp. 225–226'' is corrected to read ''pp. 224–226''.

9. On page 41343, in the first column, in Ref. 68, beginning in line 3, ''A3, col. 2'' is corrected to read ''A2, col. 3''.

10. On page 41343, in the first column, in Ref. 70, in line 4, ''pp. 21–26, 1988'' is corrected to read ''pp. 21–26, January/February, 1988.''

11. On page 41343, in the second column, in Ref. 74, '''Wall Street Journal,''' October 26, 1994, at p. A14, col. 5'' is corrected to read '''How A Tobacco Giant Doctors Snuff Brands to Boost Their 'Kick'','' *Wall Street Journal*, October 26, 1994, at p. A1.''

12. On page 41343, in the second column, in Ref. 75, '''The New York Times,''' January 13, 1984, at p. D4, col. 5.'' is corrected to read '''Moving Smokers to Sniff,''' *The New York Times*, January 13, 1984, at p. 4, section D, col. 5.''

13. On page 41343, in the second column, in Ref. 84, '''American University Studies''' is added before the phrase ''Peter Lang Publishing Inc.,'' and ''vol. 30, Series X, pp. 150–153,'' is added after that same phrase.

14. On page 41343, in the second column, in Ref. 85, in line 5, pp. ''545–573'' is corrected to read ''pp. 545–570''.

15. On page 41343, in the second column, in Ref. 87, in line 4, ''September 28'' is added before ''1985''.

16. On page 41343, in the second column, in Ref. 88, in line 3, ''No. 2'' is added after ''vol. 77,''.

17. On page 41343, in Ref. 89, in the third column, in line 2, ''No. 6'' is added after ''vol. 82,'' and in line 7, ''No. 7'' is added after ''vol. 84,'' and ''July'' is added after ''pp. 1148–1150,''.

18. On page 41343, in the third column, in Ref. 92, in line 3, ''*Am J Prev Med*, 1994 (in press).'' is corrected to read ''*Am. J. Prev. Med*., vol. 10, (6), pp. 319–326.''

19. On page 41343, in the third column, in Ref. 93, beginning in line 3, ''University of California, San Diego, La Jolla, CA, 1994'' is corrected to read ''La Jolla, Calif: University of California, San Diego, 1994.''

20. On page 41343, in the third column, in Ref. 95, in line 7, ''May 1976'' is corrected to read ''Annex 2, May 1978'', and in line 11, ''p. 33'' is corrected to read ''p. 33–34'', and in lines 13 and 14, ''WHA 43.16, May 17, 1990'' is corrected to read ''WHA 43.16, May 17, pp. 1–2, 1990''.

21. On page 41344, in the first column, in Ref. 106, in line 1, ''Olsen'' is corrected to read ''Olson''.

22. On page 41344, in the third column, in Ref. 141, ''Id.'' is corrected to read '''Youth 1987,' The Creative Research Group Limited, for RJR Macdonald Inc., General Report, June 8, 1987.''

23. On page 41345, in the first column, in Ref. 157, beginning in line 6, ''School-children'' is corrected to read ''Schoolchildren''.

24. On page 41345, in the first column, in Ref. 158, in line 7, ''a'' is corrected to read ''A'', and in line 11, ''Triers'' is corrected to read '''Triers,'''.

25. On page 41345, in the first column, in Ref. 162, in line 1, ''Botvin, G.,'' is corrected to read ''Botvin, G.J.,'' and in line 6, the ''Prevalence''.

26. On page 41345, in the first column, in Ref. 166, in line 2, ''Cigarette'' is corrected to read ''Cig''.

27. On page 41345, in the first column, in Ref. 167, in line 1, ''Pierce, J., et al.'' is corrected to read ''Pierce, J.P., et al.'', and in line 5, ''p. 3145–3148'' is corrected to read ''pp. 3154–3158''.

28. On page 41345, in the second column, in Ref. 169, beginning in line 1, '''The Relationship Between Cartoon Trade Character Recognition and Product Category Attitude in Young Children,''' is corrected to read '''Trade Character Recognition and Attitude Toward the Product by 3 to 6-Year Old Children''', and in line 5, ''May 13–14, 1994'' is corrected to read ''June 4–5, 1993.''

29. On page 41345, in the second column, in Ref. 170, in line 1, ''Pierce, J., et al.,'' is corrected to read ''Pierce, J.P., et al.''

30. On page 41345, in the second column, in Ref. 175, in line 1, ''Pierce, J., et al.,'' is corrected to read ''Pierce, J.P., et al.,''.

31. On page 41345, in the third column, in Ref. 188, in lines 5 and 6, the phrase ''Economics, and Operational Research Division'' is corrected to read ''Economics and Operational Research Division''.

32. On page 41345, in the third column, in Ref. 189, in lines 9 and 10, '''An Empirical Analysis of Dynamic, Nonprice Oligopolistic Industry,''' is corrected to read '''An Empirical Analysis of Dynamic, Nonprice Competition In An Oligopolistic Industry'''.

33. On page 41345, in the third column, in Ref. 190, in the second line from the bottom, '''Smoldering''' is corrected to read '''Smouldering'''.

34. On page 41346, in the first column, in Ref. 192, in line 2, the phrase '''and Sometimes They Don't.''' is corrected to read '''and somethimes they don't.'''

35. On page 41346, in the first column, in Ref. 193, in lines 1 and 8, ''Rossiter, J.'' is corrected to read ''Rossiter, J.R.'', and in line 4, ''Lutz, K., and R. Lutz,'' is corrected to read ''Lutz, K.A. and R.J. Lutz,''.

36. On page 41346, in the first column, in Ref. 194, in line 1, ''Rossiter, J.,'' is corrected to read ''Rossiter, J.R.,''.

37. On page 41346, in the first column, in Ref. 195, in line 4, ''pp. 249–255'' is corrected to read ''pp. 249–254''.

38. On page 41346, in the first column, in Ref. 201, in line 2, the word '''Among''' is removed.

39. On page 41346, in the second column, in Ref. 213, in line 2, ''for 1993'' is removed.

40. On page 41346, in the second column, in Ref. 222, in line 5, ''pp. 915–916'' is corrected to read ''pp. 913–917''.

41. On page 41346, in the second column, in Ref. 233, in line 3, ''&'' is removed and the word ''and'' is inserted in its place.

42. On page 41372, in the first column, in Ref. 30, in line 4, ''pp. 663–666'' is corrected to read ''pp. 1–13''.

43. On page 41372, in the first column, in Ref. 31, ''Id., p. 663'' is corrected to read ''Id. p. 10.''

Dated: December 12, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–30814 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Chapter XIV

Older Workers Benefit Protection Act of 1990 (OWBPA)

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Second meeting of Negotiated Rulemaking Advisory Committee.

SUMMARY: EEOC announces the dates of the second meeting of the ''Negotiated Rulemaking Advisory Committee for Regulatory Guidance on Unsupervised Waivers of Rights and Claims under the Age Discrimination in Employment Act'' (the Committee). A Notice of Intent to form the Committee was published in the Federal Register on August 31, 1995, 60 F.R. 45388, and a Notice of Establishment of the Committee was published in the Federal Register on October 20, 1995, 60 F.R. 54207. The Committee had its first meeting on December 6–7, 1995 in Washington, DC.

DATES: The second meeting will be held on January 23–24, 1996, beginning at 10:00 a.m. on January 23. It is anticipated that the meeting will last for two days. The session of January 24, 1996 will commence at 9:00 a.m.

ADDRESSES: The meeting will be held at the EEOC Headquarters, 1801 L Street, NW., Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Paul E. Boymel, or John K. Light, ADEA Division, Office of Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507, (202) 663–4692.

SUPPLEMENTARY INFORMATION: All Committee meetings, including the meeting of January 23–24, 1996, will be open to the public. Any member of the public may submit written comments for the Committee's consideration, and may be permitted to speak at the meeting if time permits. In addition, all Committee documents and minutes will be available for public inspection in EEOC's Library (6th floor of the EEOC Headquarters).

Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment call (202) 663–4630 (voice), (202) 663–4630 (TDD). Copies of this notice are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice), (202) 663–4399 (TDD).

Purpose of Meeting/Summary of Agenda: At the second meeting, the Committee will continue to discuss the unsupervised waiver legal issues that will be considered by the Committee in drafting a recommended notice of proposed rulemaking for EEOC approval.

Dated: December 12, 1995.

Gilbert F. Casellas,

Chairman.

[FR Doc. 95–30774 Filed 12–18–95; 8:45 am]

BILLING CODE 6570–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA44–1–7167b; A–1–FRL–5314–7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Best Available Controls for Consumer and Commercial Products (including Architectural and Industrial Maintenance Coatings)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires VOC emission standards for architectural and industrial maintenance coatings and 10 categories of consumer products . 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 revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before January 18, 1996.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove , (617) 565–3246.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q

Dated: September 21, 1995.

John P. DeVillars,

Regional Administrator, EPA New England.

[FR Doc. 95–30796 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition from Mr. Philip Sweeney to require audible exterior back-up warning signals on large motor vehicles such as school buses and city maintenance vehicles. After analyzing the petition and data on back-up accidents, NHTSA concludes that mandating audible backup warning signals may not be effective in minimizing collisions with pedestrians, especially young children. The Agency has research underway on other means to reduce such deaths and injuries.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Crash Avoidance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Medlin's telephone number is: (202) 366–5276. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: At present, none of the Federal Motor Vehicle Safety Standards requires that a motor vehicle sound an audible warning signal when the vehicle is driven in reverse or backing up. By letter dated August 7, 1995, Mr. Philip Sweeney of San Diego, California, petitioned the agency to issue a standard to require an audible exterior maintenance vehicles. Mr. Sweeney stated in his petition that drivers of large vehicles have limited rear visibility, that young children can sometimes act impulsively, disregarding safety rules, and that young children have limited ability to anticipate safety risks.

The agency has reviewed the circumstances associated with the petitioner's desired solution. It has found that pedestrian response to exterior audible back-up alarms already on large vehicles has been studied. This study looked at the human factors involved in relation to conventional backing-up audible warning systems. The study, *''The Consideration of Human Factors in the Design of a Backing-up Warning System''* by Duchon, James C. and Laage, Linneas W., U.S. Bureau of Mines, is from the

''Proceedings of the Human Factors Society—30th Annual Meeting—1986.'' The authors looked at human behavior associated with back-up alarms. The specific vehicles were front-end loaders in the mining industry. The findings were that vehicle operators lose the perception of responsibility for vigilant behavior and that the pedestrians in the area predictably become habituated to the alarm. The authors also discussed a discernible alarm that would activate only when there was a target in danger behind the vehicle, which might be more effective because it sounded when an object was in proximity to the rear of the vehicle. Unfortunately, while possibly reducing habituation, such an alarm does not resolve the fundamental problem with alarms—the change in behavior of the driver towards being less responsible for the backing maneuver.

Another research effort looked at pedestrian back-up accidents and evaluated if an audible exterior back-up alarm would have been effective in preventing the accident. The study, ''*An Audible Automobile Back-up Pedestrian Warning Device—Development and Evaluation*'', DOT–HS–802–083, November 1976, found that accidents where no benefit would be expected from an audible exterior alarm included those where the pedestrian saw the vehicle but was unable to or did not avoid it (e.g. if the vehicle was backing too fast), where the vehicle was unoccupied, and when the victim was a child less than 5 years old. This last item was added because, as the petitioner appears to support, children have limited abilities to recognize danger signals and risky situations. It should be noted that children are over-represented in backing accidents most likely because of this limitation and because they cannot be seen easily behind a vehicle, even if standing.

Thus, any solution of the back-up accident problem should be able to address the deaths and injuries to children age 5 years and under. It would appear that an audible exterior warning signal as proposed by the petitioner would have little value in addressing backing accidents, given the above findings.

The agency is currently conducting research to investigate the feasibility of equipping motor vehicles with cost effective countermeasures to assist drivers in safely carrying out backing, lane change and merging maneuvers. The objectives are to determine the performance of one or more feasible countermeasures and to define specifications in performance terms without constraining the solutions to particular devices or technologies. Should the Agency find that there are cost effective solutions available when that research is completed, it would consider beginning a rulemaking seeking to mandate those performance oriented solutions.

Concerning the petitioner's specific reference to school buses, in 1995 an industry-developed standard requiring audible exterior back-up alarms for all school buses was promulgated by the National Standards Conference on School Transportation. Thirty-one states have chosen to mandate back-up alarms on school buses or recommend voluntary installation. Other regulatory and standards setting organizations such as the states can mandate audible exterior back-up alarms on such state and locally owned government vehicles, regardless of the level of effectiveness and regardless of whether the buses are new or in service. Thus, audible exterior back-up alarm installations on school buses are likely to increase at a significant rate.

In addition, many new large trucks are voluntarily equipped with audible exterior back-up alarms because of Occupational Safety and Health Administration (OSHA) regulations for work site safety that require a person outside of a vehicle to direct backing operations or that vehicles in work sites to be equipped with audible exterior back-up alarms. Vehicle manufacturers, in response to purchasers, appear to be increasing the number of installations of back-up alarms on large trucks for the purpose of complying with the OSHA rules.

In sum, although NHTSA continues to be concerned about collisions between pedestrians and vehicles that are backing up, the agency is not convinced that mandating audible back-up alarms on large vehicles is the most effective means to minimize collisions with pedestrians. In particular, the data do not appear to show that mandating audible backup alarms would result in minimizing collisions with small children. NHTSA therefore intends to continue its research efforts and to look into possible alternatives, such as the effectiveness of mirrors installed specifically for backing maneuvers. It is premature for NHTSA to make any decision about mandating any particular solution at this time.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the specific requirement requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. Accordingly, it denies Mr. Sweeney's petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: December 11, 1995.

Barry Felice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–30558 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 60, No. 243
Tuesday, December 19, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On February 28, 1995, the Department of Commerce (the Department) published the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Japan (60 FR 10900). On September 25, 1995, the Court of International Trade (CIT) ordered the Department to correct two ministerial errors in the final results with respect to AFBs from Japan sold by Izumoto Seiko Co., Ltd. (IKS). Accordingly, we are amending our final results of administrative review of the antidumping duty orders on AFBs from Japan with respect to IKS. The reviews cover the period May 1, 1992, through April 30, 1993. The ''classes or kinds'' of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs).

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Michael F. Panfeld or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1995, the Department published the final results of antidumping duty administrative review, partial termination, and revocation in part of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, et al. (60 FR 10900). The review period is May 1, 1992, through April 30, 1993. The classes or kinds of merchandise covered by these reviews are BBs, CRBs, and SPBs. For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the ''Scope Appendix'' of the final results referenced above.

One respondent, IKS, challenged the final results before the CIT, alleging ministerial errors in the final results for AFBs from Japan. On September 25, 1995, the CIT ordered the Department to correct the errors and publish the amended final results in the Federal Register.

The CIT ordered the Department to make the following corrections to its analysis for IKS: 1) to correct the erroneous calculation of a negative United States price (USP) for certain observations; and 2) to correct the erroneous inclusion of movement expenses incurred in Japan in the calculation of movement expenses (MOVT) for further manufactured merchandise. We have corrected the ministerial errors in IKS's margin calculations for the amended final results of review for the period May 1, 1992, through April 30, 1993.

Based on the correction of the ministerial errors in our calculations for IKS, we have determined that the following percentage weighted-average margins exist for the period May 1, 1992, through April 30, 1993:

Manufacturer/exporter, and country	BBs	CRBs	SPBs
IKS, Japan	4.65	([1])	([1])

[1] No U.S. sales during the review period.

Based on these results, the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews. These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)) and 19 CFR 353.28(c).

Dated: December 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–30955 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–814]

Certain Cold-Rolled Carbon Steel Flat Products From Germany; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On August 2, 1995, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on Certain Cold-Rolled Carbon Steel Flat Products from Germany (A–428–814) (*Preliminary Results*). The review covers sales from one manufacturer of the subject merchandise to the United States and the period August 18, 1993, through July 31, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments

received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1395 or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1995, the Department published in the Federal Register (60 FR 39355) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from Germany (58 FR 44170, August 19, 1993). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of these Reviews

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1010, 7209.24.1050, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7075, 7211.41.7085, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one exporter of certain cold-rolled carbon steel flat products, Thyssen AG (TAG). The review period is August 18, 1993, through July 31, 1994.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Petitioners and Thyssen requested a public hearing but later withdrew their requests. Petitioners and Thyssen filed case briefs and rebuttal briefs on September 1, 1995, and September 12, 1995, respectively.

Comment 1: Petitioners argue that fundamental and pervasive flaws in Thyssen's responses require the use of total best information available (''BIA''). Petitioners argue that the failure of the Department to apply total BIA provides a significant disincentive for respondents to comply with the Department's instructions and information requests in the future, and encourages them to respond selectively in accordance with what would be to their benefit in the margin calculation.

Thyssen counters that the Department correctly determined in its July 20, 1995, memorandum on the use of BIA (''July 20, 1995, memorandum'') that the use of total BIA is not warranted in this case, and that petitioners' ''total BIA'' argument grossly mischaracterizes the record and does not provide any new information which would warrant a departure from the Department's preliminary results. Thyssen argues that total BIA is reserved for those respondents who have been truly uncooperative or whose submissions have been so replete with errors as to make application of partial or neutral BIA impossible. *See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts from France; et al; Final Results of Antidumping Administrative Reviews,* 60 FR 10900, 10908 (February 28, 1995). Thyssen argues that the Department's use of BIA should not unfairly penalize a respondent who substantially cooperates. *See, e.g., Allied-Signal Aerospace Co.* v. *United States,* 996 F. 2d 1185 (Fed. Cir. 1993); *NTN Bearing Corp. of America* v. *United States,* Slip Op. 93–129 (CIT July 13, 1993).

Department's Position: As discussed in the Department's July 20, 1995, memorandum, the Department applies total BIA when a respondent fails to submit information in a timely manner, or when the submitted data is sufficiently flawed, so that the response as a whole is rendered unusable. The Department considers the errors and inconsistencies in Thyssen's submission of such a nature that they have had a limited effect upon the analysis and, as appropriate, can be dealt with on an individual basis. Individual issues which petitioners argue warrant the use of total BIA, and Thyssen's rebuttals, are addressed below in Comments 2 through 4.

Comment 2: Petitioners argue that Thyssen's reporting of product characteristics was replete with mistakes and omissions and could not be conclusively verified by the Department given Thyssen's failure or refusal to provide mill certificate information. Petitioners argue that Thyssen's unreliable product comparisons and erroneous reporting preclude an accurate determination of the true dumping margin in this review, as demonstrated by the home market verification report. Furthermore, petitioners argue that product characteristics could not be conclusively verified because of Thyssen's failure to provide mill certificates or similar information that would conclusively demonstrate the physical properties of the merchandise in question. Petitioners argue that order documentation, product brochures, and Thyssen's ''List of Analysis'' directory do not indicate the particular specifications to which each transaction in fact conforms. Petitioners note that

while Thyssen has attempted to justify its failure to produce such documentation at verification by claiming that these documents generally are not requested by Thyssen's home market customers because of the extra charge, Thyssen's price list in its Section III response indicates that Thyssen does not always charge extra for preparation of information typically provided on mill certificates or similar documentation.

Thyssen responds that, as the Department noted in its July 20, 1995, memorandum, almost all of Thyssen's home market product characteristic errors involved products with the quality classification of ''other high strength'' that would not be used for matching purposes. Thyssen also argues that, as noted in the Department's July 20, 1995, memorandum, the only errors in Thyssen's U.S. sales product characteristics involved sales to specific customers which Thyssen brought to the Department's attention at the beginning of the product characteristic review in Germany, and which Thyssen had corrected by the beginning of the U.S. verification.

Thyssen argues that mill certificates were never required, as the Department's July 20, 1995, memorandum also noted, and that the Department properly did not demand access to Thyssen's magnetic tape records for whatever mill certificate information might have been available. Thyssen argues that it does not maintain mill certificates in its current ''database'' for more than three months after shipment for two reasons: these documents generally are not requested by Thyssen's customers, and so database access is not required; and the volume of business makes retention in the database impractical. Thyssen notes that the mill certificate information was and remains available on magnetic tape, but that retrieval of isolated pieces of data from this medium is time consuming. Thyssen notes that it was able to provide from its ''database,'' immediately upon request, a mill certificate for a sale in February 1995 for the only shipment where this document was requested by the customer. Thyssen argues that it provided the Department with mill certificates for all of its U.S. sales, where mill certificates are an order requirement, and argues that the Department confirmed that the ordered material corresponded to that which was produced and sold. Finally, Thyssen argues that petitioners' citation of a price list showing that some minimal information will be provided free of charge ''if selected and precisely ordered by the purchaser'' does not contradict the Department's finding that Thyssen charges extra for ''the vast majority of test certificates.''

Department's Position: Petitioners have questioned several aspects of Thyssen's reporting of product characteristics. First, we disagree with petitioners regarding the errors in reported product characteristics for home market sales involving the quality ''other high strength.'' These errors were discovered in a review of observations that Thyssen had designated with this specific quality. The specific sales in which errors were discovered were not used for matching purposes. After the discovery of this error, the Department examined additional ''high strength'' sales; no discrepancies were identified.

Regarding the majority of product characteristic errors for U.S. sales, the Department verified that Thyssen had identified the correct product characteristic information. We instructed Thyssen to incorporate those corrections in its final tape submission, and Thyssen did so in a satisfactory manner. Regarding mill certificates, the Department indicated in its verification outline of March 8, 1995, and throughout its review of product characteristics of home market and U.S. sales during verification in Germany, that it would be preferable if we were able to review the appropriate mill certificates for the observations in question. Thyssen indicated at verification that an attempt to locate available information for the period of review (''POR'') from magnetic tape would be very burdensome. In any case, the Department remains satisfied with Thyssen's presentation of documentation regarding the product characteristics of its reported sales. Although the documentation reviewed at verification in Germany indicated several errors committed by Thyssen in its reporting of product classifications, nothing was noted at verification that indicated that Thyssen shipped merchandise, as specified in its commercial invoices, that differed from the specifications noted in the corresponding purchase orders and in Thyssen's general production standards by grade. (Contrary to Thyssen's assertion, most of the mill certificates provided during the verification in Detroit were not used for purposes of product characteristic verification, as the verification of the product characteristics of pre-selected and surprise sales for both markets had already been completed during the verification in Germany.) As noted in the Department's July 20, 1995, memorandum, the Department did not insist that Thyssen's magnetic tape records be reviewed because the retrieval of isolated pieces of data from Thyssen's magnetic tape records would have been inordinately burdensome for Thyssen to have accomplished during verification.

Comment 3: Petitioners claim that the numerous corrections and clarifications provided by Thyssen demonstrate that Thyssen's response cannot be deemed reliable or usable. Petitioners argue that the nature of the errors precludes proper product matching, distorts claimed expenses and adjustments, and prevents an accurate analysis and substantiation of costs overall.

Thyssen argues that the clerical errors identified and corrected by Thyssen during the course of the review were inconsequential when compared to the millions of bits of information reported; that the Department noted numerous instances, in its verification reports, where no discrepancies were found; and that the Department correctly concluded in its July 20, 1995, memorandum that the problems found were not sufficient to render Thyssen's submission unreliable or unusable.

Department's Position: We disagree with petitioners. As reflected in the Department's July 20, 1995, memorandum and elsewhere in this final determination in regard to particular areas of concern, the Department properly allowed Thyssen to make corrections to its submissions. We determined that the remaining errors and inconsistencies did not warrant disregarding Thyssen's submission as a whole, and could be dealt with on an individual basis.

Comment 4: Petitioners assert that Thyssen failed to report cost information as requested by the Department, thereby rendering the company's responses unusable for the purposes of our final results. Specifically, petitioners first argue that Thyssen failed to provide a schedule of production quantities, thereby preventing the Department from tying control number specific cost of production (''COP'') and constructed value (''CV'') figures to Thyssen's accounting records. Petitioners argue that the verification of production quantities was crucial in determining the accuracy of Thyssen's reported COP and CV amounts because the company used production quantities to compute (1) the average per-unit costs contained in its cost center expense reports, (2) the per-ton basis costs that were common to all products within each cost center, and (3) all product-specific basis costs within each cost center as part of the ''tons per hour'' factor. Petitioners note that the Department has stated that the

failure of a respondent to show that the product-specific costs included in COP and CV are tied to the company's accounting records results in a failed verification. *See Antifriction Bearings (Other Than Tapered Roller Bearings and Parts Thereof From the Federal Republic of Germany); Final Results of Antidumping Duty Administrative Review,* 56 FR 31692, 31707 (July 11, 1991) (*AFBs From Germany*). Petitioners argue that, despite the Department's specific request for such a schedule, Thyssen refused to provide this information, claiming that it would be extremely burdensome, but failing to show why that was the case. Petitioners claim that the Department appears to have contradicted the record, including its own cost verification report, when it stated that ''Thyssen did report product-specific costs in that it computed actual product-specific costs using production quantities at each stage of the production process'' and that ''[t]hese production quantities were reviewed and tested at verification.'' Petitioners believe the cost verification report indicates that product-specific production quantity information was not provided to the Department at verification. Petitioners argue that the Department's ''alternative verification procedures,'' *i.e.,* the examination of fiscal-year ending inventory balances and movements in and out of a single warehouse, cannot be deemed to have demonstrated a link between production quantity information and Thyssen's financial records.

Petitioners also argue that Thyssen failed to identify product-specific costs as standard or actual costs, thereby preventing the Department from tying ''basis costs'' to actual production quantities. Petitioners argue that the Department has determined that it cannot use the cost response of a respondent which failed to provide actual costs and was unable to support its standard costs. *See Final Determination of Sales at Less Than Fair Value: New Steel Rail, Except Light Rail, from Canada,* 54 FR 31984, 31985–86 (August 3, 1989).

Petitioners argue that throughout the review Thyssen has failed to conclusively identify whether its reported cost figures are based on standard or actual cost amounts. Petitioner contends that all of the information on the record indicates that Thyssen's product-specific manufacturing costs for the COP and CV figures are based on standards for which variances must be calculated. Petitioners assert that the information on the record is inconsistent with statements from the Department's cost verification report that it ''tested that the standard costs were fully adjusted by the variances incurred and thus the submitted costs reflect the actual costs incurred during the respective fiscal periods.''

Petitioners conclude that Thyssen's failure to report cost information as requested requires the Department to reject the company's questionnaire responses and apply total BIA. Petitioners argue that the flaws in Thyssen's reporting of COP and CV preclude the Department from conducting its sales-below-cost test and prevent the Department from having confidence in the difference-in-merchandise (''difmer'') data, which are needed in the Department's margin calculations. Petitioners argue that, if the Department determines not to reject Thyssen's responses on the whole, the Department must, at the very least, apply as BIA to Thyssen's cost information the highest cost of manufacturing for all COP and CV values from sales in this review.

Thyssen counters that there is no doubt that the Department verified the company's actual production costs and actual production quantities. The Department utilized an exacting standard to verify Thyssen's submitted costs and the results of the Department's verification are supported by substantial evidence. Respondent argues that petitioners' claims must be rejected.

Thyssen argues that the Department's statements in its July 20, 1995, memorandum regarding this issue are accurate, contrary to the assertions of petitioners. Thyssen argues that its own submissions and the Department's cost verification report confirm that the actual production quantities were provided and verified. The actual costs were incurred by each processing cost center, based upon actual production, actual yield, actual work time and standard performance.

Furthermore, Thyssen argues that petitioners have mischaracterized the purpose of the Department's request for product-specific quantity information which was provided by alternative means. According to Thyssen, the request for quantity information pertained not to the compilation of production costs, but rather was designed to allow the Department to reconcile to Thyssen's inventory.

Department's Position: We disagree with petitioners' allegation that Thyssen failed the cost verification. The Department's verification provided reasonable assurance of the accuracy of Thyssen's reported costs, and our cost verification report outlined all of the testing which we performed and noted any exceptions or deficiencies in the results of that testing. As stated recently by the Court of Appeals for the Federal Circuit, the Act ''gives Commerce wide latitude in its verification procedures.'' *American Alloys Inc.* v. *United States,* 30 F.3d 1469, 1475 (Fed. Cir. 1994). The standard for verification is not to verify all information or to require perfect accuracy. ''Verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness, so that Commerce can justifiably rely on that information.'' *Tatung Co.* v. *United States,* Slip Op. 94–195 (CIT December 14, 1994). Accordingly, as detailed below, we are satisfied that the shortcomings identified in the cost verification report regarding Thyssen's data do not undermine the reliability of Thyssen's submission as a whole and do not warrant resort to BIA.

Contrary to petitioners' assertions, we do not believe that Thyssen's omission of product-specific (*i.e.,* control number-specific) production quantities renders the company's questionnaire response unreliable for purposes of calculating COP and CV. As Thyssen explained in its response and as we observed at verification, the company does not maintain production quantities on such a product-specific basis as part of its normal accounting system. Instead, Thyssen relies on total production quantity figures at each of its steel production stages to compute an average per-unit coil cost for all products. Thyssen then converts this average coil cost to a product specific cost based on a standard table of ''extras,'' which are discussed further below. Thus, the total production quantities at each production stage are determinative, as relied upon by Thyssen to calculate the per-stage costs which are then accumulated to determine the coil production cost.

As part of our verification testing, we required Thyssen to provide accounting records showing actual production quantities at each stage of production. In order to verify the accuracy of Thyssen's reported per-unit costs we examined production quantities and total production costs for selected cost centers within specific production stages. We found no discrepancies between the production quantities used by Thyssen to compute the actual weighted-average cost reported to the Department and the company's normal production records.

In contrast to Thyssen, the respondent in question in *AFBs From Germany,* the case cited by petitioners, was able to report the relevant information (regarding labor, overhead and other

expenses) on a model- or product-specific basis. The Department determined, however, that it could not tie the reported model-specific amounts to the respondent's internal accounting records and financial statements, information which was successfully verified. *AFBs From Germany,* 56 FR at 31707. Being unable to devise a methodology to better allocate labor and overhead costs, the Department relied upon total BIA. *Id.* Following a challenge by respondent, the CIT remanded the *AFBs From Germany* determination, stressing that the actual information provided by respondent was accurate and verified. The CIT required the Department to further explain why, instead of relying upon total BIA, it had not supplied its own methodology or that of another respondent. *Nippon Pillow Block Sales Co.* v. *United States,* 820 F. Supp. 1444, 1455 (CIT 1993). Following remand, the CIT upheld the Department's determination that it could not develop an allocation methodology or use that of another respondent which would allow it to use the previously verified data. *Nippon Pillow Block Sales Co.* v. *United States,* 837 F. Supp. 434, 436 (CIT 1993).

Hence, as demonstrated by both the Department's initial determination and the CIT's two decisions, *AFBs From Germany* stands for the principle that the Department should rely upon a party's information to the extent possible. Here, because we found Thyssen's cost information as well as its accounting methodology reasonable and verifiable, we see no reason for resorting to BIA.

With respect to petitioners' claim that it is unclear whether Thyssen reported standard or actual costs, it is clear from the computer tape submitted by Thyssen and from the verification report that Thyssen reported the actual weighted-average cost of producing cold-rolled coil. The adjustments Thyssen made to adjust the base cost to actual cost are described in the cost verification report at pages 5–7. Thyssen adjusted the average cost of coil by three factors on the computer tape: the computer variables CREXT1 and CREXT2 (''extras'') accounted for composition, size, width, and form differences between the average product and the unique product; the computer variable THMOADJ adjusted the average coil cost for year-end accruals, price and overhead variances. These three computer variables adjusted the average coil cost to actual product-specific cost.

Petitioners' reliance upon *New Steel Rail From Canada* is misplaced. In that case, the Department rejected the respondent's COP information after determining that it could not be verified. The Department found, among other deficiencies, that the respondent had developed information for the investigation based on the standard product costs used by the company, ''which were not part of the normal financial accounting system and which were for a period subsequent to the period of investigation.'' *New Steel Rail From Canada,* 54 FR at 31985. Despite having a cost system which reported actual costs, the company in question ''chose not to use this information for its response.'' *Id.* By contrast, there is no evidence in the record of this review indicating that Thyssen deviated from its normal accounting methodology except to the extent necessary to meet the Department's reporting requirements.

We also disagree with petitioners' contention that it is inappropriate to use standard machine times as a basis on which to compute labor cost for specific products. The use of standard machine times as a reasonable and appropriate allocation basis is well substantiated in both accounting and Departmental practice. *Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Certain Welded Stainless Steel Pipes from the Republic of Korea,* 57 FR 27731, 27733 (June 22, 1992). Machine hours effectively relate the labor cost incurred to the specific product. We find it reasonable and not distortive to use standard machine hours to allocate actual processing costs to specific products.

In sum, Thyssen supported its COP and CV figures with substantial evidence on the record as is indicated by the company's questionnaire responses, supplemental responses and verification exhibits. We reviewed and tested the accuracy and completeness of Thyssen's submitted COP and CV data and did not identify any problems which would cast doubt on the company's response as a whole. Accordingly, we have relied on Thyssen's cost response as the basis for our final results of this administrative review.

Comment 5: Petitioners argue that, should the Department determine not to disregard Thyssen's cost response, it must still account for Thyssen's failure to provide actual costs of material inputs from related parties. Petitioners argue that this failure prevents the verification of the valuation of materials acquired from related suppliers and requires the application of BIA.

Petitioners first contend that Thyssen's provision of financial statements or reports for a related iron ore supplier and a related ferrous scrap supplier in lieu of actual costs was insufficient for determining whether transfer prices are above or below the cost of production. Petitioners cite the final determination in the underlying investigation, which stated that ''[f]or the Department to be assured that the transfer prices are above costs, the Department must be able to test the transfer prices against the actual costs of production of the inputs. * * *'' *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Germany,* 59 FR 37136, 37151 (July 9, 1993) (*Steel from Germany*). Petitioners argue that the Department's verification of Thyssen's related iron ore supplier was inadequate to show whether transfer prices were above costs, and did not account for the fact that the overall profit on that supplier's income statement may obscure the fact that it incurs costs, on sales to Thyssen that are most likely not incurred on other sales, such as transportation and additional processing costs. Petitioners argue that the COP information provided by the related scrap supplier are also insufficient to demonstrate that the merchandise was sold above the cost of production. Furthermore, petitioners argue that Thyssen failed to distinguish between the cost of merchandise sold to Thyssen and the cost of merchandise sold to other customers. Consequently, petitioners argue that Thyssen failed to demonstrate that the transfer prices paid were above the supplier's cost of production, and therefore the application of BIA is warranted.

Thyssen responds that petitioners' claims ignore the cost verification report, the accompanying exhibits and analysis, as well as the substantial documentation provided by Thyssen. Thyssen points to its March 8, 1995, submission at 8–17 and accompanying exhibits 11–15, and pages 12–16 and exhibit G of the Department's May 17, 1995, cost verification report. Thyssen argues that the Department did not base its decision to accept related party input suppliers' prices solely on profit information in the financial statements. Further, Thyssen provided extensive information relating to sales quantities and production costs for its related iron ore supplier which established that transfer prices were above actual production costs. Thyssen counters that given its related iron ore suppliers'

product mix, petitioners' suggestion that potentially differing terms of sale could have resulted in production costs exceeding transfer prices is absurd on its face.

In regard to scrap sales, Thyssen quotes the cost verification report at 16 which concluded that the ''Rhine region scrap division, the only division providing scrap to Thyssen Stahl AG (''TSAG''), was profitable on a DM per ton basis.'' Thyssen states the Department acted reasonably in using the transfer prices submitted in determining COP and CV in the absence of any evidence that the cost data supplied was unreliable or any evidence of record more probative than that which Thyssen and its related suppliers submitted.

Further, Thyssen contends that the cost information submitted by petitioners cannot be considered because it consists of factual information available to petitioners prior to publication of the preliminary determination and therefore was not timely filed. *See NSK Ltd.* v. *United States,* 798 F. Supp. 721, 725 (CIT 1992).

Department's Position: The Department disagrees with petitioners. Thyssen submitted evidence that the prices paid to related suppliers for the most significant inputs identified by the Department were at arm's length and were not at prices below the related suppliers' cost of production. The Department tested the submitted prices from a major related iron ore supplier and a major related scrap supplier. The Department found that the iron ore prices from unrelated and related suppliers were the same. The Department found that scrap prices from unrelated and related suppliers were comparable. The Department also tested that the prices were above the cost of production. The Department computed a cost per ton of iron ore from the constant currency income statements of the major related iron ore supplier for the years ending December 31, 1993 and December 31, 1994. We compared this amount to the average sales price, noting that the transfer price was higher than the average cost. It was appropriate in this case to use the average cost calculation because the major iron ore supplier's sole business is the sale of iron ore; therefore, financial results are not affected by other lines of business. Petitioners' argument that the profit on domestic sales may far exceed the profit on export sales is speculative and not supported by evidence on the record. Export sales constituted the majority of the related suppliers' sales. Export sales commanded significantly higher prices than domestic sales; this higher price should reflect any additional processing or transportation costs envisioned by petitioners.

In addition, at verification we reviewed the profit analysis of the major scrap supplier's Rhine region division, which supplies Thyssen with its ferrous scrap, and concluded that the division was profitable and therefore its sales of scrap were at prices above the cost of production.

Comment 6: Petitioners assert that the Department should use BIA for the CV of material inputs. Petitioners argue that for purposes of calculating CV, it is not sufficient that the transfer prices of major inputs reflect market value. Rather, section 773(e)(2) of the Act requires the Department to disregard the transfer price of a major input and use the actual cost of producing the input if the transfer price is below the related supplier's COP for that input. *See Antifriction Bearings From France, supra,* 60 FR at 10924. Petitioners argue that Thyssen's failure to provide credible evidence that the transfer price for iron ore was above the cost of production despite numerous requests from the Department for this information constitutes reasonable grounds to believe or suspect that the transfer prices paid by Thyssen were less than the cost of production. With respect to ''non-major'' inputs, petitioners argue that Thyssen failed to demonstrate that its transfer prices were at arm's length as, except for scrap, which the Department examined at verification, Thyssen provided only self-selected invoices which cannot be considered representative of prices.

Department's Position: The Department disagrees with petitioners. As discussed above in response to comment 5, the Department's testing at verification revealed that Thyssen's related party did not offer preferential pricing to related suppliers for major inputs. Moreover, we verified that major inputs were purchased at prices that were not below their cost of production. We are satisfied with Thyssen's submissions regarding this issue, as verified. With respect to materials purchased from related suppliers which consisted of a small part of the cost of manufacturing—so-called ''non-major'' inputs—the Department elected not to verify these amounts. We determined that these inputs had a minimal effect on the total cost of manufacturing. Given this fact, the constraints of time, and the nature of verification (see response to comment 4), we did not consider it necessary to verify these amounts individually.

Comment 7: Thyssen argues that, for purposes of its COP and CV calculations, the Department incorrectly reduced Thyssen's reported interest income by interest/dividends earned on security investments of working capital. Thyssen disputes the Department's rationale that ''the Department does not generally allow dividends as an offset to financing expense because dividends are not considered to be short-term in nature.'' According to Thyssen, only short-term income from current assets was included in the interest income offset. Thyssen argues that, since this income was attributable to Thyssen's ''short term investments of its working capital,'' it should not have been excluded from the interest income offset. *See, e.g., Antifriction Bearings From France,* 60 FR at 10926; *and Television Receivers, Monochrome and Color from Japan; Final Results of Administrative Review,* 56 FR 23281, 23282–83 (May 21, 1991). Thyssen argues that a cost verification exhibit confirms that its claim was limited to income from current assets and did not include interest from long term securities and interest other than from current assets.

Petitioners agree with the Department's preliminary determination that Thyssen has not demonstrated that the source of the claimed income is short-term in nature.

Department's Position: Thyssen has not demonstrated that it is entitled to an offset to interest expenses for income derived from dividends. The Department's long-established practice is to deny an offset for income of this nature. *See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea,* 57 FR 42942, 42953 (September 17, 1992); *Final Determination of Sales at Not Less Than Fair Value: Saccharin From Korea,* 59 FR 58826, 58828 (November 15, 1994). The CIT recently affirmed the Department's general standard in *NTN Bearing Corp.* v. *United States,* Slip Op. 95–165 (CIT Oct. 2, 1995). Relying on its earlier decision in *Timken Co.* v. *United States,* 852 F. Supp. 1040, 1048 (CIT 1994), the court clarified that to qualify for an offset, interest income must be related to the ''ordinary operations of a company.'' *NTN Bearing* at 32. While this standard does not require that interest income be tied directly to the production of the subject merchandise, a respondent must show ''a nexus between the reported interest income'' and its ''manufacturing operation.'' *Id.* at 33; *see Timken* at 1048. Unlike interest income earned from the short-term investment of working capital,

only rarely will dividend income earned from a company's investment activities meet this standard. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18791, 18795 (April 20, 1994).

Thyssen argues in its brief that its dividend income qualifies as an offset because it is ''short-term'' income from current assets, such as ''interest on current bank accounts, interest on time and fixed-term deposits and interest on short-term securities.'' However, the verification exhibit referred to by Thyssen as support actually characterizes the income in question as ''dividends from securities of working capital.'' Cost Verification Report, Exhibit K. This is very similar to the facts in *NTN Bearings,* where the CIT upheld the Department's denial of the offset. *NTN Bearing* at 33. *See also Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review,* 56 FR 34180, 34184 (July 26, 1991). Indeed, Thyssen made little if any effort to demonstrate why its dividend income qualified as an offset. Therefore, because Thyssen failed to show the necessary nexus between its dividend income and manufacturing operations, we have denied the claimed offset.

Comment 8: Thyssen reported separate cost and allocated expense data for sales observations according to the fiscal year in which the sales took place. The Department conformed its computer programs so that they could utilize these fiscal year data. Thyssen argues that the Department incorrectly calculated one weighted-average home market direct selling expense and one weighted-average home market indirect selling expense for the entire POR. Thyssen argues that this is inconsistent with the Department's utilization of separate fiscal year costs and expenses for all of the other elements utilized in calculating constructed value.

Petitioners argue that calculating two such general expenses per control number (''CONNUM''), as requested by Thyssen, would improperly separate the class or kind into two categories, each of which has a separate cost. Petitioners argue more generally that the reporting of two costs and/or expenses per CONNUM conflicts with the statute and Department practice, distorts the effects of the costs and expenses, and is administratively burdensome. Consequently, petitioners argue that the Department should re-calculate a single weighted average for all costs and expenses covering the two fiscal periods.

Department's Position: We disagree with petitioners' assertion that the reporting of costs for the two fiscal periods covered by the POR violates the antidumping statute which directs the Department to calculate for constructed value, the ''general expenses and profit equal to that usually reflected in sales of merchandise in the same general class or kind as the merchandise under consideration.'' Thyssen did calculate general expenses for the same class or kind of merchandise in accordance with the statute for the two fiscal periods encompassed within the POR. We have determined that computing general expenses by fiscal period does not, in effect, divide the class or kind of merchandise because the calculation for each period covers the entire class or kind. Using expenses associated with each fiscal period has not distorted our analysis because we have used contemporaneous prices and expenses. Contrary to petitioners' assertions, attempting to recalculate a single weighted average for all costs and expenses covering the two fiscal periods would be extraordinarily burdensome. We inadvertently did not account for two fiscal years in the instance noted by Thyssen, and have adjusted the programming language for weighted-average home market direct and indirect selling expenses so those calculations are in accordance with the Department's general use of separate fiscal year data. In this instance we have used the reported data.

Comment 9: Thyssen argues that the Department, through clerical error, improperly calculated Thyssen's fiscal 1992/93 cost of manufacture for cost of production. Thyssen argues that the Department failed in one instance, due to a missing zero, to follow its June 16, 1995, COP, CV, and Further Manufacturing Concurrence Memorandum in correcting Thyssen's thirteenth month adjustment.

Department's Position: We agree with Thyssen, and have incorporated the correct information in the programming for the final results.

Comment 10: Thyssen asserts that the Department improperly failed to adjust for physical differences in merchandise when comparing U.S. sales to home market sales falling within the same control number (or CONNUM, identified in the sales data bases as CONNUMU and CONNUMH, respectively).

According to Thyssen, it reported its variable manufacturing costs on a weighted-average basis for each CONNUMU and CONNUMH, with the weighted average derived from actual costs attributable to each individual invoice. Consequently, Thyssen argues that the material costs, labor costs and overhead expenses were not necessarily identical for all sales within a particular CONNUM. Similarly, because the physical characteristics of the merchandise grouped together in the U.S. sales listing often differed from the physical characteristics of merchandise grouped together in the home market sales listing, the variable cost of manufacturing for U.S. sales (VCOMU) often differed from variable cost of manufacturing for home market sales (VCOMH) for product groupings with the same identifying CONNUM.

As noted in the May 17, 1995, cost verification report at 22, ''the variable cost of manufacturing in the home market sales listing and the U.S. sales listing was computed by calculating a variable cost of manufacturing for each sale and weight averaging all sale specific model costs within the control number.'' Thyssen asserts that the Department verified that Thyssen had quantified its product-specific cost differences resulting from differences in physical characteristics not reflected in the model matching characteristics upon which the determination of specific CONNUMs is based. Therefore, according to Thyssen, the Department established that the differences in the VCOMH and VCOMU for product groupings with the same identifying CONNUM were based on the physical differences in the merchandise actually falling within each group.

As support, Thyssen refers to section 771(16)(A) of the Act, which uses the phrase ''identical in physical characteristics.'' Because this phrase is not defined, Thyssen argues that it must be construed in accordance with its common meaning, *i.e.,* ''exactly the same.'' Thyssen cites various cases where the Department noted that its product groupings are not necessarily limited to a single ''identical'' product. *See, e.g., Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France; et al.; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360, 28364–66 (June 24, 1992); *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, Final Determination of Sales at Less than Fair Value,* 54 FR 18992, 19072 (May 3, 1989). Thyssen concludes that the Department has refused to make adjustments for differences in costs of producing merchandise only when the products in question had identical physical characteristics. *See Import Administration Policy Bulletin,* No. 93.2 (July 29, 1992).

In response, petitioners argue that it is well established in the cold-rolled carbon steel flat products cases that all products which have the same CONNUM are considered by the Department to be ''identical'' for the purpose of applying Section 773(a)(4)(C). For example, Appendix V of the questionnaire from the underlying investigation states that ''[f]or purposes of these investigations, products will be considered 'identical' in thickness if they fall within the same thickness range * * * regardless of the actual thickness of the products''; ''products will be considered 'identical' in width if they fall within the same width range identified * * * regardless of the actual width of the merchandise''; ''and ''[n]o difference in merchandise adjustment (difmer) may be claimed for products that are within the same thickness or width range, but differ in actual measurement.'' Similarly, the Department stated that, in following such an approach for determining which sales are of ''identical'' merchandise, ''if there are 'identical' matches according to our designated criteria, we will not make an adjustment for any additional differences in merchandise (difmer).''

Petitioners argue that, in the present review, CONNUMs have been defined such that each CONNUM has a unique set of identifiers for the matching criteria established by the Department. As a result, products sold in the United States and home markets which have the same CONNUM would share the same ''identifier'' for all of the Department's product-matching criteria and, accordingly, the Department was correct in not making difmer adjustments for U.S. and home market products with the same CONNUM.

Department's Position: We disagree with respondent. As explained below, the Department correctly declined to make difmer adjustments when U.S. sales were matched to what we determined to be home market sales of identical merchandise (*i.e.,* when the U.S. and home market sales in question possessed the same product characteristics as set forth by the Department in its model matching criteria).

Section 771(16) of the Act directs the Department to compare sales of home market merchandise which are ''such or similar'' to merchandise sold in the United States. In accordance with section 771(16)(A), the Department first identifies and compares that merchandise which is ''identical'' in physical characteristics, followed by sales of merchandise which is most ''similar'' in physical characteristics. To make these determinations, the Department devises a hierarchy of commercially meaningful characteristics suitable to each class or kind of merchandise. The Department considers merchandise to be identical within the meaning of section 771(16)(A) when all the relevant characteristics match.

The courts have recognized that the Department has broad discretion ''to choose the manner in which 'such or similar' merchandise shall be selected.'' *Koyo Seiko Co.* v. *United States,* 66 F.3d 1204, 1209 (Fed. Cir. 1995). This discretion extends to determining which products properly should be considered identical.

However, the Department is not authorized to grant difmer adjustments within identical product categories. Under section 773(a)(4)(C) of the Act, the Department may only adjust for cost differences between two products which are ''similar'' in physical characteristics, and in this way compensate for any difference in the price derived solely from the physical difference between the two products compared.

Basing its product matching criteria on commercially meaningful characteristics permits the Department to draw reasonable distinctions between products for matching purposes, without attempting to account for every possible difference inherent in certain classes or kinds of merchandise. Given the tremendous number of variations between products in the various flat-rolled carbon steel product categories, including cold-rolled steel, the Department has followed this approach in the present case, beginning with the original less-than-fair-value investigation. As such, the Department may define certain products as being ''identical'' within the meaning of section 771(16)(A), even though they contain minor differences. *See Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker From Mexico,* 55 FR 29244, 29247–48 (July 18, 1990). Similarly, the Department need not account for every conceivable physical characteristic of a product in its hierarchy. Thus, a range of products may be considered ''identical'' within the meaning of the statute.

For instance, as Thyssen correctly notes in its case brief, many steel products would have been treated by the Department as identical (*i.e.,* in the same CONNUM) even when their widths differed from one another, because this product characteristic is identified in terms of ranges (*e.g.,* 40 to 60 inches as identifier ''F'' for the width product characteristic). In other words, two sales could be classified in the same CONNUM even if one was of merchandise with a width of 41 inches and the other was of merchandise with a width of 59 inches because both would fall within the width category identified as ''F''.

At the outset of the present review, when it had an opportunity to comment on the hierarchy of product matching criteria, Thyssen failed to argue that it considered the Department's width and thickness product categories overly broad, nor did Thyssen argue that additional product characteristics should be included within the hierarchy. Because the products within each CONNUM are identical within the meaning of the statute, the VCOMH and VCOMU reported by Thyssen within individual CONNUMs do not provide a basis for making difmer adjustments.

Comment 11: Thyssen contends that the Department improperly compared U.S. sales of seconds to constructed value, rather than to home market sales of seconds. Thyssen acknowledges that home market seconds were sold at prices below cost. However, Thyssen cites the Senate Report accompanying the Trade Reform Act of 1974 to argue that neither the statute nor the Department's regulations mandate that all below cost home market sales be disregarded in calculating foreign market value. *See* S.Rep. No. 1298, 93d Cong., 2nd Sess. 173 (1974). Thyssen argues that in the steel industry it is normal business practice for all companies, including Thyssen, to sell secondary steel at less than the cost of producing prime steel of the same grade. At the same time, however, sales of seconds are relatively infrequent in comparison to sales of prime material and do not prevent a steel manufacturer from recovering production costs on all steel sales, primes and seconds, within a reasonable period in the normal course of trade. Thyssen contends that this result is directly contrary to the intent of Congress.

Thyssen argues that *IPSCO, Inc.* v. *United States,* 965 F.2d 1056, 1060 (Fed. Cir. 1992), which the Department cites at page 3 in its April 19, 1995, memorandum on treatment of non-prime merchandise (from Roland MacDonald to Joseph Spetrini, General Issue Case No. A–100–003), merely *permits* the Department to compare the prices of seconds to constructed value in appropriate circumstances; *IPSCO* does not mandate that result. Thyssen contends that the particular issue which it has raised, the question of whether Thyssen's sales of seconds were in sufficiently large quantities over a significantly lengthy period, is fact-

specific to the instant review and was not presented to the *IPSCO* court.

Petitioners respond that it is inappropriate to combine prime and non-prime merchandise in determining whether the quantity of below cost sales is sufficiently large to warrant disregarding those sales in determining FMV. Petitioners contend that Thyssen has taken the inconsistent positions that the Department should separate prime and non-prime merchandise for the arm's length test, but combine both types of merchandise for the cost test. Petitioners argue that the comparison of U.S. sales with CV is mandated by statute whenever such or similar home market merchandise fails the COP test, that Thyssen admits that its sales of seconds fail this test, and that, accordingly, U.S. sales of non-prime merchandise should be compared to CV. Petitioners add that Thyssen did not provide any evidence that the costs of the merchandise consisting of a combination of both prime and non-prime merchandise would be recovered over a reasonable period of time, even if such an analysis were relevant.

Department's Position: Thyssen is essentially requesting that the Department modify the below-cost test it applied in the preliminary results to include sales of seconds for matching purposes whenever the corresponding sales of prime were at above cost prices. In this regard, Thyssen mistakenly relies on the Senate report accompanying the 1974 Trade Reform Act to contend that the Department should not disregard sales of seconds, regardless of whether they were at prices below cost. We disagree.

The Act requires the Department to determine whether a respondent's sales were made over an extended period of time and in substantial quantities so as to warrant disregarding those sales in determining FMV. This test applies across sales of a model as a whole, whether they be prime, seconds or otherwise. *See* 19 U.S.C. § 773(b). The 1974 Senate report did list several exceptions to this test, including obsolete and end-of-model year merchandise, which the Department should not disregard regardless of the whether they were below cost.

This category of exceptions is narrow, however, and is designed only to permit the inclusion of below-cost sales which can be expected to occur on an ''infrequent'' basis. S. Rep. No. 1298, 93d Cong., 2d Sess. 173 (1974); *see also Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductor of One Megabit and Above From the Republic of Korea,* 58 FR 15467, 15476 (March 23, 1993). It is possible to verify whether merchandise claimed to be obsolete or end-of-model year actually falls within the exception. The exception does not include seconds, however, which tend to occur more frequently and which a party would be more inclined to ''systematically'' sell at prices which will not permit recovery of all costs. *See* S. Rep. 1298 at 173. It would also be more difficult to verify whether a product was properly classified as a ''second.''

In past cases, the Department has considered prime and secondary merchandise to be separate models for matching purposes. ''To do otherwise would distort the margins, since sales prices are dependent on the quality of the merchandise.'' *Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review,* 58 FR 43327, 43328 (August 16, 1993). In *IPSCO,* the Court of Appeals upheld the Department's approach of applying the same cost to prime and secondary merchandise. *See IPSCO,* 965 F.2d at 1061. In this case, we computed the cost of Thyssen's secondary merchandise using a methodology consistent with that applied in the *IPSCO* case. Based on these cost figures, we found insufficient quantities of above cost sales and, accordingly used CV as FMV.

Comment 12: Thyssen argues that the Department improperly combined sales of prime and secondary merchandise in its arm's length test. According to Thyssen, the Department should conduct separate arm's length tests and calculate separate customer-specific weighted-average price ratios for prime and secondary merchandise. In support of its argument, Thyssen asserts that such treatment would be consistent with the Department's April 19, 1995, memorandum on the treatment of non-prime merchandise.

Petitioners respond that Thyssen misrepresents the Department's statements on this matter, indicating a serious misunderstanding on Thyssen's part as to how the arm's length test was applied in the present case. Petitioners describe the Department's arm's length test as first comparing the net price of sales of a CONNUM sold to a related customer with the net price of sales of a CONNUM sold to unrelated customers. Only then, petitioners argue, is the related customer-specific weighted-average price ratio calculated, by combining all CONNUMs, consisting of all prime and non-prime merchandise sold to both related and unrelated customers. The Department's test separates prime and non-prime merchandise in making the initial comparison of related and unrelated prices on a CONNUM-specific basis. It is this initial comparison to which the Department refers in its memorandum when it states that ''prime and seconds should be separated.'' Prime and non-prime merchandise are necessarily separated for this initial CONNUM-specific comparison because prime and non-prime merchandise do not share the same CONNUM. The separation of products on a CONNUM-specific basis for the initial price comparison is necessary because there are understandable differences in prices among CONNUMs, irrespective of whether the different CONNUMs consist of prime or non-prime merchandise. Petitioners argue that the objective of the Department's arm's length test is to determine whether sales to individual related customers are made at the same or greater prices than those at which sales of the same products are made to unrelated customers. To make this customer-specific determination, all sales of all CONNUMs, both prime and non-prime, must be combined, and, so, the Department combined all CONNUMs sold to related customers which are also sold to unrelated customers to determine the customer-specific weighted average price ratios.

Department's Position: We disagree with Thyssen. The Department's April 19, 1995, seconds memorandum, states that ''if sales of seconds to related parties are compared to sales of prime (or prime and seconds combined) to unrelated parties, the results of the arm's length test could be distorted.'' The memorandum concludes that, consequently, ''prime and seconds should be separated for purposes of conducting the arm's length test. . . .'' The recommendation section of the memorandum goes on to clarify, however, that the separation of prime and secondary merchandise is done on what amounts to a CONNUM-specific basis. In cases where sales of prime and secondary merchandise were reported together in the same CONNUM, the Department treated them as separate CONNUMs for purposes of the arm's length test. As petitioners point out, the Department would ordinarily follow this approach in the initial steps of conducting the arm's length test because there are understandable differences in prices among CONNUMs, irrespective of whether the different CONNUMs consist of prime or secondary merchandise. *See* April 19, 1995, memorandum at 2–3. In this specific case, Thyssen's seconds were already classified in separate CONNUMs distinct from sales of prime merchandise, meaning that the

Department was not required to make such an initial separation.

The purpose of the Department's arm's length test is to determine if total sales to a related party are at arm's length. To make this determination, we calculate, by CONNUM, prices to each related party as a percentage of prices of sales to unrelated parties. We then take a weighted average of this ratio for all CONNUMs sold to a given related party, including seconds and prime, to determine if sales to that related party are at arm's length. Thyssen has not demonstrated that the approach resulted in a distortion of the arm's length test. *See Usinor Sacilor* v. *United States,* 872 F.Supp. 1000, 1004 (CIT 1994).

Comment 13: Thyssen contends that the Department improperly calculated the VAT adjustment. Thyssen argues that in *Zenith Electronics Corporation* v. *United States,* 988 F.2d 1573 (Fed. Cir. 1993), the Federal Circuit held that the Department's practice of making a circumstance of sale adjustment to FMV to achieve tax neutrality was contrary to law, reasoning that ''Section 1677a(d)(1)(C), the section dealing with tax adjustments, does not provide for any adjustment to FMV to correct for tax-related distortion of the dumping margin,'' and that ''the specific provision of Title 19 for tax adjustments does not permit changes to FMV.'' *Id.* at 1580. Thyssen adds that in *Daewoo Electronics* v. *International Union,* 6 F.3d 1511, 1519–20 (Fed. Cir. 1993), the Federal Circuit held that the tax should be applied at the sale price at which the tax was actually assessed.

Thyssen argues that, in *Federal Mogul Corp.* v. *United States,* CAFC No. 94–1097 (Fed. Cir. August 28, 1995), the Federal Circuit expressly held that the Department had the authority to calculate the adjustment by taking the paid tax *amount* in the home market for the same merchandise, and adding ''that amount to the price actually paid in the United States.'' Slip Op. at 9. According to Thyssen, the Court reasoned that the tax neutral methodology which results from adding the identical tax amount to both the home market and the United States sides of the dumping equation ''clearly accords with international understandings, negotiated by this country regarding unfair trade policy,'' whereas any alternative methodology which artificially increases dumping margins may ''read a GATT violation into the statute.'' *Id.* at 22–23.

Thyssen argues that the Department's preliminary results are contrary to *Zenith* in that it adjusted FMV by the tax relating to expenses that were deducted from FMV. Thyssen argues that the Department's preliminary results are contrary to *Daewoo* in that its calculation methodology resulted in the tax being applied to an ex-factory price, rather than the sales price at which the tax was actually assessed. Thyssen argues that both *Zenith* and *Daewoo* prevent the Department from making any secondary adjustments in calculating the tax pursuant to section 772(d)(1)(C), and even if the Department had this authority, it must be limited to those isolated instances in which the primary tax adjustment created margins where none had previously existed. Thyssen argues that in the case of Thyssen a secondary adjustment could never be authorized, since Thyssen's deductible U.S. expenses exceed its deductible home market expenses, and since the Department's secondary adjustment artificially and significantly inflates dumping margins, in direct contravention to *Federal Mogul.*

Thyssen concludes that the Department's preliminary results methodology, which applies the VAT to a different point in the chain of commerce than the point at which the tax is assessed, and which creates a secondary tax adjustment to FMV, is directly contrary to *Federal Mogul, Zenith,* and *Daewoo.* Thyssen argues that the Department should add to USP the exact amount of the tax added to FMV, as authorized by *Federal Mogul,* or, alternatively, calculate the tax added to FMV in the manner reported by Thyssen (gross price less discounts, times 0.15) and calculate the tax added to USP by multiplying TINC's net sales price (gross price less cash discount, where applicable) times the tax rate.

Petitioners assert that the Department properly calculated the VAT adjustment in accordance with its statutory mandate and existing legal authority, which requires that an adjustment be made to USP to account for any VAT that may have been charged on the corresponding home market sale. To do this, the Department applied the rate from the home market to the U.S. sale and added this amount to USP.

Petitioners argue that, because *Federal Mogul* does not require that any particular methodology be used, the Department's methodology in this case is not precluded by the Court's decision. While Thyssen is correct in pointing out that the Court of Appeals did rule on the issue of the VAT adjustment methodology, and clearly upheld the Department's previous methodology of calculating the amount of tax paid on the home market sale and adding the amount of the tax to USP, the opinion does not indicate that this is the only methodology that the Department may use. To the contrary, petitioners argue, the Court does not state that use of this methodology is required by the statute, but rather that it is not precluded by the statute. Furthermore, petitioners argue, as demonstrated by its use in several earlier determinations by the Department, the methodology used in this review is entirely reasonable. *See, e.g., Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 59 FR 13700, 13701 (March 23, 1994); *Certain Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review,* 59 FR 1374, 1376 (January 10, 1994).

Department's Position: In light of the Federal Circuit's decision in *Federal Mogul,* the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith,* 988 F. 2d at 1582, and which was suggested by that Court in footnote 4 of its decision. The CIT overturned this methodology in *Federal Mogul* v. *United States,* 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude the Department from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.,* assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act, (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its long standing policy of tax-neutrality and with the GATT.

Comment 14: Thyssen argues that the Department, through clerical error, improperly failed to correct certain reported home market product characteristics. Thyssen argues that the Department did not in its arm's length test program make all of the product characteristics corrections made in its model match program.

Department's Position: We agree with Thyssen that the arm's length test program did not contain all of the product characteristic corrections made in the model match program. However, we note that this oversight had no effect upon the Department's analysis because CONNUMs, rather than product characteristics, are used within the arm's length computer program, and the merchandise in question would still be classified in the same distinct CONNUMs even if the product characteristics were corrected. Consequently, we have removed any reference to product characteristic corrections from the arm's length program.

Comment 15: Thyssen argues that the Department improperly excluded home market sales prior to February 1993 from its calculations. Thyssen argues that it is inconsistent for the Department to include in its analysis shipments to Thyssen's U.S. customers with dates of shipment from Germany during the POR regardless of the date of the requirements contract, while at the same time excluding all home market shipments with sale dates prior to February 3, 1993, even though the date of shipment from the mill, the functional equivalent of the shipment date from Germany for U.S. sale observations, is within the POR.

Thyssen argues that this is particularly egregious, given that the Department has resorted to BIA for certain of Budd's U.S. resales because Thyssen did not report home market sales back far enough; it argues that the Department cannot penalize Thyssen for underreporting and at the same time exclude transactions for being prior to the requested reporting period.

Department's Position: We disagree with Thyssen. The Department is applying BIA to the Budd sales with dates of sale in 1992 because Thyssen failed to report home market sales back far enough to provide home market sales contemporary with those Budd sales (see Comment 31). Normally we request home market sales for the entire period from the earliest U.S. sale date forward and would apply the arm's length test to all sales reported. However, Thyssen selectively reported sales prior to February 1993. Thyssen might have reported home market sales for an intervening period between the 1992 Budd sales and February 1993 based solely upon the effects of such reporting on the arm's length test. Therefore, to avoid the risk of distorting the arm's length test results, we disregarded those sales, which were not contemporaneous with any U.S. sales.

Thyssen's argument that some of the excluded home market sales were shipped during the POR, like the U.S. sales, is unpersuasive. The Department reviews shipments to the U.S. during the period of review. However, in order to make the price-to-price comparison, we look at the date of sale for the U.S. transaction, which may or may not be different than the date of shipment to the United States, and match it to a home market sale with a contemporaneous date of sale, which may or may not be the date of shipment in the home market. The fact that Thyssen considers the shipment to its home market customers the equivalent of shipment from Germany to the United States is not relevant for purposes of identifying home market sales for matching purposes.

Comment 16: Petitioners argue that the Department should deduct all direct and indirect selling expenses incurred on further manufactured sales made in the U.S. market from the gross prices associated with those sales. Petitioners argue that the Department's calculation of a share of U.S. direct and indirect selling expense variables is appropriate for purposes of calculating the ESP cap, but that for purposes of calculating U.S. price, all direct and indirect selling expenses should be deducted.

Thyssen counters that the computer programming language in question was present in the version of the program disseminated to all interested parties on October 13, 1994. Petitioners filed extensive comments on that program with the Department, but did not object to the Department's proposed reduction of U.S. price by only a share of U.S. direct and indirect selling expenses.

Department's Position: We agree with petitioners that the methodology followed by the Department in the preliminary results, to reduce U.S. price by only a share of U.S. direct and indirect selling expenses, was inappropriate. The Department inadvertently included this language in its computer program. Such a share should only be used in the calculation of the ESP cap or offset for further manufactured sales in order to capture the portion of the indirect selling expenses attributable to foreign manufacturing. We have corrected the programming to reflect the correct methodology. The fact that petitioners failed to comment on this issue prior to the preliminary results does not alter the fact that they have identified a program error that should be corrected.

Comment 17: Petitioners argue that, for U.S. sales observations which the Department determined required the use of BIA, the Department should not have applied what petitioners describe as neutral BIA, the deposit rate from the underlying investigation. Petitioners claim that Thyssen's submissions reflect widespread omissions and insufficiencies by Thyssen that require application of, at the least, adverse BIA. In support, petitioners emphasize the CIT's statement that, ''[a]lthough the ultimate purpose of BIA is not to punish, BIA is intended to be adverse and requires the use of adverse assumptions.'' *National Steel Corp.* v. *United States*, 870 F. Supp. 1130, 1136 (CIT 1994) (*National Steel*). Petitioners argue that, given Thyssen's numerous omissions and insufficiencies, it is highly probable that there remain other, undiscovered problems with Thyssen's submission.

Petitioners also assert that should the Department continue to apply neutral partial BIA in its final results, respondents would have no reason to

comply with the Department's requests for information knowing that the worst they could receive as BIA for any missing or incomplete information is the rate from the underlying investigation. Petitioners cite the CIT's reasoning that using ''BIA for only those segments of a submission that are rejected could permit a party * * * to select the data it believed would be to its benefit, leaving Commerce only to fill in the blanks.'' *Tatung Co.* v. *United States,* Slip. Op. 94–195 at 13 (December 14, 1994) (citing *Chinsung Indus.* v. *United States,* 705 F. Supp. 598, 601 (CIT 1989)). Petitioners argue that an appropriately adverse partial BIA would be either the higher of the margin from the investigation or the highest non-aberrant margin calculated for Thyssen's sales in this review; because the latter figure is not known to respondents until the final calculation of the margin at the end of the review, respondents would be unable to perform the cost/benefit analysis to allow them to selectively disclose only certain information.

Thyssen responds that the Department has broad discretion in choosing BIA, and need only give a reasonable explanation of its choice. *See Neuweg Fertigung GmbH* v. *United States,* Slip Op. 92–137 (CIT August 20, 1992). Thyssen argues that, contrary to petitioners' claims, the Department is not required to utilize the highest non-aberrant margin from a respondent's sales for respondents who comply with the Department's information requests, but provide information which is incomplete or inaccurate in some regard. Thyssen argues that in *National Steel* the Court affirmed the Department's decision to apply respondents' weighted-average margin as BIA where respondent fully cooperated in the investigation and the misreporting was limited in nature. Thyssen argues that the Department's choice of BIA in its preliminary results was identical to that utilized in *Antifriction Bearings From Germany,* 56 FR at 31705.

Thyssen also argues that petitioners mistakenly presume that additional, undiscovered errors exist in Thyssen's database. Thyssen notes that it provided clerical error corrections to the Department, and the Department did additional spot checks at verification confirming errors had been corrected and were limited to isolated sales as reported by Thyssen. Thyssen concludes that the Department's use of a benign BIA would not encourage a future respondent to selectively report information.

Department's Position: As we determined in the preliminary results, Thyssen's revised database did contain unauthorized changes and other unexplained problems, but the sales affected were minimal in quantity relative to the size of the entire data base. As a result, the Department did not apply ''the most adverse partial BIA'' to such observations, but chose instead to apply Thyssen's weighted-average margin from the original investigation. Contrary to the position taken by the petitioners, this approach was approved by the CIT in *National Steel. See also Usinor Sacilor* v. *United States,* 872 F.Supp. 1000, 1007 (CIT 1994). At the same time, we do not consider this rate to be neutral, as argued by petitioners. It is considerably higher than the rate assigned to most of Thyssen's sales during this review which are based on the company's own data.

Comment 18: Petitioners argue that the Department should multiply the total volume of the BIA sales by the BIA rate to calculate the total BIA margin, then combine the resulting BIA margin with the total dumping margin calculated for the other sales to arrive at the weighted-average dumping margin. Petitioners argue that contrary to its normal practice, the Department incorrectly used the value of most of the BIA sales in the calculation of the weighted-average dumping margin. That sales information, petitioners note, is inherently unreliable, given that they are BIA sales, and reduces the dumping margin.

Thyssen acknowledges that the Department could use either methodology, assuming the use of BIA was appropriate. Thyssen argues, however, that use of the price information in the calculation of the weighted-average margin constitutes the most reasonable method because there were not price-related errors in the BIA sales in question.

Department's Position: We agree with petitioner. We have decided to calculate the overall margin for the final determination by weight-averaging the non-BIA and BIA margins by quantity alone because that is the Department's normal practice. Moreover, we note that, contrary to Thyssen's assertions, a few of the BIA observations in question did involve unauthorized changes in price.

Comment 19: Thyssen argues that the Department's resort to BIA because of clerical errors or arguably incomplete analyses contained in summary worksheets presented at the commencement of the U.S. sales verification constitutes ''a clear abuse of administrative discretion.'' Thyssen contends that the CIT has held that the DOC has abused its discretion in the past by rejecting a respondent's post preliminary determination submission as untimely. *See Usinor Sacilor* v. *United States,* 872 F.Supp. 1000, 1008 (CIT 1994) (*Usinor Sacilor*). Thyssen cites the CIT decision in *RHP Bearings* v. *United States,* 875 F.Supp. 854, 857 (CIT 1995) (*RHP Bearings*) that ''[a]n error, although untimely filed, is eligible for correction if the error is obvious from an examination of the administrative record which is before Commerce at the time of the preliminary results and the newly submitted information is obviously correct.'' Thyssen also cites *Brother Industries, Ltd.* v. *United States,* 771 F. Supp. 374, 384 (CIT 1991) (*Brother*), wherein the CIT ordered the Department to correct a respondent's clerical error, which respondent had brought to the Department's attention prior to publication of the preliminary results in an administrative review.

Thyssen claims that these cases demonstrate that the Department's resort to BIA was inappropriate. Thyssen argues that all of the errors in question consisted of clerical errors in summary worksheets, the correct data were reported in its computer database, and the clerical errors were brought to the Department's attention immediately upon discovery and prior to publication of the preliminary results.

Petitioners counter that, as the Department and Thyssen have both recognized, the information provided by Thyssen at and after verification was clearly erroneous and incomplete. Petitioners also argue that the erroneous information provided by Thyssen after verification did affect the veracity of the database as a whole. Petitioners argue that since the majority of errors were not identified until after verification, corrections made to the data base after verification obviously were not verified by the Department. Petitioners state that Thyssen did not identify the errors made in its submissions, supplying corrections only after petitioners had identified them, and that Thyssen's first attempt at clarification, the June 13, 1995, submission, included additional erroneous information. Petitioners assert that isolated verification of so-called corrected information does not negate the pervasive errors throughout groups of sales within Thyssen's database, and that a worksheet indicating an invoice ''change'' does not constitute sufficient notice to the Department because it does not identify the type or number of ''changes'' made to these invoices.

Petitioners add that it is not the Department's duty or obligation to

correct a respondent's errors. *See NSK Ltd.* v. *United States,* 825 F. Supp. 315, 319 (CIT 1993); *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews,* 59 FR 42805, 42812 (August 19, 1994). Petitioners contend that Thyssen has failed to satisfy its burden of providing reliable information. Petitioners explain that the various cases cited by Thyssen do not proscribe the application of BIA in the circumstances of this proceeding.

Department's Position: We disagree with Thyssen's assertion that the Department's use of BIA was inappropriate. Thyssen failed to make changes it proposed at verification which the Department had authorized. Thyssen also made changes which the Department did not authorize. This called into question the accuracy of the information reported for those observations. Thyssen was given the opportunity to explain how the changes in its final tape submission reflected the changes authorized by the Department's May 15, 1995, and May 17, 1995, memoranda to the file. Where Thyssen's explanation was not satisfactory, BIA was applied, as described elsewhere in this notice, in the preliminary notice, and the Department's analysis memoranda.

Furthermore, we agree with petitioners that the cases cited by Thyssen do not require a different outcome. For example, in *Usinor Sacilor,* the Court found the Department had abused its discretion by rejecting a post-preliminary results submission from the respondent. A controlling consideration for the Court, however, was that the Department's questionnaire had been misleading, which is not the case here. In *RHP Bearings,* also cited by Thyssen, the Court emphasized that it may be appropriate to correct respondent's errors if the errors are obvious from the record prior to the preliminary results and the new information is obviously correct. Thyssen's errors were neither obvious nor was the ''newly submitted information'' correct.

Finally, *Brother* is distinguishable from the current situation as well. There, the Court only required the Department to consider respondent's revised data because it was ''clerical'' in nature and because the Court was ordering remand on other issues. The Court stressed that its decision should not be construed as undermining the Department's authority to disregard untimely information. *Brother,* 771 F.Supp. at 384. In Thyssen's case, most of the information was provided after verification and none of Thyssen's unauthorized changes could be verified by the Department. Indeed, as petitioners argue, in *Brother* the Court emphasized the need for proper analysis and verification for such information, stating that the statute may require that inadequate submissions be corrected if received in time to permit proper analysis and verification of the information concerned. Such was not the case here.

Comment 20: Thyssen provided information at the beginning of the U.S. verification to correct sales that it stated had been reported twice in its U.S. database. The Department determined that Thyssen's efforts to correct the problem involving the ''duplicates'' at verification and in its final tape submission were unsatisfactory. Accordingly, the preliminary results reflected a BIA margin for the total quantity of steel in any of the invoices listed by Thyssen as ''duplicates'' and not appearing in its final tape submission.

Petitioners contend that the Department should assign a BIA margin to the total volume of the duplicate U.S. sales deleted by Thyssen from its U.S. market database. Petitioners argue that this amount is handwritten on Thyssen's June 13, 1995, submission, one of Thyssen's submissions intended to explain changes reflected in Thyssen's final tape submission.

Thyssen asserts that petitioners have ignored the methodology used by the Department. Thyssen argues that, once the decision was made to use BIA in this situation, the Department cannot accept post-verification corrections which were adverse to Thyssen, while at the same time, rejecting all other corrections as sufficiently unreliable to justify the use of BIA.

Thyssen argues that the Department improperly applied BIA to U.S. invoices identified by Thyssen at verification as duplicates. Thyssen argues that it provided the list to the Department prior to verification, it advised the Department of clerical errors contained in the list, and it explained the reason for the discrepancies.

Department's Position: We disagree with Thyssen, and have continued to apply BIA in this situation. The numerous errors in Thyssen's proposed deletions call into question whether or not any of the invoices in question should actually have been deleted. In the preliminary results, we inadvertently failed to increase the U.S. sales database by the quantities reported for any of the invoices listed in the ''deletion of alleged duplicates'' section of the relevant verification exhibit that were deleted in Thyssen's final tape submission; these quantities could very well have reflected distinct, unduplicated sales. The actual invoice and quantity information is included in the Department's December 12, 1995, Final Analysis Memorandum from Steve Bezirganian to the File (December 12, 1995, analysis memorandum). We have corrected this error in these final results.

We agree with Thyssen that it would be inappropriate to base the quantity to which BIA is applied upon the amount cited by petitioners. We were unable to determine how the handwritten number to which petitioners allude was calculated. Therefore, because we have no basis from which to conclude that the handwritten number represents the total quantity for the deleted invoices, we have not used that amount.

Comment 21: Petitioners argue that the Department should ensure that the BIA dataset it creates contains all of the invoices for which a BIA margin is to be used. For example, the Department stated in its June 16, 1995, memorandum that its preliminary results reflected the use of a BIA margin for sales to which Thyssen made unauthorized changes in quantity and/or price in its last tape submission. The Department applied BIA in the preliminary results to four such ''quantity/price'' observations because they reflected unauthorized price and/or quantity changes for these observations. Petitioners argue that the Department failed to include three invoices containing similar unauthorized changes to quantity and/or price. Petitioners also argue that the Department inadvertently left out of its BIA programming one of the four quantity/price invoices by adding an extra zero to the invoice number in its programming.

Petitioners also argue that the Department inadvertently did not include three Richburg Division invoices in its BIA list because the spaces indicated in these invoice numbers were not reported by Thyssen in the Sales Verification exhibit in question.

Thyssen responds that for the first quantity/price invoice cited by petitioners, the change in quantity was minimal and it was explained by Thyssen. Thyssen notes that the invoice contained three separate lines, and therefore is divided into three distinct U.S. sales observations. Thyssen argues that the change in question only affected one line, so any BIA should only be applied to the observation reflecting that line of the invoice.

For the second quantity/price invoice cited by petitioners, left out of the Department's BIA list because of clerical

error, Thyssen argues that BIA is improper because the errors, for this and other Richburg sales, related solely to the summary worksheet provided to the Department at verification and did not affect the veracity of the data submitted in the database. Thyssen notes that the Department did not find an error in quantity during the sales trace of one observation that appeared as an addition on the summary list, and that the quantity observed for another sales trace observation corresponded to the corrected quantity in Thyssen's June 13, 1995, submission. Petitioners counter by noting that examples of sales with correct quantity information do not negate the pervasive errors throughout the whole group of sales in question.

For the third quantity/price invoice cited by petitioners, Thyssen argues that it did report the changes in U.S. Sales Verification Exhibit 24A1 and 24A3.

Thyssen claims that it also identified at verification as requiring correction the four quantity/price observations to which the Department chose to apply BIA in its preliminary results, two of which were listed in its column of changes entitled ''Deletion of Duplicate Invoices.'' The other two were listed in the column of changes entitled ''Misc. Corrections.'' Petitioners counter that a worksheet indicating an invoice ''change'' does not constitute sufficient notice to the Department because it does not identify the type or number of ''changes'' made to these invoices.

Regarding the quantity/price invoice for which the Department added an extra zero, Thyssen argues that it had identified this invoice as a ''change,'' and provided the Department with corrected information immediately upon discovery of the summary worksheet error.

Regarding the other three Richburg invoices which petitioner argues should be included in the BIA dataset, Thyssen again argues that BIA is not appropriate for the sales in question because the errors related solely to the summary worksheet provided to the Department at verification.

Thyssen concludes that the Department should treat Thyssen's clerical mistakes in the same manner as petitioners have suggested the Department should correct the Department's own clerical errors. Thyssen argues that the limited burden of correcting the mistakes is far outweighed by the preference for accuracy in final dumping determinations, and that it would be both paradoxical and a clear abuse of discretion for the Department to punish Thyssen for its attempt to create as error-free and as accurate a margin calculation as possible.

Department's Position: The Department is not applying BIA to the first quantity/price invoice in question. That invoice is referred to on page 9 of the U.S. Sales Verification report as having an error in reported actual weight. The Department did not instruct Thyssen to make the correction to that invoice in its post-verification database; however, applying BIA to the invoice in question because Thyssen unilaterally corrected an error amounting to roughly two-tenths of one percent that the Department identified at verification, would be inappropriate.

The Department is applying BIA to the second quantity/price invoice in question, as it did for other Richburg Division invoices which Thyssen attempted to correct at U.S. verification. As noted in the Department's June 16, 1995, analysis memorandum, Thyssen provided a number of changes to the U.S. sales database with respect to sales from Richburg, but some of these changes differed from those provided at verification; differences included incorrect quantities, deletion of non-existing invoices or portions thereof, and incorrect shipping dates. The numerous errors and inconsistencies in Thyssen's presentation of changes involving Richburg sales created doubts about the observations in question. The errors in Thyssen's proposed changes only became apparent after verification, when Thyssen submitted its post-verification database on May 22, 1995. Furthermore, the fact that the verification report seems to indicate that a sale was reported accurately is not dispositive, and we agree with petitioners that the numerous errors called into question the reliability of the Richburg observations as a whole.

Regarding the third quantity/price invoice in question, the Department agrees with Thyssen that it provided the appropriate changes to the Department at verification in U.S. Sales Verification Exhibit 24A1 and 24A3.

We are applying BIA to the four quantity/price observations, consistent with our preliminary results, because there was no indication in the correction exhibits provided by Thyssen at the U.S. verification that quantity and/or price of these observations would be changed in Thyssen's final tape submission. These observations differ from the first quantity/price change observation cited by petitioners as inappropriately left out of the Department's BIA dataset. The latter observation involved an extremely small error precisely identified during a sales trace at verification, while the former four observations involve previously unidentified and unexplained changes to quantity and/or price. We note that for one of these four invoices, as noted by petitioners, we inadvertently included an extra zero in the invoice number, and have corrected this error.

Regarding the other three Richburg invoices cited by petitioners, we are including these in the BIA dataset, in accordance with the explanation above regarding the Richburg observation changes presented at verification.

Thyssen's general argument that the burden to correct its mistakes is limited is unfounded. The mistakes in question are of such nature that the accuracy of the observations involved is called into question. It is unclear whether the ''corrected'' data actually are correct, and the Department cannot be expected to take the steps necessary (*i.e.*, an additional verification) to make that determination. Thyssen had numerous opportunities to correct its mistakes. One such opportunity was at the beginning of verification, when Thyssen did in fact provide lengthy lists of changes. Review of these corrections proved very time consuming, particularly when errors in the ''corrections'' were discovered. Any changes that were not authorized by the Department prior to Thyssen's final tape submission, or that were not clearly explained as resulting from such an authorized change, were rightfully subject to adverse BIA.

Comment 22: Thyssen argues that the Department incorrectly applied a 16.56 percent BIA margin to all U.S. observations relating to several shipments of steel covered by a single order. Thyssen contends that the Department believes the data provided in Thyssen's post-verification database submission did not reflect the changes provided to the Department at verification. Those changes involved Thyssen's attempt to update its database to account for what previously had been unshipped balances. Thyssen contends that, in its June 13, 1995, submission, it advised the Department of a typographical error in the relevant correction sheet provided at verification, and that the actual quantity shipped and the actual unshipped balances were correctly reported in the United States database.

Petitioners argue that the Department properly applied BIA to this order, for which information was inaccurately reported.

Department's Position: We disagree with Thyssen. After reviewing these data issues at verification, and after allowing Thyssen to provide a post-verification submission to clarify

changes to its database. We have determined that these errors are not fully explained by the typographical error identified by Thyssen. It is still not clear how each of the invoice numbers and shipment quantities listed under the order in question relate to each other and to specific observations in Thyssen's post-verification database submitted on May 22, 1995. Consequently, we have continued to apply a margin based on BIA to the U.S. observations relating to the order in question.

Comment 23: Petitioners argue that the Department, in its preliminary results, improperly treated Thyssen's reported ''trader discounts'' granted to trading companies for sales made to customers that were end-users. Petitioners argue that, since the trading company never receives title to or takes possession of the merchandise, these deductions should be treated as a commission expense to Thyssen, rather than as a price discount. Moreover, given that the trading companies serve only as facilitators, there is no evidence that the prices charged the end-user customers in these transactions are altered or affected by the commission.

Citing *Industrial Phosphoric Acid from Israel,* 52 FR 25440, 25442 (July 7, 1987), Thyssen responds that the reduction in price on these end-user sales should properly be considered discounts granted to the trading companies. Respondent acknowledges initially having characterized these as commissions, but argues that it later clarified that they are discounts because the trading company is invoiced, it is responsible for paying Thyssen, and it bears the risk of loss if the customer does not pay. Thyssen argues that the trader discount is a reduction on the invoice of the invoice amount, for which no separate payment by TSAG is made, and that it reduces the net price received by TSAG, since it is a deduction from the amount paid by the trading company. Thyssen argues further that the Department noted, in its July 20, 1995 memorandum, that it verified that if the traders were invoiced and responsible for payment, they did in fact receive the ''discount.''

Department's Position: Generally speaking, a commission is a payment to a sales representative for engaging in sales activity, normally on behalf of the seller but occasionally on behalf of the customer. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,* 60 FR 10,900, 10,914 (Feb. 28, 1995); *Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the Peoples Republic of China,* 58 FR 7537, 7543 (Feb. 8, 1993)(*Sulfur Dyes*). A discount is a reduction in price to a customer. *See Sulfur Dyes From the PRC.* Therefore, the key question here is whether there was one transaction between Thyssen and the ultimate purchaser in which the trading companies acted as Thyssen's sales representatives for a commission; or whether there were two transactions, one in which the trading companies bought from Thyssen and received a discount on the price for that initial sale and the ultimate purchaser then bought from the trading companies.

In addressing this question, we looked first to the manner in which Thyssen reported its sales. Significantly, Thyssen identified the transactions involving the trading companies as sales made by Thyssen itself to the ultimate customer. This indicates that in Thyssen's view, there were no separate sales to the trading companies; instead, the first and only sale was to the ultimate purchaser. Thus, the role of the trading companies must have been that of a commissionnaire. Thyssen's claim that the trading companies are intermediate purchasers who receive a price discount is inconsistent with its reporting of sales to the ultimate customers.

Thyssen's acknowledgement that it conducted the price negotiations with the ultimate customers also supports the conclusion that there was a single sale between Thyssen and the ultimate customer. In addition, as petitioners stressed, Thyssen originally referred to the amounts in question as ''commissions,'' then used the term ''discount'' after the Department requested supplemental information on the commissions.

On the other hand, information in the record appears to indicate that Thyssen invoices the trading companies, and the trading companies invoice the ultimate customer. This suggests the presence of two transactions. Moreover, the Department did verify that the actual invoices to the trading companies referred to the amounts in question as discounts. Although there is conflicting evidence on the record, it is most reasonable to treat this issue consistently with Thyssen's reporting of its home market sales. Accordingly, we have revised the preliminary results in this respect and have treated these deductions as commissions.

Comment 24: Petitioners contend that the Department should deny Thyssen's claimed indirect selling expense adjustment for home market technical services expenses. The home market verification report describes the technical services expenses claimed by Thyssen as consisting primarily of research and development (R&D), which petitioners argue are generally considered production expenses rather than selling expenses. Petitioners conclude that these R&D expenses cannot be tied directly to sales of the subject merchandise, and so do not qualify as technical services expenses.

Thyssen argues that the Department noted in its Home Market Sales Verification at 21 that the technical services expenses claimed by Thyssen are related to customer-specific testing (not to be confused with the R&D expenses claimed as indirect expenses), and that, as such, these expenses are product-specific.

Department's Position: We disagree in part with petitioners. Thyssen's January 17, 1995, submission, at page 56, and Exhibit 31 of that submission describe the technical services identified on page 16 of Thyssen's November 21, 1994, Section IV submission. Exhibit 31 depicts the costs of assorted functions, including the provision of advice regarding potential new products and adjustments in production processes. However, home market verification report Exhibit XXI indicates that the cost center from which the costs were derived was identified as ''material complaints.'' As the verification report confirms, the category material complaints pertains to testing costs related to warranty claims. Because the information in Exhibit XXI referring specifically to R&D is not reflected in the technical services expense data reported by Thyssen, we reject petitioners' assertion that these data include R&D costs.

However, we do agree with petitioners that the expenses in question cannot be tied to subject merchandise, and we note that Thyssen's allocation methodology, as presented at verification, was deficient. Verification Report Exhibit XXI indicates that Thyssen derived its reported DM/ton expense by dividing total technical services expenses by shipments in Germany. Thyssen's total expenses, as is clear from the exhibit, include those for all cold-rolled material, including that which was further processed out of the scope of this review. Thyssen's total expenses also include those for merchandise produced for all customers, not just those in Germany. Consequently, we have reduced this expense amount by that amount which we estimate pertains to non-covered merchandise. *See* the Department's

December 12, 1995, analysis memorandum.

Comment 25: Petitioners assert that the interest rate used by the Department to calculate Thyssen's home market credit and inventory carrying cost adjustments should be based solely upon the company's short-term borrowings from unrelated parties. Petitioners note that the Department has recognized that expenses paid to related parties in the home market may sometimes be priced above the market rate for those expenditures, and, in such instances, the market rate of interest should be employed in the calculation of the adjustments to home market price. *See Color Picture Tubes from Japan; Final Results of Antidumping Duty Administrative Review*, 55 FR 37915, 37922–23 (Sept. 14, 1990) *(Color Picture Tubes from Japan); High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final determination; Recission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32393 (July 16, 1991)(*Flat Panel Displays*). Petitioners suggest that the market ''expense'' of Thyssen's borrowings should be determined by using interest rates of Thyssen's borrowings from unrelated parties.

According to Thyssen, the information on the record confirms that the interest rates charged for intra-company loans were consistent with other loans. Thyssen notes that it was the nature of the loan, rather than the relationship of the lender to Thyssen, which was the critical factor in determining Thyssen's interest rates during the POR.

Thyssen also argues that, in the fair value investigation, the Department rejected a similar claim by petitioners that the Department should ignore Thyssen's related company borrowings, where differences in rates were not significant. *Steel from Germany*, 58 FR at 37149. Thyssen adds that in *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand*, 57 FR 13695, 13705 (April 17, 1992), the Department rejected a respondent's attempt to disregard a related-party loan, stating that ''there was no evidence that the interest rate on the related-party loan did not reflect market interest rates.''

Department's Position: We disagree with petitioners. As in the original investigation, *Steel from Germany* at 37149, we have determined that information on the record indicates that the intracompany loans in question were made at what could be considered market rates.

The situation here differs from that in both determinations relied upon by petitioners. In *Color Picture Tubes from Japan*, the Department determined at verification that the related party charged the respondent more for freight than the related party was charged by the trading company that actually delivered the merchandise. In *Flat Panel Displays from Japan*, the Department found that, rather than being a market price, the price charged by the related party was established for respondent's internal bookkeeping purposes only. By contrast, in the present case, neither the information in Exhibit XIV of the Home Market Sales Verification, which provides interest rates on loans of varying duration from related and unrelated parties, nor the Department's May 2, 1995, Home Market Sales Verification Report, support the contention that interest rates on concurrent loans of similar duration provided to Thyssen by related parties differed in any meaningful way from those offered by unrelated parties.

However, we note that in the preliminary results we did not account for the fact that Thyssen incorrectly reported home market credit expenses that were calculated based on a price that does not net out discounts that are not on the invoice. While Thyssen has stated that it pays these discounts every quarter, there is no information on the record indicating that Thyssen pays the customers such ''discounts'' for a particular sale before the customer pays for the merchandise. Thyssen confirmed on page 13 of its June 23, 1995, submission that it ''does not incur any financing expenses from date of shipment to date of payment for these out of invoice discounts.'' Consequently, we have adjusted home market credit expenses for the final results and are calculating this expense net of discounts not on the invoice. *See* the Department's December 12, 1995, analysis memorandum.

Comment 26: Petitioners argue that the Department should exclude the R&D and general and administrative (G&A) costs from the miscellaneous indirect selling expense variable amounts claimed by Thyssen. Petitioners reiterate that expenses pertaining to R&D are generally not selling expenses, but, rather, production costs, and that such expenses should be classified as non-sales-related general and administrative expenses. Petitioners also argue that none of the various G&A expenses claimed by Thyssen qualify as indirect selling expenses, since they are not associated with selling activities. Finally, petitioners argue that should the Department decide to include Thyssen's claimed R&D in the indirect selling expenses deducted from USP and FMV, it must correct the allocation of those R&D expenses to the home and U.S. markets.

Thyssen responds that the record clearly establishes that it correctly included these expenses in its home market indirect selling expenses. Thyssen argues that the R&D expenses categorized as indirect selling expenses include items related to selling, not production activities. *See Antifriction Bearings from France*, 60 FR at 10920. Thyssen argues that the same is true for the various G&A expenses included as indirect selling expenses. Finally, Thyssen argues that the Department confirmed at verification that the R&D expenses in question had been allocated to each market on the identical basis as were selling expenses, verified by the DOC.

Department's Position: We disagree with petitioners regarding G&A expenses. Our verification indicated that the expenses in question were indirect selling expenses. The type of costs which Thyssen listed include meals and transportation for Thyssen's customers. These are costs which we reasonably consider to be selling expenses.

However, petitioners are correct that the Department does not normally consider R&D expenses to be costs associated with selling the merchandise. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28415 (June 24, 1992). There are exceptions to this policy. *See Antifriction Bearings From France*, 60 FR at 10920. However, we have determined that Thyssen has not shown that the R&D costs in question constitute selling expenses. We have therefore adjusted Thyssen's miscellaneous home market indirect selling expense variable to reflect this finding. *See* the Department's December 12, 1995, analysis memorandum.

Comment 27: Petitioners argue that Thyssen's reported home market warranty expenses for the POR are aberrational and that the Department should instead use a weighted-average for these indirect selling expenses based on Thyssen's reported data for calendar years 1990 and 1991, and fiscal years 1991/92, 1992/93, and 1993/94. Petitioners cite *Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 38417, 38421 (Aug. 13, 1991)*(Television Receivers from Japan);* and *Final*

Determination of Sales of Less Than Fair Value: Certain Carbon And Alloy Steel Wire Rod from Canada, 59 FR 18791, 18795–6 (April 20, 1994) (*Steel Wire Rod from Canada*).

Petitioners argue that for U.S. warranty expenses, the Department should employ BIA in place of Thyssen's claimed adjustment. Petitioners argue that for both its automotive and non-automotive divisions Thyssen provided U.S. warranty expense information which pertains to products well beyond the scope of this review, and that Thyssen's use of total warranty expenses over total sales does not conform to the CIT's ruling that the Department must ''develop a methodology which removes technical services and warranty expenses incurred on sales of out of scope merchandise.'' *Federal-Mogul Corp.* v. *United States,* 862 F. Supp. 384, 406–07 (CIT 1994). Petitioners also argue that the reliability of Thyssen's reported warranty expenses are further undermined by Thyssen's failure to provide information on its ''historical experience of warranty/guarantee expenses for U.S. sales in each of the five years preceding the period of review,'' as requested by the Department.

Petitioners argue that the Department should recalculate Thyssen's per-unit U.S. warranty expense adjustment by dividing the total warranty expense amounts reported by Thyssen for fiscal years 1992/93 and 1993/94, by the total volume of subject merchandise sold by Thyssen in the U.S. market in each of those fiscal years, respectively. Furthermore, petitioners argue that, because Thyssen did not provide information on its warranty experience for the five years preceding the POR, the Department should apply the higher of the two fiscal year amounts as BIA to all U.S. sales.

Petitioners conclude that, should the Department use the reported home market warranty expenses in question without weight-averaging, at a minimum it must also use the U.S. warranty expense data from the same exhibit.

Thyssen responds that the Department generally uses warranty expenses incurred during the POR, and will only resort to historical experience in those instances in which: (1) a respondent is not able to demonstrate a relationship between POR sales and its warranty expense claim, by tying actual warranty expenses to POR sales; and (2) a historical average would be a more representative proxy of eventual warranty expenses on POR sales than warranty expenses actually incurred during the review period. *See Steel Wire Rod from Canada,* 59 FR at 18795–96, and *Television Receivers from Japan,* 56 FR at 38421–22. Thyssen argues that the Department properly relied upon Thyssen's home market warranty expenses incurred in fiscal year 1993/94, and that these expenses were only slightly higher than those for fiscal year 1992/93 on either an absolute or a percentage [of sales] basis. Thyssen also argues that, for the last three fiscal years, Thyssen's home market warranty expenses reflected a relatively steady aggregate amount.

Regarding its U.S. warranty expenses, Thyssen argues that it did in fact provide adequate historical information. It also argues that *Federal Mogul* does not preclude the Department from accepting the warranty expense allocation methodology presented by Thyssen, and that the Department accepted a similar methodology in *Antifriction Bearings from France,* 60 FR at 10910. Thyssen argues that even petitioners acknowledge that the Department verified both the amount of U.S. warranty expenses incurred during the POR and the total value of sales upon which warranty expenses were allocated. Thyssen argues that, contrary to petitioners' claim, the Department never explicitly instructed Thyssen to report only those warranty expenses applicable to cold-rolled steel, but rather requested that it do so or clarify why it could not do so; and the Department confirmed in its U.S. sales verification report at 12–14 that the necessary records were not maintained, either by supplier or product type.

Thyssen argues that petitioners' suggestion that the Department should apply 100 percent of Thyssen's verified warranty expenses to cold-rolled shipments must be rejected, since the Department has confirmed that the expenses relate to all products, and the Department cannot penalize a respondent for failing to maintain business records in a particular manner or for utilizing an allocation method which subsequently may be rejected by the Department. *See, e.g., Industrial Quimica del Nalon, S.A.* v. *United States,* 15 CIT 240, 244 (CIT 1991).

Finally, Thyssen also argues that petitioners' alternative of applying a deutsche marks per metric ton warranty expense to Thyssen's U.S. shipments based on a home market sales verification exhibit is flawed, since the document upon which petitioners rely does not include data for fiscal year 1992/93. Thyssen argues that if the Department does decide to use BIA for U.S. warranty expenses, it should rely on data utilized in its fair value investigation, which were purportedly accepted by petitioners and verified by the Department from both a historical and actual perspective.

Department's Position: We disagree with petitioners' arguments that we should use weighted-averaged expenses calculated for earlier years because Thyssen's reported home market warranty expenses were aberrational. As noted in *Television Receivers from Japan,* the Department generally uses warranty expenses incurred during the POR. As the Department's May 2, 1995, Home Market Sales Verification Report indicates, there were no problems observed with Thyssen's reported home market warranty expenses. Various factors may lead to some variation in warranty expenses, and the variations in Thyssen's expenses do not appear to be abnormal.

Regarding Thyssen's reported U.S. warranty expenses, we agree with Thyssen that it would not be appropriate to apply Thyssen's total warranty expenses over total sales of subject merchandise, as suggested by petitioners. Given Thyssen's substantial U.S. sales of non-subject merchandise relative to its U.S. sales of subject merchandise, such an approach would be inappropriately adverse.

However, Thyssen did submit, as noted by petitioners, warranty expenses for U.S. shipments of cold-rolled flat products made during fiscal year 1993/94. The data for 1993/94 U.S. shipments, contained in Home Market Verification Exhibit XIX, were reviewed at the home market verification, and found to be reasonable. Thus, we are able to use this figure for calculating the adjustment, a methodology which is consistent with the CIT's directive in *Federal Mogul.* Thyssen did not submit similar data in a timely fashion for fiscal year 1992/93. However, there is no indication on the record that Thyssen's 1992/93 fiscal year warranty expenses for U.S. sales of subject merchandise were any higher or lower than those for fiscal year 1993/94. Therefore, we have used the 1993/94 data for all of Thyssen's U.S. sales, regardless of fiscal year.

Comment 28: Petitioners argue that the Department should reject all of the cash discount information supplied by Thyssen and employ instead, as BIA, an *ad valorem* cash discount for all U.S. sales based on the highest discount granted to a U.S. customer. Petitioners argue that the Department recognized in its May 11, 1995, memorandum from Richard O. Weible to Roland L. MacDonald (May 11, 1995, discount memorandum), that the cash discount information provided by Thyssen is

highly unreliable and subject to serious deficiencies, and that it is possible that there are other inaccuracies in the U.S. discount data that remain undetected. Petitioners argue that the fact that the errors found at verification were limited to certain customers does not indicate that such errors were not more widespread, but rather suggests that the contrary may be true, since the errors noted were self-produced by Thyssen. Furthermore, petitioners argue that Thyssen has failed to explain why at times its customers took the discount when eligible, at other times they did not take the discount when eligible, and at still other times they took the discount when they were technically not eligible.

Thyssen argues that the Department's verification confirmed that Thyssen had properly reported its cash discounts for all of its U.S. customers other than those specifically referred to in the Department's May 11, 1995 discount memorandum. Thyssen also argues that the Department verified the total discounts granted by TINC as a percentage of sales. Consequently, Thyssen argues that the Department must reject petitioners' call for use of BIA beyond that applied for U.S. cash discounts in the preliminary results.

Department's Position: We disagree with petitioners. Our review of U.S. discounts at verification included the pre-selected and surprise sales trace observations, as well as a thorough review of Thyssen's changes to its discounts, which were proposed in a timely manner. As noted in the Department's July 20, 1995, memorandum at 5, the only problems noted were limited to a few specific customers, and discounts reported for other customers were found to be accurate. *See also* May 11, 1995, discount memorandum. The only relevant issue is the total amount of the discounts, which has been determined as noted above. The reasons why a discount was offered or accepted for specific transactions is irrelevant to this inquiry.

Comment 29: Petitioners argue that the Department should deny Thyssen's attempt to include interest income in the calculation of its U.S. short-term interest rate. Petitioners argue that the calculation of a respondent's imputed credit and inventory carrying costs should be based on the short-term interest rate either actually or potentially incurred by the respondent in financing its accounts receivable. For purposes of calculating its imputed credit and inventory carrying costs, Thyssen's borrowing costs during the POR are fully and accurately represented by its weighted-average gross interest expense. Petitioners argue that the Department should base Thyssen's U.S. imputed credit and inventory carrying cost amounts upon the short-term interest rates reported by the company prior to verification.

Thyssen argues that it properly reduced its borrowing rate to account for short-term interest income in order to avoid a double deduction of interest resulting from the fact that Thyssen included an amount equal to TINC's allocated share of the interest expense of Thyssen AG in its U.S. indirect selling expense deduction from USP. Thyssen argues that a similar adjustment was made to avoid double-counting in *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from West Germany,* 56 FR 31692, 31721 (July 11, 1991). Because the Department's questionnaire does not provide for this particular deduction, if interest income is not deducted from interest paid, interest expenses deducted from USP will be greater than Thyssen's actual borrowing costs for the POR.

Department's Position: We have denied Thyssen's claim for an adjustment to its borrowing rate to offset short-term interest income against the deduction of credit expenses and inventory carrying costs from U.S. price. The Department does not normally allow an offset of this type outside the context of a COP or CV calculation. As explained in Comment 7, in a COP or CV calculation, the Department does generally offset interest expenses for short-term interest income earned through a company's ''general operations,'' which excludes unrelated and long-term interest income such as that earned from investment activities. *NTN Bearing Corp.,* Slip Op. 95–165 at 33; *Timken Co.,* 852 F.Supp. at 1048.

By contrast, in a sales calculation, respondents must demonstrate a more direct relationship between the interest income and the sales under review in order to qualify for an offsetting adjustment.

See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review, 59 FR 1374, 1378 (January 10, 1994). In accordance with this standard, the Department has offset interest income actually shown to reduce the respondent's cost of extending credit to its customers. For instance, the Department granted an offset for interest earned on a respondent's sales of the subject merchandise pursuant to a special arrangement with another party. *Polyethylene Terephthalate Film, Sheet and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 60 FR 42835, 42838 (August 17, 1995); *see also Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review,* 57 FR 3167, 3178 (January 28, 1992). The Department has also permitted an offset for interest earned from pre-shipment advance money, *Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Stainless Steel Angle From Japan,* 60 FR 16608, 16615 (March 31, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion Resistant Carbon Steel Flat Products From Japan,* 58 FR 37154, 37173 (July 9, 1993) (*Steel From Japan*), and for interest earned on late payments. *Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan,* 53 FR 12552, 12571 (April 15, 1988). The Department has also determined that pre-payment funds for which a party claims to have received interest income may not be used to finance ongoing operations. *Steel From Japan* at 37173.

Thyssen did not claim the offsetting adjustment for interest income until verification. Thus, the Department was never able to investigate the basis of its claim. The verification report, which contains the only explanation regarding the funds, states only that Thyssen received income ''attributed to interest that was part of a legal settlement.'' U.S. Verification Report at 10. An accompanying verification exhibit provides some detail as to the origin of the interest income, in chart form, but contains no indication that the funds were derived from sales of the subject merchandise. *Id.* at Exhibit 19.

Based on the record evidence we are unable to determine whether the interest income claimed as an offset was associated with actual sales of the subject merchandise. It was the responsibility of Thyssen to demonstrate entitlement to this adjustment to U.S. price and we find that Thyssen has failed to meet the Department's standard, as set forth above. We have, therefore, revised our preliminary results to eliminate the offset for Thyssen's claimed interest income.

Comment 30: Petitioners argue that the Department should adhere to its decision not to allow Thyssen's claimed currency hedging adjustment. Petitioners agree with the Department's

determination that the veracity of the currency hedging gain information is called into question by unexplained changes involving this information in Thyssen's post-verification database. Petitioners also argue that the adjustment should be denied on legal grounds. Petitioners cite the CIT's decision involving this adjustment in the underlying investigation, in which the court was ''not persuaded that the law presently permits any adjustment in the computation of dumping margins for either gains or losses which result from the hedging of currencies.'' *Thyssen Stahl AG* v. *United States,* 886 F.Supp. 23, 32 (CIT 1995). Petitioners conclude that the accuracy of Thyssen's reported data for this adjustment is largely irrelevant since the CIT has ruled expressly on this issue.

Thyssen responds that the Department improperly denied its currency hedging adjustment. Thyssen argues that the Department verified that Thyssen's currency exchange contracts were tied directly to its U.S. sales. Regarding the variations in the adjustment, Thyssen also points to its previous explanation that ''a change in any field used in the formula to calculate the exchange gain * * * changes the exchange gain.''

Thyssen also argues that the CIT's decision in *Thyssen Stahl AG* is not final, since Thyssen has the opportunity to appeal that decision to the Court of Appeals for the Federal Circuit, and, moreover, that decision is directly contrary to *Torrington Company* v. *United States,* 832 F. Supp. 379 (CIT 1993).

Department's Position: We disagree with Thyssen. As noted in the preliminary results, Thyssen's post-verification database contained numerous unexplained and unauthorized changes in the currency exchange expense variable. While the Department recognized that this variable would change if one of many other variables changed, we were unable to reconcile all of the changes to the changes Thyssen was authorized to make in its final tape submission. Furthermore, the largest changes were clearly unauthorized by the Department, and were very much in Thyssen's favor. Consequently we are continuing to disallow this adjustment. For purposes of this review, therefore, petitioners' and Thyssen's arguments regarding the CIT's decision are moot.

Comment 31: Petitioners agree with the Department's preliminary determination that BIA was warranted for those Budd sales in the United States for which Thyssen failed to report contemporaneous home market sales. Petitioners also argue, however, that the Department should apply BIA to all of Thyssen's remaining reported Budd sales to U.S. customers and to an additional estimated quantity of Budd sales to U.S. customers which Thyssen failed to report.

Petitioners note that, contrary to Thyssen's assertions, the volume of the unreported home market sales relative to that of the Budd sales for which they were needed is irrelevant. Petitioners argue that the Department's longstanding practice is to compare each U.S. sale to the weighted-average FMV associated with all home market sales made in the ordinary course of trade within the same six-month period as the U.S. sale. *See, e.g., Final Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom,* 56 FR 5975, 5976 (Feb. 14, 1991). Petitioners argue that, for the Budd sales given BIA because of Thyssen's failure to report shipment dates from Germany, Thyssen failed to offer any explanation in its brief as to why those shipment dates were not provided.

Petitioners also contend that the Department should apply adverse BIA to all of the Budd sales which Thyssen did report because Thyssen did not adequately address any of the Department's questions regarding U.S. further processing by Budd. Specifically, petitioners argue that Thyssen did not describe the further manufacturing processes performed by Budd or the overhead factors or cost accounting methodology; Thyssen also failed to indicate whether manufacturing processes were performed in-house or by outside contractors, or what equipment or personnel were used.

Finally, petitioners argue that the Department should apply BIA for sales by Budd that Thyssen failed to report. Petitioners argue that the Department is required by section 751 of the Act to determine the amount of the antidumping duty by determining ''the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order.'' Petitioners provide a methodology for estimating Budd's unreported sales, and argue that the Department apply as BIA for these sales the higher of either the margin rate from the underlying investigation or the highest non-aberrant margin rate calculated for sales in this review.

Thyssen asserts that the Department improperly applied a 16.56 percent BIA margin to the 1992 Budd sales for which Thyssen did not report contemporaneous home market sales. Thyssen argues that it would be absurd to require it to report an enormous number of additional home market sales simply because a small amount of Budd sales involved requirements contracts consummated in 1992. Thyssen also argues that such a reporting burden is not appropriate given the inherent difficulty in calculating meaningful margins when comparing the home market sales price for cold rolled steel to the adjusted U.S. prices of motor vehicle component parts such as those sold by Budd. Thyssen concludes that the Department should exclude these Budd sales from the U.S. database, citing the CIT decision in *Sonco Steel Tube Div.* v. *United States,* 12 CIT 745, 748 (1988); or alternatively, the Department should apply Thyssen's weighted average margin for Budd resales, as determined in this review, citing *Nat'l Steel Corp.* v. *United States,* 870 F.Supp. 1130 (CIT 1994).

Thyssen acknowledges that the data submitted for Budd was not presented in the identical format as that submitted by TINC. But Thyssen argues that the Department accepted Budd's submission as complete, as evidenced by the fact that the Department did not advise Thyssen that additional information for Budd was required or that the manner in which Budd reported its costs failed to conform to Department reporting requirements. Thyssen argues that the information necessary for the Department's analysis was provided, and that the Department has a degree of latitude in implementing its verification procedures. Thyssen also counters petitioners' argument that the highest non-aberrant margin from this review should be applied to petitioners' estimate of unreported Budd sales. According to Thyssen, the Department never questioned Budd's interpretation of its reporting instructions, thereby precluding resort to BIA. *See, e.g., SKF USA, Inc.* v. *United States,* Slip Op. 95–85 (CIT May 8, 1995).

Finally, Thyssen argues that, contrary to petitioners' contention, the Department is not required to examine every U.S. sale made by respondents during the POR. *See, e.g., Sonco Steel,* 12 CIT at 748. The potentially unreported Budd resales, Thyssen argues, consist of merchandise which was shipped by TINC to Budd prior to the POR. Petitioners' methodology for estimating unreported Budd sales assumes that all of Budd's material costs consist of cold rolled steel exported from Germany by Thyssen, which ignores the fact that the majority of steel sold by TINC to Budd was not subject cold rolled steel, and that only a *de minimis* amount of Budd's material

costs consisted of cold rolled steel purchased from Thyssen.

Department's Position: The Budd Company, like TSAG and TINC, is wholly-owned by TAG. Thyssen reported sales in the U.S. by Budd after initially refusing to do so. However, Thyssen continued to refuse to provide the contemporaneous home market sales needed for matching to the earliest Budd sales. Because these Budd sales were made pursuant to requirements contracts, the necessary home market sales were dated in 1992. We disagreed with Thyssen's request that the Budd's 1992 U.S. sales be completely excluded from the analysis or, alternatively, assigned the weighted average margin for other Budd sales in this review. *See Preliminary Results,* 60 FR at 39356. The Department requires respondents to report contemporaneous home market sales. Thyssen failed to do so for the sales in question, which included some observations for which Thyssen had failed to report a shipment date from Germany. Consequently, an adverse BIA is appropriate for the 1992 Budd sales in question, and we have continued to apply the margin from the investigation. *See Id;* the Department's June 16, 1995, Analysis Memo from Steve Bezirganian to the File.

We disagree with petitioners' contention that the Department should assign BIA to all of those U.S. sales by Budd which Thyssen did report because of what petitioners contend was Thyssen's failure to provide sufficient answers to the Department's further manufacturing questionnaire. The Budd sale submission contained the variables needed for the Department's calculations, albeit in an unwieldy format. Moreover, the Department did not request more detailed information on Budd's sales, because they constituted a very small portion of Thyssen's total U.S. sales. For those Budd sales which were reported, the only information lacking was the contemporaneous home market sales data discussed previously.

The Department repeatedly requested that Thyssen report U.S. sales made by Budd. When Thyssen finally reported Budd sales, this reporting was incorrectly on shipments during the POR from TINC to Budd, rather than Budd sales to the first unrelated customer during the POR (or, in the case of requirements contracts between Budd and its customers, shipments from Germany during the POR). Petitioners are correct that this leaves open the possibility that Thyssen failed to report all sales by Budd.

We agree with petitioners' suggestion that the Department assume that some percentage of Budd's sales during the POR were unreported, and that we should apply BIA to these ''estimated unreported'' sales. However, applying petitioners' methodology for estimating unreported sales by Budd would grossly overestimate this possibility. Therefore, we have determined that applying BIA in the manner suggested by petitioners would be unreasonable. Instead, we have adjusted petitioners' methodology to reflect our observation that very few of TINC's sales were to Budd. Therefore, for the final results, we have calculated a different estimate of the number of tons associated with these potentially unreported Budd sales, which we have added to the data base. As BIA, we have applied the rate from the original investigation to this estimated amount. *See* the Department's December 12, 1995, analysis memorandum.

Comment 32: Petitioners argue that the Department should account for unreported post-sale warehousing for certain U.S. spot sales. Spot sales were made from existing TINC inventories, and were normally shipped immediately after the sale took place. Thyssen conceded that, in certain limited instances, its U.S. spot sales were shipped ten days or more after the reported sale date. However, Thyssen argues that it advised the Department of this possibility in its November 22, 1994, questionnaire response. Thyssen argues that the Department verified that Thyssen reported all of its warehousing costs in the warehousing expense variable which the Department, as required by law, deducted from the sales price in calculating USP.

Department's Position: The post-sale expenses to which petitioners refer constitute a small portion of the overall amount reported by Thyssen in its pre-sale warehousing expense variable. Because this post-sale expense is being deducted from U.S. price, and because this expense is very small for most sales in question, even if the Department attempted to separate it into a separate variable and chose to reclassify it as a direct selling expense, the effect upon Thyssen's final calculated margin would be negligible. Consequently, we have chosen not to make any adjustments to Thyssen's pre-sale warehousing expense variable.

Final Results of Review

As a result of this review, we have determined that the following margin exists for the period August 18, 1993, through July 31, 1994:

Manufacturer/exporter	Margin (percent)
Thyssen	5.88

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Thyssen will be the rate established above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 19.03 percent, the all others rate established in the final results of the first administrative review (58 FR 44170, August 19, 1993).

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 12, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–30784 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–815]

Certain Cold-Rolled Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by two respondents, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from Korea. The review covers two manufacturers/exporters of the subject merchandise to the United States during the period of review (''POR'') from August 18, 1993, through July 31, 1994.

We have preliminarily determined that sales have been made below the foreign market value (''FMV''). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (''USP'') and the FMV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Linda Ludwig, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–3793 or fax (202) 482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On July 9, 1993, the Commerce Department published in the Federal Register (58 FR 37176) the final affirmative antidumping duty determination on certain cold-rolled carbon steel flat products from Korea, for which we published an antidumping duty order on August 19, 1993 (58 FR 44159). On August 3, 1994, the Department published the ''Notice of Opportunity to Request an Administrative Review'' of this order for the period August 18, 1993 through July 31, 1994 (59 FR 39543). We received a request for an administrative review from Dongbu Steel Co., Ltd. (''Dongbu'') and Union Steel Manufacturing Co., Ltd. (''Union''). We initiated the administrative review on September 8, 1994 (59 FR 46391).

In a letter dated February 1, 1995, petitioners formally requested that the Department consider Union and Dongkuk Industries Co., Ltd. (''DKI''), which was not a respondent initially, as related parties and ''collapse'' them as a single producer of cold-rolled carbon steel flat products.

In accordance with section 771(13) of the Tariff Act of 1930, as amended (''the Act''), the Department, in determining whether parties are related, considers whether the alleged related party:

1. Is an agent or principal of the exporter, manufacturer, or producer;
2. Owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer or producer;
3. Is a party in whose business the exporter, manufacturer, or producer owns or controls, directly or indirectly, any interest, through stock ownership or control or otherwise; or
4. Owns or controls, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, 20 percent or more in the aggregate of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 percent or more of such power or control in the business of the exporter, manufacturer or producer.

Factual information provided on the record by Union, and supplemented by petitioners, indicates that DKI and Union are both affiliated with Dongkuk Steel Mill (''DSM''). The record shows that DSM holds, directly or indirectly, a controlling share in Union's equity. DSM is in turn controlled by the Korean family which owns the largest block of shares in the company. That same family controls, directly or indirectly, a majority of DKI's equity. The Department therefore determined that Union and DKI are related to each other by virtue of their common affiliation with the same ''parents.'' (*See* the Department's internal memorandum from Joseph A. Spetrini to Susan G. Esserman, dated May 22, 1995, and entered onto the record of this proceeding on September 28, 1995—hereinafter referred to as ''the collapsing memo'').

It is the Department's practice to collapse related parties when the facts demonstrate that the relationship is such that there is a strong possibility of manipulation of prices and production decisions that would result in circumvention of antidumping law. In determining whether to collapse related parties, the Department considers the following factors:

1. The level of common ownership;
2. Whether there are interlocking officers and directors, (e.g., whether managerial employees or board members of one company sit on the board(s) of directors of the other related party(ies));
3. The existence of production facilities for similar or identical products that would not require retooling either plant's facilities to implement a decision to restructure either company's manufacturing priorities; and
4. Whether the operations of the companies are intertwined (e.g., sharing of sales information; involvement in production and pricing decisions; sharing of facilities or employees; transactions between companies).

With respect to the first factor, the Department has determined that there is a significant level of common ownership of both Union and DKI through DSM and the family that controls it. As noted above, factual information provided on the record by Union, and supplemented by petitioners, indicates that DKI and Union are both affiliated with the DSM group. The same family owns by far the largest block of shares in DSM and is listed in DSM's annual filing to the Korean Securities and Exchange Commission (''KSEC'') as ''controlling'' the company. DSM, in turn, directly and indirectly (through its affiliated companies), own a majority of the equity in Union. The same family also owns, directly and indirectly, a controlling share of DKI's equity.

With respect to the second factor, evidence on the record demonstrates that Union, DSM and DKI have interlocking officers and directors. Two of DKI's board are family members and members of DSM's board. Five of Union's 18 board members are members of DSM's board; of those five, one is a member of the family in question. The president of DKI sits on the boards of both DKI and Union. These interlocking

board members and officers participate in board meetings, vote, and voice their opinions on proposals before the board. Because the interlocking directors actively participate in the decision-making process, the potential for these interlocking directors to influence pricing and production decisions for both Union and DKI exists.

With respect to the third factor, the Department has recently clarified that, although not necessarily determinative, this factor is essential. The information presented indicates that DKI and Union produce the identical types of products for the major characteristics that are relevant to production and price decisions for cold-rolled material. They make the same grades and qualities of cold-rolled steel, and material in overlapping thicknesses and thickness tolerances. In regards to thickness tolerances, DKI can relax its rolling practices to make material to Union's tolerances, and Union has the capability to produce material comparable to DKI, yet is not supplying it in the home market. The very existence of DKI suggests that there is a domestic market for tight tolerance material in many of the grades and qualities of steel being supplied by Union. With Union not supplying this material in the home market, it indicates that DKI is meeting domestic demand for this material.

With respect to the fourth factor, Union and DKI have overlapping board members who serve in multiple roles. KSEC filings indicate that both DKI and Union are controlled by DSM. Union's 1993 financial data was combined with DSM's on an ''equity-method'' basis. (The equity method is used when an investor has the ability to exercise significant influence over the operating and financial policies of the investment.) Union sold subject merchandise through DKI during the POR, and DKI slit sheet into narrower widths for Union during the POR.

On May 22, 1995, for the reasons outlined above, the Department decided to ''collapse'' Union and DKI for purposes of this review. (For further details, *see* the collapsing memo.)

The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

These products include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The POR is August 18, 1993 through July 31, 1994. This review covers sales of certain cold-rolled carbon steel flat products by Dongbu and Union.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

United States Price

The Department used purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States. As described below in the ''Foreign Matket Value'' section of this notice, we added the Korean value-added tax to USP.

Dongbu

All of Dongbu's U.S. sales were based on the price to the first unrelated purchaser in the United States. The Department determined that purchase price, as defined in section 772(b) of the Act, was the appropriate basis for calculating USP. Depending on the channel of trade, we treated the date of either the purchase order, the internal confirmation or the date of the production order as date of sale. We made adjustments to purchase price, where appropriate, for home-market value-added tax, foreign inland freight, foreign brokerage, ocean freight, containerization, U.S. duty and U.S. brokerage and handling.

No other adjustments were claimed or allowed.

Union

All of Union's U.S. sales were based on the price to the first unrelated purchaser in the United States. The Department determined that purchase price, as defined in section 772(b) of the Act, was the appropriate basis for calculating USP. Because quantities were not finalized until the merchandise was actually shipped to the United States, we treated the date of shipment as date of sale (*see* the Department's analysis memorandum dated September 28, 1995). We made adjustments to purchase price, where appropriate, for cash discounts and rebates, home-market value-added tax, foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. brokerage and handling, U.S. inland freight, and duty drawback. Because Union had understated its U.S. credit expenses by not including bank charges therein, we increased Union's U.S. credit expense by the amount of those charges, which we obtained from the audited financial statement of Union's U.S. subsidiary.

No other adjustments were claimed or allowed.

Foreign Market Value

Based on a comparison of the volume of home-market sales and third-country sales, we determined that Dongbu's and Union's home markets were viable. Therefore, in accordance with section 773(a)(1)(A) of the Act, we based FMV on the packed, delivered price to unrelated purchasers in the home market, using the date of the invoice as the date of sale.

Based on a review of Dongbu's and Union's submissions, the Department determined that only a small percentage of those companies' home-market sales were made to related parties who, in turn, resold the merchandise (''downstream sales''). The Department determined that Dongbu and Union need not report their home-market downstream sales because of their low volume.

On December 15, 1994, petitioners alleged that Dongbu and Union sold cold-rolled carbon steel flat products in the home market at prices below their cost of production (''COP''). Based on this allegation, the Department determined, on January 17, 1995 (for Dongbu), and on January 18, 1995 (for Union), that it had reasonable grounds to believe or suspect that Dongbu and Union had sold the subject merchandise in the home market at prices below the COP. We therefore initiated cost investigations, in accordance with section 773(b) of the Act. As a result, we investigated whether Dongbu and Union sold such or similar merchandise in the home market at prices below the COP. In accordance with 19 CFR § 353.51(c) we calculated COP for Dongbu and Union as the sum of reported materials, labor, factory overhead, and general expenses, and compared COP to home-market prices, net of price adjustments, discounts and movement expenses.

In accordance with section 773(b) of the Act, in determining whether to disregard home-market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of section 773(b)(1) that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. For each model for which less than 10 percent, by quantity, of the home-market sales during the POR were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less than 90 percent, of the home-market sales during the POR were priced below the COP of the merchandise, we excluded from the calculation of FMV those home-market sales which were priced below the COP, provided that they were made over an extended period of time. For each model for which 90 percent or more of the home-market sales during the POR were priced below the COP and were made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with section 773(b) of the Act, we used the constructed value (''CV'') of those models, as described below. *See, e.g., Mechanical Transfer Presses from Japan; Final Results of Antidumping Duty Administrative Review,* 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. We used CV as the basis for FMV when an insufficient number of home-market sales were made at prices above COP. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews,* 58 FR 64720, 64729 (December 8, 1993).

Because Dongbu and Union provided no indication that their below-cost sales of models within the ''greater than 90 percent'' and the ''between 10 and 90 percent'' categories were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded those sales within the ''10 to 90 percent'' category which were made below cost over an extended period of time. In addition, as a result of our COP test for home-market sales of models within the ''greater than 90 percent'' category, we based FMV on CV for all U.S. sales for which there were insufficient sales of the comparison home-market model at or above COP. Finally, where we found, for certain of Dongbu's and Union's models, home-market sales for which less than 10 percent were made below COP, we used all home-market sales of those models in our comparisons.

We also used CV as FMV for those U.S. sales for which there was no contemporaneous sale of such or similar merchandise in the home market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials, labor, and factory overhead in our calculations. Where the general expenses were less than the statutory minimum of 10 percent of the cost of manufacture (''COM''), we calculated general expenses as 10 percent of the COM. Where the actual profits were less than the statutory minimum of 8 percent of the COM plus general expenses, we calculated profit as 8 percent of the sum of COM plus general expenses. Based on our verification of Dongbu's and Union's cost response, we adjusted Dongbu's, Union's, and DKI's reported COP and CV to reflect certain adjustments to general and administrative expenses and interest expenses. *See* the Department's separate cost calculation memoranda for Dongbu (dated August 10, 1995) and Union/DKI (dated September 21, 1995).

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States,* CAFC No. 94–1097, the Department has changed its treatment of home-market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States,* 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (''CIT'') overturned this methodology in *Federal Mogul* v. *United States,* 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the

statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home-market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (''GATT'') and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (''URAA'') explicitly amended the antidumping law to remove consumption taxes from the home-market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home-market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Dongbu

In accordance with section 773 of the Act, for those U.S. models for which we were able to find a home-market such or similar match that had sufficient above-cost sales, we calculated FMV based on the packed, f.o.b., ex-factory, or delivered prices to unrelated purchasers in the home market. We made adjustments, where applicable, for certain rebates tied to specific sales, post-sale inland freight, home-market value-added tax, and for home market direct selling expenses, *i.e.*, credit and warranty expenses. We also adjusted FMV for differences in physical characteristics of the merchandise. Finally, we adjusted FMV for differences in packing by deducting home-market packing expenses from, and adding U.S. packing expenses to, FMV.

Union

Because the Department is treating Union and DKI as a single producer of certain cold-rolled carbon steel flat products for purposes of this review, we combined Union's and DKI's home-market sales and cost-of-production data bases in our preliminary calculations. In accordance with section 773 of the Act, for those U.S. models for which we were able to find a home-market such or similar match that had sufficient above-cost sales, we calculated FMV based on the packed, f.o.b., ex-factory, or delivered prices to unrelated purchasers in the home market. We made adjustments, where applicable, for post-sale inland freight, home-market value-added tax, and for home-market direct selling expenses, *i.e.*, credit expenses.

We treated Union's warehousing expense as an indirect selling expense, rather than direct, as Union had claimed, because Union evenly allocated this expense to all home-market sales across-the-board, rather than calculating a discrete warehousing expense for each home-market sale.

We also treated Union's pre-sale inland freight as an indirect selling expense, rather than direct, as Union had claimed, pursuant to the decision by the Court of Appeals for the Federal Circuit in *Ad Hoc Committee* v. *United States*, 13 F.3d 398 (Fed. Cir. 1994). The Department considers pre-sale movement expenses as direct selling expenses only if the movement expenses in question are directly related to the home-market sales under consideration. In order to determine whether pre-sale movement expenses are direct under the facts of a particular case, the Department examines the respondent's pre-sale warehousing expenses, since the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, linked to pre-sale warehousing expenses. If the pre-sale warehousing constitutes an indirect expense, the expense involved in getting the merchandise to the warehouse must also be indirect. Conversely, a direct pre-sale warehousing expense necessarily implies a direct pre-sale movement expense. We note that, although pre-sale warehousing expenses in most cases have been found to be indirect selling expenses, these expenses may be deducted from FMV as a circumstance-of-sale adjustment in a particular case if the respondent is able to demonstrate that the expenses are directly related to the sales under consideration. In the instant review, Union did not distinguish between pre- and post-sale warehousing expenses, nor did it demonstrate that these expenses were directly tied to the home-market sales under consideration. The Department, therefore, determined to treat home-market warehousing expenses as indirect selling expenses.

We also adjusted FMV for differences in packing by deducting home-market packing expenses from, and adding U.S. packing expenses to, FMV.

During the verification of Union's responses, the Department was unable to fully verify the accuracy of Union's reported home-market product characteristics, because Union did not retain the relevant information in its records. It is the Department's preference to calculate antidumping duties on the basis of price-to-price comparisons whenever possible. It is also the Department's preference to use as much of respondent's data as possible. For purposes of these preliminary results, therefore, the Department has decided to use Union's model-matching product characteristics, but to apply to all of Union's price-to-price sales comparisons a flat, across-the-board adjustment for differences in physical characteristics of the merchandise (''difmer'') of 20 percent as the best information otherwise available (''BIA''). Twenty percent is the maximum difmer allowed between U.S. and home-market models for the purposes of comparison. *See* the Department's internal memorandum from Joseph A. Spetrini to Susan G. Esserman, dated August 8, 1995.

We were able, by contrast, to verify DKI's reported product characteristics. In the model-match program, therefore, we programmed the computer, whenever DKI sales were used as a basis for comparison with Union's U.S. sales, to apply the difmers reported by DKI, rather than an across-the-board difmer of 20 percent, as we did when Union's home-market sales were used as a basis for comparison. We disagree, however, with DKI's categorization of its thickness tolerances as ''standard.'' Based on the Department's model-matching criteria, we have concluded that DKI's thickness tolerances are much closer to U.S. ''half-mill'' tolerances than to Union's ''standard'' tolerances. We have therefore created a new category of thickness tolerance—called ''other''—for DKI, permitting the

comparison of Union's U.S. sales of ''half-mill'' to DKI's home-market sales.

Preliminary Results of Review

As a result of our comparison of USP to FMV, we preliminarily determine that the following margins exist for the period August 18, 1993, through July 31, 1994:

CERTAIN COLD-ROLLED CARBON STEEL FLAT PRODUCTS

Producer/manufacturer/exporter	Weighted-average margin (percent)
Dongbu	6.07
Union	1.21

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and FMV may vary from the percentages stated above.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act. A cash deposit of estimated antidumping duties shall be required on shipments of certain cold-rolled carbon steel flat products from Korea as follows: (1) The cash deposit rates for the reviewed company will be the rate established in the final results of this review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate for this case will be 14.53 percent, which is the ''all others'' rate for the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea,* 58 FR 37176 (July 9, 1993).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR § 353.22.

Dated: December 8, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–30799 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on November 1, 1995, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–357–405
Argentina
Barbed Wire and Barbless Fencing Wire
Objection Date: November 30, 1995; November 20, 1995
Objector: Oklahoma Steel & Wire Co.; Insteel Industries, Inc.; Keystone Steel & Wire Company
Contact: Tom Killiam at (202) 482–2704

A–357–007
Argentina
Carbon Steel Wire Rods
Objection Date: November 30, 1995
Objector: GS Industries, Inc.; GST Steel Company; North Star Steel Texas, Inc.; Co-Steel Raritan, Inc.; Atlantic Steel Company
Contact: Tom Killiam at (202) 482–2704

A–559–502
Singapore
Light-Walled Rectangular Pipe and Tube
Objection Date: November 20, 1995
Objector: Hannibal Industries, Inc.
Contact: Tom Killiam at (202) 482–2704

A–588–090
Japan
Certain Small Electric Motors of 5 to 150 Horsepower
Objection Date: November 24, 1995
Objector: Reliance Electric Industrial Company
Contact: Nancy Decker at (202) 482–5811

Dated: December 11, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance

[FR Doc. 95–30801 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–351–818]

Certain Cut-to-Length Carbon Steel Plate From Brazil; Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review.

SUMMARY: On September 15, 1995 (60 R 47930), in response to a request from Companhia Siderurgica de Tubarao (CST), the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Brazil for CST. In accordance with 19 CFR 355.22(a)(3)(1994), the Department is now terminating this review because CST has withdrawn its request for review.

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1994, the Department received a request for an administrative review of this countervailing duty order from CST, a Brazilian exporter of the subject merchandise, for the period January 1, 1994, through December 31, 1994. Although an importer of the subject merchandise, Wirth Ltd., requested a review of the scope of this order on the same date, no interested party other than CST requested a review of the countervailing duty rate. On September 15, 1994, the Department published in the Federal Register (60 FR 47930) a notice of ''Initiation of Countervailing Duty Administrative Review'' initiating the administrative review of CST for that period. On November 13, 1995, CST withdrew its request for review .

Section 355.22(a)(3) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. In this case, CST has withdrawn its request for review within the 90-day period. Further, no other interested party requested a review of the countervailing duty rate in this case, and we have received no submissions regarding CST's withdrawal of its request for review. Therefore, we are terminating the review of the countervailing duty order on certain cut-to-length carbon steel plate from Brazil for CST.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: December 11, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–30800 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–333–002]

Cotton Yarn From Peru; Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: On June 25, 1993, (58 FR 34414) the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on cotton yarn from Peru for the period January 1, 1992 through December 31, 1992. The Department has now decided to terminate this review.

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

Background

On February 25, 1993, the Department received a request for an administrative review of this countervailing duty order from the American Yarn Spinners Association (AYSA) for the period January 1, 1992 to December 31, 1992. No other interested party requested an administrative review. On June 25, 1993 the Department published, in the Federal Register (58 FR 34414), a notice of ''Initiation of Countervailing Duty Administrative Review.'' On December 1, 1995, AYSA withdrew its request for review.

Section 355.22(a)(3) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. This regulation also provides that the Secretary may extend the time limit for withdrawal of a request if it is reasonable to do so.

Because no significant work has been completed on this review, the aforementioned request for withdrawal does not unduly burden the Department. Therefore, under the circumstances presented in this review, we are waiving the 90-day requirement in section 355.22(a)(3). Accordingly, we are terminating this review.

This notice is published in accordance with section 355.22(a)(3) of the Department's regulations.

Dated: December 11, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–30802 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Olympic Coast National Marine Sanctuary Advisory Council; Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice; Meeting of the Olympic Coast National Marine Sanctuary Advisory Council.

SUMMARY: The Advisory Council was established in December 1995 to advise NOAA's Sanctuaries and Reserves Division regarding the management of the Olympic Coast National Marine Sanctuary. The Advisory Council was convened under the National Marine Sanctuaries Act.

TIME AND PLACE: Thursday, January 18, 1996, from 9 a.m. until 5 p.m. The meeting will be held at the Clallam

County Courthouse, Room 160, 223 East 4th Street, Port Angeles, Washington.

AGENDA: This is the first meeting of the Advisory Council and will serve as an orientation for the members. General subjects to be covered will include swearing in of Council members; introductions of Sanctuary staff and Council members; an overview of the Olympic Coast National Marine Sanctuary and the National Marine Sanctuary Program; and a review of Council operating procedures and requirements.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Nancy Beres at (360) 457–6622 or Elizabeth Moore at (301) 713–3141.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: December 12, 1995.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–30765 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–08–M

National Telecommunications and Information Administration

Notice of Meeting, Spectrum Planning and Policy Advisory Committee (SPAC)

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix, notice is hereby given that the Spectrum Planning and Policy Advisory Committee (SPAC) will meet on January 19, 1996 from 9:30 a.m. to 4:30 p.m. in Room 1605 at the United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC.

The Committee was established on July 19, 1965 as the Frequency Management Advisory Council (FMAC). The name was changed in April, 1991, and in July, 1993, to reflect the increased scope of its mission. The objective of the Committee is to advise the Secretary of Commerce on radio frequency spectrum planning matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Committee consists of nineteen members, fifteen from the private sector, and four from the Federal Government, whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Land Mobile Spectrum Planning Options Report;

(2) Public and Private Understanding of NTIA's Mission;

(3) Results of WRC–95;

(4) Public Safety Wireless Advisory Committee (PSWAC) Update;

(5) Update of Automated ITU Spectrum Management System.

The meeting will be open to public observations. Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before January 11, 1996. Other public statements regarding Committee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Federal Information Relay Service (FIPS) on 1–800–877–8339.

Copies of the minutes will be available upon request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to the Executive Secretary, SPAC, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, Room 4082, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone 202–482–4487.

Dated: December 12, 1995.

Richard A. Lancaster,

Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 95–30730 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–60–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of Bangladesh

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

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 each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Bangladesh and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. These limits are being reduced for carryforward applied to the 1995 limits.

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). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

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 ATC, 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 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	384,921 dozen.
331	975,182 dozen pairs.
334	117,430 dozen.
335	210,847 dozen.
336/636	377,317 dozen.
338/339	1,093,045 dozen.
340/640	2,470,896 dozen.
341	2,046,913 dozen.
342/642	354,148 dozen.
347/348	1,842,220 dozen.
351/651	562,460 dozen.
352/652	8,391,323 dozen.
363	20,965,242 numbers.
369–S [1]	1,405,316 kilograms.
634	410,836 dozen.
635	266,173 dozen.
638/639	1,386,181 dozen.
641	857,100 dozen.
645/646	325,529 dozen.
647/648	1,158,630 dozen.
847	615,190 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30810 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Brazil

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 18, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryforward and carryover.

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 17318, 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 13, 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, among other things, imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on December 18, 1995, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Sublevels in the aggregate	
218	5,853,092 square meters.
219	19,649,429 square meters.
225	10,242,909 square meters.
300/301	7,938,138 kilograms.
338/339/638/639	1,575,054 dozen.
347/348	1,137,539 dozen.
350	163,615 dozen.
369–D [2]	567,267 kilograms.
410/624	11,706,183 square meters of which not more than 3,021,972 square meters shall be in Category 410.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30803 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with the Government of Bulgaria on Certain Wool Textile Products

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On November 29, 1995, in accordance with Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Bulgaria with respect to women's and girls' wool suits in Category 444, produced or manufactured in Bulgaria.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Bulgaria, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 444, produced or manufactured in Bulgaria and exported during the twelve-month period which began on November 29, 1995 and extends through November 28, 1996, at a level of not less than 59,569 numbers.

A statement of serious damage concerning Category 444 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 444, or to comment on domestic production or availability of products included in Category 444, is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Bulgaria.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

The United States remains committed to finding a solution concerning Category 444. Should such a solution be reached in consultations with the Government of Bulgaria, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Statement of Serious Damage

Bulgaria

Women's and Girls' Wool Suits—Category 444

November 1995

Import Situation and Conclusion

U.S. imports of women's and girls' wool suits, Category 444, from Bulgaria reached 59,569 units for the year-ending August 1995, almost 14 times the 4,305 units imported during the same period a year earlier. Bulgaria shipped 41,624 units during 1994 and 1,161 units in 1992. There were no imports from Bulgaria in 1993. Imports from Bulgaria were 4.6 percent of total U.S. imports of Category 444 in the year-ending August 1995, and were equivalent to 1.5 percent of U.S. production of Category 444 for the year-ending June 1995.

U.S. imports of women's and girls' wool suits from Bulgaria in Category 444 during the first eight months of 1995 was $50.27 per unit, 65 percent below the average U.S. producers' price for women's and girls' wool suits.

The sharp and substantial increase of low-valued Category 444 imports from Bulgaria is causing serious damage to the U.S. domestic industry producing women's and girls' wool suits.

U.S. Production, Import Penetration, and Market Share

U.S. production of women's and girls' wool suits, Category 444, fell from 6,286,000 units in 1992 to 4,309,000 units in 1994, a decline of 31 percent. Domestic production of women's and girls' wool suits continued to decline in 1995, falling to 3,961,000 units in the year-ending June 1995, 22 percent below the year-ending June 1994 level. In contrast, imports of Category 444 increased from 943,000 units in 1992 to 1,093,000 units in 1994, a 16 percent increase. Category 444 imports surged to 1,307,000 units in the year-ending August 1995, 24 percent above the year-ending August 1994 level.

The ratio of imports to domestic production increased from 15 percent in 1992 to 25 percent in 1994 to 31 percent in the year-ending June 1995. The share of the U.S. market for women's and girls' wool suits held by domestic manufacturers fell from 92 percent in 1992 to 88 percent in 1994, and to 82 percent in the year-ending June 1995.

[FR Doc. 95–30812 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. 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 Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement,

effected by exchange of notes dated March 29, 1995 and June 8, 1995, between the Governments of the United States and the People's Republic of China establishes limits for the period beginning on January 1, 1996 and extending through December 31, 1996.

In the letter published below, the Chairman of CITA directs the Commisioner of Customs to establish the 1996 limits. The limits for Categories 336, 362 and 642 in Group I have been reduced for carryforward applied in 1995.

These limits may be subject to revision pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). On the date that China becomes a member of the World Trade Organization and the United States applies the Uruguay Round Agreements to China, the restraint limits will be modified in accordance with the ATC.

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 60 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

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 bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated March 29, 1995 and June 8, 1995, between the Governments of the United States and the People's Republic of China, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [1], 359–V [2], 360–363, 369–D [3], 369–H [4], 369–L [5], 410, 433-436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [6], 659–H [7], 659–S [6], 666, 669–P [9], 670–L [10], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,431,618,042 square meters equivalent.
Sublevels in Group I	
200	655,730 kilograms.
218	10,878,344 square meters.
219	2,255,185 square meters.
226	10,240,181 square meters.
237	1,761,510 dozen.
239	2,762,764 kilograms.
300/301	3,700,967 kilograms.
313	41,216,950 square meters.
314	47,544,226 square meters.
315	159,895,467 square meters.
317/326	19,743,397 square meters of which not more than 3,777,300 square meters shall be in Category 326.
331	4,861,921 dozen pairs.
333	90,718 dozen.
334	305,459 dozen.
335	375,032 dozen.
336	153,702 dozen.
338/339	2,370,396 dozen of which not more than 1,799,390 dozen shall be in Categories 338–S/339–S [11].
340	816,568 dozen of which not more than 408,284 dozen shall be in Category 340–Z [12].
341	652,595 dozen of which not more than 391,557 dozen shall be in Category 341–Y [13].
342	256,222 dozen.
345	128,260 dozen.
347/348	2,404,650 dozen.
350	154,357 dozen.
351	500,983 dozen.
352	1,801,164 dozen.
359–C	559,672 kilograms.
359–V	815,151 kilograms.
360	7,176,252 numbers of which not more than 4,894,897 numbers shall be in Category 360–P [14].
361	4,012,966 numbers.
362	6,978,163 numbers.
363	29,977,812 numbers.
369–D	4,480,901 kilograms.
369–H	4,645,985 kilograms.
369–L	3,070,837 kilograms.
410	1,958,724 square meters of which not more than 1,570,129 square meters shall be in Category 410–A [15] and not more than 1,570,129 square meters shall be in Category 410–B [16].
433	22,823 dozen.
434	13,004 dozen.
435	23,885 dozen.
436	14,862 dozen.
438	26,007 dozen.
440	37,155 dozen of which not more than 21,231 dozen shall be in Category 440–M [17].
442	41,401 dozen.
443	133,754 numbers.
444	200,831 numbers.
445/446	284,340 dozen.
447	77,298 dozen.
448	21,729 dozen.
607	3,038,521 kilograms.
611	5,193,696 square meters.
613	7,128,602 square meters.
614	11,202,088 square meters.
615	23,320,711 square meters.
617	16,293,945 square meters.
631	1,184,416 dozen pairs.
633	53,496 dozen.
634	582,000 dozen.
635	607,949 dozen.
636	525,752 dozen.
638/639	2,365,174 dozen.
640	1,437,870 dozen.
641	1,293,980 dozen.
642	300,013 dozen.
643	485,182 numbers.
644/844	3,474,297 numbers.
645/646	820,148 dozen.
647	1,509,521 dozen.
648	1,078,543 dozen.
649	876,418 dozen.
650	109,116 dozen.

Category	Twelve-month limit
651	736,428 dozen of which not more than 129,653 dozen shall be in Category 651–B [18].
652	2,513,085 dozen.
659–C	389,873 kilograms.
659–H	2,683,454 kilograms.
659–S	580,290 kilograms.
666	3,376,561 kilograms.
669–P	1,894,083 kilograms.
670–L	15,074,868 kilograms.
831	503,383 dozen.
833	26,336 dozen.
835	119,061 dozen pairs.
836	264,027 dozen.
840	463,151 dozen.
842	255,783 dozen.
845	2,420,585 dozen.
846	165,561 dozen.
847	1,222,614 dozen.
Group II	
330, 332, 349, 353, 354, 359–O [19], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [20], as a group.	121,132,059 square meters equivalent.
Group III	
201, 220, 222, 223, 224–V [21], 224–O [22], 225, 227, 229, 369–O [23], 400, 414, 464, 465, 469, 600, 603, 604–O [24], 606, 618–622, 624–629, 665, 669–O [25] and 670–O [26], as a group.	255,798,114 square meters equivalent.
Sublevel in Group III	
224–V	3,393,051 square meters.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	11,030,580 square meters equivalent.
Levels not in a Group	
369–S [27]	610,158 kilograms.
863–S [28]	8,532,986 numbers.
870	32,771,172 kilograms.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[5] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090.

[6] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[8] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[10] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[11] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[12] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[13] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[14] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[15] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[16] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[17] Category 440–M: HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[18] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[19] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[20] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[21] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[22] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[23] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–

[24] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[25] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[26] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

[27] Category 369–S: only HTS number 6307.10.2005.

[28] Category 863–S: only HTS number 6307.10.2015.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period has been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The conversion factor for merged Categories 638/639 is 12.96 (square meters equivalent/category unit).

Should China become a member of the World Trade Organization (WTO) and the United States applies the Uruguay Round Agreements to China, the limits set forth above may be subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreement on Textiles and Clothing, the Uruguay Round Agreements Act and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30807 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Import Limits and Establishment of Special Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Colombia

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending import limits and establishing special access levels.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to Memoranda of Understanding (MOUs) dated June 27, 1995 and August 9, 1995, Special Access Levels are being established for textile products in Categories 352/652 and 444 under the Andean Special Access Textile Program for textile products which are assembled in Colombia from fabric wholly formed and cut in the United States that are intended for re-export to the United States during the periods April 1, 1995 through December 31, 1995 (Categories 352/652) and January 1, 1995 through December 31, 1995 (Category 444). There is a sublimit for products that are not assembled from U.S. formed and cut fabrics.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a Special Access Level at 22,500,000 dozen for Categories 352/652 and 201,000 numbers for Category 444. The current limits for Categories 352/652 and 444 shall be amended to become sublimits to the Special Access Levels at

levels of 2,250,000 and 80,400 numbers, respectively.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 45144, published on August 30, 1995; 60 FR 45145, published on August 30, 1995; 60 FR 53762, published on October 17, 1995.

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

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 MOUs, 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 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 24, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton, wool and man-made fiber textile products, produced or manufactured in Colombia and exported during the periods April 1, 1995 and through December 31, 1995 (Categories 352/652) and January 1, 1995 and through December 31, 1995 (Category 444).

Effective on December 20, 1995, you are directed, pursuant to Memoranda of Understanding (MOUs) dated June 27, 1995 and August 9, 1995 between the Governments of the United States and Colombia, and under the terms of the Special Access Textile Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), to establish a Special Access Level for properly certified textile products in Categories 352/652 and 444 which are assembled in Colombia from fabric formed and cut in the United States and re-exported to the United States from Colombia during the periods April 1, 1995 through December 31, 1995 (Categories 352/652) and January 1, 1995 through December 31, 1995 (Category 444).

Also pursuant to the MOUs, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to amend the current limits for Categories 352/652 and 444 to become sublimits to the Special Access Levels for textile products not assembled from U.S. formed and cut fabrics.

The new Special Access Levels and their sublimits are listed below:

Category	Special Access Level
352/652 (Special Access).	22,500,000 dozen.
352/652 (non-Special Access sublimit).	2,250,000 dozen.
444 (Special Access)	201,000 numbers.
444 (non-Special Access sublimit).	80,400 numbers.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certifcation requirements established in the directive of December 5, 1995, shall be denied entry unless the Government of Colombia authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30804 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in El Salvador and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). The Guaranteed Access Levels are being established pursuant to Memoranda of Understanding (MOUs) dated September 26, 1994 and July 6, 1995 between the Governments of the United States and El Salvador.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits and guaranteed access levels for 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 60 FR 2740, published on January 11, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the September 26, 1994 and July 6, 1995 MOU's, the Uruguay Round Agreements Act and the ATC, 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 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit,

effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in El Salvador and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	953,391 dozen.
351/651	366,000 dozen.
352/652	6,603,774 dozen.

Imports charged to these category limits for the periods January 1, 1995 through December 31, 1995 (Categories 340/640) and March 27, 1995 through December 31, 1995 (Categories 351/651 and 352/652) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

Pursuant to Memoranda of Understanding dated September 26, 1994 and July 6, 1995 between the Governments of the United States and El Salvador and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on January 1, 1996, you are directed to establish guaranteed access levels for properly certified cotton and man-made fiber textile products in the following categories which are assembled in El Salvador from fabric formed and cut in the United States and re-exported to the United States from El Salvador during the period beginning on January 1, 1996 and extending through December 31, 1996:

Category	Guaranteed access level
340/640	1,000,000 dozen.
351/651	500,000 dozen.
352/652	30,000,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of January 6, 1995, shall be denied entry unless the Government of El Salvador authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30809 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in India

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 62645, published on December 20, 1994). Also see 60 FR 8344, published on February 14, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 9, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on December 15, 1995, you are directed to amend the directive dated February 9, 1995 to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
326	7,302,661 square meters.
369–D [2]	1,116,233 kilograms.
369–S [3]	677,185 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] 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).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30805 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kenya

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Kenya and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits.

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). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

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 the Uruguay Round Agreements Act and the ATC, 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 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kenya and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	416,025 dozen.
360	3,004,625 numbers.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30808 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 18, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 340/640, 342/642, 638/639 and 647/648 are being increased for swing, reducing the limits for Categories 352 and 847 to account for the swing being applied.

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 17339, published on April 5, 1995; and 60 FR 36787, published on July 18, 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 bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 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, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on December 18, 1995, you are directed to amend the directive dated March 30, 1995 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Arab Emirates:

Category	Adjusted limit [1]
340/640	328,858 dozen.
342/642	250,517 dozen.
352	106,261 dozen.
638/639	212.778 dozen.
647/648	288,696 dozen.
847	161,599 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that

these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30806 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Availability of the Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 1996

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Committee for the Implementation of Textile Agreements (CITA) announces that the 1996 Correlation, based on the Harmonized Tariff Schedule of the United States, will be available in late January 1996. Prior assessibility may be available on the Internet via the Wide World Web. The Office of Textiles and Apparel (OTEXA) Homepage address is http://ita.doc.gov/industry/textiles/.

The delay in publication of the 1996 Correlation is due to a number of changes in the Harmonized Tariff Schedule resulting from a December 1995 Presidential Proclamation.

Copies of the Correlation may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room H3100, Washington, DC 20230, ATTN: Correlation, at a cost of $30 per copy. Checks or money orders should be made payable to the U.S. Department of Commerce.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–30811 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Notice of availability of the 1995–96 Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools

SUMMARY: The Secretary announces that the 1995–96 Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools (Directory) is now available. Under the Federal Perkins Loan and National Direct Student Loan programs, a borrower may have repayment of his or her loan deferred and a portion of his or her loan canceled if the borrower teaches full-time for a complete academic year in a selected elementary or secondary school having a high concentration of students from low-income families. In the 1995–96 Directory, the Secretary lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1995–96 school year to qualify for deferment and cancellation benefits.

DATES: The Directory is currently available.

ADDRESSES: Information concerning specific schools listed in the Directory may be obtained from Patricia Reese, Systems Administration Branch, Campus-Based Programs Systems Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., (Regional Office Building 3, Room 4621), Washington, DC 20202–5447, Telephone (202) 708–6726. Information concerning deferment and cancellation of a National Direct or Federal Perkins loan may be obtained from Susan M. Morgan, Section Chief, Campus-Based Loan Programs Section, Loans Branch, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., (Regional Office Building 3, Room 4310), Washington, DC 20202–5447, Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Directories are available at (1) each institution of higher education participating in the Federal Perkins Loan Program; (2) each of the fifty-seven (57) State and Territory Departments of Education; (3) each of the major Federal Perkins Loan billing services, and (4) the U.S. Department of Education, including its regional offices.

SUPPLEMENTARY INFORMATION: The Secretary selects the schools that qualify the borrower for deferment and cancellation benefits under the procedures set forth in 34 CFR 674.53, 674.54 and 674.55 of the Federal Perkins Loan Program regulations.

The Secretary has determined that, for the 1995–96 academic year, full-time teaching in the schools set forth in the 1995–96 Directory qualifies a borrower for deferment and cancellation benefits.

The Secretary is providing the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with their lending institution, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1995–96 academic year. The Office of Postsecondary Education retains, on a permanent basis, copies of past Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Direct and Federal Perkins Loan Cancellations)

Dated: December 13, 1955.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–30760 Filed 12–18–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Extension of the Public Comment Period for the Draft Waste Management Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Extension of the Public Comment Period.

SUMMARY: This notice extends the public comment period for the Department of Energy's (DOE) Draft Waste Management Programmatic Environmental Impact Statement (PEIS) for sixty days, from December 21, 1995 through February 19, 1996. All comments received by that date will be considered in preparing the final PEIS. A Notice of Availability of the draft was published on September 22, 1995 (60 FR 49264) and amended on October 25, 1995 (60 FR 54670) to revise the schedule of public hearings. All other information contained in the Notice of

Availability as amended remains unchanged.

ADDRESSES: Written comments on the draft PEIS should be mailed to the following address:

U.S. Department of Energy, Waste Management PEIS Comments, P.O. Box 3790, Gaithersburg, MD 20885–3790.

Requests for information about and copies of the draft PEIS should be directed to:

Center for Environmental Management Information, P.O. Box 23769,Washington, DC 20026–3769, 1–800–736–3282 or in Washington, D.C.: 202–863–5084.

For information on the DOE National Environmental Policy Act process, contact:

Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42),U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or leave message at 1–800–472–2756.

DATES: The comment period on the draft PEIS will continue through February 19, 1996. Comments postmarked after that date will be considered to the extent practicable.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1995, the Department issued a Notice of Availability (60 FR 49264) on the draft PEIS that included: a brief description of the contents of the document and alternatives analyzed; a list of reading rooms where the full document is available to the public; information on how to obtain additional copies of the document and submit public comments; and a schedule of public hearings. This Notice also announced a ninety-day public comment period extending from September 22, 1995 to December 21, 1995.

On October 25, 1995, the Department issued an amendment (60 FR 54670) to the Notice of Availability. This amendment revised the schedule of public hearings in order to increase accessibility to the hearings. The amendment listed new hearing times and locations in the states of Illinois, New Mexico, New York, Oregon and Washington.

The public comment period is being extended to February 19, 1996, in response to public requests for additional time to review the document and prepare comments. Except as otherwise specified above, all information contained in the September 22, 1995 Notice of Availability as amended remains unchanged.

Issued in Washington, DC, December 13, 1995.

David F. Hoel,

PEIS Document Manager, Office of Waste Management, Environmental Management.

[FR Doc. 95–30751 Filed 12–18–95; 8:45 am]

BILLING CODE 6450–01–P

Oak Ridge Operations Office; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE). Oak Ridge Operations Office, pursuant to 10 CFR 600.7(b)(2), announces its intent to issue on a noncompetitive basis a renewal award to the United States Automotive Materials Partnership (USAMP) for a project entitled, ''Automotive Lightweight Materials Program''. USAMP is a consortium of Chrysler Corporation, Ford Motor Company, and General Motors Corporation. The period of performance for this project is four years with operating funds in the amount of $15,000,000 being allocated for this effort. These funds will be matched equally by USAMP under this cooperative agreement.

PROCUREMENT REQUEST NO.: 05–96OR22363.001.

PROJECT SCOPE: The USAMP mission is to continue to define and conduct pre-competitive, vehicle-related research and development (R&D) in materials and materials processing which will improve the competitiveness of the U.S. automotive industry. USAMP goals are to develop several families of automotive materials that will impact strategic needs of the industry. These needs include improved fuel economy through vehicle weight reduction, improved reliability and durability, reduced friction, noise and vibration, lower cost materials and manufacturing processes, flexibility of design and styling, and reduced emissions. The project participants, including Chrysler, Ford, General Motors, and their suppliers, are making available for this effort their internal automotive R&D facilities, as well as demonstration facilities in manufacturing operations and at suppliers. These capabilities are world class and cannot be matched and/or duplicated except at other automotive manufacturer R&D sites. The recipient's resources, capabilities, facilities, and situation in the private sector are unsurpassed. There exists no other similar company or consortium with the capabilities and supplier base with which to competitively bid this work. Therefore, in accordance with 10 CFR 600.7(b)(2)(i), it has been determined that the activity to be funded is necessary for the satisfactory completion of an activity that will enhance the public benefit derived and for which competition would have a significant adverse effect on completion of the activity. In addition, based upon the consortium partner's and their supplier's unique facilities, equipment, proprietary data, and technical expertise, the recipient has exclusive domestic capability to perform the activities successfully. Eligibility for renewal of this award is, therefore, restricted to USAMP.

FOR FURTHER INFORMATION CONTACT: Mark A. Million, Contract Specialist, U.S. Department of Energy, Oak Ridge Operations Office, Procurement and Contracts Division, AD–423, Oak Ridge, TN 37831–8758, (423) 576–7814.

Issued in Oak Ridge, Tennessee, on December 6, 1995.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations Office.

[FR Doc. 95–30753 Filed 12–18–95; 8:45 am]

BILLING CODE 6450–01–M

Savannah River Operations Office; Interim Management of Nuclear Materials at Savannah River Site

AGENCY: Department of Energy.

ACTION: Record of decision and notice of preferred alternatives.

SUMMARY: The U.S. Department of Energy (DOE) prepared a final environmental impact statement (EIS), ''Interim Management of Nuclear Materials'', (DOE/EIS–0220, October 20, 1995) to assess the potential environmental impacts of actions necessary to manage nuclear materials at the Savannah River Site (SRS), Aiken, South Carolina, until decisions on their ultimate disposition are made and implemented. The actions evaluated in the EIS would stabilize SRS materials that represent environment, safety and health vulnerabilities in their current storage condition or which may represent a vulnerability within the next 10 years. These vulnerabilities are the result of the suspension of nuclear materials production and processing operations which accompanied the end of the Cold War. Although DOE has initiated programmatic and project specific environmental evaluations on the ultimate disposition of the nuclear materials in the DOE complex which are

now surplus to national defense requirements, the implementation of decisions regarding ultimate disposition will take several years. In the interim, DOE wants to eliminate vulnerabilities associated with certain current nuclear material storage configurations in order to protect the environment and the health and safety of workers and the public.

Several reviews conducted by DOE and the Defense Nuclear Facilities Safety Board (DNFSB) have identified environment, safety and health vulnerabilities associated with the continued storage of certain nuclear materials at the SRS in their current location and physical condition. The Final EIS evaluates alternatives for managing these materials. In making the decisions announced in this Record of Decision, DOE considered environmental and other factors, such as costs, security and nuclear nonproliferation, facility usage, technology availability, required new facilities, skilled labor availability, minimization of continuing custodial care for the materials, the need for maintenance or modifications to aging SRS facilities, and, to the greatest possible extent, stakeholder concerns and preferences.

DOE organized the nuclear materials at the SRS into one of three categories: stable, programmatic, and candidates for stabilization. The nuclear materials, the alternatives, and the potential environmental impacts of implementing the alternatives are all described in detail in the Final EIS. DOE is announcing its decisions with respect to most of these nuclear materials today. With respect to the neptunium-237 solutions and targets and the plutonium-239 solutions, DOE has determined that stabilization is necessary and has narrowed the alternatives under consideration regarding how to stabilize these materials. Upon completion of further analysis, DOE will issue a subsequent Record of Decision to further specify the final stabilization strategy for these materials. With respect to the Mark-16 and Mark-22 fuels, and other aluminum-clad targets, DOE has designated new preferred alternatives and will announce its decision on the management of these materials in an amended Record of Decision no sooner than 30 days from the availability of this notice.

RECORD OF DECISION: DOE has decided to initiate actions which will stabilize certain of the SRS materials that represent environment, safety and health vulnerabilities in their current storage condition or which may represent a vulnerability within the next 10 years. Based on the analysis in the Final EIS, and the other factors identified above, DOE has made the following decisions:

Stable Materials

DOE has decided that stable materials can be safely managed in their existing physical and chemical forms over the next several years. Programs and projects to consolidate storage of stable materials in order to reduce surveillance and maintenance costs will continue. These materials will remain stored at SRS until DOE makes decisions relative to their future use or disposition.

Programmatic Materials

DOE identified nuclear materials at SRS which may be required to support ongoing or planned programs after consultation with national laboratories and other appropriate federal agencies, such as the National Aeronautics and Space Administration (NASA). The bulk of the following programmatic nuclear materials at the SRS are contained in acidic solutions stored in tanks in the canyon facilities and would otherwise be considered Candidates for Stabilization.

Plutonium-242

DOE has decided to process plutonium-242 solutions stored in the H-Canyon facility to an oxide using the HB-Line facility. The plutonium-242 oxide will be packaged into containers and stored at the SRS until DOE makes programmatic decisions on its use or disposition.

Americium and Curium

DOE has decided to process solutions of americium and curium isotopes stored in the F-Canyon facility into a glass matrix within small stainless steel canisters, and to store the resulting canisters at the SRS until programmatic decisions on use or disposition are made by DOE. Vitrification equipment will be installed in an existing portion of the F-Canyon facility (previously called the Multi-Purpose Processing Facility). DOE has decided to continue the storage of metal reactor targets and slugs containing americium and curium isotopes in existing SRS basin facilities until DOE makes programmatic decisions on their use or disposition.

Neptunium-237

DOE will dissolve, chemically separate and process neptunium contained in the nine (9) obsolete reactor targets and will process existing solutions in the H-Canyon to either a glass matrix using the same vitrification equipment installed in F-Canyon or to an oxide using the HB-Line facility. The final form of the neptunium-237 depends on actions taken, if any, to consolidate certain activities in the F-Canyon as outlined in a recently issued DOE staff report entitled Facility Utilization Strategy for the Savannah River Site Chemical Separation Facilities (December 1995) . The study principally considers what effect the consolidation of two primary processing areas to one would have on the ability to stabilize nuclear materials at the SRS. Budgetary pressures and safety requirements as well as preserving capability for future missions necessitates a thorough examination of the options for these facilities. The report is available to the public (see below). At this time, DOE is narrowing the potential stabilization alternatives for the neptunium-237 from the four considered in the EIS to either the oxide or vitrified (F-Canyon) form. As noted above, DOE will issue a subsequent Record of Decision to specify which of these two alternatives will be used to stabilize these materials.

To vitrify the neptunium solutions in F-Canyon, DOE would develop or procure a container suitable for transporting the solutions from H-Canyon to F-Canyon and make minor modifications to each facility to support loading and unloading operations. DOE is currently evaluating the feasibility of using a container designed for transport of radioactive solutions which is licensed by the International Atomic Energy Agency (IAEA). In order to process the solutions to an oxide, DOE would start up a new portion of the HB-Line facility (Phase II) which has never been operated. Neptunium recovered from the targets will be processed along with the existing neptunium solutions into either a glass or an oxide. The glass canisters or containers of oxide would be stored inside the shielded canyon facilities or in a new Actinide Packaging and Storage Facility until DOE makes programmatic decisions on their future use or disposition.

Candidates for Stabilization

Materials that are candidates for stabilization are in forms (e.g., liquid) that present inherent management risks, are stored in facilities that were not designed for long-term storage, or both. Generally, these materials currently present, or can be expected to present over the interim period (approximately 10 years), environmental, worker or public safety and health concerns or vulnerabilities.

Highly Enriched Uranium (HEU) Solutions

DOE has decided to stabilize highly enriched uranium solutions stored in H-Area by blending them with depleted uranium at the SRS to produce solutions containing low enriched uranium (LEU). DOE will make minor modifications to the F-Canyon and H-Canyon facilities to enable loading and unloading of the uranium solutions into containers for transport between the facilities and install a spare dissolver in FA-Line. The LEU solutions will either be stored in existing tanks at SRS or converted to a low enriched uranium oxide using the FA-Line facility. The final form of the HEU solutions after they are blended down will be dependent upon the timing of DOE decisions related to the disposition of surplus HEU and upon facility utilization considerations related to cost and schedule.

Plutonium and Uranium Stored in Vaults

DOE has decided to stabilize plutonium and uranium materials stored in vaults by (1) heating or repackaging the material into better containers, and (2) dissolving some materials to chemically remove impurities or radioactive decay products, converting the resulting purified solutions to a metal, an oxide or a glass. DOE will determine the appropriate method to use upon inspection and analysis of the material in each package. DOE will use the H-Canyon, HB-Line, F-Canyon and FB-Line facilities to process the materials and remove impurities that contribute to the stability concerns. DOE will use the FB-Line facility to convert resulting plutonium-239 solutions to a metal, HB-Line to convert resulting plutonium-238 and plutonium-239 solutions to an oxide, and a modified portion of F-Canyon to convert plutonium-239 solutions to a glass matrix. The use of the modified portion of the F-Canyon will be subject to the successful vitrification of the solutions containing americium and curium isotopes (see above) and additional analytical laboratory work. DOE will use a glove box being installed in FB-Line to package the plutonium metal. DOE has decided to construct a new Actinide Packaging and Storage Facility in F-Area to enable heating and repackaging of plutonium metals and oxides to meet new storage criteria (DOE Criteria for Safe Storage of Plutonium Metals and Oxides (DOE-STD–3013–94)) and to provide space for consolidated storage of plutonium and special actinide materials at SRS. The storage standard imposes stringent requirements regarding the chemical stability of plutonium metals and oxides along with requirements for design and construction of packages used for storage of the material. The standard identifies such measures as residual moisture content allowed in the plutonium metal or oxide, materials to be avoided in contact with the plutonium or used in the packaging configuration, thermal loading limitations, and packaging seals, closures and containment features. DOE will incorporate requirements of the IAEA into the design and construction of the new Actinide Packaging and Storage Facility to provide the latitude for placing the nuclear materials under international safeguards in the future. DOE is also pursuing declassification of information related to the amount of plutonium that would be stored in the new facility.

Mark-31 Targets

DOE has decided to stabilize Mark-31 targets (short cylindrical metal slugs fabricated with depleted uranium and, if irradiated, containing plutonium) by dissolving them in the F-Canyon facility and chemically separating the plutonium and depleted uranium from fission products and other constituents. The resulting plutonium solutions will be converted to a metal using the FB-Line facility. Upon installation of a new glove box in FB-Line, the metal will be packaged in accordance with DOE's storage standard. DOE will use the depleted uranium recovered from the Mark-31 targets for blending with highly enriched uranium solutions in H-Area (see above).

Aluminum-clad Taiwan Research Reactor (TRR) Fuel and Experimental Breeder Reactor (EBR)-II Slugs

DOE has decided to stabilize 81 canisters of failed fuel from the Taiwan Research Reactor and one failed canister of de-clad metal slugs from the Experimental Breeder Reactor-II by dissolving the materials in F-Canyon and processing them in conjunction with the Mark-31 targets. The failed fuel and de-clad metal slugs contain natural or depleted uranium and plutonium, similar to the Mark-31 targets. The resulting solutions containing plutonium recovered from the fuel and slugs will be converted to a metal using the FB-Line facility. The plutonium metal will be packaged in accordance with DOE's storage standard. The depleted and natural uranium recovered from the fuel and slugs will be used for blending with the highly enriched uranium solutions stored in H-Area.

Plutonium-239 Solutions

DOE has decided to stabilize plutonium-239 solutions stored in the H-Canyon facility to either a glass using the vitrification equipment installed in a modified F-Canyon, an oxide using the HB-Line facility, or a metal using the FB-Line facility. At this time, DOE is narrowing the potential stabilization alternatives from the five considered in the EIS to either the vitrified (F-Canyon), metal, or oxide form. The final stabilization strategy would depend in part on actions taken, if any, to consolidate certain activities in the F-Canyon as described above for the neptunium-237 stabilization activities. As with the neptunium-237 materials, a subsequent Record of Decision will be issued to specify the final strategy for stabilizing the plutonium-239 solutions.

To vitrify the solutions in F-Canyon, DOE would move the solutions from H-Canyon to F-Canyon using the same container as described above for the transport of the neptunium solutions and also use the same facility modifications for loading and unloading the container. The use of the modified portion (the vitrification equipment) of the F-Canyon would be subject to the successful vitrification of the solutions containing americium and curium isotopes (see above) and additional analytical laboratory work. In order to process the existing solutions to an oxide in HB-Line, DOE would have to start up a new portion of the facility which has never been operated. To process the solutions to metal, DOE would move the solutions from H-Canyon to F-Canyon as described for the vitrification alternative and would use FB-Line to convert the solutions to metal.

Notice: Announcement of Preferred Stabilization Alternatives. DOE also is announcing today new preferred alternatives for managing the Mark-16 and Mark-22 fuels, and the ''other aluminum-clad targets.'' In the Final EIS, DOE identified continued storage (i.e., No Action) as the preferred alternative for managing the Mark-16 and Mark-22 fuels (aluminum-clad, highly enriched uranium fuel from SRS reactors) and the other aluminum-clad targets (irradiated in SRS reactors) pending further review of cost, schedules, and technical uncertainties associated with dry storage techniques for failed fuel. DOE has since completed its review of these issues and is now announcing the designation of processing and blending down to low enriched uranium as the preferred alternative for stabilizing the Mark-16 and Mark-22 fuels. DOE is also

announcing the designation of Processing and Storage for Vitrification in the Defense Waste Processing Facility as the preferred alternative for stabilizing the other aluminum-clad targets. DOE will issue a subsequent Record of Decision on the Mark-16 and Mark-22 fuels and the other aluminum-clad targets no sooner than thirty (30) days from the availability of this notice.

FOR FURTHER INFORMATION CONTACT: For further information on the interim management of nuclear materials at the SRS or to receive a copy of the Final EIS, the Facility Utilization Strategy Study, or this Record of Decision contact: Andrew R. Grainger, NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, P.O. Box 5031, Aiken, South Carolina 29804–5031, (800) 242–8259, Internet: andrew.grainger@srs.gov.

For further information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Atomic Energy Commission, a predecessor agency of the Department of Energy (DOE), established the Savannah River Site in the early 1950's. The SRS occupies approximately 800 square kilometers (300 square miles) adjacent to the Savannah River, mostly in Aiken and Barnwell Counties of South Carolina, about 40 kilometers (25 miles) southeast of Augusta, Georgia, and about 32 kilometers (20 miles) south of Aiken, South Carolina. The SRS mission for the past 40 years has been the production of special radioactive isotopes to support national programs. The primary mission was the production of strategic isotopes (plutonium-239 and tritium) used in the development and production of nuclear weapons for national defense. The Site produced other special isotopes (e.g., californium-252, plutonium-238, americium-241) to support research in nuclear medicine, space exploration, and commercial applications. To produce the isotopes, DOE fabricated selected materials into metal targets and irradiated them in the SRS nuclear reactors. After irradiation and cooling, the targets and reactor fuel were dissolved in acid and the special isotopes were chemically separated and converted to a solid form, either an oxide powder or a metal. The oxide or metal was fabricated into a usable form at the SRS or at other DOE sites. The final form of the material depended on the application (nuclear weapon component, encapsulated medical source, power source, etc.).

Due to the large scale chemical separation capabilities at the SRS, materials containing significant quantities of plutonium-239, uranium-235, and other special isotopes were shipped to the Site for processing and recovery. The materials were in a wide variety of physical shapes and forms, including (1) small encapsulated plutonium sources returned after use by national laboratories and domestic universities; (2) cans or drums of scrap metals and oxides from weapons manufacturing operations at other DOE sites; (3) irradiated metal fuel rods, tubes, plates, or assemblies from experimental DOE reactors, university research reactors, and foreign research reactors; and (4) cans, bottles, or drums containing residues or samples used in laboratory experiments at other DOE sites. All the materials were stored until they could be dissolved and processed in the chemical separations facilities (F-Canyon or H-Canyon). The small sources, scrap metals, oxides, residues, and samples were typically stored in cans, bottles, or drums in safeguarded concrete vaults. The irradiated fuel and targets were stored under water in metal racks or buckets. The offsite materials were typically processed in conjunction with the materials produced at the SRS.

In March 1992, DOE suspended chemical processing operations in the F- and H-Canyon facilities to address a safety concern regarding the capacity of the F- and H-Canyon ventilation systems to withstand an earthquake. That concern, involving the potential failure of the canyon exhaust stack liner in the event of a severe earthquake, was addressed through the preparation of appropriate response procedures, training, and response drills. However, in April 1992, before operation of the F- and H-Canyons could resume, the Secretary of Energy directed that the SRS phase out defense-related chemical separations activities in these facilities. World events in the late 1980's and early 1990's resulted in the end of the Cold War and a reduction in the demand for new material for nuclear weapons. As a result, DOE stopped operating the SRS reactors to produce strategic isotopes. After the Secretarial decision in April 1992, DOE did not process nuclear materials at the SRS chemical separations facilities to recover special isotopes, with the exception of scrap materials containing plutonium-238. DOE continued the processing of plutonium-238 for use as a thermal power source by the National Aeronautics and Space Administration (NASA) in exploratory space missions.

By September 1992, SRS had developed plans to phase out chemical reprocessing. The plans included actions for removing the material that remained in the canyons, spent fuel basins, and storage vaults as a result of the suspension of chemical separation activities in March 1992. In February 1993 the Site requested approval from DOE to restart F-Canyon after the completion of operational readiness reviews conducted as part of the response to the March 1992 safety concern. The SRS made this startup request in light of the Secretary's direction to accelerate the transition of F-Area reprocessing facilities to a standby condition and because all contemplated actions were typical of ongoing or previous facility operations.

During this same time period, DOE was developing new requirements for the performance of operational readiness reviews prior to the startup (or restart) of nuclear facilities. Under these requirements, facilities had to be able to demonstrate the capability to perform satisfactorily in relation to a broad range of topics associated with the safe operation of a nuclear facility. DOE promulgated these requirements in DOE Order 5480.31, ''Startup and Restart of Nuclear Facilities'', which it issued in September 1993. DOE decided that the SRS should apply these requirements to the F and H-Canyons and, in November 1993, determined that the Site should hold the proposed F-Canyon (and FB-Line) restart in abeyance until it had completed a restart review in accordance with the new Order. In part due to stakeholder concerns, DOE decided in January 1994 that absent an emergency condition, there should be no further material processed in the canyons (beyond processing of plutonium-238 for NASA) before completion of an environmental impact statement.

On March 17, 1994, DOE published a Notice of Intent (NOI) (59 FR 12588) to prepare an environmental impact statement on the interim management of nuclear materials at the SRS. The proposed DOE interim management actions are to stabilize those nuclear materials at the SRS that represent a health or safety concern for the public, workers, and the environment and to convert certain materials to a usable form to support DOE program needs. These interim actions are necessary while DOE makes and implements long-term decisions on the disposition of nuclear materials. DOE is addressing

long-term decisions in the Programmatic Environmental Impact Statement for Storage and Disposition of Weapons-Usable Fissile Materials, for which it issued an NOI on June 21, 1994 (59 FR 31985), and in the Disposition of Surplus Highly Enriched Uranium EIS (60 FR 17344, April 5, 1995) (for which the draft EIS was issued in October 1995 (60 FR 55021, October 27, 1995)).

The NOI for the Interim Management of Nuclear Materials EIS requested public comments and suggestions for DOE to consider in its determination of the scope of that EIS, and announced a public scoping period that ended on May 31, 1994. DOE held scoping meetings in Savannah, Georgia, North Augusta and Columbia, South Carolina, on May 12, 17, and 19, 1994, respectively.

In May 1994, the Manager of the Savannah River Operations Office recommended that the DOE Assistant Secretary for Defense Programs seek alternative methods pursuant to the emergency provisions of 10 CFR 1506.11 to comply with the National Environmental Policy Act (NEPA) to allow stabilization of plutonium solutions stored in F-Canyon and Mark-31 targets stored in the L-Reactor Disassembly Basin.

In June 1994, the DOE Office of Environment, Safety and Health performed an independent evaluation of the SRS request for alternative arrangements for compliance with NEPA. DOE evaluated the SRS request in light of the Office of Environment, Safety and Health's report and determined that the appropriate action would be to accelerate the evaluation of stabilization alternatives for the F-Canyon plutonium solutions by preparing a separate expedited environmental impact statement on this subject. In February 1995, following completion of the F-Canyon Plutonium Solutions EIS and issuance of that Record of Decision, DOE resumed F-Canyon operations to eliminate the risks involved in storing plutonium in solution form.

DOE issued a Draft EIS on the Interim Management of Nuclear Materials for public review and comment on March 17, 1995 (60 FR 14432). DOE has revised the Draft EIS in response to the comments received in letters and electronic messages from individuals, organizations, Federal and state agencies and comments received during public hearings held in Savannah, Georgia (April 11, 1995) and North Augusta, South Carolina (April 13, 1995). On October 20, 1995, EPA published a Notice of Availability of the Final EIS on the Interim Management of Nuclear Materials in the Federal Register (60 FR 54226), following distribution of approximately 400 copies to government officials and interested groups and individuals.

DOE prepared this Record of Decision in accordance with the regulations of the Council on Environmental Quality for implementing NEPA (40 CFR 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR 1021). This Record of Decision is based on DOE's Final Environmental Impact Statement on the Interim Management of Nuclear Materials, Savannah River Site, Aiken, South Carolina (DOE/EIS–0220).

II. Studies of Vulnerabilities of Storage of Nuclear Materials at SRS

The cessation of processing activities resulted in a large inventory of nuclear materials being caught in various stages of the production cycle (fabrication, irradiation, reprocessing, and isotope recovery). These materials include irradiated and unirradiated reactor fuel, targets, and components; solutions containing dissolved nuclear materials and recovered isotopes in stainless-steel tanks; and product and scrap forms of metals or oxides in containers (cans, drums, etc.) typically used for temporary storage or shipment off the Site.

Between November 1993 and November 1994, DOE completed two nationwide reviews of how nuclear materials are stored at the SRS and other sites: Spent Fuel Working Group Report on Inventory and Storage of the Department's Spent Nuclear Fuel and Other Reactor Irradiated Nuclear Materials and Their Environment, Safety and Health Vulnerabilities, and Plutonium Working Group Report on Environment, Safety and Health Vulnerabilities Associated with the Department's Plutonium Storage. The reviews identified vulnerabilities with the continued storage of several nuclear materials at SRS: corroded spent fuel and targets stored in water-filled basins; tanks with thousands of gallons of acidic solutions containing plutonium, neptunium, americium and curium isotopes stored in the canyon facilities; and packages containing plutonium-bearing materials stored in vaults. The reviews defined vulnerabilities as conditions or weaknesses that might lead to radiation exposure to the public, unnecessary or increased exposure to workers, or release of radioactive materials to the environment.

The Defense Nuclear Facilities Safety Board (DNFSB) is an independent organization established by Congress to provide oversight of DOE. In May 1994, the DNFSB transmitted Recommendation 94–1 to the Secretary of Energy. In its recommendation, the Board observed that the halt in production of nuclear weapons had frozen the manufacturing pipeline in a state, that for safety reasons, should not be allowed to persist unremediated. The Board concluded from observations and discussions with others that imminent hazards could arise within two to three years unless certain problems are corrected. The Board expressed special concern about specific liquids and solids containing fissile materials and other radioactive substances in spent fuel storage pools, reactor basins, reprocessing canyons, processing lines, and various buildings once used for processing and weapons manufacture. On August 3, 1995, the Chairman of the DNFSB transmitted a staff report to the Assistant Secretary for Environmental Management identifying concerns with leaking containers of corroded spent fuel stored in the Receiving Basin for Offsite Fuel at SRS. The staff report from the Board expressed concerns with DOE having previously identified all of the nuclear materials in the basin as ''stable'' in the Draft EIS issued for public comment.

III. Categories of Nuclear Materials at the Savannah River Site

DOE used information from the two nationwide reviews on spent fuel and plutonium storage, an SRS site-wide review, and input from the DNFSB to categorize the nuclear materials at SRS as either Stable or Candidates for Stabilization. Stable materials have physical and chemical forms that, combined with their storage configurations, do not currently pose environmental, safety, or health concerns and are not likely to pose a concern over the next 10 years. Candidates for Stabilization are materials that exhibit or could be expected to exhibit over the next 10 years, health, safety or environmental vulnerabilities because of their physical condition, chemical composition, or the manner in which they are stored.

DOE categorized materials containing plutonium-242, neptunium-237 and various isotopes of americium and curium as Programmatic after consultation with national laboratories and other appropriate federal agencies, such as NASA. The bulk of these Programmatic nuclear materials are contained in acidic solutions stored in tanks in the canyon facilities and would otherwise be considered Candidates for Stabilization. Programmatic materials contain special isotopes that could be needed to support DOE programs. In their current forms these materials are

not usable and may not be suitable for continued safe storage. DOE may use plutonium-242 in the nuclear weapons stockpile stewardship program. Americium-243 and curium-244 are considered national assets for potential support of research in nuclear medicine, nuclear chemistry, solid-state chemistry, and nuclear physics. The higher isotopes of curium (curium-244 through -248) are irreplaceable feedstocks for the production of californium-252, which is used as a neutron source for both military and industrial applications. DOE may use neptunium-237 in the future production of plutonium-238 to provide a power source for remote terrestrial and space applications. Future DOE decisions will determine if these Programmatic materials will actually be used. Table 1 lists the nuclear materials at SRS in each category.

IV. Alternatives Evaluated in the Final EIS

DOE evaluated the following alternatives for managing the nuclear materials: (a) Continued Storage (i.e., ''No Action'' within the context of NEPA), (b) Processing to Metal, (c) Processing to Oxide, (d) Blending Down to Low Enriched Uranium, (e) Processing and Storage for Vitrification, (f) Vitrification, and (g) Improving Storage. As shown in Table 2, DOE has evaluated the environmental impacts of managing the nuclear materials using one or more of these alternatives. The following is a brief description of each alternative.

A. Continuing Storage (No Action)

Under this alternative, DOE would continue to store materials in their current physical form. DOE would relocate, repackage, or re-can nuclear materials stored in vaults, tanks or basins to consolidate the material or to respond to an immediate safety problem. Periodic sampling, destructive and non-destructive examination, weighing, visual inspection and similar activities would continue in order to monitor the physical and chemical condition of the nuclear material. Chemicals would be added to existing solutions in order to maintain concentration and chemistry within established parameters. Repackaging would include removing materials from a damaged storage container and placing them in a new container or placing the damaged container in a larger container. Re-canning would primarily entail placing damaged or degraded fuel or targets in metal containers, sealing the containers, and keeping them in wet storage.

Many activities would be required by DOE irrespective of the management alternative used. For example, DOE would maintain facilities in good working condition and would continue to provide utilities (water, electricity, steam, compressed gas, etc.) and services (security, maintenance, fire protection, etc.) for each facility. Training activities would ensure that personnel maintain the skills necessary to operate the facilities and equipment. DOE would continue with ongoing projects to alleviate facility-related vulnerabilities associated with storage of the nuclear materials and projects to upgrade or replace aging equipment (ventilation fans, etc.).

As shown in Table 2, DOE designated Continuing Storage as the preferred alternative for managing all stable nuclear materials and metal targets containing isotopes of americium and curium. DOE also designated Continuing Storage as the preferred alternative for managing Mark-16 and Mark-22 fuels and other aluminum-clad targets until additional reviews on dry storage technologies, costs and schedules versus chemical processing techniques could be completed.

B. Processing to Metal

Under this alternative, DOE would convert plutonium nitrate solutions to plutonium metal using the FB-Line facility. After conversion, the metal would be packaged and stored in accordance with DOE's storage standard. A new glove box is being installed in FB-Line to provide the equipment necessary to meet the storage standard criteria for packaging of plutonium metal. The plutonium metal would be stored at SRS until programmatic decisions are made by DOE on long-term storage or disposition.

The plutonium would come from existing nitrate solutions in H-Canyon or would be generated as a result of dissolving and chemically processing plutonium-bearing material in the F-Canyon. Existing nitrate solutions in H-Canyon contain plutonium-239 and plutonium-242. Additional plutonium-239 solutions would be generated by dissolving and processing plutonium-bearing metals and oxides stored in SRS vaults, Mark-31 targets, canisters of failed Taiwan Research Reactor fuel, and a failed canister of de-clad Experimental Breeder Reactor-II metal slugs.

DOE would design or procure a container to transport the existing plutonium-239 and plutonium-242 solutions from H-Canyon to F-Canyon. Some degree of uncertainty exists on the ability to transfer these solutions from one canyon to the other. Minor modifications would be made to the canyon facilities to support loading and unloading of the solutions into the transport container.

As shown in Table 2, DOE designated Processing to Metal as the preferred alternative for stabilizing some of the plutonium and uranium vault materials, the Mark-31 targets, failed Taiwan Research Reactor fuel, and the failed canister of Experimental Breeder Reactor-II slugs.

C. Processing to Oxide

Under this alternative, DOE would convert plutonium to an oxide in HB-Line or FB-Line. The plutonium would come from existing nitrate solutions in H-Canyon or would be generated as a result of dissolving and chemically processing material in H-Canyon or F-Canyon. Existing nitrate solutions in H-Canyon contain plutonium-239 and plutonium-242 and would be converted to an oxide in HB-Line. Additional plutonium-239 nitrate solutions would be generated by dissolving and processing Mark-31 targets, canisters of failed Taiwan Research Reactor fuel, and a failed canister of de-clad slugs from the Experimental Breeder Reactor-II. FB-Line would require modification to convert the resulting plutonium-239 solutions to an oxide. Plutonium-239 solutions and a small quantity of plutonium-238 solution could also be generated by dissolving plutonium-bearing metals and oxides currently stored in SRS vaults. This material would be dissolved and processed in H-Canyon/HB-Line and converted to an oxide in HB-Line. After conversion, the plutonium oxide would be packaged and stored in accordance with the DOE Criteria for Safe Storage of Plutonium Metals and Oxides (DOE–STD–3013–94). Modifications would be made to the FB-Line facility to provide the equipment necessary to heat and package the oxide in accordance with the DOE storage standard or a new Actinide Packaging and Storage Facility would be constructed.

DOE would convert neptunium-237 solutions to an oxide in HB-Line. The neptunium would come from existing solutions in H-Canyon and from dissolving and processing the obsolete reactor targets containing neptunium in H-Canyon. Additionally, if one of the alternatives involving dissolution and chemical separation (Processing to Oxide or Blending Down to Low Enriched Uranium) were implemented for stabilization of irradiated SRS reactor fuels (Mark-16 and Mark-22), neptunium would be recovered. After

conversion of the neptunium solutions to an oxide, the oxide would be packaged and stored in the Actinide Packaging and Storage Facility.

DOE would convert the americium and curium solutions in F-Canyon to an oxide. DOE would modify an existing portion of F-Canyon to provide the necessary equipment. After conversion, the americium and curium oxide would be packaged and stored in an existing vault or the new Actinide Packaging and Storage Facility. DOE could also transport the obsolete targets and slugs containing americium and curium isotopes to F-Canyon, dissolve them and convert the resulting solutions in a similar manner.

DOE would convert highly enriched uranium solutions to highly enriched uranium oxide. To provide conversion capability, DOE would complete the partially constructed Uranium Solidification Facility (USF) in H-Canyon. DOE would also dissolve Mark-16 and Mark-22 fuels containing highly enriched uranium in H-Canyon and convert the resulting solutions to an oxide in the same manner. The highly enriched uranium oxide would be packaged and stored in a vault in USF until DOE makes long-term management and disposition decisions.

As shown in Table 2, DOE designated Processing to Oxide as the preferred alternative in the Final EIS for stabilizing plutonium-242 solutions, neptunium-237 solutions and targets, plutonium-239 solutions, and some of the plutonium and uranium vault materials.

D. Blending Down to Low Enriched Uranium

This alternative is only relevant to materials containing highly enriched uranium. Existing solutions of highly enriched uranium stored in H-Area would be blended with existing depleted uranium at SRS. DOE would modify the canyon facilities to support loading and unloading of tanks used for transport and install a spare oxide dissolver in FA-Line. The highly enriched and depleted uranium would be blended to produce a low enriched uranium solution.

Mark-16 and Mark-22 fuels containing highly enriched uranium would be transported to either H-Canyon or F-Canyon by rail casks, dissolved in nitric acid, and the highly enriched uranium separated from fission products and other materials. The highly enriched uranium solutions would be blended with natural or depleted uranium to produce low enriched uranium solutions. The low enriched uranium solutions would be converted to an oxide using FA-Line. The oxide would be stored in drums in existing facilities or in a new warehouse constructed at SRS.

Dependent upon the timing of future DOE decisions, the highly enriched uranium solutions and the uranium recovered from the dissolution of Mark-16 and Mark-22 fuels could also be dispositioned in conjunction with other highly enriched uranium (by commercial sale, etc.).

As shown in Table-2, DOE designated Blending Down to Low Enriched Uranium as the preferred alternative for stabilizing highly enriched uranium solutions.

E. Processing and Storage for Vitrification in the Defense Waste Processing Facility (DWPF)

DOE would perform research and development work to develop a method for chemically adjusting existing solutions in the canyons in order to transfer them to the high level waste tanks in F- or H-Area. The research and development work would be to ensure nuclear criticality safety due to the large amounts of plutonium-239 and uranium-235 contained in the existing solutions and to evaluate the effects on the systems and facilities used to store and treat the liquid high level waste. Upon completion of the studies, existing solutions containing plutonium-239, plutonium-242, highly enriched uranium, neptunium-237, and americium and curium isotopes would be chemically adjusted and transferred to the high level waste tanks via underground pipelines.

Plutonium-bearing vault materials would be dissolved in either a canyon or B-Line dependent upon the amount of material and the chemical composition. The degraded reactor components (fuel and targets) stored in water-filled basins would be transported by rail casks to F- or H-Canyon and dissolved in nitric acid. The resulting solutions from dissolution of the vault materials and reactor components would be chemically adjusted and transferred to the high level waste tanks along with existing canyon solutions. The solutions would be mixed with the existing volume of high level waste stored in the F- and H-Area tanks. The bulk of the radioactivity in the solutions would eventually be immobilized in borosilicate glass by the Defense Waste Processing Facility (DWPF). The glass would be contained within stainless steel canisters that would be stored in an adjacent facility to the DWPF awaiting geological disposal by DOE. The bulk of the liquid would be immobilized by the Saltstone facility into a grout containing very low levels of radioactivity. The grout would be poured into concrete vaults located at the Saltstone facility.

As shown in Table-2, Processing and Storage for Vitrification in DWPF was not designated by DOE as a preferred alternative for any of the materials.

F. Vitrification (in F-Canyon)

This alternative would involve modifying existing space in the F-Canyon, providing equipment to vitrify radioactive solutions using a process similar to that developed for the DWPF. The equipment would be much smaller in scale to that of the DWPF and the stainless-steel canisters of glass produced would contain much higher concentrations of actinides, including fissile isotopes. After completing the modifications, DOE would vitrify existing solutions of plutonium-242, plutonium-239, neptunium-237, and americium and curium isotopes. The solutions stored in H-Canyon would be transported to F-Canyon for vitrification upon development (or procurement) of a suitable shipping container and upon completion of modifications to the canyon facilities for loading and unloading.

Plutonium-bearing vault materials would be dissolved in either a canyon or a B-Line and vitrified in the same manner. Similarly, degraded reactor components (Mark-31 targets, canisters of failed TRR fuel and the failed canister of EBR-II slugs) would be transported by rail cask to F-Canyon, dissolved in nitric acid, and the plutonium vitrified. The depleted or natural uranium contained in the reactor components would be chemically separated and stored in tanks or used for blending with highly enriched uranium (see description of Blending Down to Low Enriched Uranium).

The obsolete reactor targets and slugs containing neptunium, americium and curium would be transported to F-Canyon, dissolved in nitric acid, and the programmatic isotopes chemically separated from fission products and other materials. The resulting neptunium, americium and curium solutions would be vitrified in conjunction with the existing solutions containing those same isotopes.

Neptunium separated from Mark-16 and Mark-22 fuels processing in F-Canyon for blending down to low enriched uranium would be vitrified in conjunction with the existing neptunium solutions.

As shown in Table-2, DOE designated Vitrification in F-Canyon as the preferred alternative for stabilizing americium and curium solutions and

some of the plutonium and uranium vault materials.

G. Improving Storage

This alternative would be applicable to plutonium-bearing materials stored in vaults and degraded reactor components stored in water-filled basins. Based on earlier DOE decisions to stabilize plutonium solutions stored in F-Canyon (see background), DOE is modifying the FB-Line facility by installing a glove box to enable handling and packaging of plutonium without the use of plastic and other organic materials (rubber, elastomeric seals, etc.). The existing plutonium metal stored in vaults would be repackaged in FB-Line to meet the DOE storage standard. DOE would provide the capability to heat, repackage, and store plutonium oxide by modifying an existing facility (FB-Line or Building-235) or by building a new Actinide Packaging and Storage Facility in F-Area. The plutonium-bearing vault materials would be repackaged to meet the DOE storage standard and would be stored at SRS until DOE makes long-term storage or disposition decisions.

For degraded reactor components (Mark-31 targets, Mark-16 and -22 fuels, other aluminum-clad targets, failed TRR fuel, and the failed canister of EBR-II metal slugs), DOE would remove the materials from the basins and place them in dry storage. Because of technical uncertainties (e.g., potentially pyrophoric hydrides of uranium, elimination of potential reactive material) associated with the dry storage of failed fuel and targets, DOE would perform additional research to demonstrate concepts for drying and placing the materials into canisters for storage. Work related to the dry storage of low enriched uranium and commercial spent nuclear fuel has already been done in the United States and other countries. This work has not focused on aluminum-clad highly enriched uranium fuels. In conjunction with this work, DOE would design and construct a Dry Storage Facility at SRS.

A typical dry storage facility would be a Modular Dry Storage Vault. This facility would consist of four major components: a receiving/unloading area, fuel storage canisters, a shielded container handling machine, and a modular vault for storing the fuel in storage canisters. As a variation, canisters could be stored in dry storage casks rather than a vault. The degraded fuel and target materials would be removed from the basins and dried; canned or placed directly in canisters; the cans or canisters would be filled with an inert gas to inhibit further corrosion; and if cans were used, loaded into storage canisters. This process could be varied as dictated by the condition of the material. After the targets were loaded in a canister, a machine would transport the canister to the modular storage vault. The vault would consist of a large concrete structure with an array of vertical tubes to hold the canisters. The canister transport machine would move into the vault and load the canister into a storage tube. A shielded plug would be placed on top of the tube. The transport machine and the vault storage tubes would be heavily shielded to reduce radiation levels from the canister. To use dry storage casks, the machine would transport the canister to a cask (horizontal or vertical) and discharge the canister into the cask, and then the cask would be sealed.

DOE evaluated the potential environmental impacts associated with two variations for implementing this alternative. The first involved the use of a traditional project schedule for design and construction of the facility, estimated to take about ten years. The second was an accelerated schedule for design and construction, estimated to take about five years. Until the Dry Storage Facility was completed, DOE would store the materials in existing basins, as described under Continued Storage (No Action).

As shown in Table-2, DOE designated Improving Storage as the preferred alternative for stabilizing some of the plutonium and uranium vault materials.

V. Environmental Impacts of Alternatives

The Final EIS for Interim Management of Nuclear Materials evaluated alternative stabilization methods for each category of nuclear materials at the Savannah River Site, as shown in Table 2. DOE analyzed the potential environmental impacts that would result from implementation of the alternatives and believes there would be little or no impact from implementation of any of the alternatives for any material group in the areas of geologic resources, ecological resources (including threatened or endangered species), cultural resources, aesthetic and scenic resources, noise, and land use. Impacts in these areas would be limited because facility modifications or construction of new facilities would occur within existing buildings or industrialized portions of the Savannah River Site. DOE anticipates that the existing SRS workforce would support any construction projects and other activities required to implement any of the alternatives. As a result, DOE expects negligible socioeconomic impacts from implementation of any of the alternatives.

Management alternatives requiring the use of the large chemical separations facilities (the canyons and B-Lines) would have greater environmental impacts during the time dissolving, processing or conversion activities are underway than when these facilities are storing nuclear materials. After materials have been stabilized, impacts of normal facility operations related to management of those materials would decline, and potential impacts of accidents associated with those materials would be reduced with certain kinds of accidents eliminated. Potential health effects from normal operations from any of the alternatives, including those involving the operation of the canyon facilities, would be low and well within regulatory limits. Alternatives requiring the use of the canyons are: Processing to Metal, Processing to Oxide, Blending Down to Low Enriched Uranium, Processing and Storage for Vitrification in the DWPF, and Vitrification (F-Canyon).

Improving Storage alternatives generally have lower impacts in the near term because they involve only heating, drying and repackaging the nuclear materials. These alternatives also potentially involve the use of new facilities, such as an Actinide Packaging and Storage Facility and a Dry Storage Facility. The newer facilities would incorporate improved designs for remote handling, shielding, containment, air filtration, etc.; these improvements could reduce worker exposures and releases to the environment below levels associated with existing storage basins and vaults.

Annual impacts from normal operations and potential accidents associated with material storage would be reduced after material stabilization alternatives are implemented. Stabilization alternatives requiring longer periods of time to complete are estimated to have relatively higher impacts from normal operation and potential accidents than alternatives requiring less time to complete.

Continuing Storage (or ''No Action'') alternatives are estimated to result in relatively low annual environmental impacts, but the impacts would continue for an indefinite period of time. Stabilization alternatives typically are estimated to result in slightly higher annual environmental impacts than ''No Action'' in the near-term, but upon completion of the stabilization action, result in lower annual impacts. Under Continuing Storage alternatives, no actions would be taken to chemically or

physically stabilize the storage conditions and reduce the potential for accidents. All of the stabilization alternatives, upon completion of the actions required, are estimated to reduce the potential for accidents and the associated consequences. Several of the stabilization alternatives would involve a short-term increase in the risks from accidents until the required actions are completed.

Emissions of hazardous air pollutants and releases of hazardous liquid effluents for any of the alternatives would be within applicable federal standards and existing regulatory permits for the SRS facilities. Similarly, high level liquid waste, transuranic waste, mixed hazardous waste and low level solid waste generated by implementation of any of the alternatives would be handled by existing waste management facilities. All of the waste types and volumes are within the capability of the existing SRS waste management facilities for storage, treatment or disposal.

SRS facilities that will be used to stabilize and store the nuclear materials incorporate engineered features to limit the potential impacts of facility operations to workers, the public and the environment. All of the engineered systems and administrative controls are subject to DOE Order requirements to ensure safe operation of the facilities. No other mitigation measures have been identified; therefore DOE need not prepare a Mitigation Action Plan.

VI. Other Factors

In addition to comparing the environmental impacts of implementing the various alternatives, DOE considered other factors in reaching the decisions announced here. These other factors included issues addressed by the National Academy of Sciences in the 1994 report, Management and Disposition of Excess Weapons Plutonium; the Office of Technology Assessment's 1993 report, Dismantling the Bomb and Managing the Nuclear Materials; comments received during the scoping period for the EIS on the Interim Management of Nuclear Materials, and comments received on the Draft and Final EIS's. The other factors considered are briefly summarized in the following paragraphs.

Implementation of certain alternatives would require construction and operation of new facilities. The new facilities described in the EIS are: (1) F-Canyon Vitrification Facility (for the Vitrification (F-Canyon) Alternative), (2) a Dry Storage Facility (for the Improving Storage Alternative for degraded reactor fuel and targets currently stored in basins), (3) a Uranium Solidification Facility (for the Processing to Oxide Alternative for highly enriched uranium solutions in H-Area and the Mark-16 and -22 fuel stored in basins), (4) an Actinide Packaging and Storage Facility (for the Processing to Metal and Processing to Oxide Alternatives for plutonium-bearing materials, for the Improving Storage Alternative for plutonium-bearing vault materials, for the Processing to Oxide Alternative for neptunium-237 materials, and for the Vitrification (F-Canyon) Alternative for materials containing plutonium and neptunium). Implementation of some alternatives would require minor modifications of existing facilities, as described in the EIS. Examples include minor modifications to the F-Canyon and H-Canyon facilities to provide the capability to load and unload radioactive solutions into containers for transport between facilities and installation of a spare dissolver in the FA-Line facility.

Preventing the spread of nuclear weapons has been a fundamental national security and foreign policy goal of the United States since 1945. The current U.S. policy is summarized in the White House Fact Sheet on Nonproliferation and Export Control Policy, dated September 27, 1993. This policy makes it clear that the United States does not encourage the civil use of plutonium and, accordingly, does not itself engage in plutonium reprocessing (that is, separation of plutonium from spent nuclear fuel) for either nuclear power or nuclear explosives purposes. In addition, it is U.S. policy to seek to eliminate where possible the accumulation of stockpiles of highly enriched uranium and plutonium. The stabilization alternatives vary in regard to the attractiveness of the stabilized plutonium or highly enriched uranium for use in nuclear weapons (either by the U.S. or an adversary). None of the alternatives would denature or eliminate the plutonium from the current inventory; it would still exist in some form. Of the alternatives for stabilization of highly enriched uranium, only Processing and Storage for Vitrification in the Defense Waste Processing Facility and Blending Down to Low Enriched Uranium would reduce the inventory of highly enriched uranium. Because of the potential concern regarding any processing and consolidating plutonium or highly enriched uranium from the SRS inventory, the Secretary of Energy has committed that any separated or stabilized plutonium-239 and highly enriched uranium would be prohibited from use for nuclear explosive purposes. This prohibition would apply to plutonium-239 and highly enriched uranium stabilized through actions implemented by this Record of Decision.

In the EIS on the Interim Management of Nuclear Materials, DOE examined the potential impacts associated with an integrated implementation schedule for management of nuclear materials. DOE examined several combinations of alternatives, or management scenarios, including continued storage of all the materials (No Action), stabilization using the preferred alternatives for each material, and alternatives requiring a minimum of chemical processing. DOE expects that it will take at least 6 to 7 years to stabilize all of the nuclear materials at SRS under any scenario due to the resources (primarily trained personnel) required and the time required to make facility modifications or construct new facilities. DOE has developed an optimum schedule of proposed actions in response to DNFSB Recommendation 94–1. DOE will revise and update the schedule as stabilization actions proceed and as future budget considerations dictate.

DOE considered technology availability and technical feasibility in reaching decisions on management alternatives. DOE considered the extent to which technology development would be required and the likelihood of success of such endeavors. All of the alternatives are technically feasible. In general, however, the more alternatives vary from the historical processes and facilities used at SRS, the greater the technical uncertainty and extent to which new facilities or modifications to existing facilities would have to be made.

DOE evaluated labor availability and the existence of core competency at the SRS in reaching decisions on management alternatives. DOE expects to use the existing workforce at SRS to implement the management alternatives selected. There would be differences between the level of personnel knowledge and training required for each alternative. In general, as an alternative varies from historical processes and facilities used at the SRS for material management, additional training of personnel may be required. The more unique or extensive the differences from past facility operations, the more training may be required.

In reaching decisions on management alternatives, DOE considered the fact that many SRS facilities are 30 to 40 years old and do not meet all current DOE requirements for the design and

construction of new nuclear facilities. DOE and the DNFSB have conducted many reviews to evaluate facility vulnerabilities and assess facility compliance with current requirements. One vulnerability common to many older facilities is that the facility could sustain structural damage in the event of a severe earthquake. Rather than initiate extremely expensive modifications, DOE has chosen to mitigate the potential consequences of a severe earthquake by using engineering safeguards, such as structurally reinforcing tanks, and administrative controls, such as limiting the amount of radioactive material that can be stored in a facility. Ultimately, removal of nuclear materials from vulnerable facilities would reduce the risks. All of the alternatives except Continued Storage (No Action) would support DOE's objective of removing nuclear materials from vulnerable facilities in preparation for decontamination and decommissioning.

Some level of custodial care will be required for the nuclear materials as long as they are stored at the SRS, and DOE considered minimizing the level of custodial care in reaching management decisions. Radioactive solutions require the greatest amount of custodial care to ensure safe storage, and radioactive materials in a glass matrix (i.e., vitrified) are expected to require the least. Many alternatives would produce concentrated oxide or metal forms that would be packaged and stored in compliance with new DOE standards for storage of nuclear materials. Compliance with the storage criteria will reduce the need to handle and repackage the material and is intended to minimize the future level of custodial care required.

In reaching decisions on management alternatives, an important consideration for DOE was cost. DOE evaluated the costs of implementing the various management alternatives for each type of material on both an individual basis and collectively, as part of an integrated stabilization program. DOE estimates it will cost approximately $3 billion to operate and staff the facilities used to stabilize and store the SRS nuclear materials over the next 10 years. A large fraction of this cost (approximately $2.8 billion) would be required for continued storage of the nuclear materials even if DOE implemented no stabilization alternatives (i.e., No Action). DOE expects annual costs of operating and maintaining the facilities to decrease as nuclear materials are removed, stabilized and consolidated for interim management. DOE expects further reductions in costs as, and if, facilities are deactivated.

VII. Environmentally Preferable Alternatives

As described in the Final EIS for Interim Management of Nuclear Materials, certain management alternatives are expected to result in lower environmental impacts than others. However, a single alternative was rarely estimated to have lower impacts for all environmental factors evaluated by DOE. For example, an alternative might be expected to result in lower releases of hazardous pollutants to air or water than the other alternatives, but might generate slightly higher amounts of radioactive waste. DOE reviewed the environmental impacts estimated for the alternatives evaluated for each type of nuclear material and identified the following as the environmentally preferable for each. The health effects from any of the alternatives are all low and well within regulatory limits. Included below is a qualitative description of how the identified environmentally preferable alternative compared with the other stabilization alternatives for the environmental factors that generally are of most interest.

Plutonium-242—Processing and Storage for Vitrification (DWPF)

Processing and Storage for Vitrification in DWPF is the environmentally preferable alternative for stabilizing the plutonium-242 solutions stored in H-Canyon. Processing and storage for vitrification in DWPF is estimated to result in the lowest radiological doses to the offsite public and the SRS workers; result in air and water emissions of hazardous pollutants comparable to the other alternatives; and result in the least amount of transuranic and mixed waste generated among the alternatives with comparable amounts of high level and low level waste.

Americium and Curium—Processing and Storage for Vitrification (DWPF)

Processing and storage for vitrification in the DWPF is the environmentally preferable alternative for stabilizing solutions and metal targets and slugs containing americium and curium isotopes. Of the stabilization alternatives, processing and storage for vitrification in DWPF is estimated to result in the lowest radiological doses to the offsite public and the SRS workers; have the lowest level of hazardous pollutant emissions to the air with comparable levels of liquid effluent emissions; and result in the least amount of high level, transuranic and mixed waste with comparable amounts of low level waste.

Neptunium-237—Vitrification (F-Canyon)

Vitrification in F-Canyon is the environmentally preferable alternative for stabilizing solutions and targets containing neptunium. Although vitrification in F-Canyon is estimated to result in slightly higher radiological doses to the SRS workers, it is estimated to result in the lowest radiological doses to the offsite public. Similarly, although it could result in higher airborne emissions of hazardous pollutants, the levels of liquid effluent emissions would be comparable to the other alternatives. Vitrification (F-Canyon) would generate the least amount of high level, transuranic and mixed waste, and would generate comparable amounts of low level waste to the other alternatives.

Plutonium-239 Solutions—Vitrification (F-Canyon)

Vitrification in F-Canyon is the environmentally preferable alternative for stabilizing the plutonium-239 solutions stored in H-Canyon. Of the stabilization alternatives, Vitrification in F-Canyon is estimated to result in the lowest radiological doses to the offsite public and SRS workers; result in comparable levels of hazardous pollutant emissions to the air and water; and result in the least amount of transuranic, mixed, and low level waste with comparable amounts of high level waste.

Highly Enriched Uranium Solutions—Processing to Oxide

Processing to Oxide is the environmentally preferable alternative for stabilizing highly enriched uranium solutions stored in H-Area facilities. Although it is estimated to result in slightly higher radiological doses to the offsite public and SRS workers, the Processing to Oxide alternative has comparable levels of air and water emissions to the other alternatives and would generate the least amount of high level, transuranic, mixed and low level waste.

Plutonium and Uranium Vault Materials—Improving Storage

Improving Storage in the environmentally preferable alternative for stabilizing plutonium and uranium vault materials. Although it is estimated to result in higher radiological doses to the offsite public and SRS workers, the Improving Storage alternative has comparable levels of air and water emissions to the other alternatives and

would generate the least amount of high level and mixed waste, with comparable amounts of transuranic and low level waste.

Mark-31 Targets—Improving Storage (Accelerated Schedule)

Improving Storage on an accelerated schedule is the environmentally preferable alternative for stabilizing the Mark-31 targets. Improving storage is estimated to result in lower radiological doses to the offsite public with doses to the SRS workers comparable to other alternatives; have the lowest estimates of air and water emissions; and result in the generation of the least amount of high level and transuranic waste with comparable levels of mixed and low level waste. However, improving storage will not reverse or arrest the corrosion of these targets and the release of fission products and radionuclides to the basin water for the several years prior to the construction and operation of the improved storage capability.

Failed TRR Fuel and EBR–II Slugs—

Improving Storage (Accelerated Schedule) Improving Storage on an accelerated schedule is the environmentally preferable alternative for stabilizing failed TRR fuel and EBR–II slugs stored in canisters in the Receiving Basin for Offsite Fuels. Improving Storage is estimated to result in the lowest radiological doses to the offsite public with doses to the SRS workers comparable to other alternatives; have the lowest estimates of air and water emissions; and, result in the generation of the least amount of high level, transuranic, mixed, and low level waste. However, as with the Mark-31 targets, improving storage will not reverse or arrest the corrosion of the fuel or slugs and the release of fission products and radionuclides to the basin water for the several years prior to the construction and operation of the improved storage capability.

VIII. Decision

After completion of the Final EIS, DOE received several letters from stakeholders on issues related to the interim management of nuclear materials at the SRS. Letters were received from the following individuals and organizations: DNFSB, U.S. Senator Strom Thurmond, U.S. Representative Charlie Norwood, U.S. Representative Lindsey Graham, U.S. Representative Edward J. Markey, U.S. Representative Frank Pallone, Jr., the Energy Research Foundation (ERF), the Natural Resources Defense Council (NRDC), and Governor David M. Beasley of South Carolina. Two principal issues were raised in the letters: (1) the method to be used for the interim- to long-term management of spent nuclear fuel, and (2) the operational status of the F- and H-Canyon processing facilities. The DNFSB, Congressional, and Governor Beasley letters recommended that DOE stabilize the Mark-16 and Mark-22 fuels through chemical treatment (processing), and that both the F- and H-Canyon facilities be maintained in support of DOE missions and tasks. The ERF/NRDC joint letter urged the Department to thoroughly consider alternatives, to include the development of new methods, for the management of spent nuclear fuel, and to consider carefully all factors, particularly safety, environmental, nonproliferation, and budgetary issues, in making its materials management and facility utilization decisions. Congressmen Markey and Pallone's joint letter urged the Department to pursue the closing of the H-Canyon at the earliest possible date on the understanding that substantial savings to taxpayers could be achieved. After careful consideration of the issues identified in these letters (addressed below), along with the analyses of environmental impacts and other factors identified in the Final EIS, DOE has made the following decisions for the interim management of the nuclear materials at the Savannah River Site:

Stable Material—Continuing Storage

DOE will continue storage of the stable materials in their existing physical and chemical forms. Programs and projects to consolidate material storage in order to reduce surveillance and maintenance costs to DOE will continue.

Plutonium-242—Processing to Oxide

DOE has decided to process the existing plutonium-242 solutions stored in H-Canyon to a purified oxide in HB-Line. The plutonium-242 oxide will be packaged and stored at the SRS. Processing to Oxide was selected for many reasons. First, the facilities and equipment to implement the alternative already exist, with HB-Line specifically designed for converting purified plutonium nitrate solutions to an oxide. The portions of the HB-Line facility required to convert the solutions to an oxide are already fully staffed and operational, nearing completion of plutonium-238 work in support of NASA. Although DOE could transfer the solutions to the adjacent high level waste tanks in H-Area along with other liquid high level waste for processing, storage and eventual vitrification in DWPF (the environmentally preferable alternative), the concentration of plutonium-242 would be significantly diluted due to the existing volume of liquids contained in the high level waste tanks (approximately 1 million gallons in each tank). The dilution and mixing of the plutonium-242 with cesium, strontium and other long-lived fission products contained in the high level waste tanks would effectively render any future recovery or use of the material impractical due to cost and technical complexity. In order not to preclude its recovery while the future use of plutonium-242 is being decided, DOE considers it prudent to stabilize the material to a concentrated oxide form, thereby preserving its availability for potential use. In evaluating the alternatives, DOE determined Processing to Oxide could be implemented sooner than the other alternatives, thus eliminating the need to further extend storage of the solutions. Although Processing to Oxide is not the environmentally preferable alternative, it is estimated to result in a similar level of impacts. Processing to Oxide is estimated to have slightly higher radiological doses to the public and worker populations, but result in the least amount of high level waste for the stabilization alternatives.

Americium and Curium—Vitrification (F-Canyon)—Solutions; Continued Storage (No Action)—Metal Targets and Slugs

DOE has decided to process the existing solutions containing americium and curium isotopes in F-Canyon to a glass contained within small stainless steel canisters. DOE will modify an existing portion of F-Canyon (previously called the Multi-Purpose Processing Facility) to install the necessary vitrification equipment. The glass canisters will be stored at the SRS until DOE makes programmatic decisions on the use of the americium and curium. DOE has also decided to continue wet storage of the reactor targets and slugs until such programmatic decisions are made.

DOE selected vitrification in F-Canyon for several reasons. First, no capability currently exists in either F-Canyon or its associated facilities (FA-Line or FB-Line) to convert the americium and curium solutions to a solid physical form suitable for continued safe storage. DOE could transfer the solutions via underground pipelines to the adjacent high level waste tanks in F-Area. The solutions, however, would have to remain stored in the high level waste tanks until they could be vitrified into glass by the DWPF (the environmentally preferable alternative). Vitrification of the

solutions by DWPF would not occur within the next 10 years due to the large existing inventory (34 million gallons) of high level waste which must be vitrified in DWPF. Transfer of the solutions to the high level waste tanks would result in significant dilution of the concentration of the americium and curium isotopes due to the large volume of the tanks (approximately 1 million gallons). The americium and curium isotopes would also be mixed with long-lived fission products such as cesium and strontium if transferred to the high level waste tanks. The vitrified glass form produced in DWPF would contain very dilute quantities of americium and curium combined with highly radioactive fission products. This would render use of the americium and curium isotopes impractical due to the technical complexity and cost of future recovery.

To maintain the americium and curium in a concentrated physical form, thus preserving their potential future use, DOE evaluated alternatives for converting the solutions to either an oxide or glass. Either form could support future use of the material, if required. The conversion process associated with the two alternatives would require a similar level of modifications and new equipment to be installed in F-Canyon. However, DOE found that the glass form offers significant advantages over the oxide form for future storage and handling. The glass matrix produced by the vitrification process provides some ''self-shielding'' compared to oxide. This reduces the radiation levels associated with the glass form, thereby reducing exposure to workers. The glass matrix is also a much less dispersible form of radioactive material compared to the oxide in the event of a severe facility-related accident, such as a major fire. Americium and curium isotopes do not pose a nonproliferation concern, irrespective of their physical form. Existing personnel at SRS will be used to operate the facilities and equipment required, and the level of additional training required would be similar whether DOE selected conversion to oxide or glass.

DOE has decided to maintain storage of the metal targets and slugs containing significant quantities of americium and curium isotopes in the existing storage basins at SRS primarily because there is not an immediate need for the isotopes. The targets are stored in the Receiving Basin for Offsite Fuel (RBOF). The RBOF facility has excellent water chemistry and the targets are in good physical condition, capable of being safely stored over the next 10 years. The metal slugs represent a very small amount of nuclear material whose continued storage can be accommodated by relocation to either the RBOF facility or the K-Reactor disassembly basin. DOE has made physical upgrades to the K-Reactor disassembly basin to provide storage conditions comparable to those in RBOF. By maintaining the targets and slugs in storage at the SRS, DOE can preserve the option of recovering, if needed, the americium and curium isotopes at a later date for programmatic use. The targets and slugs contain varying amounts and isotopes of americium and curium. It would not necessarily be advantageous for DOE to process and recover all of the americium and curium isotopes into a single physical form for continued storage, because such an operation would result in the mixing of many isotopes, increasing the technical complexity of their future separation and recovery or making it impractical.

Neptunium-237—Vitrification (F-Canyon) or Processing to Oxide

DOE has narrowed its alternatives under consideration for the stabilization of the neptunium-237 materials (neptunium contained in the H-Canyon solutions and nine (9) obsolete reactor targets) into either one of two physical forms: (1) a glass matrix using the same modified portion of F-Canyon used to vitrify the americium and curium solutions (the environmentally preferable alternative), or (2) a purified oxide using the HB-Line facility. Only one of these stabilization methods will be used. Both the vitrified glass and oxide forms can be stored safely pending DOE's decision on use or disposition. To implement the vitrification alternative, DOE would move the neptunium solutions from H-Area to F-Area using a special truck container designed for transport of highly radioactive solutions. The nine (9) obsolete reactor targets containing neptunium would be transported to F-Canyon in shielded casks, dissolved and the neptunium chemically separated from radioactive decay products and other impurities. The resulting purified neptunium solution would be vitrified in F-Canyon. SRS would store the canisters of neptunium glass until programmatic decisions on neptunium's use are made by DOE. To implement the Processing to Oxide alternative, DOE would start up and operate the Phase II portion of the HB-Line facility and would dissolve and process the obsolete reactor targets in H-Canyon.

Potential environmental impacts, as detailed in the Interim Management of Nuclear Materials EIS, of implementing any of the stabilization alternatives, irrespective of location, are low and well within acceptable regulatory and management limits. In addition, there are no substantial differences in potential environmental impacts should DOE operate either or both canyon facilities.

The final form of the neptunium depends on actions taken, if any, to consolidate certain activities in the F-Canyon as outlined in the facility utilization strategy report. The study principally considers what effect the consolidation of two primary processing areas to one would have on the ability to stabilize nuclear materials at the SRS. Budgetary pressures and safety requirements as well as preserving capability for future missions necessitates a thorough examination of the options for these facilities. The report is available to the public. A subsequent Record of Decision will be issued when DOE's review of the utilization strategy, the EIS, and the other relevant factors is complete.

Highly Enriched Uranium Solutions—Blending Down to Low Enriched Uranium

DOE has selected Blending Down to Low Enriched Uranium for stabilization of highly enriched uranium (HEU) solutions. These include existing HEU solutions stored in H-Area facilities and any HEU solutions produced in conjunction with the stabilization of other materials (e.g., plutonium and uranium vault materials). DOE will modify portions of the F- and H-Canyon facilities to provide the capability to load and unload containers for the transport of depleted, natural or low enriched uranium solutions. DOE will dissolve depleted uranium oxide in FA-Line. DOE will transport depleted uranium solutions to H-Area for blending with the highly enriched uranium solutions. The resulting low enriched uranium solutions will be transported back to F-Area and converted to an oxide in FA-Line. The low enriched uranium oxide will be stored at SRS until disposition decisions can be implemented.

DOE selected this stabilization alternative for several reasons. Blending down the highly enriched uranium will reduce DOE's inventory of this weapons-useable fissile material. This alternative can be implemented expeditiously at relatively low cost. Processing the solutions to a highly enriched uranium oxide (the environmentally preferable alternative) would require the completion and startup of the Uranium Solidification Facility. Processing for storage and vitrification in the DWPF would extend

the period of HEU solution storage with its attendant vulnerabilities while mechanisms are developed to assure the safe transfer and stabilization of this fissile material through the affected facilities.

Plutonium and Uranium Stored in Vaults—Improving Storage, Processing to Metal, Processing to Oxide, and Vitrification (F-Canyon)

DOE has decided to use a variety of alternatives to stabilize plutonium and uranium materials stored in vaults at SRS. DOE is installing a glove box in FB-Line (based upon previous decisions to stabilize F-Canyon plutonium solutions—see ''Background'') to provide the capability to handle and package plutonium metal without the use of plastic and other organic materials (rubber, elastomeric seals, etc.). This will provide SRS the capability to package (or repackage) plutonium metal in accordance with the DOE storage standard. Upon completion of the FB-Line modifications, DOE will repackage plutonium metal stored at SRS in accordance with the storage standard. This implements the environmentally preferable alternative for the candidate plutonium metals.

DOE will dissolve some of the existing vault materials that are Candidates for Stabilization in FB-Line and F-Canyon, and H-Canyon and HB-Line, chemically separate the plutonium from impurities that contribute to the stability concerns and radioactive decay products, and process the plutonium to a metal in FB-Line and an oxide in HB-Line. After vitrification of the americium and curium solutions in F-Canyon (see above) and subject to successful analytical laboratory work, timing and facility availability, and future decisions on plutonium disposition, DOE may stabilize some of the plutonium-bearing vault materials by vitrification in F-Canyon. DOE will dissolve vault materials containing scrap amounts of plutonium-238 that require chemical stabilization in HB-Line, chemically separate the plutonium-238 from impurities that contribute to the stability concerns and radioactive decay products, and convert the plutonium-238 to an oxide in HB-Line. The plutonium-238 oxide will be stored in an existing SRS vault.

DOE has decided to construct an Actinide Packaging and Storage Facility to provide the capability for handling, heating and packaging of plutonium oxide and metal in accordance with the storage standard (the environmentally preferable alternative) and to provide space necessary to consolidate storage of plutonium and special actinides at the SRS. DOE will incorporate requirements of the IAEA into the design and construction of the facility to provide the latitude for future international safeguards inspections. DOE is also pursuing declassification of information related to the amount of plutonium resulting from stabilization actions at the SRS that will be stored in the new packaging and storage facility.

The plutonium oxide and existing SRS vault materials that do not require chemical processing for stabilization, will be heated and repackaged in the Actinide Packaging and Storage Facility to meet criteria in the DOE storage standard. The amount of vault materials stabilized using each of the methods will be dependent upon: (a) the physical condition and chemical composition of the material (which DOE will determine upon opening each of the containers or packages inside a glove box in either FB-Line or HB-Line) and, (b) the availability of the required facilities. The plutonium will be stored at SRS until DOE can implement long-term storage or disposition decisions. Uranium recovered from the chemical stabilization of any vault materials will be blended down to low enriched uranium and the solutions will be stored or converted to an oxide, as described under the stabilization of highly enriched uranium solutions.

As previously discussed, the Improving Storage alternative is the environmentally preferable alternative. The environmental impacts associated with the other alternatives selected for stabilization of vault materials which require chemical processing (i.e., Processing to Metal, Processing to Oxide, and Vitrification in F-Canyon) all involve slightly higher but similar levels of impacts.

As explained in the Final EIS, some of the containers stored in vaults at SRS have internal packaging configurations which are unknown and the exact chemical composition of the material inside the containers may also be unknown, with the exception of its content of special nuclear materials. Because of the unknown content of some of the vault containers, and in light of pending DOE decisions on long-term management or disposition of surplus materials, several stakeholder groups have raised concerns regarding DOE's current and future compliance with the Resource Conservation and Recovery Act (RCRA). DOE has provided existing information on the vault materials and other materials stored at SRS to the applicable regulatory agency for RCRA at SRS, the South Carolina Department of Health and Environmental Control (SCDHEC). DOE is continuing the dialog with SCDHEC on the applicability of RCRA to any of the nuclear materials that will be stabilized as a result of this Record of Decision and will take appropriate management actions, as necessary to ensure compliance with RCRA.

Mark–31 Targets—Processing to Metal

DOE has selected Processing to Metal for stabilization of the Mark–31 targets stored in the F-Canyon basin, reactor disassembly basins and the Receiving Basin for Offsite Fuels (RBOF). DOE will dissolve the Mark–31 targets in F-Canyon and chemically separate the plutonium and depleted uranium from fission products and other materials. The plutonium solutions will be processed to metal in FB-Line. After modification of the FB-Line (see vault materials above), the metal will be packaged to meet the DOE storage standard. The plutonium metal will remain at SRS until DOE can implement long-term storage or disposition decisions on weapons usable forms of plutonium. The depleted uranium solutions recovered from dissolving the targets will be used to blend-down the highly enriched uranium solutions in H-Area (see highly enriched uranium solutions discussion above).

The stabilization of the Mark–31 targets by processing to metal can be accomplished one and one-half to nine years earlier than the other stabilization alternatives (four to nine years earlier than Improved Storage (the environmentally preferable alternative)). DOE believes further delay in removing the Mark–31 targets from wet basin storage where they have undergone significant corrosion and release of fission and radioactive products would serve no practicable purpose. This selected stabilization alternative relies upon existing operating equipment and trained personnel; the stabilized plutonium metal will be repackaged in conformance with DOE's storage standard within 3 years using the FB-Line bagless transfer facility. The technical uncertainty for this alternative is very low and the associated costs are well established. Potential waste generation impacts are comparable to the other alternatives, but greater than the environmentally preferable alternative for high level and transuranic waste, but lower for hazardous/mixed and low level radioactive wastes. Potential safety and health impacts to workers and the public are comparable for all the stabilization alternatives. Potential impacts to air and water resources are comparable to the other processing alternatives, and greater, but well within

regulatory and management control limits, than the Improved Storage alternatives. Processing and Storage for Vitrification in DWPF would make the plutonium more difficult to recover than the selected alternative. However, this alternative would also require the extended wet storage of these targets, continuing their corrosion and the release of fission and radioactive products to the basin water.

The selected stabilization action will result in plutonium metal, a weapons-useable product. However, the quantity produced will be a small fraction of DOE's existing inventory of plutonium metal, and DOE believes this small amount does not present nuclear proliferation concerns. None of the stabilization alternatives would denature the plutonium to preclude its recovery and use in nuclear weapons manufacture. The plutonium metal produced from this stabilization action will be prohibited for use in nuclear weapons. In addition, DOE is pursuing options for placing this material under international safeguards (e.g., International Atomic Energy Agency).

Taiwan Research Reactor Fuel and Experimental Breeder Reactor-II Slugs—Processing to Metal

The 81 canisters of failed Taiwan Research Reactor fuel and a single canister of Experimental Breeder Reactor-II slugs will be dissolved in F-Canyon and the plutonium recovered will be converted to a metal in FB-Line. The processing of these materials will be done in conjunction with processing of the Mark–31 targets (see above). Upon installation of the new glove box in FB-Line, the plutonium metal will be packaged in accordance with the DOE storage standard and be placed in an SRS vault until long-term storage or disposition decisions can be implemented on weapons usable plutonium. Natural or depleted uranium recovered by processing the fuel and slugs located in a failed canister will be stored at SRS in tanks or used to support blending down of highly enriched uranium solutions (see above).

DOE selected processing to metal for the Taiwan Research Reactor fuel and Experimental Breeder Reactor-II slugs for similar reasons as described for the Mark–31 targets. These materials are very similar in composition to the Mark–31 targets and can be stabilized concurrently, four to nine years earlier than the environmentally preferred alternative (Improving Storage—Accelerated Schedule). Potential waste generation impacts from the selected alternative are greater than those of the environmentally preferable alternative, but less than potential high-level waste impacts (equivalent DWPF canisters) from the Processing and Storage for Vitrification in DWPF alternative. The Processing and Storage for Vitrification in DWPF would make the plutonium more difficult to recover. However, this alternative would require the extended wet storage of these elements, continuing their corrosion and the release of fission and radioactive products to the basin water.

As with the Mark–31 targets, the plutonium metal produced would be in a form that is weapons-useable. None of the stabilization alternatives would denature the plutonium to preclude its recovery and use in nuclear weapons manufacture. The quantity of plutonium to be produced is such a small amount (a very small fraction) of DOE's current plutonium metal inventory that, standing alone, it does not present nuclear proliferation concerns. The plutonium metal produced will be prohibited for use in nuclear weapons. In addition, DOE is pursuing options for placing this material under international safeguards (e.g., International Atomic Energy Agency).

If after removing the Mark–31 targets, failed TRR fuel, and the failed canister of EBR-II slugs from RBOF, DOE determines that additional fuel, targets, or canisters have failed, as indicated by gas releases from a canister, or visible failure of cladding or canisters, DOE would categorize those materials as Candidates for Stabilization. DOE would perform the appropriate National Environmental Policy Act review and evaluation for the stabilization of any additional materials in RBOF that may be determined at a later date to have failed (e.g., Supplement Analysis).

Potential environmental impacts, as detailed in the Interim Management of Nuclear Materials EIS, of implementing any of the stabilization alternatives, irrespective of location, are low and well within acceptable regulatory and management limits. In addition, there are no substantial differences in potential environmental impacts should DOE operate either or both canyon facilities. DOE is considering this study and the results of the Interim Management of Nuclear Materials EIS, and at this time is announcing a narrowing of potential stabilization alternatives for the following materials.

Plutonium–239 Solutions—Processing to Metal, Processing to Oxide, or Vitrification (F-Canyon)

DOE will stabilize the existing plutonium–239 solutions stored in H-Canyon using one of three alternatives: (1) Processing the solutions to an oxide in HB-Line, (2) processing to a glass matrix by vitrifying the solutions in F-Canyon (the environmentally preferable alternative), or (3) processing to a metal in FB-Line. Only one of these stabilization methods will be used. To implement the processing to oxide alternative, DOE would start up and operate Phase II of the HB-Line facility. The oxide produced would be packaged and stored in an existing vault at SRS until the new Actinide Packaging and Storage Facility is constructed. To implement the vitrification alternative, DOE would transport the solutions from H-Canyon to F-Canyon using a special truck/container as described above for the movement of the neptunium solutions and the modifications made to F– and H–Canyon for loading/unloading of the solutions. The plutonium would be vitrified in F–Canyon using the equipment installed for vitrification of the americium and curium solutions. The canisters of plutonium glass would be stored in an existing SRS vault or the Actinide Packaging and Storage Facility, upon construction. To implement the processing to metal alternative, DOE would transfer the solutions to F-Canyon in the same manner as the vitrification alternative. The plutonium would be converted to a metal using the currently operating F-Canyon and FB-Line facilities. The metal would be packaged in conformance with DOE's storage standard and stored in an existing vault at SRS until the new Actinide Packaging and Storage Facility is available. Using any of these methods, the form of the plutonium (metal, glass matrix or oxide) will remain stored at SRS until DOE implements long-term storage and disposition decisions on weapons usable forms of plutonium. If vitrification of the plutonium solutions cannot be supported for technical or programmatic reasons, but the solutions are transferred to F-Canyon, then DOE will stabilize the plutonium by conversion to metal using the F-Canyon and FB-Line facilities.

One of the stabilization alternatives remaining under consideration (Processing to Metal) would result in plutonium metal, a weapons-useable product. However, the quantity produced will be a small fraction of DOE's existing inventory of plutonium metal, and DOE believes this small amount does not present nuclear proliferation concerns. None of the stabilization alternatives would denature the plutonium to preclude its recovery and used in nuclear weapons manufacture. The plutonium metal produced from this stabilization action will be prohibited to be used for nuclear

explosive purposes. In addition, DOE is pursuing options for placing this material under international safeguards (e.g., International Atomic Energy Agency).

Potential environmental impacts, as detailed in the Interim Management of Nuclear Materials EIS, of implementing any of the stabilization alternatives, irrespective of location, are low and well within acceptable regulatory and management limits. In addition, there are no substantial differences in potential environmental impacts should DOE operate either or both canyon facilities.

The final form of the plutonium solutions depends on actions taken, if any, to consolidate certain activities in the F-Canyon as outlined in the facility utilization strategy report. A subsequent Record of Decision will be issued when DOE's review of the utilization strategy, the EIS, and the other relevent factors is complete.

IX. Preferred Alternatives for Stabilizing Mark–16 and Mark–22 Fuels and Other Aluminum-clad Targets

In addition to reaching decisions on the management and alternatives under consideration for the materials described above, DOE is now designating its preferred alternatives for stabilization of the Mark–16 and Mark–22 fuels and Other Aluminum-clad Targets. As explained in the Final EIS, DOE identified Continued Storage (No Action) as the preferred alternative for management of these materials pending further analysis of whether alternatives involving chemical processing or dry storage were preferable as a stabilization method. The additional reviews were prompted by public comments that DOE received on potential stabilization alternatives involving technologies other than chemical processing. Based on these additional reviews (discussed in Attachment 2 of the Facility Utilization Strategy), DOE is designating the following as preferred stabilization alternatives:

Mark–16 and Mark–22 Fuels—Blending Down to Low Enriched Uranium

DOE is designating Blending Down to Low Enriched Uranium as its preferred alternative for stabilization of the Mark–16 and Mark–22 fuels. Under this alternative, DOE would remove the Mark–16 and Mark–22 fuels from the water- filled basins in which they are stored and transport them to one, or both, of the canyons using the existing SRS rail casks. All of the cask shipments would be confined within the boundaries of SRS, occurring near the center of the site. The fuel assemblies would be dissolved in nitric acid. The highly enriched uranium contained in the fuel would be chemically separated from fission products and other materials. The highly enriched uranium would be blended with existing SRS inventories of depleted uranium to produce a low enriched uranium solutions. The resulting low enriched uranium solution will be stored or converted to an oxide in FA-Line. The low enriched uranium will be stored at SRS until disposition decisions can be made. The neptunium separated during the processing of the fuels would be stabilized with the other neptunium solutions.

DOE is designating Blending Down to Low Enriched Uranium as the preferred alternative for several reasons. Stabilization of the fuels with their removal from basin wet storage and elimination of the wet storage vulnerabilities through processing can be accomplished two to seven years earlier than the improved storage alternatives. Blending down to LEU reduces the HEU inventory and eliminates nonproliferation and security issues associated with the indefinite storage of HEU fuel which is not self-protecting. Cost and cost uncertainties have also played a significant role in the selection of the preferred stabilization alternative. Near-term annual costs to process and blend down the HEU to LEU are estimated at $20 million to $95 million less than for the improved storage alternatives. Substantial uncertainty exists concerning the disposition of dry-stored (improved storage) HEU spent fuel. Little uncertainty exists with the stabilization of the fuels through blending down to LEU. Life-cycle costs evaluations favor blending down to LEU ($38 million to greater than $1 billion advantage)[Facility Utilization Strategy, Attachment 2]. The potential environmental impacts from any of the stabilization alternatives are acceptable and well below any regulatory or management control limits. Projected impacts evaluated in the Final EIS are several times lower for the improved storage alternatives than the preferred blending down to LEU alternative.

Other Aluminum-clad Targets—Processing and Storage for Vitrification in the DWPF

DOE is designating Processing and Storage for Vitrification in the DWPF as its preferred alternative for stabilization of the other aluminum-clad targets stored in reactor disassembly basins at SRS. Under this alternative, DOE would remove the other aluminum-clad targets stored in reactor disassembly basins and transport them to one of the canyons via SRS rail casks. The targets would be dissolved, the resulting solutions chemically adjusted, and transferred to the adjacent underground high level waste tanks. The solutions would be stored in the high level waste tanks until they could be processed in conjunction with the other high level waste in the tanks. The high level waste would eventually be vitrified in the DWPF. The stainless steel canisters of glass would be stored in a facility adjacent to the DWPF, awaiting geological disposal by DOE. DOE is designating this alternative as its preferred stabilization alternative for several reasons. These targets contain little or no fissile material, yet are in a variety of physical forms and shapes. Their dissolution and transfer for vitrification in DWPF (the environmentally preferable alternative) has a minimal impact on all processing facilities and places these many forms into a single physical form suitable for future emplacement in a geological repository. Improved storage would require the development of one or more packaging configurations for repository emplacement. Although vitrification in DWPF will not occur for several years, processing and storage for vitrification in DWPF can be implemented one to six years earlier than the improved storage alternatives. This will remove the targets and their deteriorating condition from the reactor disassembly basins, precluding further release of radioactivity to the basin water. As with the improved storage alternatives for the Mark–16 and Mark–22 fuels, near-term costs are considerably less for the processing alternative as compared with the improved storage alternative. The potential environmental impacts from any of the stabilization alternatives are acceptable and well below any regulatory or management control limits. As with the Mark–16 and Mark–22 fuels, projected impacts for the improved storage alternatives are lower than the preferred alternative of processing and storage for vitrification in DWPF.

Decisions on facility utilization will determine the canyon location(s) for implementing the preferred stabilization alternatives for the Mark-16 and Mark-22 fuels, and the other aluminum-clad targets. DOE will issue a Record of Decision(s) for the stabilization of these materials no sooner than thirty (30) days following the availability of this notice.

X. Conclusion

While the Final EIS focuses on the interim management of nuclear

materials at the Savannah River Site, the decisions associated with the safe management of these materials directly affect the operational status of the nuclear material processing facilities at the Site. These decisions have been made in the context of then Secretary Watkins' 1992 decision to phase out reprocessing at the Savannah River Site. The decisions in this ROD are structured to effect the earliest completion of actions necessary to stabilize or convert nuclear materials into forms suitable for safe storage and prepare the facilities for subsequent shutdown and deactivation. The actions being implemented will support the consolidation of the storage of nuclear materials at the SRS. To a great extent, the alternatives will result in stabilization of the nuclear materials and alleviation of associated vulnerabilities within the time frame recommended by the DNFSB.

The stabilization decisions utilize existing facilities and processes to the extent practical; can be implemented within expected budget constraints and minimal additional training to required personnel; rely upon proven technology; and using an integrated approach, represent the optimum use of facilities to stabilize the materials in the shortest amount of time. Although minor modifications of a few facilities will be required, only two new facilities will be needed: (a) design and construction of an Actinide Packaging and Storage Facility in F-Area, and (b) a small vitrification facility within the existing F-Canyon. The decisions in this ROD do not imply or contribute to any poential decision to change the baseline canyon operating strategy from the current two-canyon approach.

DOE expects to make decisions related to the future management of foreign research reactor fuel and on strategies for the disposition of surplus nuclear materials within the next year. Similarly, DOE is evaluating alternatives for stabilizing nuclear materials stored at other locations in the DOE complex. Several years will be required to achieve stabilization of the nuclear materials within the scope of this Record of Decision. Stabilization of the nuclear materials at SRS will entail the operation of many portions of the chemical processing facilities. Consistent with DNFSB Recommendation 94–1, this will preserve DOE's capabilities related to the management and stabilization of other nuclear materials until such decisions are made.

In summary, the Department has structured its decisions on interim actions related to management of the nuclear materials at SRS to achieve stabilization as soon as possible, consistent with earlier decisions to phase out processing activities at the Savannah River Site, while supporting U.S. nonproliferation policies in a safe and cost effective manner.

Issued at Washington, DC, December 12, 1995.

Thomas P. Grumbly,

Assistant Secretary for Environmental Management.

TABLE 1.—NUCLEAR MATERIALS AT THE SAVANNAH RIVER SITE

[From DOE/EIS–0220, "Interim Management of Nuclear Materials"]

Description	Quantity [a]	Location(s)
Stable		
Spent fuel	3,000 items	Receiving Basin for Offsite Fuel (RBOF).
Unirradiated fuel, targets, reactor components, and scrap from fabrication operations.	315,000 items	Buildings 305A, 313–M, 315–M, 320–M, 321–M, 322–M, 341–M, K- and L-Reactor Assembly Areas.
Unirradiated fuel, targets, and reactor components.	6,900 items	K- and L-Reactors.
Unirradiated and irradiated reactor components and control rods.	420 items	C-, K-, L- and P-Reactors.
Depleted uranium oxide	36,000 drums	R-Reactor, Buildings 221–1F, 221–12F, 221–21F, 221–22F, 707–R, 714–7N, 728–F, 730–F, and 772–7B.
Depleted uranium solutions	300,000 liters (78,000 gallons)	F-Canyon, F-Area Outside Facilities, and TNX.
Sources, standards, and samples.	20,000 items	Sitewide.
Laboratory materials used in research and development.	260 items	Savannah River Technology Center (SRTC).
Programmatic		
Plutonium-242 solutions	13,000 liters (3,500 gallons)	H-Canyon.
Americium and curium solutions and targets.	14,000 liters (3,800 gallons)	F-Canyon.
	65 assemblies	RBOF.
	60 slugs	P-Reactor disassembly basin.
	114 slugs	RBOF.
Neptunium solutions and targets.	6,100 liters (1,600 gallons)	H-Canyon.
	9 targets	Building 321–M.
Candidates for Stabilization		
Plutonium-239 solutions	34,000 (9,000 gallons)	H-Canyon.
Highly enriched uranium solutions.	228,000 liters (60,000 gallons)	H-Canyon and H-Area Outside Facilities.
Plutonium vault materials	2,800 packages	FB-Line, HB-Line, Building 772–F, Building 235–F, and SRTC.
Mark-31 targets	16,000 slugs	K-Reactor, L-Reactor, F-Canyon, and RBOF.
Mark-16 and Mark-22 fuels	1,900 assemblies	K-, L-, and P-Reactors and H-Canyon.
Other aluminum-clad targets	1,800 slugs and assemblies	K-, L-, and P-Reactors.

TABLE 1.—NUCLEAR MATERIALS AT THE SAVANNAH RIVER SITE—Continued

[From DOE/EIS–0220, ''Interim Management of Nuclear Materials'']

Description	Quantity [a]	Location(s)
Failed TRR [b] and EBR–II [c] slugs.	82 canisters	RBOF.

[a] Quantities of materials shown are approximate. Quantities of radioactive solutions stored in tanks fluctuate due to natural evaporation and the addition of materials (e.g., nitric acid) to maintain chemistry within established parameters.
[b] Taiwan Research Reactor—81 canisters.
[c] Experimental Breeder Reactor–II—1 canister.

TABLE 2.—ALTERNATIVES FOR THE INTERIM MANAGEMENT OF NUCLEAR MATERIALS AT THE SRS

[From DOE/EIS–0220, ''Interim Management of Nuclear Materials'']

Material	Alternatives						
	Continuing storage (no action)	Processing to metal	Processing to oxide	Blending down to low enriched uranium	Processing and storage for vitrification (DWPF)[a]	Vitrification (F-canyon)	Improving storage
Stable	✔						
Plutonium-242	x	x	✔		x	x	
Americium and curium	✔½		x		x	✔[c]	
Neptunium	x		✔		x	x	
Plutonium-239 solutions	x	x	✔		x	x	
Highly enriched uranium solutions	x		x	✔	x		
Plutonium and uranium in vaults[d]	x	✔	✔		x	✔	✔
Mark-31 targets	x	✔	x		x	x	x
Mark-16 and Mark-22 fuels	✔		x	x	x		x
Other aluminum-clad targets	✔				x		x
Failed TRR fuel and EBR–II slugs[e]	x	✔	x		x	x	x

x=alternative evaluated.
✔=preferred alternative designated by DOE in Final EIS.
[a] DWPF=Defense Waste Processing Facility.
[b] Targets.
[c] Solutions.
[d] For the plutonium and uranium stored in vaults, there were four preferred alternatives. DOE will base its choice of the applicable alternative for a particular solid upon inspection of the material.
[e] TRR=Taiwan Research Reactor, EBR–II—Experimental Breeder Reactor–II.

[FR Doc. 95–30750 Filed 12–18–95; 8:45 am]
BILLING CODE 6450–01–P–M

Federal Energy Regulatory Commission

[Docket No. QF86–896–007]

Piney Creek Limited Partnership; Notice of Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

December 13, 1995.

On November 28, 1995, Piney Creek Limited Partnership (Piney Creek) of 25 West 3rd Street, Suite 803, Williamsport, Pennsylvania, 17701 submitted for filing an application for recertification of a facility as a qualifying small Power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the bituminous coal refuse-fueled small power production facility is located in Clarion County, Pennsylvania. The Commission previously certified the capacity of the facility to be 29.9 MW. The facility consists of a fluidized bed boiler and an extraction/condensing steam turbine generator. The instant application for recertification was submitted to report a change in ownership of the facility and an increase in the maximum net electric power production capacity from 29.9 MW to 33 MW. In addition, applicant requests that the Commission certify certain proposed fuel sources as ''waste''.

Any person desiring to be heard or objecting to the granting of qualifying status 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. All such motions or protests must be filed within 30 days after the date of publication of this notice in the Federal Register and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 95–30715 Filed 12–18–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. CP66–111–003 and CP96–26–000]

Great Lakes Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed St. Clair River Crossing Project and Request for Comments on Environmental Issues

December 13, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an

environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the St. Clair River Crossing Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Great Lakes Gas Transmission Limited Partnership (Great Lakes) seeks authority to amend its Presidential Permit (under Docket No. CP66–111–003) and construct, connect, operate, and maintain (under Docket No. CP96–26–000) about 1,500 feet of 36-inch-diameter pipeline loop at the international border between the United States and Canada, in St. Clair County, Michigan.

Great Lakes states that the proposed border facilities would be used to provide 50,000 thousand cubic feet per day of winter firm transportation service to TransCanada Pipelines Limited (TransCanada). Great Lakes indicates that the facilities, along with additional facilities TransCanada would build on its system, would provide TransCanada with greater system security and reliability of service.

The proposed river crossing would be directionally drilled. Great Lakes proposes to operate the drill rig on the United States side of the river, on land owned by Great Lakes. The pipeline would be strung and staged on the Canadian side.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require a staging area about 150 feet by 250 feet. No additional permanent right-of-way would be required after construction. An existing cleared area north of Puttygut Road would be used as a contractor yard. This area was used for this purpose during construction of the RG&E III Project (Docket No. CP92–595–000).

Permanent aboveground facilities would consist of a mainline valve and a ''pig launcher'' in the vicinity of Great lakes' existing mainline valve.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Land use.
- Cultural resources.
- Vegetation and wildlife.
- Endangered and threatened species.
- Air quality and noise.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Great Lakes. Keep in mind that this is a preliminary list:

- Noise generated during the continuous operation of the directional drill rig used to install the pipeline under the St. Clair River may significantly impact nearby residences.
- Drilling mud and fluids must be handled and disposed of properly or significant impact on the St. Clair River and nearby wetland could result.
- Construction activities may impact the wetland located near the proposed staging area.
- There may be visual impacts associated with the permanent aboveground facilities.

The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426;
- Reference Docket Nos. CP66–111–003 and CP96–26–000;
- Send a *copy* of your letter to: Mr. Howard Wheeler, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., N.E., PR–11.2, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before January 19, 1996.

If you wish to receive a copy of the EA, you should request one from Mr. Wheeler at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of

[1] Great Lakes Transmission Limited Partnership's application was filed with the Commission under section 3 of the Natural Gas Act, sections 153.10 through 153.12 of the Commission's Rules of Practice and Procedure, and Executive Order 10485 (as amended by Executive Order 12038 and Secretary of Energy Delegation Order No. 0204–112).

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Howard Wheeler, EA Project Manager, at (202) 208–2299.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30712 Filed 12–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–16–000]

Transcontinental Gas Pipe Line Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Sunbelt Expansion Project and Request for Comments on Environmental Issues

December 13, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the SunBelt Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Transcontinental Gas Pipe Line Corporation (Transco) wants to expand the capacity of its facilities in Mississippi, Alabama, Georgia, and South Carolina to transport an additional 145,666 thousand cubic feet per day of natural gas to nine local distribution companies and one electric cogeneration plant. Transco seeks authority to construct and operate:

- 14.9 miles of 42-inch-diameter pipeline loop (Loop D) from milepost (MP) 1222.66 to MP 1237. 58 in Cherokee County, South Carolina;
- 15,000 horsepower (hp) of compression (gas turbine) at a new station, to be known as Compressor Station 105 in Coosa County, Alabama;
- 15,000 hp of compression (gas turbine) at a new station to be known as Compressor Station 125 in Walton County, Georgia; and
- 15,000 hp of compression (gas turbine) at the existing Compressor Station 80 in Jones and Jasper Counties, Mississippi.

Transco also seeks to uprate:

- A compressor (gas turbine) from 14,100 hp to 15,000 hp at Compressor Station 100 in Chilton County, Alabama; and
- One compressor (gas turbine) from 12,600 hp to 15,000 hp at each of three stations: Compressor Station 110 in Randolph County, Alabama; Compressor Station 130 in Madison County, Georgia; and Compressor Station 140 in Spartanburg County, South Carolina.

The general location of the project facilities and specific locations for Loop D and the new compressor stations are shown in appendix 1.[2]

Land Requirements for Construction

Loop D would be constructed adjacent to Transco's existing right-of-way. Transco has proposed an 85-foot-wide construction right-of-way, which includes 35 feet of its existing right-of-way. Consequently, about 50 feet of new clearing would be required in most areas. Following construction, about 25 feet of the newly cleared right-of-way would be allowed to revert to former uses and 25 feet would be retained as new permanent right-of-way.

Additional work space would be required adjacent to the construction right-of-way at crossings of roads, railroads, streams, wetlands, and other utility lines. In addition, Transco proposes to use two off-right-of-way parcels of land for staging and pipe fabrication and storage. Construction of Loop D would require about 171.9 acres, including 63.3 acres of existing maintained right-of-way. Following construction, about 45.2 acres would be maintained as new permanent right-of-way. The remaining 126.7 acres would be allowed to revert to former land uses.

Transco currently owns the properties that would be developed for the two new compressor stations. Construction would require a total of about 28.0 acres of land, of which about 16.0 acres would be fenced for operation of the new compressor stations. All additions and modifications at the other compressor stations would occur inside the fencelines on existing compressor station property.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Air quality and noise.
- Safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention

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[1] Transcontinental Gas Pipe Line Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference Room, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

based on a preliminary review of the proposed facilities and the environmental information provided by Transco. Keep in mind that this is a preliminary list:

• Blasting is expected to be required at the crossings of the Broad River and Peoples Creek and possibly at occasional locations along the proposed pipeline route.

• The proposed pipeline would cross a number of waterbodies, including the 546-foot-wide Broad River. In addition, several wetlands would be crossed.

• Four federally listed endangered or threatened species potentially occur in the counties in which the proposed facilities would be constructed.

• The proposed Loop D crosses the Cooperville Ironworks, a National Register of Historic Places District (District) and one of the sites that makes up the District.

• Twelve residences are within 50 feet of the proposed construction right-of-way.

• New compression at new and existing compressor stations would result in impacts on air and noise quality.

The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional electric cogeneration plant. We will briefly describe its location and status in the EA. This facility is in Cherokee County, South Carolina, and it has received most of the relevant permits. Its construction should begin in January 1996.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes or locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

• Address and send your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426;

• Reference Docket No. CP96–16–000;

• Send a *copy* of your letter to: Mr. Mark Jensen, EA Project Manager, Federal Energy Regulatory Commission, 888 First Street, N.E., 11.2, Washington, D.C. 20426; and

• Mail your comments so that they will be received in Washington, D.C. on or before January 15, 1996.

If you wish to receive a copy of the EA, you should request one from Mr. Jensen at the above address.

Becoming an Intervener

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Mark Jensen, EA Project Manager, at (202) 208–0828.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30719 Filed 12–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–15–000]

Iroquois Gas Transmission System, L.P.; Notice of Refund Report

December 13, 1995.

Take notice that on October 20, 1995, Iroquois Gas Transmission System, L.P. (Iroquois Gas) tendered for filing a refund report pursuant to the Commission's February 22, 1995, Order in Docket No. RP95–124–000.

Iroquois Gas states that it received $180,446.00 from Gas Research Institute (GRI) in payment of the 1994 Tier 1 refund. Pipelines receiving a refund were required to credit such refunds to their customers. Iroquois states that it provided credits to its customers in the invoices that were remitted on October 6, 1995. Because some of the shippers on Iroquois' system did not receive invoices on that date, shippers otherwise entitled to credits were issued refund checks. Iroquois requests any waivers that may be necessary to permit such a result.

In addition, while the February 22 Order spoke only of credits to firm customers, Iroquois had interruptible customers that are entitled to credits. Iroquois therefore requests any waivers necessary to accomplish this as well; the amount involved is de minimis.

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 Rules 211 and 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 20, 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. 95–30716 Filed 12–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–493–000]

The Montana Power Company; Notice of Filing

December 13, 1995.

Take notice that on November 30, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a Form of Electric Tariff, Second Revised Volume No. 1, a revised Index of Purchasers under said Tariff, and a Certificate of Concurrence from Cenergy.

A copy of the filing was served upon Cenergy.

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 December 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30718 Filed 12–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–100–000]

Natural Gas Pipeline Company of America, Mississippi River Transmission Corporation; Notice of Application

December 13, 1995.

Take notice that on December 8, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, and Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP96–100–000, pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and Section 157.7 and 157.18 of the Commission's Regulations thereunder, a joint application requesting permission and approval for abandonment, effective January 1, 1996, a sale/purchase/exchange service performed under Natural's Rate Schedule X–57 and MRT's Rate Schedule X–13 authorized in Natural's Docket No. CP75–224, as amended, and MRT's Docket No. CP75–226, as amended, all as more fully set forth in the application on file with the Commission.

Natural and MRT state that they are parties to a gas exchange agreement and sales agreement dated December 23, 1974, as amended (Agreement), which became Natural's Rate Schedule X–57 and MRT's Rate Schedule X–13. It is also stated that pursuant to the agreement, as amended, Natural: 1) received in Wheeler County, Texas MRT's reserves on a firm basis up to 15,000 Mcf of natural gas per day which MRT purchases in the Mills Ranch Field in Wheeler County, Texas and 2) redeliver to MRT in Clinton County, Illinois, Randolph County, Arkansas and Harrison County, Texas, eighty nine percent (89%) of the volumes delivered by MRT to Natural commencing April 1 each year and forty three percent (43%) of the volumes delivered by MRT to Natural during the six (6) months commencing October 1 each year. Natural and MRT further state that MRT sold and Natural purchased the remainder of the volumes received from MRT.[1]

Natural and MRT state that by a letter agreement dated October 27, 1995, they agreed to terminate the Agreement, as amended, effective January 1, 1996. Therefore, by the present joint application, Natural and MRT request authority to abandon, effective January 1, 1996, the sale/purchase/exchange service performed under the Agreement, as amended, and Natural's Rate Schedule X–57 and MRT's Rate Schedule X–13 authorized in Natural's Docket No. CP75–224, as amended, and MRT's Docket No. 75–226, as amended.

Natural and MRT state that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 3, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural or MRT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30714 Filed 12–18–95; 8:45 am]

BILLING CODE 6717–01–M

[1] The percentage of gas purchased and transported by Natural varies according to the time of the year and the year in question. Natural's purchase obligation is subject to a cap of the applicable percentage applied to 15,000 Mcf of gas per day.

[Docket No. ER96–501–000]

Ohio Power Company; Notice of Filing

December 13, 1995.

Take notice that on December 1, 1995, the American Electric Power Service Corporation (ARPSC), on behalf of Ohio Power Company (OPCO), tendered for filing as an initial rate schedule, a Power Supply Agreement between OPCO and Cleveland Public Power (CPP).

The Power Supply Agreement provides CP up to 50 MW of limited term power for 5 years.

Copies of the filing were served upon CPP, Cleveland Electric Illuminating Company, and the Public Utilities Commission of Ohio.

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 28, 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. 95–30717 Filed 12–18–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 96–03: Computational Structural Biology

AGENCY: Office of Energy Research, Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), supports a comprehensive research program in the

area of environmental sciences, health effects and life sciences, and medical applications. Major program research emphasis is placed on characterization of human and microbial genomes, structural biology, cellular and molecular biology, global climate change, improved technology for cleanup of DOE contaminated sites, advanced imaging technologies, and molecular nuclear medicine. With the explosion of nucleic acid and amino acid sequence data that stems from genome projects, there is an immediate need for greatly improved experimental and computational approaches for protein structure determination. To help meet this need, and in support of diverse missions of DOE, OHER is initiating a new program in computational structural biology. The purpose of this program is to support research that will enhance understanding of structure-function relationships in biological macromolecules. These relationships are very important for diverse applications in biotechnology, including development of drugs for diseases, new and improved biomaterials, design of enzymes for effective and efficient removal of environmental contaminants, and the development and conversion of bio-mass for fuels. In particular, research applications that integrate existing software tools in novel ways and/or develop new computational strategies to exploit databases of macromolecular structural information towards furthering our understanding of the relationships between sequence and structure are of particular interest to the program at this time. This includes the goals of predicting the structure and function of newly discovered gene sequences and the prediction or design of the chemical properties and architectural arrangement of proteins or nucleic acids needed for a particular functional application. Examples of existing approaches that fall into this category are knowledge-based or molecular extension methods (e.g., homology model building or multiple sequence alignment), ab initio folding (finding structures that fit sequences) and the development of tools to assign existing or new sequences to specific structures (e.g., finding sequences that fit structures through threading or inverse folding algorithms). Attention should be also focussed on the problem of negative design, the identification of aspects of a sequence that precludes its fitting a known structure. More generally, the integration and joint utilization of the growing body of sequence, structural and physical information is an area that offers new opportunities that are of interest to the program. Studies that rigorously compare existing tools and/or exploit the latest advances in multiple approaches (in algorithms, simulation, modeling and graphical representation/visualization) or that include the development of new computational and visualization techniques for application to the prediction of protein and nucleic acid structure and the exploitation of structure to predict function, will also be considered particularly responsive. Collaborative projects with two to five principal investigators, of complementary expertise and each with independent funding, aimed at achieving a synergistic effect in improving structure prediction accuracy through such activities as evaluation of different potential functions, the development of shared code, or an integrated attack on a set of problems in an area of prediction or in testing current modeling techniques are also encouraged. Funds for such projects would be comparable to individual awards, but could be used to nucleate a larger group effort.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., April 25, 1996, to be accepted for a June merit review and to permit timely consideration of award in Fiscal Year 1996.

ADDRESSES: Formal applications referencing Program Notice 96–03 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 96–03. The same address as above must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Matesh N. Varma, Office of Health and Environmental Research, ER–73, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290, telephone: (301) 903–3209, Fax: (301) 903–0567, (E-mail: matesh.varma@mailgw.er.doe.gov).

SUPPLEMENTARY INFORMATION: Before preparing a formal application, potential applicants must submit a brief preapplication in accordance with 10 CFR 600.10(d)(2), which consists of two to three pages of narrative describing research objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs for the computational structural biology program. Preapplications referencing Program Notice 96–03 should be received by January 23, 1996, and sent to Dr. Matesh N. Varma, Office of Health and Environmental Research, 19901 Germantown Road, Germantown, Maryland 20874–1290, (301) 903–3209. Telephone and fax numbers and e-mail addresses are required to be part of the preapplication. A response to the preapplication discussing potential relevance of a formal application will be communicated by February 20, 1996. It is anticipated that approximately $2.0 million will be available for grant awards during Fiscal Year 1996 contingent upon availability of funds. We expect to award several grants in this area of research up to a few hundred thousand dollars per year. Information about development, submission, and the selection process, and other polices and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Energy Research Financial Assistance Program. The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental, ER–73, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone requests may be made by calling (301) 903–5349. Electronic access to ER's Financial Assistance Guide is possible via the Internet using the following E-mail address: http://www.er.doe.gov/

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, D.C. on December 11, 1995.

D. D. Mayhew,

Associate Director, Office of Resource Management, Office of Energy Research.

[FR Doc. 95–30749 Filed 12–18–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5398–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The

ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1100.08.

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards for Hazardous Air Pollutant (OMB Control No. 2060–0191; EPA ICR No. 1100.08). ''This is a request for extension of a currently approved collection.''

Abstract: On December 15, 1989 pursuant to Section 112 of the Clean Air Act as amended in 1977 (42 U.S.C. 1857), the Environmental Protection Agency promulgated NESHAPs to control Radionuclide emissions from several source categories. The regulations were published in 54 FR 51653, and are codified at 40 CFR Subparts B, H, I, K, R, T, and W, and imposes the following radionuclide dose and emission standards:

Subpart B—Underground Uranium Mines
10 mrem/yr
Subpart H—Department of Energy
10 mrem/yr, 20 pci/m ^{2}-s
Subpart I—Non-DOE not licensed by NRC
10 mrem/yr, 3 mrem/yr; iodine
Subpart I—Licensed by NRC
10 mrem/yr, 3 mrem/yr iodine
Subpart K—Elemental Phosphorous
2 curies/yr
Subpart R—Phosphogypsum Stacks
20 pci/m ^{2}-s
Subparts T and W—Uranium Mill Tailings Piles
20 pci/m ^{2}-s

Information collected is used by EPA to ensure that public health continues to be protected from the hazards of airborne radionuclides by compliance with these. If the information were not collected, it is unlikely that violation of the standards would be identified and no corrective action would be initiated to bring the facilities back into compliance. Compliance is demonstrated through emission testing and/or dose calculation. Results are submitted to EPA Regional office annually or when required for verification of compliance and maintained for a period of 5 years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 08/25/95 (FR Doc. 95–21169).

Burden Statement: The annual public reporting and Record keeping burden for this collection of information is estimated to average 31 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 6112.

Estimated Number of Respondents: 412.

Frequency of Responses: Annually or less than annually.

Estimated Total Annual Hour Burden: 188,708 hours.

Estimated Total Annualized Cost Burden: $1,758,559.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1100.08 and OMB Control No. 2060–0191 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW., Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: December 5, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–30793 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5398–2]

Agency Information Collection Activities Under OMB Review; EPA Indoor Environmental Quality Questionnaire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) for ''EPA Indoor Environmental Quality Questionnaire'' abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1619.02.

SUPPLEMENTARY INFORMATION:

Title: EPA Indoor Environmental Quality Survey (OMB Control No. 2060–0244; EPA ICR No. 1619.02). This is a request for an extension of a currently approved collection.

Abstract: The Indoor Environmental Quality Questionnaire is a component of the EPA Building Assessment Survey and Evaluation (BASE) program. In this program, EPA is conducting an indoor air quality (IAQ) study of 100–200 large commercial and public office buildings. The purpose of this tudy is to develop a national baseline assessment of the indoor air in such buildings. The activities EPA will conduct under this survey include Indoor Environmental Quality Questionnaire, building inspections, interviews with building maintenance workers, environmental measurements (e.g., ventilation rates, concentrations of indoor air pollutants), and other quantitative and qualitative assessments. By conducting this research, EPA will begin to be able to assess the key building parameters that affect IAQ and the incidence of certain IAQ-related health and comfort problems. The Indoor Environmental Questionnaire is a voluntary questionnaire asking for information pertaining to work station characteristics, working conditions, exposure to pollutants, health and well-being, and stress. Data from the Indoor Environmental Questionnaire will be used to compare the measured building parameters and health effects.

EPA has piloted this study in three buildings and has conducted the study in 29 other buildings to date.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 13, 1995 (FRL–5295–7).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Occupants of commercial facilities in a wide variety of fields and SIC codes.

Estimated Number of Respondents: 2800.

Frequency of Response: One-time.

Estimated Total Annual Hour Burden: 654 hours.

Estimated Total Annualized Cost Burden: $14,720.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1619.02 and OMB Control No. 2060–0244 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: December 7, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–30794 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5398–1]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSIC Automobile Manufacturing, Iron and Steel, and Computers and Electronics Sector Subcommittee Meetings; Open Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that, pending resolution of EPA's FY 1996 appropriation, the Automobile Manufacturing, Iron and Steel, and Computers and Electronics Sector Subcommittees of the Common Sense Initiative Council will meet on the dates and times described below. All meetings are open to the public. Seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed with the three Sector Subcommittee announcements below.

(1) Automobile Manufacturing Sector Subcommittee—January 10, 1996

The Common Sense Initiative Council, Automobile Manufacturing Sector Subcommittee (CSIC–AMS), pending resolution of EPA's FY 1996 appropriation, is convening an open meeting on January 10, 1996. The meeting will begin at approximately 9:30 a.m. EST and run until about 3:30 p.m. EST. The meeting will be held at the Summit Building, 10th floor conference room 10A and 10B, 410 West Peachtree Street, Atlanta, Georgia.

The CSIC–AMS has formed three project teams: Regulatory Initiatives, Alternative Sector Regulatory System/Community Technical Assistance and Life Cycle Management/Supplier Partnership. The Regulatory Initiatives project team's most recent meetings have focused on issues within the Clean Air Act's New Source Review Program. The Alternative Sector Regulatory System/Community Technical Assistance project team is currently identifying and discussing principles and attributes desirable in a new alternative regulatory system. The Life Cycle Management/Supplier Partnership project team has identified a portion of the supply chain to participate in the development of a framework for a supplier partnership that encourages the consideration of environmental impacts in product development. The project teams will report progress on these ongoing projects and present deliverables, if applicable.

Seating may be limited; therefore, advance registration is recommended. An Agenda will be available January 5, 1996. Any person or organization interested in attending the meeting should contact Ms. Carol Kemker, Designated Federal Official (DFO), no later than January 8, 1996, at (404) 347–3555 extension 4222. Each individual or group wishing to make oral presentations will be allowed a total of three minutes. For further meeting information contact Carol Kemker, DFO on (404) 347–3555 extension 4222, or Keith Mason, Alternate DFO, on (202) 260–1360.

(2) Iron and Steel Sector Subcommittee—January 18, 1996

Notice is hereby given that the Environmental Protection Agency, pending resolution of its FY 1996 appropriation, is convening an open meeting of the Iron and Steel Sector Subcommittee on Thursday, January 18, 1996. The meeting will begin at 8:00 a.m. CST and run until 4:00 p.m. CST. It will be held at the Metcalf Federal Building, Great Lakes Conference Center, Lake Michigan room (12th floor), 77 West Jackson Boulevard, Chicago, Illinois, telephone number 312–886–9494. A picture identification will be needed to enter the building. Seating will be available on a first come, first served basis. Limited time will be provided for public comment.

The Iron and Steel Subcommittee has created four work groups which are responsible for proposing to the full Subcommittee, for its review and approval, potential activities or projects that the Iron and Steel Sector Subcommittee will undertake, and for carrying out projects once approved. The Subcommittee has approved seven projects and their work plans, and is considering several others. The purpose of the January meeting is to discuss in detail the status of projects sponsored by the Compliance and the Innovative Technology work groups, to hear brief status updates from the Permits and Brownfields work groups, to discuss a potential community involvement project, and to discuss the role of pollution prevention in the industry.

For further information regarding this Iron and Steel Sector Subcommittee Meeting, please call either Ms. Mary Byrne at 312–353–2315 in Chicago,

Illinois, or Ms. Judith Hecht at 202–260–5682 in Washington, DC.

(3) Computers and Electronics Sector Subcommittee—January 22 and 23, 1996

Notice is hereby given that the Computers and Electronics Sector Subcommittee, pending resolution of EPA's 1996 appropriation, will hold an open meeting on Monday, January 22, 1996, from 8:30 a.m. EST to 5:00 p.m. EST and Tuesday, January 23, 1996, from 8:30 a.m. EST to 3:00 p.m. EST, at the Embassy Suites Alexandria Hotel, 1900 Diagonal Road, Alexandria, Virginia 22314. Seating will be available on a first-come, first-served basis.

The first day of the meeting, January 22, will be devoted primarily to breakout sessions for the three subcommittee workgroups (Reporting and Information Access; Overcoming Barriers to Pollution Prevention, Product Stewardship, and Recycling; and Integrated and Sustainable Alternative Strategies for Electronics); the second day, January 23, will consist primarily of reports to the full subcommittee from those workgroups and discussion of issues of interest to the full subcommittee. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

For further information concerning this meeting of the Computers and Electronics Sector Subcommittee, please contact Gina Bushong, U.S. EPA (202) 260–3797, FAX (202) 260–1096 or by mail at U.S. EPA (MC 7405), 401 M Street, SW, Washington, DC 20460; Mark Mahoney, Region 1, U.S. EPA (617) 565–1155; or David Jones, Region 9, U.S. EPA (415) 744–2266.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above Sector Subcommittee announcements will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meetings, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Katherine Brown at brown.katherine@epamail.gov.

Dated: December 13, 1995.

Prudence Goforth,

Designated Federal Officer.

[FR Doc. 95–30791 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2115]

Petition for Reconsideration of Actions in Rulemaking Proceedings

December 13, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed January 3, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the use of 200 Channels Outside the Designated Filing Area in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool (PR Docket No. 89–553).

Implementation of Sections 3(n) and 332 of the Communications Act (GN Docket No. 93–252).

Number of Petitions Filed: 2.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Rosendale, New York) (MM Docket No. 93–17, RM–8170).

Number of Petitions Filed: 1.

Subject: Petition for *Computer III* Waiver (CC Docket No. 90–623).

Number of Petitions Filed: 1.

Federal Communications Commision.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30696 Filed 12–18–95; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 2117]

Petition for Reconsideration of Actions in Rulemaking Proceedings

December 14, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed January 3, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Willows and Dunnigan, CA) (MM Docket No. 94–29, RM–8416).

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30756 Filed 12–18–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Carolina First Corporation, et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has given notice under § 225.23(a)(2) or (e) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (e)) 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 acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating

how the party commenting would be aggrieved by approval of the proposal.

Comments regarding this application must be received not later than January 2, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Carolina First Corporation, Greenville, South Carolina; to acquire Blue Ridge Finance Company, Inc., Greenville, South Carolina, and thereby indirectly engage in purchasing sub-prime automobile chattel receivables from automobile dealers, the subsequent servicing of such receivables, and other activities related to such receivables and their associated servicing (such as the foreclosed activities), pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y; in making, acquiring, and servicing loans or other extensions of credit in a manner typical of finance companies (including direct auto lending) and other activities typically associated with consumer finance operations, pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y; and in acting as agent or broker for insurance directly related to an extension of credit by a finance company, pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. Comments on this application must be received by December 29, 1995.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Swanton Agency, Inc., Swanton, Nebraska; to acquire Plymouth Investment Company, Plymouth, Nebraska, and thereby engage in the sale of general insurance in a town of less an 3,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. This activity will be conducted in Plymouth, Nebraska.

Board of Governors of the Federal Reserve System, December 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-30724 Filed 12-18-95; 8:45 am]

BILLING CODE 6210-01-F

Citi-Bancshares, 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 12, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Citi-Bancshares, Inc., Leesburg, Florida; to merge with Citizens First Bancshares, Inc., Ocala, Florida, and thereby indirectly acquire Citizens First Bank of Ocala, Ocala, Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Beulah Bancorporation, Inc., Sioux Falls, South Dakota; to acquire 94.04 percent of the voting shares of Fairview Bank, Fairview, Montana.

Board of Governors of the Federal Reserve System, December 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30727 Filed 12–18–95; 8:45 am]

BILLING CODE 6210–01–F

First National Bank Employee Stock Ownership Plan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 2, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First National Bank Employee Stock Ownership Plan, San Benito, Texas; to acquire an additional 4.28 percent, for a total to 14.27 percent, of the voting shares of First San Benito Bancshares, Inc., San Benito, Texas, and thereby indirectly acquire First National Bank, San Benito, Texas.

2. Joe E. Sharp, Dallas, Texas; to acquire an additional 16.39 percent, for a total of 25.11 percent, of the voting shares of First Baird Bancshares, Inc., Baird, Texas, and thereby indirectly acquire First National Bank, Baird, Texas, and First National Bank, Weatherford, Texas.

Board of Governors of the Federal Reserve System, December 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30723 Filed 12–18–95; 8:45 am]

BILLING CODE 6210–01–F

First American Corporation; Application to Engage in Nonbanking Activities;

First American Corporation, Nashville, Tennessee (Applicant), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) of its intention to engage *de novo* through it indirect subsidiary, The SSI Group, Inc., Mobile, Alabama (Company), [1] in processing and transmitting medical payment data between health care providers (Providers) and insurance companies and other entities responsible for providing medical benefits (Payers). Providers would enter claims information (such as patient identification, coverage eligibility, and a description of the medical services provided) into Company's medical claims network, and Company would

[1] Applicant proposes to acquire 49.25 percent of the voting shares of Company from Southern Medical Health Systems, Inc., Mobile, Alabama (≥Co-Venturer≥), which would retain 49 percent of the voting shares. Co-Venturer's sole shareholder would retain an additional 1.75 percent of the voting shares. Applicant also would acquire an option to purchase up to an additional 17.75 percent of the voting shares from Co-Venturer.

transmit claims information to the proper Payers and transmit Payers' coverage decisions to Providers for posting on Providers' books as accounts receivable. In addition, Company would arrange for electronic funds transfers from Payers to Providers through an affiliate, First American National Bank, Nashville, Tennessee (Bank), offer medical service credit cards, issued by Bank, to Providers' patients to be used to pay for all medical expenses not covered by Payers, and operate a collection agency for Providers to collect past-due accounts. Company also would perform general data processing services, including maintaining medical records and scheduling the provision of medical services, for Springhill Hospitals, Inc., Mobile, Alabama, which is affiliated with Applicant's co-venturer and would serve as a beta site for the testing and development of data processing and transmission software and facilities offered by Company to Providers. Applicant also proposes that Company would provide electronic storage and retrieval of financial documents and information to insured depository institutions and other financial companies. The scope of Company's activities would be nationwide.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity that the Board, after due notice and opportunity for hearing, has determined by order or regulation to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the ''closely related to banking'' test if it is demonstrated that banks have generally provided the proposed services, that banks generally provide services that are operationally or functionally similar to the proposed services so as to equip them particularly well to provide the proposed services, or that banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Applicant states that the Board previously has determined by regulation that providing certain financial, banking, or economic data processing and data transmission services and facilities and providing access to such services and facilities by any technological means are closely related to banking for purposes of section 4(c)(8) of the BHC Act. *See* 12 CFR 225.25(b)(7). Applicant maintains that the transmission of claims from providers to payers and the payers' responses to such claims constitutes the transmission of financial data.

Applicant also contends that, to the extent the proposed activities involve transmitting nonfinancial data (such as patient identification, coverage eligibility, and a description of the medical services provided), a bank holding company may engage in these activities as incidental to the transmitting of Providers' requests for payment. *See Banc One Corporation*, 80 Federal Reserve Bulletin 139 (1994). Applicant contends that Providers' requests for payment and Payers' remittance decisions on those requests are financial data, even in the absence of an actual transfer of funds. *See Citicorp*, 72 Federal Reserve Bulletin 497 (1986).

Applicant states that the Board previously has determined by regulation that operating a collection agency for overdue accounts receivable, either retail or commercial, is closely related to banking for purposes of section 4(c)(8) of the BHC Act, provided the collection agency does not obtain the names of customers of competing collection agencies from an affiliated depository institution that maintains trust accounts for those agencies and does not provide preferential treatment to an affiliate or customers of an affiliate seeking collection of an outstanding debt. *See* 12 CFR 225.25(b)(23). Applicant states that its proposed collection agency activities would solely be for overdue accounts as required by the Board's regulation.

In order to approve the proposal, the Board also must determine that the proposed activities to be engaged in by Company are a proper incident to banking that ''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.'' 12 U.S.C. 1843(c)(8). Applicant contends that its proposal would produce public benefits, including gains in efficiency, that outweigh any potential adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the notice and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 2, 1996. Any request for a hearing on this notice must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, December 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30728 Filed 12–18–95; 8:45 am]

BILLING CODE 6210–01–F

Middlefork Financial Group, 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 11, 1996.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Middlefork Financial Group, Inc., Hyden, Kentucky; to acquire 100 percent of the voting shares of Farmers & Traders Bank of Campton, Campton, Kentucky.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Centura Banks, Inc., Rocky Mount, North Carolina; to merge with First Commercial Holding Corporation, Asheville, North Carolina, and thereby indirectly acquire First Commercial Bank, Asheville, North Carolina.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Whitney Holding Corporation, New Orleans, Louisiana; to merge with First Citizens BancStock, Inc., Morgan City, Louisiana, and thereby indirectly acquire First National Bank in St. Mary Parish, Morgan City, Louisiana.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CCB Bancorp, Inc., Santa Ana, California (a subsidiary of First Banks, Inc., Creve Coeur, Missouri); to merge with QCB Bancorp, Long Beach, California (a subsidiary of First Banks, Inc., Creve Coeur, Missouri), and thereby indirectly acquire Queen City Bank, N.A., Long Beach, California.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FirstBank Holding Company of Colorado, Lakewood, Colorado; to acquire 100 percent of the voting shares of The Bank of Douglas County, Castle Rock, Colorado.

Board of Governors of the Federal Reserve System, December 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30722 Filed 12–18–95; 8:45 am]

BILLING CODE 6210–01–F

Julie Christine Yarbrough, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 2, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Julie Christine Yarbrough, Shawnee, Kansas; to acquire an additional 7.31 percent, for a total of 31.93 percent, of the voting shares of B.B. Bancshares, Inc., Shell Knob, Missouri, and thereby indirectly acquire The Community Bank of Shell Knob, Shell Knob, Missouri.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Richard F. Wartman, Ashland, Wisconsin; and Eugene A. Halker, Ashland, Wisconsin (as trustee), to each acquire an additional 7.32 percent, for a total of 30.96 percent; Laura G. Halker, Ashland, Wisconsin (as trustee), to acquire an additional 6.15 percent, for a total of 26.01 percent; Dennis K. Christensen, Ontonagon, Michigan, to acquire an additional 7.31 percent, for a total of 30.90 percent; and Halker Joint Revocable Trust, Ashland, Wisconsin, to acquire an additional 6.15 percent, for a total of 26.01 percent, of the voting shares of UP Financial, Inc., Ontonagon, Michigan, and thereby indirectly acquire First National Bank in Ontonagon, Ontonagon, Michigan.

Board of Governors of the Federal Reserve System, December 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30729 Filed 12–18–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Announcement of Dates for Public Workshop Regarding ''Made in USA'' Claims in Product Advertising and Labeling and Procedure for Requesting to Participate

AGENCY: Federal Trade Commission.

ACTION: Announcement of dates for public workshop on the use of ''Made in USA'' claims in product advertising and labeling and procedures for requesting to participate.

SUMMARY: On October 18, 1995 the Federal Trade Commission (Commissioner Roscoe B. Starek, III dissenting) published a Federal Register Notice seeking public comments through January 16, 1996 in connection with its comprehensive review of consumers' perceptions of ''Made in USA'' claims in product advertising and labeling. As part of this review, the Commission announced that it would invite representatives of consumers, industry, government agencies, and other groups to attend a public workshop to exchange views on the issues, including those raised by the comments received. Among other things, in its review the Commission will be considering (i) whether it should alter its legal standard regarding the use of unqualified ''Made in USA'' claims, and (ii) how domestic content should be measured under any future standard.

The Commission has scheduled the workshop for March 26–27, 1996 at its headquarters at Sixth Street and Pennsylvania Ave., N.W., Washington, D.C. If necessary to accommodate the number of issues raised by the comments, the workshop may be continued through March 28. Today's Federal Register Notice discusses, among other matters, the procedure to be followed by those who wish to participate in the workshop. The Commission also announces that it will hold the record of this proceeding open for approximately one month (until April 30, 1996) for workshop participants and other interested parties to submit clarifying or rebuttal comments on the issues discussed at the workshop.

DATES: Requests to participate in the workshop must be submitted on or before January 16, 1996.

ADDRESSES: Six paper copies of each request to participate should be submitted to the Office of the Secretary, Federal Trade Commission, Room 159, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. Requests should include the requester's telephone number and a FAX number if available. Requests should be captioned: ''Made in USA Workshop—Request to Participate,'' FTC File No. P894219. You may include this request with your comment.

FOR FURTHER INFORMATION CONTACT: Robert Easton, Special Assistant, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580, telephone 202–326–2823.

SUPPLEMENTARY INFORMATION:

A. Background

The October 18, 1995 Federal Register Notice (60 FR 53922, hereafter referred to as the ''first Notice'') announced the public workshop and requested comment on a number of specific questions relating to advertising and labeling claims of ''Made in USA.'' The first Notice described in detail the substance of the issues to be discussed at the workshop and the issues on which written comments were requested. The first Notice, however, left open the specific dates and location for the workshop. This second Notice addresses these matters, as well as the procedure for requesting the opportunity to participate.

As stated in the first Notice, the intent of the workshop will not be to achieve a consensus among participants, or between participants and Commission staff, with regard to any issue raised in this proceeding. However, the Commission will consider the views and suggestions made during the workshop, in addition to any written comments, in formulating its future policy regarding ''Made in USA'' claims.

B. The Workshop

The Commission expects the workshop to be conducted over two days, with separate morning and afternoon panels on each day. A third day of the workshop will be held if there is a need to do so. The subjects to be discussed at each of the panels will be determined after reviewing the substantive comments received pursuant to the first Notice. An agenda for each panel will be announced as soon as practical. The workshop will be open to the public.

As mentioned in the first Notice, the Commission is currently conducting a consumer research project regarding consumer perception of ''Made in USA'' claims. Results of the project will be made available to participants and the public before the workshop. Participants who wish to discuss the consumer perception study at the workshop will be asked to submit an outline or short statement of their views prior to the workshop for the purpose of arranging the workshop's agenda. Others who wish to submit comments on the study are welcome to do so.

The record of the proceeding will be open for a month after the workshop is concluded for the receipt of any additional comments on the study or other issues discussed at the workshop. This will allow workshop participants and others to clarify any views expressed at the workshop or to rebut the comments and views of others in the event that there is insufficient time to fully address all pertinent issues.

A neutral, third-party facilitator may be retained for the public workshop. The discussion during the workshop will be transcribed and the transcript will be placed on the public record.

C. Selection of Workshop Participants

If the number of parties who request to participate in the workshop is so large that including all requesters would inhibit effective discussion among the participants, Commission staff will select as participants a limited number of parties to represent the interests of those who submit written comments. Selection will be based on the following criteria:

1. The party must have submitted a substantive written comment by January 16, 1996 in response to the first Federal Register notice (60 FR 53922, Oct. 18, 1995).
2. The party must have submitted a request to participate pursuant to this Federal Register notice by January 16, 1996.
3. The party's attendance would promote the representation of a balance of interests at the conference.
4. The party's attendance would promote the consideration and discussion of the issues presented in the workshop.
5. The party has expertise in issues raised in the workshop.
6. The party adequately reflects the views of the affected interest(s) which it purports to represent.
7. The party has been designated by one or more interested parties (who timely file requests to participate and written comments) as a party who shares group interests with the designator(s).
8. The number of parties selected will not be so large as to inhibit effective discussion among them.

If it is necessary to limit the number of participants, those not selected to participate, but who submit both requests to participate and written comments, will be afforded an opportunity, if at all possible, at the end of one or more sessions to present statements during a limited time period. The time allotted for these statements will be based on the amount of time necessary for discussion of the issues by the selected parties, and on the number of persons who wish to make statements.

Requesters will be notified as soon as possible after January 16, 1996 if they have been selected to participate. To assist in making this notification, please include in your request to participate a telephone number and a FAX number if available.

D. Date, Time and Location of Workshop

The workshop is scheduled to be held in room 432 of the FTC headquarters building, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. on March 26 and 27, 1996, from 8:30 a.m. until 5 p.m. Depending on the number of issues raised by the comments, the workshop may be extended through an additional day, March 28, 1996. The workshop is open to the public.

E. Procedure for Requesting Opportunity to Participate in Workshop

To be eligible to participate at the workshop, you must:

1. File a written substantive comment by January 16, 1996 pursuant to the first Federal Register notice.
2. File a written request to participate by January 16, 1996 pursuant to this Federal Register notice.

You may combine the written substantive comment and the written request to participate in one document.

Authority: 15 U.S.C. 41 *et seq.*

By direction of the Commission, Commissioner Starek dissenting.

Donald S. Clark,

Secretary.

[FR Doc. 95–30833 Filed 12–18–95; 8:45 am]

BILLING CODE 6750–01–P

[File No. 951 0072]

Devro International PLC; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: This consent agreement, accepted subject to final Commission approval, settles alleged violations of

federal law prohibiting unfair or deceptive acts and practices and unfair methods of competition allegedly arising from the acquisition by Devro International of Teepak International. Devro and Teepak are the two largest producers of collagen sausage casings (the skins into which various meat products are stuffed before being cooked or smoked) in the United States. The consent agreement, among other things, would require Devro to divest Devro North America, the assets it uses to manufacture and distribute collagen sausage casings in the United States and Canada. The assets to be divested include a manufacturing plant in Somerville, New Jersey, and a finishing plant in Ontario, Canada. The divestiture would have to be completed within three months of the date the order becomes final, and the assets would have to be sold to a buyer (1) that does not already produce collagen sausage casings for sale in the United States, and (2) that is approved by the Commission. If the divestiture is not completed on time, the consent agreement would permit the Commission to appoint a trustee to complete it.

DATES: Comments must be received on or before February 20, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, FTC/H–374, Washington, DC 20580 (202) 326–2932; Ronald Rowe, FTC/S–2602, Washington, DC 20580 (202) 326–2610; or Joseph Brownman, FTC/S–2108, Washington, DC 20580 (202) 326–2950.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisition by Devro International plc and Devro Inc. of the outstanding voting securities of Teepak International, Inc. and it now appearing that Devro International plc and Devro Inc. (hereinafter sometimes referred to as the ''Proposed Respondents'') are willing to enter into an agreement containing an order to divest certain assets and providing for other relief:

It is hereby agreed by and between the Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission, that:

1. Proposed Respondent Devro International plc is a corporation organized, existing, and doing business under and by virtue of the laws of Scotland, with its office and principal place of business at Moodiesburn, Chryston, G69 OJE, Scotland.

2. Proposed Respondent Devro Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at Southside Avenue, Somerville, New Jersey.

3. Teepak International, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at Three Westbrook Corporate Center, Suite 1000, Westchester, Illinois 60153.

4. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

5. Proposed Respondents waive:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement; and

d. any claim under the Equal Access to Justice Act.

6. Proposed Respondents shall submit, within five (5) days of the date this Agreement is signed by Proposed Respondents, an initial compliance report, as contemplated by Rules 2.33 and 4.9(b)(7) of the Commission's Rules of Practice and Procedure, 16 C.F.R. 2.33 and 4.9(b)(7), duly signed by the Proposed Respondents, setting forth in precise detail the manner in which Proposed Respondents will comply with Parts II and III of the proposed consent order, when and if entered, the Agreement to Condition Acquisition, and the Agreement to Hold Separate. Among other things, the report shall include:

a. A full and complete description of Proposed Respondents' compliance and planned compliance with the terms and conditions of the Agreement to Hold Separate, including:

(1) The names, telephone numbers, and business affiliations of the persons that Proposed Respondents intend to appoint, or are considering appointing, or have appointed, as members of the Management Team, pursuant to Paragraph 4 (a) of the Agreement to Hold Separate;

(2) the name(s), telephone number(s), and business affiliation(s) of the person(s) that Proposed Respondents intend to appoint, are considering appointing, or have appointed, as independent auditor/manager, pursuant to Paragraph 4 (b) of the Agreement To Hold Separate; and

(3) copies of all written communications, internal memoranda, and reports and recommendations concerning the terms of the Agreement to Hold Separate.

b. A full and complete description of Proposed Respondents' compliance and planned compliance with the terms and conditions of the Agreement to Condition Acquisition, including:

(1) The resolution, or draft resolution, that Devro International plc will present to its shareholders;

(2) the date that Devro International plc anticipates that its shareholders will vote on the resolution;

(3) the date that Devro International plc anticipates learning the outcome of the vote by the shareholders on the resolution; and

(4) copies of all written communications, internal memoranda, and reports and recommendations concerning the terms of the Agreement to Condition Acquisition.

c. A full and complete description of the efforts planned or underway to comply with the terms and conditions of the proposed order, including:

(1) A list of the firms to which Proposed Respondents (i) have offered, and (ii) intend to offer, the Assets To Be Divested;

(2) the names and telephone numbers of the representatives of the firms listed in response to part c. (1) of this Paragraph that Proposed Respondents have already contacted to offer the Assets To Be Divested;

(3) the names, addresses, telephone numbers and business affiliations of at least three (3) potential trustees that would be acceptable to Proposed Respondents should the appointment of a trustee be deemed appropriate by the Commission;

(4) the procedures that Proposed Respondents will employ in finding a

proposed acquirer of the Assets To Be Divested;

(5) all criteria that Proposed Respondents will employ for choosing a proposed acquirer of the Assets To Be Divested in the event that offers for these assets are made by more than one firm;

(6) a full and complete description of all of the Assets To Be Divested;

(7) all descriptions, characterizations, and explanations of the Assets To Be Divested that may already have been provided, or that Proposed Respondents intend to provide, to potential acquirers;

(8) a full and complete description of the financial condition and potential viability as an independent business of the Assets To Be Divested;

(9) all descriptions, characterizations, and explanations of the financial condition and potential viability as an independent business of the Assets To Be Divested that may already have been provided, or that Proposed Respondents intend to provide, to potential acquirers; and

(10) copies of all written communications, internal memoranda, and reports and recommendations concerning divestiture.

7. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This Agreement is for settlement purposes only and does not constitute an admission by the Proposed Respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

9. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to divest shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to the Proposed Respondents' counsel at the address as stated in this Agreement shall constitute service. The Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

10. The Proposed Respondents have read the proposed complaint and order contemplated hereby. The Proposed Respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. The Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

11. Proposed Respondents agree to be bound by all of the terms of the Agreement to Condition Acquisition and the Agreement to Hold Separate, attached to this Agreement and made a part hereof as Appendix I and Appendix II, respectively, upon acceptance by the Commission of this Agreement Containing Consent Order for public comment.

12. Proposed Respondents agree to notify the Commission's Bureau of Competition in writing, within twenty-four (24) hours, of the action taken by the shareholders of Devro International plc regarding (a) the proposed acquisition by Devro International plc of Teepak International, Inc. (''the Acquisition''), (b) the divestiture of the Assets To Be Divested under the terms of this Agreement Containing Consent Order (''the Divestiture''), and (c) the unlimited indemnification of the independent auditor/manager, retroactive as of the date of the appointment of the auditor/manager, pursuant to the Agreement to Condition Acquisition and the Agreement to Hold Separate (''the Retroactive Indemnification'').

13. Subsequent to approval of this Agreement Containing Consent Order and acceptance for public comment of the Consent Order by the Commission and unconditional approval by the shareholders of Devro International plc of (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, with written notice having been given to the Commission's Bureau of Competition, in writing, within twenty-four (24) hours, of the unconditional approval by the shareholders, Devro International plc may consummate the Acquisition.

14. In the event the shareholders of Devro International plc, prior to the expiration of the sixty (60) day public comment period, fail unconditionally to approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, Proposed Respondents, having no authority to consummate the Acquisition, will, within twenty-four (24) hours of the failure of the shareholders of Devro International plc unconditionally to approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, notify the Commission of such failure and withdraw any Hart-Scott-Rodino Premerger Notification and Report Form that may have been filed under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a. After such timely notification and withdrawal, pursuant to the terms of this Paragraph, the Commission will not issue the following divestiture order.

Order

I

It is ordered That, as used in this Order, the following definitions shall apply:

A. ''Devro International plc'' means that company and its predecessors, subsidiaries, divisions, groups and affiliates controlled by Devro International plc, and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each.

B. ''Devro Inc.'' means that company and its predecessors, subsidiaries, divisions, groups and affiliates controlled by Devro Inc. and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each.

C. ''Devro Canada'' means DCI Devro Canada Inc., and its predecessors, subsidiaries, divisions, groups and affiliates controlled by DCI Devro Canada Inc. and its respective directors, officers, employees, agents, and

representatives, and the respective successors and assigns of each.

D. ''Teepak'' means Teepak International, Inc., and its predecessors, subsidiaries, divisions, groups and affiliates controlled by Teepak International, Inc. and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each. The definition of ''Teepak'' specifically excludes Devro International plc, Devro Inc., and Devro Canada. For purposes of Parts VII and VIII of this Order, after the Acquisition, Teepak will be regarded as part of Respondent Devro International plc.

E. ''Respondents'' means Devro International plc and Devro Inc.

F. ''Acquisition'' means the proposed acquisition by Devro International plc of the outstanding voting securities of Teepak International, Inc.

G. ''Assets To Be Divested'' means:

1. All assets related to the collagen sausage casings business of Devro Inc. and Devro Canada, including, but not limited to:

a. All production and finishing facilities, plant, and equipment of Devro Inc., including the plant located at Somerville, New Jersey, and, wherever located, all machinery, fixtures, equipment, kitchen facilities, laboratory testing equipment and facilities, research and development facilities and programs, vehicles, transportation facilities, furniture, tools and other tangible personal property, customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, and management information systems;

b. All production and finishing facilities, plant, and equipment of Devro Canada, including the plant located in Markham, Ontario, Canada, and, wherever located, and to the extent they exist, all machinery, fixtures, equipment, kitchen facilities, laboratory testing equipment and facilities, research and development facilities and programs, vehicles, transportation facilities, furniture, tools and other tangible personal property, customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, and management information systems;

c. All intellectual property, including product and process patents, patent rights, patent improvements, process improvements, trademarks, service marks, copyrights, technology, knowhow, basic research, trade secrets, goodwill, or trademarks that Devro Inc. or Devro Canada use, license, have rights to, or otherwise have an interest in; provided, however, that Devro International may retain all rights to the trademark Devro®, tradename ''Devro'', and the stylized letter ''D'';

d. All Devro Inc. and Devro Canada inventory and storage capacity;

e. All rights, titles, and interest in and to real property owned or leased by Devro Inc. and Devro Canada, together with all appurtenances, licenses, and permits;

f. All rights, titles, and interests in and to contracts entered into in the ordinary course of business between Devro Inc. and Devro Canada with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees;

g. All rights of Devro Inc. and Devro Canada, under warranties and guarantees, express or implied;

h. All books, records, and files of Devro Inc. and Devro Canada;

i. All items of prepaid expense to Devro Inc. and Devro Canada; and

2. From Devro International plc:

a. On a non-exclusive basis, with no right to sub-license to a third party, all rights to any information or intellectual property relating to Devro International (but not any information or intellectual property of Teepak in existence at the time of the Acquisition) in development or already developed by Devro International at the time of the divestiture, plus all enhancements, improvements or perfections thereof within twenty-four (24) months of the divestiture, including information or intellectual property relating to product and process patents, patent rights, patent improvements, technology, knowhow, basic research, or trade secrets regarding any research and development programs or activities, wherever located, to the extent that such information or intellectual property relate to the manufacture, finishing, distribution, or sale of collagen sausage casings; and

b. All additional tangible and intangible assets of Devro International, wherever located, reasonably necessary to enable the acquirer of the Assets To Be Divested to manufacture, finish, distribute, and market collagen sausage casings in substantially the same manner, quality, and quantity achieved by Devro Inc. and Devro Canada prior to the divestiture, other than any tangible or intangible assets of Teepak in existence at the time of the Acquisition.

H. ''Excluded Assets'' means the following entities: Devro Limited, Devro Holdings Limited, Devro Pty Limited, Devro BV, Devro Asia Limited, Devro GmbH, and Devro KK, and Teepak and its tangible and intangible assets in existence at the time of the Acquisition. The term ''Excluded Assets'' does not include (that is, the following assets are not Excluded Assets) specifically identifiable tangible and intangible assets of these excluded entities (other than those of Teepak at the time of the divestiture) related to the manufacture and finishing of collagen sausage casings.

I. ''Commission'' means the Federal Trade Commission.

II

It is further ordered That:

A. Within three (3) months of the date the order becomes final, Respondents shall divest, absolutely and in good faith, at no minimum price, the Assets To Be Divested.

B. The purpose of the divestiture of the Assets To Be Divested is to ensure the continued use of the Assets To Be Divested as a viable, competitive, and independent business, in the same business in which the Assets To Be Divested are engaged at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

C. The proposed acquirer shall not be a firm that has been engaged in the manufacture of collagen sausage casings for sale, other than to itself, in the United States.

D. The Assets To Be Divested shall be divested only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

III

It is further ordered That:

A. If Respondents have not divested the Assets To Be Divested, absolutely and in good faith, with the Commission's prior approval, within three (3) months of the date this Order becomes final, the Commission may appoint a trustee to divest the Assets To Be Divested. In the event that the Commission or the Attorney General brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the

Commission, for any failure by Respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III. A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, and consistent with the provisions of Paragraphs II. B.–D. of this Order, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested.

3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

4. The trustee shall have six (6) months from the date the Commission approves the trust agreement described in Paragraph III. B. 3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the six-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times for up to an additional twelve (12) months each time.

5. The trustee shall, to the extent not prohibited by United States or Canadian law, have full and complete access to the personnel, books, records and facilities related to the Assets To Be Divested or to any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in Part II of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, and at reasonable fees, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Assets To Be Divested.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III. A. of this Order.

10. In the event the trustee is unable to divest the Assets To Be Divested, the trustee may divest such additional assets of Respondent Devro International, other than the Excluded Assets, as may be reasonably necessary to enable the trustee to divest the Assets To Be Divested.

11. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

12. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.

13. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered That:

A. Upon reasonable notice to Respondents from the acquirer approved by the Commission pursuant to this Order, Respondents shall provide such assistance to the acquirer as is reasonably necessary to enable the acquirer to manufacture, finish, distribute and market collagen sausage casings in substantially the same manner, quality, and quantity achieved by Devro Inc. and Devro Canada prior to the divestiture. Such assistance shall include reasonable consultation with knowledgeable employees of Respondents and training at the acquirer's facility for a period of time sufficient to ensure that the acquirer's personnel are appropriately trained in the manufacture, finishing, distribution, and marketing of collagen sausage casings in the manner carried on by Devro Inc. and Devro Canada prior to the divestiture. Respondents, however, shall not be required to continue providing such assistance for more than two (2) years from the date of the divestiture. Respondents may charge the acquirer at a rate no greater than their direct costs for providing such technical assistance.

B. Respondents shall facilitate and not interfere with the hiring by the acquirer approved by the Commission of employees of Devro Inc. and Devro

Canada who may desire to undertake employment.

C. Pending divestiture of the Assets To Be Divested, Respondents shall take such actions as are reasonably necessary to maintain the viability and marketability of the Assets To Be Divested and to prevent their destruction, removal, wasting, deterioration or impairment of any kind, except for ordinary wear and tear.

V

It is further ordered That Respondents shall continue to comply with all terms of the Agreement to Hold Separate attached to this Order and made a part hereof as Appendix II. Said Agreement shall remain in force and effect until the Assets To Be Divested have been divested as required by this Order.

VI

It is further ordered That:

Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Parts II, III, and IV of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, or have complied with this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order, and their compliance with the terms and conditions of the Agreement To Condition Acquisition and the Agreement To Hold Separate, and set forth the monthly sales of Devro Inc. and Devro Canada during the preceding two months and compared to the monthly sales during the same months in the preceding calendar year. Respondents shall include in their compliance reports copies of all written communications, internal memoranda, and reports and recommendations concerning divestiture and the manner in which the Assets To Be Divested are being held separate.

VII

It is further ordered That, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and reasonable notice, each Respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

B. Upon five (5) days' notice to the appropriate Respondent, and without restraint or interference, to interview officers, directors, or employees of the Respondent, who may have counsel present.

VIII

It is further ordered That Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporations that may affect compliance obligations arising out of the Order.

Appendix I

Agreement To Condition Acquisition on Shareholder Approval of Divestiture and Retroactive Indemnification

This Agreement To Condition Acquisition on Shareholder Approval of Divestiture and Retroactive Indemnification (''Agreement To Condition Acquisition'') is by and between Devro International plc, a corporation organized, existing, and doing business under and by virtue of the laws of Scotland, with its office and principal place of business at Moodiesburn, Chryston, Scotland; Devro Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at Somerville, New Jersey; and the Federal Trade Commission (''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Whereas Devro International plc entered into an agreement with Hillside Industries Incorporated for Devro International plc to acquire the outstanding voting securities of Teepak International Inc. (''Teepak''), a Delaware corporation (hereinafter ''the Acquisition'');

Whereas Devro International plc and Devro Inc. manufacture, finish, distribute, and sell collagen sausage casings, and DCI Devro Canada Inc. (''Devro Canada'') finishes, distributes, and sells collagen sausage casings;

Whereas Teepak, with principal offices located at Westchester, Illinois, among other things, also manufactures, finishes, distributes, and sells collagen sausage casings;

Whereas the Commission is investigating the Acquisition to determine whether it would violate any statute enforced by the Commission;

Whereas Devro International plc and Devro Inc. are willing (a) to enter into an Agreement Containing Consent Order requiring them to divest certain Assets To Be Divested, as defined in Part I of the proposed Consent Order of the Agreement Containing Consent Order, which include the collagen sausage casings business of Devro Inc., Devro Canada, and assets of Devro International plc related thereto (hereinafter ''the Divestiture''); (b) to enter into an Agreement To Hold Separate requiring that the Assets To Be Divested be held separate and apart from the remainder of the assets of Devro International pending their divestiture; and (c) to arrange and provide for the unlimited indemnification for the independent auditor/manager, retroactive as of the date of the appointment of the auditor/manager, pursuant to this Agreement To Condition Acquisition and the Agreement To Hold Separate (hereinafter ''the Retroactive Indemnification'');

Whereas if the Commission accepts the attached Agreement Containing Consent Order, which would require the divestiture of the Assets To Be Divested, the Commission is required to place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Rule 2.34 of the Commission's Rules of Practice and Procedure, 16 C.F.R. 2.34;

Whereas the Commission is advised and concerned that, under the applicable law of the United Kingdom, Devro International will be unable to commit to, or be bound by, certain of the terms of the Agreement Containing Consent Order and the Agreement To Hold Separate unless and until those terms are approved by the shareholders of Devro International plc;

Whereas the Commission is advised that, under the applicable law of the United Kingdom, Devro International plc will not be able to seek shareholder approval for (a) the Divestiture or (b) the Retroactive Indemnification, until after all of the terms of the Agreement Containing Consent Order, the Agreement To Hold Separate, and this Agreement To Condition Acquisition are made known to the shareholders of Devro International plc, which can only happen after the Commission accepts the Agreement Containing Consent Order for public comment, and the Agreement To Hold Separate and the Agreement To Condition Acquisition;

Whereas the Commission will not accept for public comment an Agreement Containing Consent Order or an Agreement to Hold Separate that is not binding on the Proposed Respondents;

Whereas the undersigned officials of Devro International plc and Devro Inc. and their attorneys at this time are authorized to make the following binding commitments:

1. Devro International plc and Devro Inc. will seek shareholder approval for, at the same time, as part of a single package, and as a mutually contingent matter, (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification;

2. the shareholder approval will be sought, and if unconditionally obtained, (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification will be fully authorized, no less than seven (7) days prior to the completion of the sixty (60) day public comment period during which the

Agreement Containing Consent Order will have been placed on the public record;

3. Devro International plc and Devro Inc. will advise the Commission's Bureau of Competition in writing, within twenty-four (24) hours, of all actions taken by the shareholders in connection with the effort to obtain approval for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; and

4. Devro International plc, Devro Inc., and all entities controlled by either of them will not acquire, directly or indirectly, Teepak or any of its assets without unconditional shareholder approvals having been obtained and fully authorized for (a) the Divestiture and (b) the Retroactive Indemnification;

Whereas Devro International plc represents to the Commission that (1) the directors of Devro International plc will officially recommend to the shareholders of Devro International plc that they approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; (2) Devro International plc will use its best efforts to obtain shareholder approval for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; (3) in light of (1) and (2) above, it would be highly unusual if the shareholders of Devro International plc were to reject (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; and (4) Devro International plc fully expects the shareholders of Devro International plc to approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification;

Whereas shareholder approval of (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification will be presented to the shareholders for their approval as part of a single resolution, to be voted upon as a package only, and Devro International plc and Devro Inc. will not be authorized to consummate the Acquisition unless and until they are also authorized (a) to make the Divestiture and (b) to grant the Retroactive Indemnification;

Whereas shareholder approval for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification will be sought, and determined, prior to the time that the Commission will consider whether to accept the final Agreement Containing Consent Order under the Commission's Rules;

Whereas the Commission is concerned that if an agreement is not reached regarding the nature and timing of the shareholder approval and the commitment on the part of Devro International and Devro Inc. not to consummate the acquisition unless and until the requisite shareholder approvals are obtained, appropriate divestiture resulting from any proceeding challenging the Acquisition might not be possible or might produce a less than effective remedy;

Whereas the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the Divestiture and the continued viability and competitiveness of the Assets To Be Divested;

Whereas Devro International plc and Devro Inc.'s entering into this Agreement shall in no way be construed as an admission by them that the Acquisition is illegal;

Whereas Devro International plc and Devro Inc. understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Devro International plc or Devro Inc. with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the Agreement to Hold Separate, and the Consent Order to which this Agreement is annexed and made a part thereof, as follows:

1. The Acquisition by Devro International plc or Devro Inc. of Teepak is contingent upon shareholder approval.

2. Devro International plc and Devro Inc. will not seek shareholder approval for the Acquisition without, at the same time, and as part of the same package, also seeking mutually contingent shareholder approval for (a) the Divestiture and (b) the Retroactive Indemnification.

3. Unconditional shareholder approval will be sought, and if obtained, be fully authorized, no less than seven (7) days prior to the completion of the sixty (60) day public comment period during which the Agreement Containing Consent Order will have been placed on the public record.

4. In no event will Devro International plc or Devro Inc. or any entity controlled by either acquire, directly or indirectly, Teepak or any of its assets without unconditional shareholder approvals having been obtained and fully authorized for (a) the Divestiture and (b) the Retroactive Indemnification.

5. Unless and until unconditional shareholder approval is obtained for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, Devro International plc and Devro Inc., or any entity controlled by either, will not acquire, directly or indirectly, Teepak or any of its assets.

6. At such time as the shareholders of Devro International may unconditionally approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, Devro International and Devro Inc., by and through their authorized representatives, shall notify the Commission's Bureau of Competition, in writing, within twenty-four (24) hours, of the action taken.

7. Devro International and Devro Inc., by and through their signatories, warrant that they are fully authorized to enter into the terms of this Agreement to Condition Acquisition and to bind Devro International plc and Devro Inc. to all of its terms and conditions.

8. This Agreement shall be binding when approved by the Commission.

Appendix II

Agreement to Hold Separate

This Agreement to Hold Separate (''Agreement'') is by and between Devro International plc, a corporation organized, existing, and doing business under and by virtue of the laws of Scotland, with its office and principal place of business at Moodiesburn, Chryston, Scotland; Devro Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at Somerville, New Jersey; and the Federal Trade Commission (''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Whereas Devro International plc entered into an agreement with Hillside Industries Incorporated for Devro International plc to acquire the outstanding voting securities of Teepak International, Inc. (''Teepak''), a Delaware corporation (hereinafter ''Acquisition'');

Whereas Devro International plc and Devro Inc. manufacture, finish, distribute, and sell collagen sausage casings, and DCI Devro Canada Inc. (''Devro Canada'') finishes, distributes, and sells collagen sausage casings;

Whereas Teepak, with principal offices located at Westchester, Illinois, among other things, also manufactures, finishes, distributes, and sells collagen sausage casings;

Whereas the Commission is investigating the Acquisition to determine whether it would violate any statute enforced by the Commission;

Whereas if the Commission accepts the attached Agreement Containing Consent Order, which would require the divestiture of certain Assets To Be Divested, as defined in Part I of the Consent Order, which include the collagen sausage casings business of Devro Inc., Devro Canada, and assets of Devro International plc related thereto, the Commission is required to place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules of Practice and Procedure, 16 C.F.R. 2.34;

Whereas the Commission is concerned that if an understanding is not reached preserving the *status quo ante* of the Assets To Be Divested during the period prior to the acceptance of the final Consent Order by the Commission, after the 60-day notice period, divestiture resulting from any proceeding challenging the Acquisition might not be possible or might produce a less than effective remedy;

Whereas the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Assets To Be Divested and the continued viability and competitiveness of the Assets To Be Divested;

Whereas the purpose of this Agreement and the Consent Order is to:

1. Preserve and maintain the Assets To Be Divested as a viable, competitive and independent business engaged in the manufacture, finishing, distribution and sale of collagen sausage casings pending divestiture;

2. Limit the potential for interim competitive harm during the period between the Acquisition and the required divestiture; and

3. Remedy any anticompetitive effects of the Acquisition;

Whereas Devro International plc and Devro Inc.'s entering into this Agreement shall in no way be construed as an admission by them that the Acquisition is illegal;

Whereas Devro International plc and Devro Inc. understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Devro International plc or Devro Inc. with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the Agreement to Condition Acquisition, and the Consent Order to which this Agreement is annexed and made a part thereof, as follows:

1. Devro International plc and Devro Inc. agree to execute the Agreement Containing Consent Order and be bound by the Consent Order.

2. Devro International plc and Devro Inc. agree to execute and be bound by the Agreement To Condition Acquisition.

3. Devro International plc and Devro Inc. agree that until the earlier of the dates listed in subparagraphs 3(a) and 3(b) of this Paragraph, they will comply with the provisions of Paragraph 4 of this Agreement:

(a) Three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. 2.34; or

(b) The day after the divestiture required by the Consent Order has been completed.

4. To ensure the complete independence and viability of Devro Inc., Devro Canada, and the Assets To Be Divested, and to further ensure that no competitive information is exchanged between Devro International plc and Devro Inc., Devro Canada, and the persons responsible for maintaining and operating the Assets To Be Divested, Devro International plc shall hold Devro Inc., Devro Canada, and the Assets To Be Divested, as defined in the Consent Order, separate and apart from all of its other operations, on the following terms and conditions:

(a) Devro International plc will appoint three persons to manage and maintain the business and assets of Devro Inc., Devro Canada, and the Assets To Be Divested. These persons (''the Management Team'') shall agree to be bound by this Agreement and shall manage Devro Inc., Devro Canada, and the Assets To Be Divested independent of the management of Devro International plc's other business operations, including those of Teepak, after Devro International plc acquires Teepak. The persons on the Management Team shall not be involved in any way in the manufacture, finishing, distribution, or sale of sausage casings by Devro International plc or Teepak. The management team shall conduct the business operations of Devro Inc., Devro Canada, and the Assets To Be Divested.

(b) The Management Team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by Devro International plc. The independent auditor/manager, who shall not be an employee or agent of Devro International plc or a person likely to be an employee or agent of Devro International plc within two years of the divestiture, shall have expertise in the manufacture, finishing, distribution, or sale of collagen sausage casings. The independent auditor/manager shall agree to be bound by this Agreement and shall have exclusive control over the operations of Devro Inc., Devro Canada, and the Assets To Be Divested, with responsibility for their management and maintaining their independence. The independent auditor/manager shall not be involved in any way in the business of manufacturing, finishing, distribution, or sale of sausage casings by Devro International plc or Teepak.

(c) Devro International plc shall not exercise direction or control over, or influence directly or indirectly, the independent auditor/manager, or the Management Team, or Devro Inc., Devro Canada, or the Assets To Be Divested, other than as may reasonably be necessary to assure compliance with this Agreement and with all applicable laws.

(d) Devro International plc shall not change the composition of the Management Team without the consent of the independent auditor/manager.

(e) Devro International plc shall maintain the viability, competitiveness, and marketability of the Assets To Be Divested and shall neither cause nor permit the destruction, removal, wasting, deterioration, or impairment of the Assets To Be Divested, except as may occur in the ordinary course of business and except for ordinary wear and tear, and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their viability, competitiveness, or marketability.

(f) Except for the Management Team, Devro International plc shall not permit any Devro International plc Board Member, officer, director, employee, or agent to be involved in the business operations of the Assets To Be Divested.

(g) Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, complying with requirements of the London Stock Exchange and independent auditors, defending investigations or defending or prosecuting litigation, negotiating agreements to divest assets, or complying with this Agreement or the Consent Order, Devro International plc shall not receive or have access to, or use or continue to use, any material confidential information about Devro Inc., Devro Canada, or the Assets To Be Divested, in connection with the operation of Devro International plc or its operation of the Teepak business. ''Material confidential information'' means competitively sensitive or proprietary information not in the public domain, including, but not limited to, customer lists, price lists, marketing methods, patent rights, knowhow, technologies, processes, process improvements or other trade secrets or confidential business information.

(h) Devro International plc, Devro Inc. and Devro Canada shall circulate to all employees of Devro Inc. and Devro Canada, and display in a conspicuous place at Devro Inc. and Devro Canada manufacturing facilities, notice of this Agreement to Hold Separate and the proposed Consent Order in the form attached hereto as Attachment A.

(i) Devro International plc shall give funds to the Management Team for all capital expenditures relating to Devro Inc. and Devro Canada previously planned or approved by Devro International plc to the extent Devro Inc. does not generate sufficient cash flow to fund such capital expenditures. The Management Team shall expend the funds for these previously planned capital expenditures.

(j) The Management Team shall take all steps reasonably necessary to optimize the profitable operations and continued viability of Devro Inc., Devro Canada, and the Assets To Be Divested, including, but not limited to:

(1) Paying all direct costs and indirect overheads relating to the business of Devro Inc., Devro Canada, and the Assets To Be Divested;

(2) Making available funds for advertising and other marketing and promotional activities at no less than the level for the comparable period in the preceding calendar year;

(3) Providing no less than the same level of sales commissions or incentives for sales personnel as were provided for the comparable period in the preceding calendar year;

(4) Maintaining the same level of resources involved in sales and marketing as was the case in the normal course of business prior to the Acquisition; and

(5) Expending funds sufficient to perform all reasonably necessary routine maintenance to, and replacements of, the Assets To Be Divested.

In the event that Devro Inc., Devro Canada, and the Assets To Be Divested do not generate sufficient cash flow to fund the activities reasonably necessary to optimize the profitable operations and viability of Devro Inc., Devro Canada, and the Assets To Be Divested, Devro International plc shall advance such sums as are reasonably necessary to pay for same, to be repaid by the acquirer at no interest within two (2) years.

(k) The compensation and expenses of the independent auditor/manager shall be the responsibility of Devro International plc. Devro Inc., Devro Canada, and the Assets To Be Divested shall not be charged by Devro International plc with those costs and expenses.

(l) Devro International plc shall indemnify the independent auditor/manager against any

losses or claims of any kind that might arise out of his or her involvement under this Agreement, not to exceed $5 million, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts or bad faith; provided however, upon shareholder approval of the unlimited indemnification of the auditor/manager, retroactive as of the date of the appointment of the auditor/manager, the $5 million liability limitation shall become null and void, under the terms of the Agreement to Condition Acquisition.

(m) If the independent auditor/manager fails to act, or ceases to act, diligently, a substitute auditor/manager shall be appointed by Devro International plc in the manner provided in Paragraph 4 (b) of this Agreement.

(n) The independent auditor/manager shall have access to, and be informed about, the names of the companies who may inquire about, or seek or propose to buy, Devro Inc., Devro Canada, or the Assets To Be Divested. Devro International plc may require the independent auditor/manager to sign a confidentiality agreement prohibiting the auditor/manager from disclosing any material confidential information obtained as a result of his or her role as independent auditor/manager, to anyone other than the Commission.

(o) All material transactions other than those in the ordinary course of business, if not precluded by this Paragraph, shall be subject to a majority vote of the Management Team. In the event of a tie vote, the independent auditor/manager shall cast the deciding vote.

5. Should the Federal Trade Commission seek in any proceeding to compel Devro International plc or Devro Inc. to divest any of the Assets To Be Divested, or any additional assets, as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order or this Agreement, as defined in the draft complaint attached to the Agreement Containing Consent Order, Devro International plc and Devro Inc. shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission permitted the Acquisition. Devro International plc and Devro Inc. also waive all their rights to contest the validity of this Agreement.

6. To the extent that this Agreement requires Devro International plc or Devro Inc. to take, or prohibits them from taking, certain actions that otherwise may be required or prohibited by contract, Devro International plc and Devro Inc. shall abide by the terms of this Agreement and the Consent Order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or Consent Order.

7. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to counsel, Devro International plc and Devro Inc. shall permit any duly authorized representative or representatives of the Commission:

(a) Access during the office hours of Devro International plc and Devro Inc., and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in their possession or under their control relating to compliance with this Agreement; and

(b) Upon five (5) days' notice to counsel, and without restraint or interference from counsel, to interview officers or employees of Devro International plc and Devro Inc., who may have counsel present, regarding any such matters.

8. This Agreement shall not be binding until approved by the Commission. Devro International plc and Devro Inc. acknowledge that from the date they sign this Agreement until such time as the Commission may approve this Agreement, they will undertake to maintain the Assets To Be Divested in a viable condition.

9. Subsequent to acceptance for public comment of the Agreement Containing Consent Order by the Commission and after the unconditional approval by the shareholders of Devro International obtained not less than seven (7) days prior to the end of the 60-day public comment period, of (a) the Acquisition, (b) the divestiture of the Assets To Be Divested under the terms of the Agreement Containing Consent Order, and (c) the retroactive indemnification, under the definitions and terms of the Agreement To Condition Acquisition and this Agreement to Hold Separate, with written notice having been given to the Commission's Bureau of Competition, in writing, within twenty-four (24) hours, of the unconditional approval by the shareholders, Devro International plc may consummate the Acquisition.

10. This Agreement shall be binding when approved by the Commission.

11. Devro International plc and Devro Inc., by and through their signatories, warrant that they are fully authorized to enter into the terms of this Agreement to Hold Separate and to bind Devro International plc and Devro Inc. to all of its terms and conditions.

Attachment A

Important Notice

As you know, Devro International plc has entered into an agreement with the Federal Trade Commission (FTC) in connection with the proposed acquisition of Teepak International, Inc. Under the terms of the agreement with the FTC, Devro International must sell Devro Inc. and DCI Devro Canada Inc. to a third party that is acceptable to the FTC. We anticipate that this will occur within the next several months.

The agreement with the FTC also requires that, until Devro Inc. and Devro Canada are sold, Devro International must preserve and maintain them as competitive and independent businesses separate from Devro International.

To ensure that Devro Inc. and Devro Canada are kept separate from Devro International, a three-person management team, composed of _____, _____, and _____, will assume the management of Devro Inc. and Devro Canada. This management team, which will operate totally independently of Devro International, will report directly and exclusively to _____, an independent auditor/manager.

The effect of Devro International's agreement with the FTC is that, for all intents and purposes, Devro International will no longer be playing any role in the management and operation of Devro Inc. and Devro Canada. Until such time as the future owners of Devro Inc. and Devro Canada are determined, it is the responsibility of every employee of Devro Inc. and Devro Canada to cooperate with the new management team and to help to preserve Devro Inc. and Devro Canada as competitive and independent businesses.

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from Devro International plc and its United States subsidiary, Devro Inc. (collectively referred to as ''Devro'') an Agreement Containing Consent Order. This agreement has been placed on the public record for sixty (60) days for receipt of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the consent order in the agreement.

According to the draft of complaint that the Commission intends to issue, Devro and Teepak International, Inc. (''Teepak'') are competitors, nationwide and worldwide, in the manufacture of collagen sausage casings. Sausage casings are the skins into which various sausage-meat products are stuffed before being cooked or smoked. Among the sausage products using collagen sausage casings are beef jerkys, small sausages, and frankfurters. Unlike other types of synthetic sausage casings, such as fibrous sausage casings, used principally to make salamis and hams, and cellulose sausage casings, used principally to make skinless frankfurters, most collagen sausage casings are edible. Edible sausage casings produce a ''bite'' to a sausage when eaten.

The Commission's draft of complaint states that Devro entered into an agreement with Hillside Industries, Inc.,

the current owners of Teepak, for Devro to acquire all of Teepak for approximately $135 million. The Commission is concerned that the proposed merger would eliminate substantial competition between Devro and Teepak, increase concentration in the highly concentrated collagen sausage casings markets, and lead to higher prices and fewer customer services. The Commission stated it has reason to believe that the proposed acquisition would have anticompetitive effects and be in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

According to the Commission's draft complaint, the anticompetitive effects of the proposed acquisition will be felt in an all-collagen sausage casings product market as well as in an edible collagen sausage casings product market, in both the United States and the world as a whole. In the United States all-collagen sausage casings and edible sausage casings markets, only four firms sell collagen sausage casings, and Devro and Teepak are the nation's top two producers. The proposed acquisition would increase the Herfindahl-Hirschman Index (''HHI''), the customary measure of industry concentration, by a substantial amount. For example, in the United States all-collagen sausage casings market, the HHI will increase by approximately 2000 points and produce an industry concentration of approximately 4700 points. In the United States edible collagen sausage casings market, the HHI would increase by approximately 3300 points and produce an industry concentration of approximately 6800 points. In the world all-collagen and edible sausage casings markets, the proposed acquisition would affect concentration as measured by four-firm concentration and the HHI by very similar orders of magnitude.

The Agreement Containing Consent Order, if finally issued by the Commission, would settle all of the charges alleged in the Commission's complaint. Under the terms of the proposed consent order, Devro will be required to divest all of its collagen sausage casings business assets in the United States and Canada (''Devro North America'') to an acquirer acceptable to the Commission. Devro North America consists primarily of a collagen sausage casings manufacturing plant in Somerville, New Jersey, and a collagen sausage casings finishing plant in Markham, Ontario, Canada. Because the Canadian and United States facilities constitute a single operation, Devro is required to divest the Canadian facility along with the United States plant. This will insure that the divested assets will continue to operate as a viable, competitive business. Devro will also be required to make available to the acquirer of these assets, on a non-exclusive basis, any new technology that Devro may develop related to collagen sausage casings for a period of two (2) years following the final entry of the order.

Devro will be required to complete the required divestiture within three (3) months of the Commission's final issuance of the consent order. In the event Devro does not divest Devro North America to an acquirer acceptable to the Commission in the requisite time, procedures for the appointment of a trustee to sell the assets have been agreed to and will be triggered.

An additional feature of the consent order accepted for public comment is that it limits to some extent the class of potential acquirers for Teepak that would be acceptable to the Commission. Firms already producing collagen sausage casings for sale in the United States are excluded as prospective acquirers of Devro North America. The purpose of this exclusion is to preclude Devro from attempting to divest Devro North America to a competitor where there are likely to be further anticompetitive effects.

Accompanying the Agreement Containing Consent Order are two ancillary agreements. The first is an Agreement to Condition Acquisition and the second is an Agreement to Hold Separate.

The Agreement to Condition Acquisition requires that Devro may not acquire Teepak until Devro is authorized by its shareholders to divest Devro North America and related assets. The purpose of this agreement is to ensure that the Commission, through the appointed trustee, will have an enforceable divestiture remedy available should Devro acquire Teepak and not divest Devro North America. For reasons related to United Kingdom procedure and practice, Devro believes it cannot seek shareholder approval for the proposed acquisition of Teepak, or for the proposed divestiture of Devro North America, unless and until the Commission accepts the Agreement Containing Consent Order for public comment. Under the terms of the Agreement to Condition Acquisition, Devro is required to seek shareholder approval of the divestiture at the same time that it seeks shareholder approval of the acquisition, and these approvals must be obtained unconditionally and at least 7 days before the end of the 60-day public comment period. Devro will not be permitted to acquire Teepak unless it has shareholder approval to divest Devro North America. Also, when the Commission decides whether to issue the final order, the Commission will know whether the conditions have been satisfied. If the Devro shareholders reject the proposed resolution that, if passed, would authorize Devro to acquire Teepak and divest Devro North America, no anticompetitive acquisition will occur and the Commission will not issue the final consent order.

The Agreement to Hold Separate requires that Devro preserve Devro North America's assets and operate Devro North America as a separate, ongoing business apart from Devro and Teepak. The purpose of this agreement is to help insure that the competitive value of Devro North America will be maintained after Devro acquires Teepak but before the assets are actually divested.

By accepting the consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or in any way to modify their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in Devro International PLC

[File No. 951–0072]

Although I have voted to accept the proposed consent order requiring divestiture for public comment, I have reservations about the provision of the order that excludes some incumbent firms from eligibility to acquire the assets to be divested.[1] According to the Notice to Aid Public Comment, the ''purpose of this exclusion is to preclude Devro from attempting to divest Devro North American to a competitor where there are likely to be further anticompetitive effects.'' Since any proposed divestiture under the order must be approved by the Commission,[2] an attempt by Devro to make an anticompetitive divestiture likely would be fruitless. In addition, Devro would risk appointment under the order of a trustee to accomplish

[1] Order Paragraph II.C of the proposed order states that the proposed acquirer of the assets to be divested ''shall not be a firm that has been engaged in the manufacture of collagen sausage casings for sale, other than to itself, in the United States.''

[2] Order Paragraph II.D.

divestiture and incurring civil penalties for failure to make a timely divestiture.

Attempts to define in advance the field of eligible acquirers under a divestiture order are unnecessary, at best, potentially inefficient and possibly even anticompetitive. It is an inefficient use of resources to attempt to assess in advance the competitive effects of a transaction that Devro might or might not propose (especially if the exclusion covers more than one firm), even if the transaction-specific information necessary to our merger analysis were available. As a practical matter, any such exclusions will be based on something less than an adequate factual examination of the various possible proposed divestitures and will necessarily involve the risk of excluding firms that might have been acceptable and even procompetitive acquirers. That risk is unnecessary and should be unacceptable in view of the requirement to obtain the Commission's approval before any divestiture can take place and the availability of other sanctions for failing to make a timely divestiture.

[FR Doc. 95–30834 Filed 12–18–95; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part B of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration on Aging (AoA), as follows: continues the Office of the Assistant Secretary for Aging; establishes two Offices, the Office of Program Operations and Development, and the Office of Governmental Affairs and Elder Rights; the operating grant programs (Titles III and VI) and the developmental grant program (Title IV) are placed under the Office of Program Operations and Development; all inter- and intra-governmental cooperative programs, domestic and international, as well as the elder rights services of Titles II and VII are placed under the Office of Governmental Affairs and Elder Rights; the executive secretariat and policy coordination functions are moved to the Office of the Assistant Secretary; supervision of the Regional Offices is moved to the Director, Office of Program Operations and Development; planning functions are moved to the Office of Management; and the former Office of the Deputy Assistant Secretary for Program Operations and Intergovernmental Affairs, Office of the Deputy Assistant Secretary for Program Development and Elder Rights Programs, Office of Field Operations, and Office of Policy Coordination and Analysis and the division structure under the Office of State and Community Programs and the sub-offices under the Office of Program Development are abolished.

The language to implement these changes is as follows: Part B, Chapter B, ''The Administration on Aging,'' as published in the Federal Register on September 13, 1991 (56 FR 46620); amended on December 24, 1992 (57 FR 61433); and further amended on March 2, 1993 (58 FR 12040) is amended as follows.

Delete B.00 and replace with the following:

B.OO Mission

The Administration on Aging, an Operating Division of the Department of Health and Human Services, is the principal agency designated to carry out the provisions of the Older Americans Act (''OAA'' or ''The Act'') of 1965, as amended, 42 U.S.C. 3001 *et seq.* Serves as the effective and visible advocate for older persons within the Department of Health and Human Services and with other Federal departments and agencies. Directly assists the Secretary in all matters pertaining to problems of the aging. Advocates for the needs of older persons in program planning and policy development within the Department and in other Federal agencies. Gives priority to older persons in greatest economic or social need. Develops standards and issues best practice guidelines; disseminates information; provides technical assistance; and initiates policy related to services funded by the Department and provided to older persons. Advises the Secretary, Department components and other Federal departments and agencies on the characteristics, circumstances and needs of older people and develops policies, plans and programs designed to promote their welfare; under Title III of the Act (45 CFR Part 1321) administers a program of formula grants to States to establish State and community programs for older persons; administers a program of grants to American Indians, Alaskan Natives and Native Hawaiians to establish programs for older Native Americans under Title VI of the Act (45 CFR parts 1326 and 1328). Provides policy and procedural direction, advice and assistance to States and Native American grantees to promote the development of State and Native American administered, community-based systems of comprehensive social services for older persons. Administers long term care ombudsman and protective services programs, legal services development programs, and outreach, counseling and assistance programs for older people under Title VII of the Act. Approves or disapproves State plans and Native American funding applications. Administers programs of training, research and demonstration under Title IV of the Act. Administers national centers for service development and assistance, and information dissemination benefitting older persons. Promotes through the State and Area Agencies on Aging and Indian Tribal Organizations a national community-based long term care program for older persons. Develops and issues program designs, guidelines, standards and assistance to State and Area Agencies, Indian Tribal Organizations and nutrition providers to support Titles III and VI nutrition services and disseminate nutrition education material.

Delete B.10 and replace with the following:

B.10 Organization

The Administration on Aging is headed by the Assistant Secretary for Aging and consists of:

Office of the Assistant Secretary
- Congressional and White House Liaison
- Executive Secretariat and Policy Coordination

Office of Governmental Affairs and Elder Rights
- Office of Elder Rights Protection

Office of Management
- Division of Budget and Finance
- Division of Personnel and Planning
- Division of Grants and Contracts Management
- Division of Information Resources Management

Office of Program Operations and Development
- Regional Offices on Aging
- Office of State and Community Programs
- Office for American Indian, Alaskan Native and Native Hawaiian Programs
- Office of Program Development

Delete B.20, A–I, and replace with the following:

B.20. Functions

A. Office of the Assistant Secretary (BA)

The Office of the Assistant Secretary serves as the focal point for OAA programs through the development,

coordination and administration of those programs nationwide. Serves as the effective and visible advocate within the Federal government to ensure the rights and entitlement of the elderly. Conducts active public education of officials, citizens, and the aged to ensure broad understanding of the needs and capabilities of the aged.

Sets national policies, establishes national priorities, ensures policy consistency, and directs plans and programs conducted by AoA. Advises the Secretary, HHS agencies, and other Federal departments and agencies on the characteristics, circumstances, and needs of older people and on policies, plans and programs designed to promote their welfare. The Deputy Assistant Secretary is the Assistant Secretary's primary associate in carrying out the mission of the agency, particularly in the advocacy and policy negotiation role within the Federal government.

Serves as an advocate for older people with voluntary and private organizations. Collaborates with other Federal agencies to assist older persons by the development and implementation of interagency agreements. Coordinates joint interests and initiation of projects with other Federal agencies and State and local government entities. Provides liaison with the Federal Council on the Aging and other Federal advisory committees focused on the aging. Works with national aging organizations, professional societies, and academic organizations to identify mutual interests and plan voluntary and funded approaches to meet the needs of older persons. Ensures affirmative action throughout the Aging Network in employment and services delivery.

Congressional and White House Liaison (BA1)

Coordinates all liaison activities with Congress and with the print and electronic media. Manages AoA's media relations and legislative liaison activities.

Develops legislative proposals, testimony, background statements, and other policy documents for use by the Assistant Secretary in activities related to legislation. In coordination with the DHHS Office of the Assistant Secretary for Legislation, analyzes proposed and enacted legislation related directly or indirectly to older people, including legislation directly affecting OAA programs. Through an automated legislative information system tracks bills related to the aging. Develops and issues status reports regarding key legislative developments to Headquarters and Regional Office staff, the network of State and Area Agencies on Aging, and Indian Tribal Organizations.

Coordinates with the Office of the Assistant Secretary for Public Affairs, including planning and implementing strategy for relations with the news and other information media; initiates media outreach activities and responds to all media inquiries concerning AoA programs and related issues.

Executive Secretariat and Policy Coordination (BA2)

Responsible for policy coordination concerning programs and services under the OAA, including long-term care initiatives and services. Serves as the communications center for AoA, ensuring that issues requiring the attention of the Assistant Secretary, Deputy Assistant Secretary or AoA Executive Council are identified on a timely and coordinated basis. Monitors the response of other AoA units in developing necessary documents for the Assistant Secretary's review and provides assistance to staff on the content and style of special assignments. Operates the agency-wide paper and electronic correspondence and assignment tracking and control system and provides technical assistance on standards for control of correspondence and memoranda. Manages the clearance system and reviews documents for consistency with the Assistant Secretary's and the Secretary's assignments, previous decisions on related matters, and editorial standards. Refers unprecedented policy questions to the appropriate subject matter office. Develops and maintains agency-wide mailing lists.

In conjunction with the Immediate Office of the Assistant Secretary, implements public education activities for Headquarters and Regional Offices to achieve AoA program objectives in coordination with other AoA units; develops and distributes publications and audiovisual materials about older people and prepares and issues brochures, fact sheets, exhibits and films on the needs and concerns of older persons and measures to improve the circumstances, available services, and environment for the older population.

Develops special information campaigns to inform older people and the general public about issues, problems and benefits important to older people. Fosters, plans and coordinates ceremonies and celebrations related to the elderly. Prepares the AoA Annual Report to the President and Congress.

Maintains official copies of all policy and information issuances and data collection instruments; ensures their proper clearance before issuance and annually reviews them for currency and compliance with law and regulations. Reviews all materials prepared for Federal Register publication and ensures their compliance with guidelines. Serves as AoA's liaison with the Executive Secretariats in the Office of the Secretary and other HHS units regarding AoA program, policy and special administrative matters. Receives and sorts internal mail for AoA headquarters components.

Provides liaison with OMB for the management of the agency paperwork burden reduction program. Coordinates clearance of OAA Titles II, III, IV, VI and VII program regulations within AoA and with appropriate HHS offices, and review of those regulations by OMB. Prepares and processes clearances for collection of information, and assures compliance with related standards, procedures and policies.

Serves as liaison with the Office of the General Counsel, Office of the Inspector General and the General Accounting Office on all program matters other than those related to grants or procurement management. Reviews requests for information under the Freedom of Information Act and arranges for appropriate responses, in coordination with the HHS Freedom of Information Act Officer.

Responds to written, phone and personal inquiries from all sources dealing with services and needs of the aging.

B. Office of Governmental Affairs and Elder Rights (BA–1)

Develops and maintains effective relationships with government entities and their representatives at the Federal, State and local levels to develop a unified policy toward, and promote, the aims of the Older Americans Act, especially as they relate to a community-based system of long-term care for the aging and disabled; oversees development of more responsive service systems through intergovernmental and private sector initiatives and partnerships to address age-related issues and concerns. Coordinates AoA fraud, waste and abuse investigation and elimination, and related activities. Chairs the Assistant Secretary's Business and Aging Leadership Roundtable of representatives from private industry and national business and aging organizations. Oversees the international liaison and coordination functions of AoA. Stimulates and coordinates AoA international activities

and coordinates AoA international activities with Departmental and other Federal agencies and State and national organizations concerned with international aging matters. At all levels, from national to the local service delivery level, develops methods and relationships to articulate the problems and concerns of the elderly to organizations beyond the traditional network of agencies and works with these organizations to be more sensitive and responsive to age-related needs and issues.

Directs intergovernmental affairs activities and develops and maintains effective relationships with other governmental departments and agencies. Plans, negotiates, facilitates, and updates, as appropriate, memoranda of understanding with other departments and agencies to promote agreements and cooperative relationships and ventures that address policies and services affecting the aging population.

Implements Section 203(1) of the OAA by coordinating, advising, consulting with and cooperating with the head of each department, agency and instrumentality of the Federal Government proposing or administering programs or services substantially related to the objectives of the OAA. Oversees the consultation process by which agency heads must consult with AoA before establishing programs or services related to the OAA. Plans and implements the process for the collaboration of all Federal agencies with AoA in the execution by those agencies of programs and services related to the OAA. These activities are focused primarily on older individuals (particularly low-income minority older people) and the functions and responsibilities of the State and Area Agencies on Aging.

The Director carries out the functions of the Office of Long-Term Care Ombudsman Programs established in Section 201(d)(1) of the OAA. Serves as the effective and visible advocate within the Department and with other departments and agencies of the Federal Government regarding all Federal policies affecting older residents of long term care facilities; reviews Federal legislation, regulation, and policy respecting long-term care ombudsman programs and makes recommendations to the Secretary and Assistant Secretary; coordinates the activities of AoA with other Federal, State and local entities relating to long-term care ombudsman programs; prepares an annual report to Congress on the effectiveness of services provided by State long-term care ombudsman programs; investigates the operations of any Federal law administered by HHS that may adversely affect the health, safety, welfare, or rights of older individuals; and establishes standards for the training of State long-term care ombudsman staff.

B.2 Office of Elder Rights Protection (BA–11)

Develops and carries out the ombudsman, elder abuse prevention, legal assistance development, and benefits outreach, counseling and assistance provisions of Titles II and VII-A of the OAA throughout the Aging Network, including administration of the National Ombudsman Resource Center and the National Center on Elder Abuse, and advising the Assistant Secretary on the operation of those Centers. Reviews State Plans to determine eligibility for funding under Sec. 705 of the OAA and recommends approval or disapproval to the Assistant Secretary. Implements Title VII-A in the field through provision to Regional Office staff guidance and information concerning AoA programs, and the development and interpretation of Title VII program regulations and policy; ensures the implementation of guidance and instructions concerning long-term care ombudsman, prevention of elder abuse, elder rights and legal assistance development and outreach, counseling and assistance programs.

Implements Title VII-A in the field by the provision to Regional Office staff of guidance and information concerning the ombudsman, elder abuse prevention, legal assistance development, and benefits outreach, counseling and assistance provisions of Titles II and VII-A of the OAA, and interpretation of regulations and policy implementing those programs. Fosters, oversees, assists, and assesses the development of State-administered long term care ombudsman, elder abuse prevention, legal assistance development, and benefit counseling programs for the elderly as authorized under Title VII-A of the OAA. Establishes, administers and evaluates the National Ombudsman Resource Center and the National Center on Elder Abuse.

Provides specialized input on Title VII-A programs to long range planning, operational plans and the budget process. Responsible for the implementation of regulations and policy on Title VII-A of the OAA. Develops program plans and instructions for AoA Regional Offices and State and Area Agencies to improve the Title VII-A protection and representational programs funded under the OAA.

C. Office of Management (BE)

Reports to the Deputy Assistant Secretary for Aging. Advises the Assistant Secretary in the areas of internal administration and management of AoA. In response to Federal statutes, regulations and Departmental policies and instructions, provides leadership, policies and procedures for effective and efficient management throughout AoA, including such areas as budget, finance, grants administration, personnel management, procurement, material and facilities management, management systems, information resources management, telecommunications and similar administrative management facilitation services. Responsible for all management and administrative reviews, analyses and controls within AoA required by statute or regulation, such as the Federal Managers Financial Integrity Act (FMFIA). The Director serves as the AoA Chief Financial Officer (CFO) and, on behalf of the Assistant Secretary for Aging, performs the duties assigned to AoA under the Chief Financial Officers Act of 1990, including the development of the CFO 5-year plan and status report. Manages all planning activities in AoA, including those responsibilities assigned by the Government Performance and Results Act of 1993 (GPRA). Conducts management analysis and automated systems development activities for AoA and serves as the principal AoA staff examining the AoA organization. Provides technical assistance and guidance to Headquarters and Regional Office units in the development, implementation and maintenance of administrative and grants management systems and audit resolution.

Division of Budget and Finance (BE1)

Provides and coordinates management support services involving budget formulation and execution, and financial management. In coordination with AoA program offices, formulates and presents budget estimates; executes apportionment documents; plans, directs, and coordinates financial and budgetary programs of AoA. Provides guidance to AoA program offices in preparing budgets, justifications, and other budgetary materials. Prepares budget documents on behalf of the Assistant Secretary for presentation to Departmental management, the Office of Management and Budget (OMB), and Congress. Assists in planning for and presenting the budget before OMB and the Congress. Solicits, obtains and

consolidates information and data from other AoA offices for testimony at hearings before these bodies in coordination with the Office of the Assistant Secretary. Analyzes the budget as approved by the Congress and apportioned by OMB, obtains input from program offices and recommends for the Assistant Secretary's approval a financial plan for its execution. Makes allowances to AoA offices within the guidelines of the approved financial plan. Develops and maintains an overall system of budgetary controls to ensure observance of established ceilings on both program—including all formula, discretionary grant accounts, and Salaries and Expense funds; maintains administrative control of funds against allotments and allowances, and certifies funds availability for all AoA accounts. Prepares requests for apportionment of appropriated funds. Maintains control of allotted funds against current obligations, and maintains separate financial operating plans for each of the Regional Offices. Prepares spending plans and status-of-funds reports for the Assistant Secretary.

Acts as AoA's coordination point with the Office of the Secretary and AoA organizational units on policy and regulatory issues involving travel management, develops and interprets AoA policies on travel, and provides support services to AoA components for travel management.

Provides analysis and coordinates accounting reports for AoA. Manages funds for salary and expense accounts. Tracks financial status of all AoA program and salary and expense funds.

In meeting the Assistant Secretary's priorities and instructions, with appropriate input from AoA organizational units, develops financial operating procedures and manuals, including directing the implementation within AoA (headquarters and regions) of Departmental and other Federal fiscal policies and procedures. Participates in program development and implementation plans where there are budgetary implications; serves as the AoA liaison with the Office of the Secretary and OMB on all budgetary matters.

Division of Personnel and Planning (BE2)

Develops and interprets AoA goals, priorities, and strategies. Prepares the AoA strategic plan, long and short-range plans, operational plans; implements the Government Performance and Results Act of 1993, and customer service activities AoA-wide; provides interpretation and guidance for implementation of these plans and activities to all AoA units; and reviews all new and changed policy documents for consistency with AoA long-range goals and strategies. Adjusts goals and strategies accordingly. Provides guidance and technical assistance to AoA units in developing operational plans, particularly in developing measurable objectives and indicators reflecting program and organizational performance. Coordinates with the Office of the Assistant Secretary and all AoA units, and Departmental staff offices on planning issues and development. By means of this system, coordinates the development of implementation strategies and subsidiary plans as well as processes for monitoring progress toward stated objectives.

Develops, recommends and implements a management review system for the purpose of assessing organizational progress in implementing GPRA, strategic and customer service priorities, and of encouraging appropriate action by managers at all levels; provides analysis of individual organization and AoA-wide progress; identifies problems and issues for action by the Assistant Secretary and Senior Staff; suggests alternatives for resolving issues where progress is unsatisfactory and provides the Assistant Secretary with recommendations to facilitate decision-making.

Initiates and develops AoA administrative and human resource management policies, procedures and instructions. Plans, organizes and conducts management studies of the AoA program, staff and organization.

Plans, organizes and conducts in-depth studies of organization structures, functional statements, job structure, staffing patterns, management and administrative information systems, relevant legislative and regulatory authorities and/or workloads to analyze staff, equipment, and systems resources and needs and/or to determine and measure work elements. Recommends to the Assistant Secretary organization changes; alternate staffing patterns; job structure and/or functional statement modifications; and staff, workload and equipment distribution.

Manages the AoA management improvement program. Assesses AoA's management methods and recommends improvements to the Assistant Secretary. Monitors AoA's progress toward approved goals. Incorporates performance measures used to implement GPRA.

Consistent with relevant OMB Circulars, develops, defines and implements management analysis and reporting systems to provide for better informed management decisions and more equitable distribution of resources, and through the Division of Information Resources Management implements these within the AoA automated information system; manages official AoA administrative oversight systems, such as the personnel data base and the administrative issuance process. Performs assessments of paperwork processing, reporting, and other systems needs in AoA.

Monitors AoA's compliance with the Federal Manager's Financial Integrity Act (FMFIA), as defined by OMB Circular A–123 (Management Accountability and Control). Develops protocols, develops and evaluates self-assessment models, and recommends corrective actions. Monitors AoA's compliance with FMFIA instructions and findings. Acts as the AoA liaison with Assistant Secretary for Management and Budget (ASMB) and Office of the Inspector General (OIG) on FMFIA matters. Prepares the AoA annual FMFIA report to the Secretary, the President and Congress.

Develops, implements and assesses strategies on use of human resources and the assignment of full-time equivalent employment (FTE) ceilings. Develops and administers the AoA Position Management Plan and functional statements. Acts as liaison with ASMB and ASPER in coordinating preparation of organizational proposals requiring approval by the Secretary. Maintains official organizational, functional statement and delegation files for AoA. Develops formal program, administrative and personnel delegations of authority for AoA based on continuing management assessment and on review and analysis of legislation and regulations.

Provides technical assistance and guidance to AoA managers and staff regarding personnel management matters. Reviews proposed requests for personnel action and recommends approval/disapproval of such requests.

Develops and monitors the annual AoA employee training strategy and budget, assuring that the common training needs of AoA employees are identified and implemented. Coordinates Presidential Management Intern, Federal Women's and other developmental programs with high AoA/HHS priorities. Oversees AoA training contracts.

Develops, manages, and assesses the effectiveness of AoA employee performance management, incentive and award systems. Provides training and technical assistance on current and demonstration systems.

Acts as AoA's focal point with the Office of the Secretary, other Federal agencies, and AoA organizational units on policy and regulatory issues involving real and personal property, space management, occupational safety and health, material management, postal management, and forms and records management. Provides oversight and direction to meet the administrative needs of AoA components. Serves as liaison with the Office of the Secretary, the General Services Administration (GSA), and outside vendors to provide facilities services including acquisition of facilities and equipment, personal property management, inventory control, and labor services. Administers AoA's personal and capitalized property management program, including the establishment and maintenance of property accountability systems, the storing and distribution of supplies, and the movement of furniture and equipment associated with the relocation of offices. Develops and implements AoA's plans, guidelines and activities for space and facilities management, including identification of and negotiations for space, and planning and design of office layouts. Responsible for the acquisition, disposition, allocation, and budgeting of space for AoA.

Serves as the AoA records manager, providing guidance and assistance to both Headquarters and Regional Office staff regarding filing practices, retention and disposition of records.

Division of Grants and Contracts Management (BE3)

Serves as AoA's focal point for management, leadership and administration of discretionary and formula grants, and cooperative agreements. Provides national policy oversight and development for grant management and administration matters. Ensures that all grant awards conform with applicable statutes, regulations, and policies. Maintains liaison and coordination with appropriate AoA and HHS organizations to ensure consistency between AoA discretionary and formula grant award activities, and the Department's various payment systems for grants.

For discretionary grants, ensures that the administrative and financial management aspects of grants administration are carried out and monitors grantee performance in these areas. Provides support for and processes all discretionary grant award documents and negotiates grant budgets, and makes all awards for AoA Headquarters and Regional Offices. Reviews discretionary grants after input from AoA program offices, and coordinates AoA grantee financial management matters as necessary with appropriate HHS and AoA units.

Issues and maintains control over formula grant awards under the OAA, and makes adjustments to previously issued formula grant awards.

In coordination with all AoA Headquarters and Regional Offices having grant administrative responsibilities: reviews and assesses AoA formula grant award procedures; directs and/or coordinates management initiatives to improve formula grant programs in financial areas; develops proposals for improving the efficiency in awarding grants and coordinating financial operations among AoA programs; establishes priorities and develops procedures for grantee financial monitoring; and, reviews activities at the field level for all AoA discretionary and formula grant programs.

Following consultation with all Headquarters and Regional Offices having grant administrative responsibilities, and with the approval of the Assistant Secretary: develops AoA instructions and procedures for the administration of all discretionary and formula grants, including those approved in AoA Regional Offices. Provides training and technical assistance to AoA staff regarding grants and provides overall guidance, monitoring, and assistance to Regional Offices in all areas of administrative and financial management of grants.

Has primary responsibility for developing policy issuances for grants management in AoA, and reviews all proposed AoA instructions and policy issuances pertaining to grant matters which are derived from Departmental, OMB or other government-wide issuances to ensure consistent policy and interpretation within AoA concerning grants management.

Functions as AoA liaison with the General Accounting Office (GAO), the HHS Office of the Inspector General and the Department's Office of Grants and Acquisition Management on grant matters. Assists at discretionary and formula grant hearings before the Departmental Appeals Board in response to disallowances and other financial claims by AoA or State Agencies on Aging and other grantees.

For formula grant activities, develops financial management standards for State and Area Agencies and provides guidance on and interpretation of 45 CFR Parts 74 and 92 to AoA staff. Based on formula grants management policies and procedures approved by the Department, reprogram formula grant funds as required under the OAA.

Responds to audit issues raised by Department and General Accounting Office audit reviews and ensures the proper analysis and resolution of audit findings by Regional Offices for final action by the Assistant Secretary. Coordinates receipt and processing of all grant and contract related materials.

Division of Information Resources Management (BE4)

Manages AoA's Information Resources Management (IRM) Program and develops policies, plans, budgets, standards and procedures related to it. The IRM Director serves as the principal IRM Official, responsible for delegations of procurement authority and the annual five-year long-range plan. Plans, manages, maintains and operates AoA's automated information system, including the LAN, personal computers, software, and support systems and services. Provides guidance and technical assistance on all components of the system and coordinates the preparation of manuals and policy issuances required to meet the instructional and informational needs of users of the system. Provides or contracts for training of users in all AoA systems, hardware and software. In coordination with the Executive Secretariat carries out the activities required under the Paperwork Reduction Act of 1980, as amended, as the Federal Information Resources Management Regulations, other Federal regulations and Executive Orders and DHHS/OS policies and procedures apply the Paperwork Reduction Act to automated information resources management. Represents AoA on the OS IRM Policy and Planning Board.

Responsible for IRM reviews; Federal Information Processing resources retirement and disposal; and conducting and reporting of information resource inventories.

Acts within the overall strategy, annual workplan and budget approved by the AoA Information Resources Management Board, composed of management representatives from each major component of AoA.

Assesses the need for, and defines the specifications for procurement of all Headquarters and Regional Office IRM hardware and software. Reviews and recommends to the Director, OAM, the decision for Headquarters and Regional Office requests for Automatic Data Processing (ADP) equipment and services. Assesses, recommends and defines the need to share ADP services through inter-government, inter-department and interagency agreements.

Surveys specifications and other literature, initiates requests for services, and defines AoA's need for support services from private ADP vendors.

Recommends strategies, provides for, and maintains systems integration in the AoA corporate data enterprise. Designs and institutes procedures for the protection, security and integrity of the AoA data, hardware and software. Develops automation-based solutions to improve efficiency and effectiveness of methods used by AoA staff to carry out work assignments and responsibilities.

The Division is responsible for establishing and maintaining a secure Internet presence. The Internet presence will be used to provide a variety of services to agency customers including a World Wide Web Home Page containing the latest information on AoA activities, sending and receiving grantee financial and performance reports, and supporting an International Aging Information Network that will pull together various private non-profit and federal/state/local/government resources addressing aging related issues. This network will be integrated with the National Aging Information Center (NAIC) which will provide on-line, direct public access to the NAIC's substantial data analysis capability for professional aging services providers.

Provides telecommunications planning, budgeting and management for AoA Headquarters' facilities, including procurement, installation, alterations, and maintenance. Provides liaison with HHS and GSA on telecommunications matters, and provides assistance to AoA components to identify telecommunications needs and to use communications equipment and systems.

D. Office of Program Operations and Development (BF)

Reports to the Assistant Secretary for Aging. Plans, directs and evaluates agency program operations, including the development and implementation of a comprehensive, coordinated system of services for older Americans. Coordinates all AoA cross-cutting program activities and initiatives. Assures internal coordination of programs. Assesses the need for, develops strategies and priorities about, and conducts activities for the development of adequate knowledge for improving the circumstances of older people.

Provides leadership on behalf of Titles III, IV and VI of the OAA, and those parts of Title II of the OAA for which the Office is responsible. Plans, directs and evaluates the programs under the OAA designed to provide planning, coordination and services to older Americans through grant programs authorized under Titles III and VI of the OAA. Assures the successful collection of data and its analysis to demonstrate program effectiveness. Assures that program and service information and trends are disseminated to advocates for older persons. Provides technical assistance to and education for State and Area Agencies on Aging and Tribal grantees in the development of plans, goals, and system development activities. Assures that statutory requirements, regulations, policies, and instructions are implemented for Titles III and VI, and for the functions under Title II for which the Office is responsible.

Performs the following functions under Title II: issues and enforces regulations regarding conflicts of interest in arranging the provision of services under the Act, including prohibiting such conflicts on the part of Area Agencies on Aging; provides direction to service providers to improve data collection and analysis; designs uniform data collection procedures; assists State and Area Agency volunteer coordinators, as necessary, and encourages the effective use and training of volunteers; consults with State and Area Agencies and Tribal grantees in the development of goals, regulations, instructions and policies; oversees the Nutrition Officer who provides technical assistance and guidance to Regional Offices, States, Area Agencies on Aging and service providers; establishes and convenes a nutrition guidance council to assess program effectiveness and to promote nutrition and dietary standards; and assures planning for and completion of studies and evaluations.

Provides program expertise to the Assistant Secretary for policy development, advocacy and program initiatives within its assigned program areas.

Provides technical assistance to the Headquarters and Regional Offices, State and Area Agencies on Aging, and other organizations on their statistical data needs, uses of data, and methods of collecting the data.

Funds and administers the National Aging Information Center, which compiles, publishes and disseminates information on programs funded under the Act, as well as demographic data on the elderly population and data from other Federal agencies on the health, social and economic status of older persons, and provides technical assistance and training to State and area agencies and to service providers on State and local data collection and analysis.

Assesses results of these activities to develop utilization strategies. Promotes information dissemination in professional fields. Develops and manages AoA technical information clearinghouse to ensure dissemination of information such as best practice models, to exchange program experience with the network of State and Area Agencies on Aging, and to coordinate technical information dissemination requirements with other national organizations in the field of aging.

Supervises and provides technical guidance to the Regional Offices as they implement the national programs of the OAA. Ensures that clear and consistent guidance is given to all Regional Offices on program and policy directives. Issues substantive operating procedures to guide Regional Office staff of AoA in the conduct of their responsibilities; establishes standards for performance plans in the Regional Offices; regularly assesses the performance of AoA Regional Office staff against the established standards.

E. Regional Offices on Aging (BFD1 to BFDX)

Regional Offices on Aging are headed by a Regional Administrator (RA) who reports to the Director, Office of Program Operations and Development.

Serve as the focal point for the development, coordination and administration of OAA programs within the designated HHS region. Represent the Assistant Secretary for Aging within the region, and provide information for, and contribute to the development of, national policy dealing with the elderly. Based on national policy and priorities, establish field program goals and objectives.

Serve as the effective and visible advocates for the elderly to Federal agencies in their geographic jurisdiction to ensure the rights and entitlement of the elderly; advise, consult and cooperate with each Federal agency proposing or administering programs or services related to the aging; coordinate and assist in the planning and development by public (including Federal, State, Tribal and local agencies) and private organizations of comprehensive and coordinated services and opportunities for older individuals in each community of the nation; conduct active public education of officials and citizens and the aged to ensure broad understanding of the needs and capabilities of the aged.

Monitor, assist and evaluate State Agencies on Aging administering

programs supported under Titles II, III and VII of the OAA, and Indian Tribal Organizations administering projects under Title VI. Review OAA State Plans on Aging and approve acceptable plans or recommend disapproval to the Assistant Secretary for Aging, as appropriate. Recommend approval or disapproval of regional Title IV applications to the Assistant Secretary. Review applications and recommend approval or disapproval of Title VI applications to the Assistant Secretary.

Advise the Assistant Secretary of problems and progress of programs through the Director, Office of Program Operations and Development; recommend to the Assistant Secretary changes that would improve OAA operations; evaluate the effectiveness of OAA and related programs in the Region and recommend to the Assistant Secretary or take positive action to gain improvement; and guide agencies and grantees in applications of policy to specific operational issues requiring resolution. Facilitate interagency cooperation at the Federal, Regional Office, State and Tribal levels to enhance resources and assistance available to the elderly. Disseminate and provide technical assistance regarding nutrition guidelines and developments to State and Area Agencies, Indian Tribal Organizations and nutrition service providers.

Monitor and assist State and Area Agencies and Indian Tribal Organizations in the implementation and execution of the long-term care ombudsman, elder abuse prevention, elder rights and legal assistance development, and outreach, counseling and assistance programs, and the implementation of elder rights under Title VII of the OAA.

Office of State and Community Programs (BF1)

Serves as the focal point within AoA for the operation, administration, management and assessment of the programs authorized under Title III of the OAA. Also carries out the following responsibilities of Title II: encourages and assists in the provision of information to older people with the need for Supplemental Security Income, Medicaid and Food Stamps; implements and oversees the supportive services and nutrition programs; implements and oversees the uniform data collection procedures for States; implements and oversees the responsibilities for consultation with other Federal agencies and with State and Area Agencies on Aging.

Implements Title III of the OAA through the development of regulations, policies and guidance governing the development and enhancement of comprehensive and coordinated home and community-based care service delivery systems by State and Area Agencies on Aging. Provides guidance regarding State Plan processing and approval, the process and criteria for approval of States' Intrastate Funding Formulas for the allocation and targeting of resources within States, and implementation of the Interstate Funding Formula for distribution of Title III funds among States. In the field, implements Title III through the provision to Regional Office staff of guidance and information concerning AoA programs, and interpretation of Title III program regulations and policy. In addition, fosters, oversees, and assesses the implementation of Title III by States and Area Agencies through guidance and direction to Regional Office staff regarding program reviews, compliance monitoring, program and system development and enhancements. Designs and provides training and technical assistance for program compliance, effectiveness, and enhancement.

Develops and designs the criteria for collecting, analyzing and distributing program performance data on State and Area Agencies' implementation of OAA programs, and prepares that data for reporting to Congress, the public and the National Aging Information Center.

Provides specialized input on Title II and III programs to long-range planning, operational plans and the budget process. Develops program plans and instructions for AoA Regional Offices and State and Area Agencies to improve Title III programs and to ensure that the objectives of the OAA in fostering independence and life with dignity are met.

Develops policies, guidance and technical assistance to State and Area Agencies on Aging with respect to programs under Title III of the OAA, including the development and implementation of comprehensive and coordinated systems for supportive services, congregate and home-delivered nutrition services, the development and operation of multipurpose senior centers and the delivery of legal assistance; provides guidance and technical assistance to AoA Regional Office Staff in the effective implementation of programs under Title III of OAA; designs, implements and provides guidance and technical assistance to State and Area Agencies on Aging and service providers on data collection and analysis (Section 202(b)(28)) and on uniform data collection procedures for State Units on Aging (Section 202(b)(29)); consults with State and Area Agencies on Aging, service providers and other appropriate stakeholders in the development of goals, regulations, program instructions and policies regarding comprehensive and coordinated supportive and nutrition systems of services for older individuals.

Develops regulations for use by State and Area Agencies on Aging and local service providers responsible for programs under Title III of the OAA. Carries out the functions of the designated nutrition officer, who coordinates nutritional services under the Act and develops the regulations and guidelines, and provides technical assistance regarding nutrition to the AoA Regional Offices, State and Area Agencies, nutrition service providers, and other organizations; in coordination with the Office of Governmental Affairs and Elder Rights, serves as the liaison to the United States Department of Agriculture and other Federal agencies and organizations related to nutrition policy and program issues.

Administers the State plan hearing process required by Section 307(c)(1) of the OAA and provides the analysis and recommendations for the Assistant Secretary's decision resulting from the hearing.

Provides timely and accurate responses to requests for policy interpretation and technical assistance from Congress, State and Area Agencies on Aging, and the general public.

Develops and operates a National Aging Program Information System focused on the information needs of AoA and the Network on Aging to both manage and advocate for the delivery of effective and efficient services to the elderly. Coordinates and conducts operational studies, program analyses, and evaluations on special issues of concern to the Secretary, the Assistant Secretary, Regional Offices, and State and Area Agencies on Aging. Prepares reports on program operations under Title III for the Assistant Secretary, other AoA offices, the Secretary, the President, Congress and the public.

Through the analysis of State Plans, evaluation findings and other relevant material, identifies potential Title III program and management issues and develops recommendations to the Assistant Secretary on possible solutions.

Carries out the Title II responsibilities related to facilitating the continuing development, expansion and improvement of home and community-based service systems to be more responsive at the community level to meet the social and human service

needs of the elderly. Develops and implements special initiatives at the national level for building strong interagency, intergovernmental and private sector partnerships to address age-related issues and concerns and promotes these initiatives throughout the network of agencies involved with older Americans.

Directs and assesses the development under Title III of the OAA of State-administered, home and community-based long-term care systems, and social and supportive services for the elderly. Initiates and encourages expansion of the capacities of home and community-based social service and health care systems to deliver comprehensive services to the elderly. Strengthens and extends the development of the continuum of care principle in local community-based social services systems for the elderly. Provides technical and subject matter expertise for the development of these systems, targeted at enhancing the capabilities of State and Area Agencies and local service delivery programs to improve their service to older people.

Assists State and Area Agencies and local service delivery agencies to analyze program trends and project needs of the aging population, and to develop strategies and specific implementation plans to enable all levels of the Aging Network to anticipate and adapt to community program needs in the future. Develops policies, guidance and technical assistance to the Aging Network of States, Area Agencies, service providers, national organizations, state organizations, local organizations and academia. Focuses primarily on the development of systems of care at the community or local level. Coordinates with the Division of Program Management and Analysis to achieve a fully integrated approach for the enhancement of systems of care throughout the nation.

Assists in the collection and analysis of demographic and socio-economic information related to the aging. Maintains a knowledge of data generated by a wide range of organizations; provides liaison with the Federal Task Force on Aging Statistics; in support of planning and program requirements, performs routine and special statistical analyses of data for AoA offices, other Federal and non-Federal organizations, and the general public.

Office for American Indian, Alaskan Native, and Native Hawaiian Programs (BF2)

On behalf of individuals who are older Native Americans, serves as the effective and visible advocate within the Department, with other Departments and agencies of the Federal Government, and with State, local and tribal governments regarding all Federal policies affecting Native American elders. Additionally, advocates and promotes linkages among national Indian organizations, national aging organizations, and national provider organizations with the goal of enhancing the interests of and services to Native American elders.

Recommends to the Assistant Secretary policies and priorities with respect to the development and operation of programs and activities relating to individuals who are older Native Americans. The Office coordinates activities among other Federal departments and agencies to ensure a continuum of improved services through memoranda of agreements or through other appropriate means of coordination. Carries out the following responsibilities of Title II: evaluates the outreach under Title III and Title VI and recommends necessary action to improve service delivery, outreach, and coordination between Title III and Title VI services; encourages and assists the provision of information to older Native Americans with need for Supplemental Security Income, Medicaid, food assistance, housing assistance, and transportation assistance; develops research plans, conducts and arranges for research in the field of Native American aging; collects, analyzes, and disseminates information related to problems experienced by older Native Americans, including information on health status of older individuals who are Native Americans, elder abuse, in-home care, and other problems unique to Native Americans; develops, implements, and oversees the uniform data collection procedures for Tribal and Native Hawaiian Organizations; and implements and oversees the consultation requirements of Title II as they apply to Native American issues.

Chairs the Interagency Task Force on Older Indians which is comprised of representatives from the Federal departments and agencies with an interest in the welfare of individuals who are older Indians and makes recommendations to the Assistant Secretary at six month intervals, to facilitate coordination among Federally funded programs and improve services to older Indians.

Provides the Native American input to the Office of Program Development for inclusion in AoA's research plan. In addition, collaborates with the Office of State and Community Programs on Title VI—Title III coordination.

Provides input and feedback to the Office of Program Development for the development and operation of Resource Centers on Native American Elders which gather information, perform research, provide for dissemination of results of the research, and provide technical assistance and training to those who provide services to Native American elders.

Provides specialized input on Title VI programs and the Native American components of Title II and Title VII–B programs to other Offices for long range planning, operational plans, research and training, and the budget process. Determines the Title VI grant amounts from annual appropriations. Develops testimony and background documents concerning Native Americans for use by the Assistant Secretary.

Serves as the AoA focal point for the administration and assessment of the programs authorized under Title VI and the Native American Organization provisions of Title VII–B of the OAA, including administering grants, cooperative agreements and contracts. Implements the American Indian, Alaskan Native and Native Hawaiian programs in the field through provision of program and policy direction, training and oversight to the Regional Offices in the execution of the Native American components of their Title II, Title VI and Title VII–B responsibilities. Oversees the Regional Offices' monitoring of Title VI grantees. Arranges for and manages on-going training and technical assistance for Title VI grantees. Coordinates additional training and technical assistance with other projects managed by the Office Program Development.

Office of Program Development (BF3)

Develops AoA plans and priorities for evaluation of programs, with subject matter input from appropriate units. Manages contracting for mandated evaluation projects and performs intramural evaluation studies. Prepares reports of the results of program and impact evaluations conducted by and for AoA, with technical input from other AoA units.

Maintains information on programs in other Federal agencies and national voluntary agencies which have potential for relating to research, demonstration and training strategies.

Plans, directs and evaluates activities authorized under Title IV of the OAA. Conducts activities for the development of adequate knowledge for improving the circumstances of older people. Develops a knowledge base for policy decisions and program development and coordination through support of a wide range of research, demonstration, and training activities.

Prepares the planning documents for, and coordinates the development of, the annual discretionary funds program announcement. Provides technical input for Congressional and budget presentations related to the research and demonstration program. Evaluates research, demonstration and training grant and contract proposals; and recommends approval/disapproval, monitors progress, gives technical guidance to and evaluates the performance of grantees and contractors. Analyzes and interprets project results and recommends technical applications. Promotes coordination of research and demonstrations with other national, field and local programs related to aging.

Within overall AoA strategy and long range plans, conducts continuing studies and periodic reviews of personnel needs and resources in the field of aging. Plans and assesses AoA's activities to ensure trained staff for programs serving older Americans. Develops and monitors a national plan for increasing these resources, and prepares reports thereon for AoA, the Federal Council on the Aging, the Secretary, the President and Congress.

Administers a program through grants and contracts for developing curricula and providing training related to preparation for professional, teaching, research, and paraprofessional careers in the field of aging. Makes grants for planning, developing, and operating multi-disciplinary centers of gerontology designed to serve the purposes set forth under Title IV of the OAA, including the monitoring of such grants on a continuing basis.

Develops standards, optional models, and ''best practice'' suggestions on services to the elderly for use by the Regional Offices, and State and Area Agencies on Aging. Develops technical assistance material and in-service training curricula concerning these standards, models, and best practice suggestions.

Provides technical input on research, demonstration and training programs to the AoA planning and policy development activities, legislative activities and the annual budget development cycle. Participates in Departmental and inter-departmental activities which concern health and social services; reviews and comments on Departmental regulations and policies regarding health programs and institutional and non-institutional long term care services.

Manages a program for the collection, analysis, and dissemination of information related to the needs and problems of older persons. Develops and coordinates initiatives with other Federal agencies, national aging organizations and universities to fill gaps in information in the field of aging.

Reviews all products from AoA, the OAA network, and other sources of information on aging to identify new findings which will be useful to older people and professionals operating in the field of aging. Determines the relative utility of each product, its potential users, and the most effective way to disseminate information to users.

Dated: December 12, 1995.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 95–30732 Filed 12–18–95; 8:45 am]

BILLING CODE 4130–01–P

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Friday, January 26, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Madison Hotel, 1177 5th Street, NW., Washington, DC 2005.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 603, Rockville, Maryland 20852, (301) 594–1459.

In addition, if sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, or (301) 594–6665 no later than January 19, 1996.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriations, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are: Robert A. Berenson, M.D.; F. Marian Bishop, Ph.D.; Linda Burnes Bolton, Dr. P.H.; John W. Danaher, M.D.; Helen Darling, M.A.; Nancy J. Kaufman, M.S.; William S. Kiser, M.D.; Robert M. Krughoff; Risa J. Lavizzo-Mourey, M.D.; W. David Leak, M.D.; Harold S. Luft, Ph.D.; Barbara J. McNeil, M.D.; Walter J. McNerney, M.H.A.; Edward B. Perrin, Ph.D.; Louis F. Rossiter, Ph.D.; Albert L. Sui, M.D.; and Ellen B. White. M.B.A.

There also are Federal ex-officio members. These members are: Administrator, Substance Abuse and Mental Health Services Administration; Director, National Institutes of Health; Director, Centers for Disease Control and Prevention; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Friday, January 26, 1996, the meeting will begin at 8:30 a.m. with the call to order by the Council Chairman. The Administrator, AHCPR, will update the status of current Agency issues and program initiatives. Council will then discuss the issues of health services research work force and education, public/private sector collaboration, and the large grant review process. The meeting will adjourn at 5:00 p.m.

Agenda items are subject to change as priorities dictate.

Dated: December 7, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–30742 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 95M–0397]

Progressive Angioplasty Systems, Inc.; Premarket Approval of the PAS Lacrosse™ PTCA Catheter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Progressive Angioplasty Systems, Inc., Menlo Park, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the PAS LaCrosse™ PTCA Catheter. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 27, 1995, of the approval of the application.

DATES: Petitions for administrative review by January 18, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm . 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Veronica Price, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243.

SUPPLEMENTARY INFORMATION: On April 4, 1994, Progressive Angioplasty Systems, Inc., Menlo Park, CA 94025–1516, submitted to CDRH an application for premarket approval of the PAS LaCrosse™ PTCA Catheter. The device is a percutaneous transluminal coronary angioplasty (PTCA) dilatation catheter and it is indicated for balloon dilatation of the stenotic portion of a coronary artery or bypass graft stenosis for the purpose of improving myocardial perfusion.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicated information previously reviewed by this panel. On September 27, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 18, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 4, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–30743 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0393]

Bioetica, Inc.; Premarket Approval of HEMOSTAGENE® Absorbable Collagen Hemostatic Sponge

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Bioetica, Inc., Westbrook, ME, on behalf of Coletica, S. A., Lyon, France, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of HEMOSTAGENE® Absorbable Collagen Hemostatic Sponge. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 15, 1995, of the approval of the application.

DATES: Petitions for administrative review by January 18, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Frances M. Curtis, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION: On August 30, 1993, the U.S. representative, Bioetica, Inc., Westbrook, ME 04092, on behalf of Coletica, S. A., Lyon, France, submitted to CDRH an application for premarket approval of HEMOSTAGENE® Absorbable Collagen Hemostatic Sponge. The device is an absorbable hemostatic agent and is indicated for use in surgical procedures (other than in neurosurgical, ophthalmic, and urological) as an adjunct to hemostasis when control of bleeding by ligature or conventional procedures is ineffective or impractical.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the General and Plastic Surgery Devices Panel of the

Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On August 15, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 18, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 29, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–30697 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0398]

Cochlear Corp.; Premarket Approval of New Indication for Use for the Nucleus 22–Channel Cochlear Implant

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Cochlear Corp., Englewood, CO, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of a new indication for use for the Nucleus 22–Channel Cochlear Implant. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 21, 1995, of the approval of the application.

DATES: Petitions for administrative review by January 18, 1996.

ADDRESSES: Address written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marilyn Flack, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080.

SUPPLEMENTARY INFORMATION: On August 8, 1992, Cochlear Corp., Englewood, CO 80112, submitted to CDRH a supplemental application for premarket approval of an expanded indication for use for the Nucleus 22–Channel Cochlear Implant. The device was originally approved in 1985 for use in adults who demonstrated postlinguistic, bilateral, sensorineural hearing loss and obtained little or no benefit from conventional amplification. It was approved in 1990 for use in children who demonstrated bilateral, profound, sensorineural hearing loss and obtained little or no benefit from conventional amplification or vibrotactile hearing aids. The expanded indication for use now includes patients, 18 years and older, who have bilateral, postlinguistic, sensorineural hearing impairment and obtain limited benefit from appropriate binaural hearing aids. Limited benefit from amplification is defined by test scores of 30 percent correct or less in the best-aided listening condition on tape-recorded tests of open-set sentence recognition. These patients typically have low frequency residual hearing in the moderate-to-profound range and profound (greater than or equal to 90 dBHL) hearing loss in the mid-to-high speech frequencies.

On April 20, 1995, the Ear, Nose and Throat Devices Advisory Panel, an FDA advisory panel, reviewed and recommended approval of the supplemental application.

On August 21, 1995, CDRH approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this supplemental application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the supplemental application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and

place where the review will occur, and other details.

Petitioners may, at any time on or before January 18, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 4, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–30815 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0395]

Pharmacia, Inc.; Premarket Approval of Model WS–100 Pliolens Ultraviolet-Absorbing Silicone Posterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Pharmacia, Inc., Dublin, OH, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Model WS–100 Pliolens ultraviolet-absorbing silicone posterior chamber intraocular lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 20, 1995, of the approval of the application.

DATES: Petitions for administrative review by January 18, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ashley A. Boulware, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053.

SUPPLEMENTARY INFORMATION: On February 28, 1994, Pharmacia, Inc., Dublin, OH 43017, submitted to CDRH an application for premarket approval of Model WS–100 Pliolens ultraviolet-absorbing silicone posterior chamber intraocular lens. The device is a posterior chamber intraocular lens and is indicated for primary implantation for the visual correction of aphakia in persons 60 years of age or older in whom a cataractous lens has been removed by extracapsular cataract extraction.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On July 20, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 18, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 29, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–30698 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0253J]

Analysis Regarding The Food and Drug Administration's Jurisdiction Over Nicotine-Containing Cigarettes and Smokeless Tobacco Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; analysis regarding agency jurisdiction; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the Federal Register of August 11, 1995 (60 FR 41453). In the notice, FDA published a document entitled ''Nicotine In Cigarettes And Smokeless Tobacco Products Is A Drug And These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act,'' and announced the availability of appendices to this document. The agency has identified some proofreading inaccuracies in the references listed in the document. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Phillip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

In FR Doc. 95–20052, appearing on page 41453 in the Federal Register of

August 11, 1995, the following corrections are made:

1. On page 41556, in footnote 89, ''1588'' is corrected to read ''1558,'' and on the same page, in footnote 90, in line 1, ''MDG'' is corrected to read ''MDB''.

2. On page 41557, in footnote 91, in line 1, the phrase ''of behavioral dependence'' is corrected to read ''of and behavioral dependence''.

3. On page 41558, in footnote 93, in line 4, ''*Parmacol. Biochem. Behav.*'' is corrected to read ''*Pharmacol. Biochemistry & Behav.*''

4. On page 41560, in footnote 101, in line 4, ''Page 50'' is corrected to read ''Pages 50–51.''

5. On page 41561, in footnote 105, in line 2, ''231–234'' is corrected to read ''231–241.''

6. On page 41588, in footnote 172, in line 8, ''12641–46'' is corrected to read ''02641–02646''.

7. On page 41621, in footnote 240a, in line 13, ''July 25, 2995'' is corrected to read ''July 25, 1995).''

Dated: December 12, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–30745 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 59 FR 17106, April 11, 1994) is amended to reflect the following reorganization within the Center for Devices and Radiological Health (CDRH), Office of Operations, Food and Drug Administration (FDA).

The Center for Devices and Radiological Health is abolishing the Office of Health Physics (OHP), the Office of Health Affairs (OHA), and the Office of Standards and Regulations (OSR) and realigning their functions into existing line and staff offices within the Center. The goal of this realignment is to more effectively manage the resources invested in these functional areas, consolidate similar functions, realign medical expertise closer to program needs, and streamline the current organizational structure.

Under section HF-B, Organization:

1. Delete subparagraphs Office of Health Physics (HFW12), the Office of Health Affairs (HFW13), and the Office of Standards and Regulations (HFW14) under paragraph Center for Devices and Radiological Health (HFW), in their entirety.

2. Insert the following new subparagraphs under paragraph *Office of Operations (HFA9), Center for Devices and Radiological Health (HFW)* reading as follows:

Office of Systems and Management (HFW11). Advises the Center Director regarding all administrative management matters.

Plans, develops, and implements Center management policies and programs concerning financial and human resource management, contracts and grants management, conference management, occupational safety, organizational, and general office services support.

Develops and implements the Center's long-range, strategic, and operational plans.

Develops and applies evaluation techniques to measure the effectiveness of Center programs.

Provides general information and technical publication services to the Center.

Plans, conducts, and coordinates Center committee management activities.

Determines and implements Center strategy and utilization of information management resources.

Designs administrative, scientific, and technical information systems in support of Center programs.

Provides assistance to Center staff in accessing information necessary to carry out the Center's mission.

Coordinates requests and Center activities pertaining to the Freedom of Information and Privacy Acts.

Office of Health and Industry Programs (HFWG). Analyzes medical device and radiation-emitting product user-related problems and conducts research, applying systems analysis and human factors to problem identification and solution strategies. Implements and evaluates user-related solution strategies.

Conducts and evaluates programs to provide technical and other nonfinancial assistance to small manufacturers of medical devices to promote their understanding of compliance with the medical device amendments and regulations.

Provides, maintains, and applies expertise in communications technology in support of Center and FDA programs.

Develops and implements strategies for obtaining, analyzing, and incorporating the views and needs of health professionals, lay device users, and industry into the Center policy and decision-making processes as well as in problem analysis, resolution strategy development, implementation, and evaluation processes.

Establishes and operates a program to implement the Mammography Quality Standards Act of 1992.

Provides leadership and technical expertise to the Center and other Departmental components in applying health physics procedures and radiation protection principles.

Advises the Center Director and appropriate Agency officials on FDA regulation development responsibilities relating to medical devices and radiological health activities. Serves as the Center focal point for liaison on regulations development activities with the Office of General Counsel.

Coordinates the development, review and submission of Federal Register publications for the Center. Prepares position statements for the Center on standards promulgated by other organizations.

Coordinates international relations activities as required by the Safe Medical Devices Act of 1990.

Office of Science and Technology (HFWE). Provides scientific support and laboratory analyses in response to the program needs of other Center and Agency components.

Plans, develops, and implements an intramural science program covering key areas of engineering, physics, and biology; develops, modifies, and validates test methods and measurement techniques, risk assessments and hazard analyses, and generic techniques to enhance product safety and usefulness.

Provides scientific and engineering support in the review of regulatory documents, the development of regulatory decisions, and the analysis of postmarket surveillance issues.

Plans, conducts, or stimulates research on the human health effects of radiation and medical devices.

Participates in the development of national and international consensus standards and voluntary guidelines through interaction with appropriate standards committees; coordinates with other standards-setting groups representing national and international standards-setting organizations; conducts the review and analysis of performance standards, guides and documents related to the Center's mission.

Establishes official liaisons with Standards Development Organizations. Coordinates the liaison within the Center. Establishes and maintains

records on committee participation and status of medical device standards used by the Center.

3. Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: November 28, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–30813 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 60 FR 53382, October 13, 1995) is amended to reflect the change in title of the International Affairs Staff to the Office of International Affairs, Office of External Affairs (OEA), in the Food and Drug Administration (FDA).

The Office of International Affairs will continue to serve as the Agency focal point for developing and maintaining international communications and programs. FDA believes that the increase in international activity with regard to FDA regulated products and activities necessitates the elevation of the International Affairs Staff to office level status within OEA and that this action further enhances the management and coordination of Agency international activities.

Under section HF-B, Organization:

1. Delete the subparagraph, *International Affairs Staff (HFAQA),* under the *Office of External Affairs (HFAQ),* in its entirety and insert a new subparagraph, Office of International Affairs (HFAQA), under the Office of External Affairs (HFAQ), reading as follows:

Office of International Affairs (HFAQA). Serves as the Agency focal point for developing and maintaining international communications and programs.

Establishes and provides an Agency liaison on international activities with the Department, Public Health Service (PHS), and other Federal agencies, foreign governments, including foreign embassies, and international organizations.

Represents the Agency at meetings, conferences, and symposia relating to international obligations; briefs Agency participants in such international activities.

Establishes, identifies, interprets, and clarifies, in cooperation with appropriate Agency components, the Agency's international obligations and needs, including those associated with bilateral programs which involve extra budgetary support.

Establishes and maintains an international information exchange program concerning Agency policies and programs to provide interchange between FDA and counterpart agencies in foreign countries and international organizations.

Assists in the development, negotiation, and monitoring of agreements with foreign governments and international organizations in cooperation with appropriate Agency components; and acts as the Agency focal point for intergovernmental conferences.

Negotiates the preparation and implementation of technical assistance programs (including formal training programs and surveys) with foreign governments and international organizations in areas relating to the Agency mission. Coordinates ongoing technical assistance operations with appropriate components within the Department, PHS, and the Agency.

Directs the Agency's International Visitors Program, providing participants with policy briefings, technical training, and/or assistance in response to specific needs

2. Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: December 5, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–30744 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of January 1996.

Name: Council on Graduate Medical Education

Date and Time: January 9, 1996, 1:00 p.m.–5:00 p.m., January 10, 1996, 8:30 a.m.–4:00 p.m.

Place: Governor's House Hotel, 17th Street at Rhode Island Avenue, N.W., Washington, D.C. 20036

The meeting is open to the public.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to international medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The Agenda will include a panel to discuss International Medical Graduates, entry and participation in the U.S. physician workforce. A panel to discuss Legislation and GME Reform, House Ways and Means Committee. Report on transition funding issues; Report and updates on the work groups, Minorities in Medicine; Geographic Distribution/Medical Education Consortia; Physician Competencies in a Managed Care World; and IMG Entry and Participation in the Physician Workforce.

Anyone requiring information regarding the meeting should contact F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, Telephone 301–443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Agenda items are subject to change as priorities dictate.

Dated: December 12, 1996.

Jackie E. Baum,

Advisory Committee Management Officer.

[FR Doc. 95–30816 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting

of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications

Commitee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 20, 1995.

Time: 3 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: December 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30928 Filed 12–18–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 19, 1995.

Time: 3 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 19, 1995.

Time: 2 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: December 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30929 Filed 12–18–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of the Proposed Planning Criteria for Amending Idaho Land Use Plans for Rangeland Health Standards and Guidelines

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the proposed planning criteria for amending Idaho land use plans to adopt standards for rangeland health and guidelines for grazing management in Idaho and to adopt ecosystem-based management strategies from the Upper Columbia River Basin (UCRB) EIS.

SUMMARY: Pursuant to 43CFR 1610.4–2, the Bureau of Land Management, Idaho State Office, announces the availability of proposed planning criteria for amending Land Use Plans in Idaho to include standards and guidelines for Rangeland Health as directed in 43 CFR 4180.2. And to adopt ecosystem-based management strategies from the Upper Columbia River Basin (UCRB) EIS. The public is invited to review and comment on the proposed criteria.

DATES: Comments on the proposed criteria will be accepted through January 31, 1996.

ADDRESS: Comments should be sent to the Idaho State Director, Attn: Dave Brunner, 3380 Americana Terrace, Boise, Idaho 83706–2500. Copies of the proposed criteria may be obtained from and Idaho, BLM office.

SUPPLEMENTARY INFORMATION: Planning criteria, a requirement of the BLMB Planning Regulations, will guide the development of appropriate land use plan modifications and associated NEPA compliance documentation to incorporate standards and guidelines being developed to ensure rangeland health (as required by BLM Grazing Regulations, 43 CFR Part 4, 1780 and 4100, effective August 21, 1995) and other appropriate recommendations which may be included in the Upper Columbia River Basin Environmental Impact Statement (UCRB EIS), currently being prepared. The following general planning criteria will be used for this process:

* All planning actions and decisions will consider the goals of BLM's Grazing Regulations; improve rangeland health, help build stable economies, and enhance stakeholder participation.

* All planning actions will ensure that the following established fundamentals for rangeland health are incorporated:

1. Watersheds are in, or are making significant progress toward properly functioning physical condition. 2. Ecological processes are maintained or there is significant progress toward their attainment. 3. Water quality complies with state water quality standards. 4. Habitats are, or are making significant progress, toward being restored or maintained for threatened or endangered species.

* Planning actions will be driven by the statements of purpose and need from the UCRB EIS and the NEPA compliance process used to analyze the proposed rangeland standards and guidelines.

* Standards proposed for incorporation into land use plans will be measurable and used to assess progress toward achieving the goals and fundamentals related to rangeland management.

* Planning actions will be responsive to the issues identified by the public during the UCRB EIS formal scoping process and other comments received concerning the development of rangeland standards and guidelines.

* Planning actions resulting from the UCRB EIS will be based upon the data provided in the Scientific Assessment for Ecosystem Management in the Interior Columbia River Basin and on other published, peer-reviewed scientific literature.

* The detail and specificity of the alternative management strategies will be limited to that necessary to address the identified needs for the action.

Dated: December 12, 1995.

J. David Brunner,

Deputy State Director for Resource Services.

[FR Doc. 95–30731 12–18–95; 8:45 am]

BILLING CODE 1020–GG–M

[UT–910–06–1020–00]

Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare standards and guidelines, to modify land use plans, and prepare analyses pursuant to the National Environmental Policy Act.

SUMMARY: The Bureau of Land Management (BLM) in Utah intends to prepare Standards for Rangeland Health, Guidelines for Grazing Management, modifications to existing Land Use Plans, and to prepare appropriate National Environmental Policy Act (NEPA) documents for these actions according to BLM's new grazing regulations (43 CFR Part 4100). Public comment is sought on suggested standards and guidelines, and on the issues and alternatives to be considered.

DATES: Comments will be accepted throughout this process or until further notice. Public comment periods specifically for the plan modification and NEPA process will be provided later.

FOR FURTHER INFORMATION CONTACT: Deane Zeller, Team Leader, Bureau of Land Management, Utah State Office, 324 So. State Street, Salt Lake City, UT 84111–2303; phone (801) 539–4052.

SUPPLEMENTARY INFORMATION: Pursuant to BLM's new grazing regulations (43 CFR Part 4100), which became effective August 21, 1995, BLM Utah intends to develop Standards and Guidelines (43 CFR Part 4180) through the BLM planning and NEPA process. It is uncertain at this point what level of plan modification or NEPA analysis will be conducted. Planning actions may be plan maintenance, plan amendment, or new plan preparation. NEPA actions may be an Administrative Determination (that an EA/EIS is not needed), Categorical Exclusion (CX), an Environmental Assessment (EA), or an Environmental Impact Statement (EIS). All Land Use Plans for public lands in the State of Utah may be affected.

Public comments and opinions are solicited and encouraged. Public meetings will be held—information to be announced later. Guidance will be sought from the Utah BLM Resource Advisory Council, user groups, local leaders, and the public at large.

Issues preliminarily identified are: the effect of the proposed standards and guidelines on public land grazing operations, public land values, and other uses of the public lands.

Alternatives identified at this time include adoption of the Fallback Standards and Guidelines specified in the new grazing regulations, adoption of new Standards and Guidelines specific to Utah, or continuation of current management under existing land use plans (where such plans are in conformance with the Fallback Standards and Guidelines) accompanied by incremental implementation of new Standards and Guidelines on priority areas.

Roger Zortman,

Acting State Director, Utah.

[FR Doc. 95–30705 Filed 12–18–95; 8:45 am]

BILLING CODE 4310–DQ–P

[UT–020–06–1430–00]

Notice

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of intent to amend management framework plan.

SUMMARY: The Bureau of Land Management (BLM) is preparing an Environmental Assessment (EA) to consider a proposed amendment to the Park City Management Framework Plan (MFP). The proposed amendment would consider alternatives for additional opportunities for land tenure adjustments in Summit County.

DATES: The comment period for identification of issues for the proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before January 18, 1996.

FOR FURTHER INFORMATION CONTACT: Leon Berggren, Bear River Resource Area Manager, Bureau of Land Management, Salt Lake District, 2370 South 2300 West, Salt Lake City, UT 84119, telephone (801) 977–4300. Existing planning documents and information are available at the above address or telephone (801) 977–4300. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The Bear River Resource Area of the Salt Lake District, BLM, is proposing to amend the Park City MFP to allow for land tenure adjustments on T. 2 S., R. 3 E., Section 10, NE¼ not previously identified in the MFP. The main purpose is to identify and analyze the land for exchange to the State of Utah for acquisition of lands that results in a net gain of important and manageable resource values on public land. Lands transferred out of Federal ownership to State interests, as a result of the exchange, would be available to meet the various needs of the respective parties. Where there are specific uses proposed on lands identified for exchange, those uses will be analyzed. An environmental assessment (EA) will be prepared to analyze the impacts of this proposed plan amendment and alternatives.

Public participation is being sought at this initial stage in the planning process to ensure the MFP amendment addresses all issues, problems and concerns from those interested in the management of lands within the Bear River Resource Area. Necessary amendments to the approved plan will keep the document current and viable.

David E. Little,

Acting State Director.

[FR Doc. 95–30704 Filed 12–18–95; 8:45 am]

BILLING CODE 4310–DQ–P

[NV–050–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management.

ACTION: Resource advisory council meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council will be held as indicated below. The agenda includes a discussion of laws and regulations that pertain to grazing, and a statewide update of standards and guidelines.

All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending of the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Michael Dwyer at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone (702) 647–5000.

DATES, TIMES: Dates are January 18 and 19, 1996. The council will meet at the BLM Las Vegas District Office located at 4765 Vegas Drive, Las Vegas, Nevada, at 8:30 a.m. until approximately 4 p.m.

The public comment period will be on January 18 at 3 p.m.

SUPPLEMENTAL INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION: Lorraine Buck, Public Affairs Specialist, Las Vegas District, telephone: (702) 647–5000.

Michael F. Dwyer,

District Manager.

[FR Doc. 95–30706 Filed 12–18–95; 8:45 am]

BILLING CODE 4310–HC–M

[ES–020–4210–01; FL–ES–047709]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Pinellas County, Florida have been examined and found suitable for classification for conveyance to the Board of Trustees of the Internal Improvement Trust Funds of the State of Florida under the provisions of the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 *et seq.* The Board of Trustees proposes to use the lands as part of the Anclote Key State Preserve.

Tallahassee Meridian, Florida

T. 27 S., R. 15 E.,
Sec. 1, Part of Lot 1.

Containing 0.17 acres more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The patent, when issued, will be subject to the following terms, conditions and reservations;

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.
4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206. Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

DATES: For a period on or before February 2, 1996, interested persons may submit comments regarding the proposed conveyance of the lands to the District Manager, Jackson District Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of lands for a recreational area.

Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for recreational purposes.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mary Weaver, Realty Specialist, Bureau of Land Management, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206. Detailed information concerning this action is also available for review.

Dated: December 13, 1995.

Sammy St. Clair,

Acting District Manager.

[FR Doc. 95–30739 Filed 12–18–95; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for permits 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–809224

Applicant: U.S. Department of Energy, Portsmouth Site Office, Piketon, Ohio.

The applicant requests a permit to take (capture and release) Indiana Bats (*Myotis sodalis*) within the DOE PORTS reservation boundary to determine presence or absence of the species. Data will be used to assess impacts when designing projects on the reservation.

PRT–809227

Applicant: Dr. Virgil Brack, 3D/Environmental, Cincinnati, Ohio.

The applicant requests a permit to take (capture and release, handle, radio-tag) Indiana Bats (*Myotis sodalis*) and Gray Bats (*Myotis grisescens*) in Ohio, Indiana, Illinois, Iowa, Michigan, and Missouri. Permit is sought for activities proposed to document presence/absence, habitat use, monitor populations, and evaluate effects of industrial, commercial, and military activities on the species.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review 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, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone (612/725–3536, x250); FAX: (612/725–3526).

Dated: December 11, 1995.

John A. Blankenship,

Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 95–3070 Filed 12–18–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Record of Decision on the Final Environmental Impact Statement on the Silvio O. Conte National Fish and Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1505) for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), the Fish and Wildlife Service (Service) issues this Record of Decision upon the Final Environmental Impact Statement (FEIS) for the Silvio O. Conte National Fish and Wildlife Refuge. The Service evaluated and considered a range of alternatives on how to implement the Silvio O. Conte National Refuge Act, as presented in the FEIS. The Service also reviewed and considered public and agency comments. Based on that evaluation and review the Service has selected for implementation the Revised Proposed Action described in the FEIS. This determination was based on a thorough analysis of the environmental, social, economic, and other essential considerations.

ADDRESSES: Copies of this Record of Decision and supporting documentation are available for public inspection upon request at the Silvio O. Conte National Fish and Wildlife Refuge, 38 Avenue A, Turners Falls, Massachusetts, 01376.

FOR FURTHER INFORMATION CONTACT: Larry Bandolin, Project Leader of the Silvio O. Conte National Fish and Wildlife Refuge at the address given above, telephone 413/863–0209.

SUPPLEMENTARY INFORMATION:

Background

The proposed action is designed to provide guidance for the establishment and operation of the Silvio O. Conte National Fish and Wildlife Refuge for a period of fifteen years. Shortly before his death, Silvio O. Conte, a 30 plus year member of Congress and conservationist, introduced legislation authorizing a national fish and wildlife refuge within the four state Connecticut River watershed. The watershed is contained within the states of New Hampshire, Vermont, Massachusetts, and Connecticut. After his death the Congress renamed the Act in his honor, the Silvio O. Conte National Fish and Wildlife Refuge Act.

The purposes of the Conte Refuge as stated in the Conte Refuge Act are:

(1) To conserve, protect and enhance the Connecticut River populations of Atlantic salmon, American shad, river herring, shortnose sturgeon, bald eagles, peregrine falcons, osprey, black ducks, and other native species of plants, fish and wildlife;

(2) To conserve, protect and enhance the natural diversity and abundance of plant, fish and wildlife species and the ecosystem upon which these species depend within the refuge;

(3) To protect species listed as endangered or threatened, or identified as candidates for listing, pursuant to the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 et seq.);

(4) To restore and maintain the chemical, physical and biological integrity of wetland and other waters within the refuge;

(5) To fulfill the international treaty obligations of the United States relating to fish and wildlife and wetlands; and

(6) To provide opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation and access to the extent compatible with the other purposes stated in this section.

The Service identified 434 species rare enough to be considered in need for protection on a watershed basis. In addition 125 plant communities were considered rare or exemplary. The Service identified about 180,000 acres of lands and waters that contributed in a substantial way to protecting these species and fulfilling the other purposes listed in the Conte Refuge Act. These areas have been named Special Focus Areas. An additional 500 small and scattered sites that contain some of the 434 rare species have been identified. The Special Focus Areas and small scattered sites will be the focus of the majority of Conte Refuge efforts.

A notice of intent to prepare an EIS was published in the Federal Register in August, 1993. Sixty-one informal information meetings with organizations and agencies were held prior to that time, and another 82 such meetings were held through the end of July, 1994. A series of 27 more formal evening public scoping meetings were held at locations throughout the watershed during the last 4 months of 1993 and January of 1994. In April, 1994, a 3-day workshop was held in each of the four affected states. Each workshop involved 35 citizens of varied background and opinions in developing consensus recommendations for the Service. Over this entire time period, three informational mailings were made to the large mailing list. In addition, 3,500 copies of an issues workbook, soliciting input, were distributed and 500 completed workbooks were returned and analyzed.

The notice of availability of the Draft EIS appeared in the Federal Register on May 19, 1995. One-thousand nine hundred documents and 2,000 summaries were distributed. Sixteen afternoon walk-in sessions and subsequent evening public meetings were held throughout the watershed area during June, 1995 (four of which were formal public hearings). Over 990 people attended. Written comments were accepted through the end of July, 1995.

The notice of availability of the FEIS appeared in the Federal Register on November 10, 1995. A Revised Proposed Action, modified in response to public comment, was presented and the FEIS also responded to all comments received. Copies of the document or a summary were distributed to all interested parties.

The Selected Alternative

The selected alternative is Alternative D, the Revised Proposed Action as described in the FEIS. The activities to be undertaken include working with private landowners, state or local agencies and private organizations through the existing Partners for Wildlife and Challenge Cost Share Programs. The Service's major thrust through the year 2010 would focus on the use of voluntary efforts, developing partnerships, providing technical assistance, and administering a cost-sharing grants program to help other conservation interests carry out their land protection programs. The Service would also initiate its own land protection program. The Service would use a combination of easements, cooperative management agreements and fee title acquisition—with emphasis on lands hosting endangered, threatened, rare and uncommon species and communities. Educational efforts would be carried out in cooperation with the watershed's many environmental education providers. This alternative would result in the establishment of watershed-wide cooperative management and education programs.

This alternative would provide a high level of protection to federally listed species, rare species, migratory birds, area-sensitive species, and wetland habitats. Over 60% of the watershed's unprotected Special Focus Areas would receive some degree of protection under this alternative, a greater percentage than Alternatives A (7%), B (7%), or C(15%). Although Alternative E would offer some protection to 100% of the Special Focus Areas, Alternative D provides essentially the same protection to the listed and rare species and

communities evaluated in the FEIS. Since Alternative D also has provisions to offer widespread environmental education, technical assistance and habitat management assistance, up to 25% of the land throughout the watershed, owned by conservation organizations and private owners, would provide improved habitat. The flexibility of programs and broad land base to be affected will benefit many aquatic, and/or wide-ranging species as well as species which require active habitat management; Alternative E cannot provide the same benefits to these species. For this reason, Alternative D is the environmentally preferable alternative.

In addition to being environmentally preferable, Alternative D provides its high level of protection to targeted resources more cost effectively and in a socially preferred format. The cost of Alternative D is estimated to be $4 million a year less than that of Alternative E. Public input throughout the NEPA process consistently recommended partnerships with local organizations as the way to implement this refuge. Such partnerships offer the Service a practical alternative to the traditional way to administer a refuge with many scattered parcels, as well as a way to implement broad landscape-scale solutions to emerging habitat issues. A majority of written and verbal comments received on the Draft EIS supported the project and almost half specifically endorsed Alternative D. In addition, Alternative D was slightly modified in response to comments received to form the Revised Proposed Action described in the FEIS.

Other Alternatives Considered

Besides the proposed action, the major alternatives under consideration that were analyzed and evaluated during the planning process include the following:

A. The No Action Alternative

In this alternative, the Service would take no actions to implement the Conte Refuge Act. The existing programs for protection of threatened and endangered species would continue, as would the restoration programs to restore anadromous fish such as Atlantic salmon and American shad. The activities of the Service, such as commenting on Federally licensed, permitted or funded programs would also continue. State and local agencies and private organizations would continue their ongoing programs without additional Service assistance. This alternative describes the status quo.

Based on current trends, minimal protection of aquatic habitats and plants and animal populations within the identified Special Focus Areas would result. Many species would continue to decline and some would be extirpated from the watershed. This alternative would not provide any additional Service efforts and is therefore not responsive to the Conte Refuge Act.

B. The Private Lands Work and Education Alternative

In this alternative, the Service would work exclusively with private landowners through the existing Partners for Wildlife Program. The Service's major thrust through the year 2010 would focus on the voluntary restoration and enhancement of habitats on private lands to benefit plants and animals. A limited educational effort would be undertaken, targeting the watershed's private landowners.

If this alternative were chosen, many species in the watershed would continue to decline. Minimal protection of aquatic habitats and plant and animal populations within the identified Special Focus Areas would result. Habitat improvement would occur randomly depending on landowner participation and would benefit certain species, primarily those who inhabit small wetlands and perhaps some early-successional species, but not substantially benefit many of the rare, area-sensitive or migratory species. This Alternative would not accomplish the purposes of the Act.

C. The Private Lands Work, Education and Partnerships Alternative

In this alternative, the Service would work with private landowners, state or local agencies, and private organizations through the existing Partners for Wildlife and Challenge Cost Share Programs. The Service's major thrust through the year 2010 would focus on the use of voluntary efforts, developing partnerships, providing technical assistance, and administering a cost-sharing grants program to help other conservation interests carry out their land protection programs. Educational efforts would be carried out in cooperation with the watershed's many environmental education providers.

If this alternative were chosen, small amounts of additional protection would be provided to federally-listed species, rare species, fish, migratory birds, area-sensitive species and wetland habitats. The protection and management provided by others with the support of the Service would be beneficial, but limited in scope. Species and sites not of interest to existing organizations would receive no protection. This Alternative would not fully accomplish the purposes of the Act.

E. The Private Lands Work, Education and Land Protection Alternative

In this alternative, the Service would work with private landowners, state or local agencies and private organizations through the existing Partners for Wildlife Program. The Service would also initiate an extensive land protection effort through the year 2010, using a combination of conservation easements, cooperative management agreements and fee title acquisition, to ensure natural diversity. Educational efforts would focus on developing new programs and facilities on Service lands. This alternative would result in the establishment of a more traditional national fish and wildlife refute in the watershed.

If this alternative were chosen, all the acreage within the Special Focus Areas would receive some degree of protection by the Service. This Alternative provides essentially the same level of protection to the listed and rare species and communities as does Alternative D, with slight additional protection for grassland and boreal species. Since habitat improvement efforts would largely be limited to Service lands, a smaller amount of the entire watershed would become improved habitat. Many aquatic, and/or wide-ranging species as well as species which require active habitat management would not be broadly benefitted.

Minimization of Impacts

Possible project impacts, public concerns and methods used to mitigate those impacts and concerns are addressed in the FEIS. A major public concern was that the programs undertaken would be forced on the people. The Partners for Wildlife and the Challenge Cost Share programs require the participant to apply to the Service, and therefore are totally voluntary. The Service's land acquisition policy is to work with willing sellers. The loss of tax revenue due to Service purchase of land is a negative impact. The loss of tax revenue to the towns will be partially mitigated by payment-in-lieu taxes.

Findings and Decision

Having reviewed and considered the FEIS for the Silvio O. Conte National Fish and Wildlife Refuge and the public comments thereon, the Service finds as follows:

(1) The requirements of NEPA and their implementing regulations have been satisfied;

(2) Statutory authority for the Service to implement this project exists subject to the Silvio O. Conte National Fish and Wildlife Refuge Act, Public Law 102–212;

(3) The Proposed Action Alternative represents the best balance between the Service's goals and objectives and the public's concerns identified throughout the public participation process; and

(4) Consistent with social, economic and other essential considerations from among the reasonable alternatives, the Proposed Action Alternative is one which minimizes or avoids adverse environmental effects to the maximum extend practicable.

Having made the above findings, the Service has decided to proceed with implementation of the Revised Proposed Action Alternative.

This Record of Decision will serve as the written facts and conclusions relied on it reaching this decision.

Dated: December 13, 1995.

Cathleen I. Short,

Acting Regional Director, Region 5, Hadley, Massachusetts.

[FR Doc. 95–30768 Filed 12–18–95; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1155X)]

Consolidated Rail Corporation—Abandonment Exemption—In Middlesex County, NJ

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 1.4 miles of rail line extending between approximately milepost 25.00 and milepost 267.40 in Middlesex County, NJ.

Conrail has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal compliant filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 18, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 29, 1995. Petitions to reopen or requests for public use conditions under CFR 1152.28 must be filed by January 8, 1996, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission,[4] Washington, DC 20423–2191.

A copy of any pleading filed with the Commission should be sent to applicant's representative: John J. Paylor, Associate General Counsel, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 22, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 12, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30769 Filed 12–18–95; 8:45 am]

BILLING CODE 7035–01–M

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[4] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–114]

National Environmental Policy Act; Mars Global Surveyor Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216 Subpart 1216.3), NASA has made a finding of no significant impact (FONSI) with respect to the proposed Mars Global Surveyor (MGS) mission, which would involve a flight to and orbit about Mars. The baseline mission calls for the MGS spacecraft to be launched aboard a Delta II 7925 from Cape Canaveral Air Station (CCAS), Florida, in November 1996.

DATES: Comments on the FONSI must be provided in writing to NASA on or before January 18, 1996.

ADDRESSES: Written comments should be addressed to Ms. Mary Kaye Olsen, NASA Headquarters, Code SLP, 300 E Street SW, Washington, DC 20546. The Environmental Assessment (EA) prepared for the MGS mission which supports this FONSI may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546.

(b) Spaceport USA, Room 2001, John F. Kennedy Space Center, Florida, 32899. Please call Lisa Fowler beforehand at 407–867–2468 so that arrangements can be made.

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

The EA may also be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(d) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–4190).

(e) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3448).

(f) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(g) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).

(h) NASA, Langley Research Center, Hampton, VA 23665 (804–864–6125).

(i) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2313).

(j) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (205–544–5252).

(k) NASA, Stennis Space Center, MS 39529 (601–688–2164).

A limited number of copies of the EA are available by contacting Ms. Mary Kaye Olsen at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: Mary Kaye Olsen, 202–358–0304.

SUPPLEMENTARY INFORMATION: NASA has reviewed the EA prepared for the MGS mission and has determined that it represents an accurate and adequate analysis of the scope and level of associated environmental impacts. The EA is incorporated by reference in this FONSI.

NASA is proposing to launch the MGS mission, which would deliver a single polar-orbiting spacecraft to Mars in 1997. MGS would be inserted into an elliptical capture orbit in September 1997 and, over the next 4 months, would use thruster firings and aerobraking techniques to reach a nearly circular, low-altitude, polar-mapping orbit. The orbit would allow the spacecraft to be illuminated by the sun in the same way throughout the Martian year. Aerobraking, a technique which uses the forces of atmospheric drag to slow the spacecraft for orbital maneuvers, would provide a means of minimizing the amount of fuel required to reach the final low Mars mapping orbit. The spacecraft carries no radioactive material. The proposed action calls for using a Delta II 7925 launch vehicle with a Payload Assist Module-Delta (PAM–D) upper stage to inject the MGS spacecraft into an Earth-Mars trajectory in November 1996.

The science objectives for the MGS mission are to fulfill most of the critical science objectives of the failed Mars Observer mission. To satisfy the mission's purpose, the MGS spacecraft would carry nearly a full duplicate of the Mars Observer instrument payload, and would use those instruments to acquire Mars surface data for a full Martian year (approximately 2 Earth years). These objectives include detailed global maps of surface topography, the distribution of minerals, the planet's mass, size, and shape, the characterization of Mars' gravitational and magnetic fields, and the monitoring of global weather. These data and investigations could help scientists better understand the current state of water on Mars, the evolution of the planet's formation and atmosphere, and the factors that led to major changes in the Martian climate. Other data acquired from this mission could provide insight into the evolution of both Earth and the solar system. MGS could then support possible future Mars missions, by providing relay capability for surface science stations and landers.

Alternatives that were evaluated include (1) No-Action (*i.e.*, no Mars Global Surveyor mission); and (2) launch vehicles options, including the Space Shuttle, Titan, and Atlas configurations, foreign launch vehicles, as well as other Delta configurations. Failure to undertake the MGS mission would disrupt the execution of NASA's Solar System Exploration Program, as defined by the Agency's Solar System Exploration Committee. Cancellation of the MGS mission would leave a gap in the orderly exploration of Mars, and would retard NASA's attainment of scientific data on the surface and atmosphere of Mars, which is critical to future explorations of Mars. Of the launch vehicles evaluated, the Delta II 7925/PAM–D most closely matches the MGS mission requirements, has superior reliability, minimizes adverse environmental impacts, and is also the lowest in cost.

Expected impacts to the human environment associated with the mission arise almost entirely from the normal launch of the Delta II 7925. Air emissions from the exhaust produced by the solid propellant graphite epoxy motors and liquid first stage primarily include carbon monoxide, hydrochloric acid, aluminum oxide in soluble and insoluble forms, carbon dioxide, and deluge water mixed with propellant by-products. Air impacts will be short-term and not substantial. Short-term water quality and noise impacts, as well as short-term effects on wetlands, plants, and animals, would occur in the vicinity of the launch complex. These short-term impacts are of a nature to be self-correcting, and none of these effects would be substantial. There would be no impact on threatened or endangered species or critical habitat, cultural resources, or floodplains. Accident scenarios have also been addressed.

The second stage would be ignited at an altitude of 129 kilometers (80 miles), which is in the ionosphere. Although the second stage would achieve orbit, its orbital decay time would fall below the limit NASA has set for orbital debris consideration. After burning its propellant to depletion, the second stage would remain in low Earth orbit until its orbit eventually decayed. The MGS Project has followed the NASA guidelines regarding orbital debris and minimizing the risk of human casualty for uncontrolled reentry into the Earth's atmosphere. No other impacts of environmental concern have been identified.

The level and scope of environmental impacts associated with the launch of the Delta II 7925 vehicle are well within the envelope of impacts that have been addressed in previous FONSI's concerning other launch vehicles and spacecraft. No significant new circumstances or information relevant to environmental concerns associated with the launch vehicle have been identified which would affect the earlier findings.

On the basis of the MGS EA, NASA has determined that the environmental impacts associated with the mission would not individually or cumulatively have a significant impact on the quality of the human environment. NASA will take no final action prior to the expiration of the 30-day comment period.

Dated: December 13, 1995.

Wesley T. Huntress, Jr.,

Associate Administrator for Space Science.

[FR Doc. 95–30759 Filed 12–18–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Temporary Closing of Reference Service on Certain Textual Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of revised schedule of closure and reopening of reference services for certain textual records holdings in the National Archives related to the move to the National Archives at College Park (Archives II) and the relocation of some records to the National Archives Building.

SUMMARY: This notice provides information about the period of time that reference service on certain textual records holdings of the National Archives will be unavailable due to the move of those holdings from their current locations in the National Archives Building in Washington, DC, and the Washington National Records Center in Suitland, Maryland, to new locations in either the new Archives II facility in College Park, Maryland, or the National Archives Building in Washington, DC. Additional notices will be published by NARA relating to the move of other holdings to Archives II.

During the periods shown for the record groups listed on the schedule at the end of this notice, the National Archives will be unable to provide records for research, or process requests for reproductions (fee orders) or requests for information from these records. Requests received during the periods of suspended service will be returned for resubmission after the date indicated for reopening the records for reference service.

BACKGROUND: Changes in the overall move schedule to accommodate necessary space for records to move from the Washington National Records Center in Suitland to the National Archives Building in Washington, DC required changes in the closure and reopening dates for the record groups listed below.

FOR SCHEDULE UPDATES AND INFORMATION ON THE NEW LOCATION OF THE RECORDS, CALL: User Services Division at (202) 501–5400.

Dated: December 7, 1995.

Michael J. Kurtz,

Assistant Archivist for the National Archives.

Cluster title	RG No.	Record group short title	Close date	Reopen date
Genealogical Related Records	015	Veterans Administration	04/09/96	07/01/96
Genealogical Related Records	029	Bureau of the Census	04/15/96	07/10/96
Genealogical Related Records	049	Bureau of Land Management	05/01/96	09/22/96
Genealogical Related Records	059	Department of State	07/15/96	09/26/96
Genealogical Related Records	085	Immigration and Naturalization Service	07/22/96	09/27/96
Genealogical Related Records	117	American Battle Monuments Commission	07/29/96	10/11/96
Genealogical Related Records	147	Selective Service System (World War II)	08/05/96	10/17/96
Genealogical Related Records	163	Selective Service System (World War I)	08/19/96	10/23/96
Genealogical Related Records	210	War Relocation Authority	08/26/96	10/29/96
Genealogical Related Records	241	Patent and Trademark Office	08/30/96	12/06/96
Modern Army	338	Army Commands, 1942–	04/15/96	10/01/96
Modern Navy	024	Bureau of Naval Personnel	10/20/96	01/29/96
Modern Navy	038	Office of the Chief of Naval Operations	11/17/96	02/13/96
Modern Navy	052	Bureau of Medicine and Surgery	01/02/96	02/23/96
Modern Navy	071	Bureau of Yards and Docks	01/08/96	02/29/96
Modern Navy	072	Bureau of Aeronautics	01/12/96	03/25/96
Modern Navy	074	Bureau of Ordnance	01/25/96	04/09/96
Modern Navy	080	Department of the Navy, 1798–1947	02/12/96	04/23/96
Modern Navy	125	Judge Advocate General (Navy)	02/16/96	04/25/96
Modern Navy	127	U.S. Marine Corps	02/20/96	04/30/96
Modern Navy	143	Bureau of Supplies and Accounts	02/26/96	05/09/96
Modern Navy	181	Naval Districts and Shore Establishments	02/26/96	05/13/96
Modern Navy	298	Office of Naval Research	03/04/96	05/15/96
Modern Navy	313	Naval Operating Forces	03/04/96	06/06/96
Modern Navy	343	Naval Air Systems Command	04/01/96	06/07/96
Modern Navy	345	Naval Electronics Systems Command	04/03/96	06/10/96
Modern Navy	346	Naval Ordnance Systems Command	04/08/96	06/12/96
Modern Navy	347	Naval Supply Systems Command	04/08/96	06/13/96
Modern Navy	384	Chief of Naval Material	04/10/96	06/17/96
Modern Navy	428	Department of the Navy, 1947–	04/15/96	06/25/96

[FR Doc. 95–30472 Filed 12–18–95; 8:45 am]

BILLING CODE 7515–01–P–M

NUCLEAR REGULATORY COMMISSION

Union Electric Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

[Docket No. 50–483]

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Union Electric Company (the licensee) to withdraw its February 24, 1995, application for proposed amendment to Facility Operating License No. NPF–30 for the Callaway Plant, Unit No. 1, located in Fulton, Missouri.

The proposed change would have revised Technical Specification 4.6.1.7.4 and its associated Bases to delete the quarterly verification of the measured leakage rate for containment mini-purge supply and exhaust isolation valves.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on May 10, 1995 (60 FR 24921). However, by letter dated November 29, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 24, 1995, and the licensee's letter dated November 29, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 11th day of December 1995.

For the Nuclear Regulatory Commission.

Kristine M. Thomas,

Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30754 Filed 12–18–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy FAR Part 15 Rewrite

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Request for Comments via the Internet.

SUMMARY: In response to the report of the National Performance Review (NPR), the Federal Acquisition Regulatory Council has embarked on a rewrite of FAR Part 15 to simplify, update and streamline rules related to negotiated procurements. The intent of this notice is twofold: first, to announce a future rulemaking action; second, to inform the public that electronic means will be used to engage the public in electronic discussions about issues important to the rewrite of the rules governing negotiated procurements. For those who do not want to participate electronically or cannot access the World Wide Web but would like to provide initial input for the rewrite, a notice of proposed rulemaking was published requesting paper comments and announcing a public meeting. This notice, which was issued by the Department of Defense, in concert with the Federal Aquisition Regulations Council, appeared in the Federal Register on December 8, 1995 (60 FR 63023).

DATES: The initial round for electronic discussions will be conducted during the period December 1, 1995 through January 22, 1996. We anticipate further rounds as the rulemaking progresses.

FOR FURTHER INFORMATION CONTACT: Susan E. Alesi at 202–395–3301.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1993, the Vice President released the report of the NPR which advocated simplification of the procurement process by, in part, rewriting the Federal Acquisition Regulation (FAR). As a first step in this project, a set of core guiding principles was formulated to guide the federal acquisition system. These principles are now included in FAR Part 1. The project has now resumed with the rewrite of FAR Part 15 dealing with the rules on negotiated rulemaking under the direction of the Federal Acquisition Regulatory Council (FAR Council).

The FAR Council has established a team of 11 individuals from civilian agencies, DOD components and the Office of Federal Procurement Policy, with co-chairs from DOD and NASA to participate in rewriting Part 15. The actual drafting of the regulatory language is scheduled to start no later than February 1, 1996, with a target finish date of October 1996. This delayed starting date was proposed and agreed upon to allow time to solicit input and to identify those areas that need the most attention. The initial public input will be accomplished in a number of ways. In addition to such traditional methods as requesting the submission of written comments and holding a public meeting, additional methods of obtaining public comment are being used, one of which is through on-line discussions via the Acquisition Reform Network (ARnet).

The ARnet was established in June 1, 1995, as an initiative of the NPR to help government workers communicate electronically. The purpose of the Internet based World Wide Web Network is to inform the members of the acquisition community about reform initiatives, give them electronic access to references, training materials and other electronic sources of information, and engage them in on-line discussions about issues important to improving our acquisition system.

Use of the ARnet On-Line Forum to assist the FAR Part 15 Rewrite Team provides an additional avenue for two-way communication with the acquisition community. This support will initially be used as a call for inputs organized around a series of key Part 15 issues. Some of these issues are government-industry communications via draft solicitations, discussions and oral proposals; Part 15 and commercial items; source selection and best value determinations; selection of proposals for competitive range; and the use of ''shalls'' in governmentwide regulations governing negotiated procurements. We anticipate that the ARnet will subsequently be used to publicize proposed rule(s) and provide another round of discussions on these rule(s) during the public comment period.

Electronic Access to the FAR Part 15 Rewrite Forum on the Internet

General: This Forum can be accessed through the World Wide Web by using any HTML viewer at the following URL address: http://www-far.npr.gov. Anyone with access to the World Wide Web can participate through using comment options residing on the Web Site.

Participation Options: The method for participating in this forum which is currently operational is through the World Wide Web. However, we are also working to provide access to these discussions through E-mail; if E-mail access can be arranged, a supplemental notice will be issued announcing how interested persons can participate in the forum via E-mail. In addition, individuals who cannot participate through these electronic methods, or would prefer to provide their comments through alternative means, will be able to participate through non-electronic means as described above (i.e., by submitting written comments or participating in a public meeting).

Steven Kelman,

Administrator.

[FR Doc. 95–30699 Filed 12–18–95; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36575; File No. SR–CBOE–95–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Membership Fees

December 12, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 29, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 CBOE hereby gives notice that it is proposing to amend certain membership fees imposed by the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to amend the membership fees imposed by the Exchange in two respects. These amendments will take effect on January 1, 1996.

First, the Exchange proposes to reduce from $1,500 and $500 the fee that it assesses member organizations that apply for Exchange approval to conduct a non-member customer business.

Second, the Exchange proposes to amend its Inactive Nominee Status Change Fee. Currently, the Exchange assesses member organizations a $55 whenever an inactive nominee of a member organization becomes an active nominee of the member organization, regardless of when the Exchange's Membership Department is notified of that status change. As is more fully described below, in order to encourage member organizations to provide the Membership Department which advance notice of such status changes, the Exchange is proposing to make the amount of this fee depend on when the Membership Department receives notice of these status changes.

In order to consummate a nominee status change, a member organization is required to submit a Notification of Change in Nominee Status Form (''Notification Form'') to the Membership Department setting forth, among other things, the designated effective date of the status change. If the Notification Form is submitted prior to the opening of trading on the designated effective date of the status change, the status change becomes effective upon the opening of trading on such designated effective date. If the Notification Form is submitted subsequent to the opening of trading on the designated effective date of the status change, the status changer becomes effective upon the submission of the Notification Form. Upon the effectiveness of the status change, the person moving from inactive to active nominee status is granted trading privileges on the Exchange.

Although a nominee status change can become immediately effective (or can become effective within minutes) if notice of the status change is submitted to the Membership Department on its designated effective date, it taken time for the Membership Department to update the Exchange's membership records to reflect the status change. Specifically, the Membership Department must enter the status change information into the Exchange's membership database and must validate the acronym for the person moving from inactive to active nominee status in the Exchange's Trade Match System so that trades can be matched to the nominee by that System. Ordinarily, the Membership Department is able to quickly process nominee status changes and to validate the acronyms of nominee moving from inactive to active status before these nominees begin consummating trades on the Exchange. However, if the Membership Department receives notification of a number of nominee status changes either late in the day on the date prior to the designated effective date of such status changes and/or on the designated effective date of such status changes, it is more difficult for the Membership Department to process all of the changes before the newly activated nominees begin their trading activities. This can result in outtrades being created because the Trade Match System is unable to match trades with the acronyms of those nominees whose status changes have not yet been processed, and these outtrades then need to be corrected later in the day.

In order to encourage member organizations to provide the Membership Department with sufficient notice of nominee status changes so that the Membership Department has time to process such changes prior to the time that the newly activated nominees begin to trade, the Exchange is proposing the following three-tiered fee structure for nominee status changes: If a Notification Form is submitted before 4 p.m. on the date prior to the designated effective date of the status change, the fee is proposed to be $40. If a Notification Form is submitted after 4 p.m. on the date prior to the designated effective date of the status change or before 8 a.m. on the designated effective date of the status change, the fee is proposed to be $75. If a Notification Form is submitted after 8 a.m. on the designated effective date of the status change, the fee is proposed to be $150.

The CBOE represents that the proposed rule change is consistent with section 6 of the Act, in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule changes, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such

filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–95–69 and should be submitted by January 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30762 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36576; File No. SR–CHX–95–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Establishment of a Minor Rule Violation Procedure and Reporting Plan

December 12, 1995.

Pursuant to Sections 19(b)(1) and (d)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1) and (d)(1), and Rules 19b–4 and 19d–1(c)(2) thereunder,[1] notice is hereby given that on October 11, 1995, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[2] On December 8, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to add a minor rule violation procedure as Article XII, Rule 9 of the Exchange's rules, adopt a minor rule violation reporting plan,[4] and renumber existing Article XII, Rule 9.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed minor rule violation procedure (''Procedure'') authorizes the Exchange, in lieu of commencing a disciplinary proceeding, to impose a fine, not to exceed $2,500, on any member, member organization, associated person or registered or non-registered employee of a member or member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature. The Committee on Floor Procedure will have the same authority for violations relating to decorum on the Exchange trading floor.

If the fine is to be imposed by the Exchange (as opposed to the Committee on Floor Procedure) the fine shall be imposed in accordance with the method set forth in paragraph (b) of the Procedure. Specifically, prior to imposing the fine, the staff of the Exchange shall present the facts supporting such violative conduct to a Minor Rule Violation Panel (''Panel''), which shall consist of three floor members (one member of the Committee on Floor Procedure, one member of the Committee's Rules Subcommittee, and one member not on the Committee or any of its subcommittees) appointed by the President of the Exchange. The Panel is then authorized to impose the fine. In the event the Panel does not impose the fine, the staff shall, under circumstances set forth in the Procedure, issue a report to the President. The President, in turn, may either impose the fine, direct the staff to prefer formal charges or reject the staff's recommendation entirely.

If a fine is to be imposed under the Procedure, the Exchange will serve a written statement on the person against whom a fine is imposed setting forth the rule violated, the act or omission constituting the violation, the fine imposed and the date of imposition, the date the fine must be paid and the date by which such determination must be contested.

If the person against whom a fine is imposed pursuant to the Procedure chooses not to contest the matter and pays the fine, he or she waives his or her right to a disciplinary proceeding under Article XII of the Exchange's rules and any right to review or appeal (to the extent such right would otherwise exist under current Exchange rules). Alternatively, any person may choose to contest a fine by submitting a written answer, at which point the matter becomes a ''disciplinary proceeding'' subject to the applicable provisions of Article XII, including all disciplinary sanctions available thereunder (except for contests of a fine by the Committee on Floor Procedure, which will be subject to the provisions of Article XII, Rule 3).

Under the Procedure, the Exchange will periodically prepare and announce to its members and member organizations a list of Exchange rules and policies as to which the Exchange may impose fines pursuant to the Procedure as well as the fines that may be imposed for their violation. The Procedure, however, expressly states that the Exchange is not required to impose a fine under the Procedure with respect to any violation of any rule included on such list. In addition, whenever the Exchange determines that a rule violation is not minor in nature, it has the discretion to commence disciplinary proceedings under Article XII of the CHX rules.

The Exchange also proposes to adopt a minor rule violation reporting plan (''Plan''). Under its Plan, the Exchange designates certain specified rule

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[1] 17 CFR 200.30–3(a)(12) (1994).

[1] 17 C.F.R. 240.19b–4 and 19d–(c)(2).

[2] The Exchange is submitting to the SEC concurrently with the proposed rule change a minor rule violation reporting plan in accordance with Rule 19d–1(c)(2) under the Act. *See* Letter from David Rusoff, Attorney, Foley & Lardner, to Glen Barrentine, Senior Counsel, SEC, dated October 6, 1995.

[3] *See* Letter from David Rusoff, Attorney, Foley & Lardner, to Glen Barrentine, Senior Counsel, SEC, dated December 8, 1995. Amendment No. 1 renumbers existing Article XII, Rule 9 to Article XII, Rule 10.

[4] In Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984), the SEC adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations to submit for SEC approval plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments, any disciplinary action taken by a self-regulatory organization against any person for violation of a rule of the self-regulatory organization that has been designated as a minor rule violation pursuant to a plan filed with the SEC shall not be considered ''final'' for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies with respect to the matter.

The SEC has approved minor disciplinary rule plans by virtually every stock exchange and the National Association of Securities Dealers, Inc. *See, e.g.,* Securities Exchange Act Release No. 21919 (April 3, 1985), 50 FR 14068 (April 9, 1985) (File No. 4–260) (Amex); Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (September 23, 1985) (File No. 4–284) (NYSE); Securities Exchange Act Release No. 22654 (November 21, 1985), 50 FR 48853 (November 27, 1985) (File No. 4–285) (PSE).

violations as minor rule violations and requests that it be relieved of the current reporting requirement of Rule 19d–1(c)(1) under the Act regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.[5] The Plan, however, would not cover any fine imposed pursuant to the Procedure that is contested. Such violations and fines would continue to be reported as they occur.

Initially, the Exchange is proposing to include the following rule and policy violations in both its Procedure and Plan: (1) Acquisition of membership by general or limited partner (Article II, Rule 1); (2) general partners bound by rules of Exchange (Article II, Rule 4); (3) notice of death or retirement of partner (Article II, Rule 9); (4) filing and approval of Articles of Incorporation (Article III, Rule 4); (5) authorization of officers to act (Article III, Rule 5); (6) officers, directors and principal stockholders (Article III, Rule 6); (7) death or retirement of registrant member (Article III, Rule 11); (8) transactions off the floor (Article VIII, Rule 9); (9) records of orders transmitted (Article IX, Rule 7); (10) dealing in stocks on put, call, straddle or option (Article IX, Rule 15); (11) record of margin calls and receipt of margin (Article X, Rule 2); (12) record of orders (Article XX, Rule 24); (13) specialist's book (Article XXX, Rule 4); (14) written reports of transactions (Article XXX, Rule 5); (15) record of orders (Article XXX, Rule 11); (16) financial operational reports (Article XI, Rule 4); (17) notification of change in bond coverage (Article XI, Rule 6); (18) filing requirements on change of examining authority (Article XI, Rule 7); (19) submission of books to board (Article VIII, Rule 11); (20) submission of evaluation of co-specialists survey (Article VIII, Rule 11); (21) failure to issue ITS pre-opening notification (Article XX, Rule 39); (22) failure to comply with ITS trade-through, locked markets and block trade rules (Article XX, Rule 40); (23) failure to comply with stop order rule (Article XXX, Rule 22); (24) failure to comply with 50 percent requirement (Article XXXIV, Rule 3); (25) failure to comply with trading from off the floor rule (Article XXXIV, Rule 4); (26) failure to comply with public outcry rule (Article XXXIV, Rule 10); (27) violation of Class A decorum rules (Article II, Rule 3, Interpretation and Policy .01); (28) violation of Class B decorum rules (Article XII, Rule 3, Interpretation and Policy .01); (29) failure to comply with recognized quotations (Article XX, Rule 7); (30) failure to clear the post (Article XX, Rule 10); (31) failure to comply with cabinet securities provision (Article XX, Rule 11); (32) failure to comply with minimum fractional changes Article XX, Rule 22); (33) failure to comply with agency cross rule (Article XX, Rule 23); (34) failure to comply with ''stopped''order rule (Article XX, Rule 28); (35) improper use of ''SOLD'' designator (Article VIII, Rule 7); (36) trading ahead of customer orders (Article XXX, Rule 2); (37) violation of preference solely on competitive basis rule (Article XXX, Rule 3).

The purpose of the Procedure is to provide a more appropriate response to certain rule violations. At the present time, when the staff of the CHX discovers a technical, inadvertent, or otherwise minor rule violation, often, the Exchange's only practical response is to issue a written letter of caution to the person(s) involved focusing attention on the necessity of fully complying with all Exchange rules and policies and warning against future violations. Such written admonitions, however, may not always successfully deter future violations. The other alternative, the initiation of a formal disciplinary proceeding may, in many cases, be too time consuming, too costly, and carry too severe a penalty for such minor violations. The ability to impose a fine on a discretionary basis may constitute a more effective deterrent than a cautionary letter while avoiding the severe penalty or attendant publicity of a disciplinary hearing. The Procedure provides for an appropriate response to minor rule violations of certain Exchange rules while preserving the due process rights of the party accused through specified, required procedures.

The purpose of the Plan is to provide the CHX with the flexibility to fashion reporting requirements that would result in the Commission receiving the necessary information regarding minor rule violations in the least burdensome way possible.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[6] and will advance the objectives of Section 6(b)(6) of the Act[7] in that it will provide a procedure whereby members can be ''appropriately disciplined'' in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. In accordance with Sections 6(b)(7) and 6(d)(1) of the Act,[8] the proposed rule change provides a fair procedure for imposing such sanctions. Finally, the proposed plan is consistent with Section 6(d)(1) of the Act and Rule 19d–1(c)(2) thereunder, which authorizes self-regulatory organizations to adopt minor rule violation reporting plans.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference

[5] The Exchange's quarterly report to the SEC will include: the CHX's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the fine imposed, the number of times the rule violation has occurred, and the date of disposition.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7) and (d)(1).

Section 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–25 and should be submitted by January 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30761 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36582; File No. SR–PHLX–95–78]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Extension of the Automated Options Market Pilot Program

December 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 1, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is approving this proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to extend the Exchange's Automated Options Market (''AUTOM'') system for a one year period ending December 31, 1996.

The text of the proposal is available at the Office of the Secretary, the PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

AUTOM, which as operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,[1] is the PHLX's electronic order routing, delivery, execution and reporting system for equity and index options. AUTOM is an online system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor.

Certain orders are eligible for AUTOM's automatic execution feature, AUTO-X, which was approved as part of the AUTOM pilot program in 1990.[2] AUTO-X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the Options Price Reporting Authority (''OPRA'') as well as the originating firm. Orders that are not eligible for AUTO-X are handled manually by the specialist and, upon execution of the order, are inputted into exchange systems for reporting to OPRA and the delivering firm.

Originally, the AUTOM pilot program was approved by the Commission for market orders of up to five contracts for 12 PHLX near-month equity options.[3] Since that time, AUTOM has been extended and amended several times.[4]

The purpose of the proposed rule change is to extend the AUTOM pilot program for a one-year period ending December 31, 1996. The PHLX believes that this extension of the pilot program should provide the Exchange with additional time to study the effectiveness of AUTOM prior to permanent approval. During this time, the Exchange intends to monitor the implementation of certain enhancements to AUTOM and to draft an Exchange rule codifying the entire pilot program.

Generally, the Exchange believes that, since the date of the last Commission order extending the AUTOM pilot program, AUTOM has functioned properly and efficiently, without any material problems reported by PHLX members or AUTOM users, and without significant malfunctions or operational failures.

AUTOM provides small customer option orders with the benefits of electronic delivery and reporting, while AUTO–X provides automatic executions as well. Accordingly, the Exchange believes that AUTOM increases the speed and efficiency of order delivery, execution and reporting. This, in turn, promotes both liquidity and fair and orderly markets. For these reasons, the PHLX believes that extending the AUTOM pilot program for a one-year period is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that the proposal is designed to promote just and equitable principles of trade, and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with Section 11A(a)(1)(B) of the Act in

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[1] *See* Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR-PHLX–94–41).

[2] *See* Securities Exchange Act Release No. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990) (order approving File No. SR-PHLX–89–03).

[3] *See* Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988).

[4] *See* Securities Exchange Act Release No. 35183, *supra* note 1. *See also* Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988) (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR-PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR-PHLX–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR–PHLX–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR-PHLX–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR-PHLX–90–16, extending pilot through December 31, 1990; 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR-PHLX–90–34, extending pilot through December 31, 1991); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR-PHLX–90–03, extending pilot through December 31, 1993); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR-PHLX–93–57, extending pilot through December 31, 1994); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR-PHLX–91–31, permitting AUTO-X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (order approving File No. SR-PHLX–91–33, permitting AUTO-X for all strike prices and expiration months); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR-PHLX–92–38, permitting AUTO-X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR-PHLX–93–57, extending pilot through December 31, 1994); 34920 (October 31, 1994), 59 FR 55510 (November 7, 1994) (File No. SR-PHLX–94–40, codifying use of AUTOM for index options); 35601 (April 13, 1995), 60 FR 19616 (File No. SR-PHLX–95–18, codifying the use of AUTOM for certain order types); 35681 (May 30, 1995), 60 FR 30131 (June 7, 1995) (File No. SR-PHLX–95–29, increasing AUTO-X for USTOP 100 Index (''TPX'') options to 50 contracts); 35782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (File No. SR-PHLX–95–30, increasing the maximum AUTOM order size from 100 to 500 contracts); 36429 (October 27, 1995), 60 FR 55874 (November 3, 1995) (File No. SR-PHLX–95–35, allowing broker-dealer TPX option orders to be routed through AUTOM); and 36467 (November 8, 1995), 60 FR 57615 (November 16, 1995) (order approving File No. SR-PHLX–95–33, limiting AUTO-X for National Over-the-Counter Index options to series where the bid is $10 or less).

that AUTOM is intended to improve, through the use of new data processing and communications techniques, the efficiency with which transactions in PHLX equity and index options are executed. Further, the Exchange believes that AUTOM fosters competition among options exchanges, which have similar systems in place.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6 and 11A.[5] Specifically, the Commission continues to believe that the development and implementation of the AUTOM system provides for more efficient handling and reporting of orders in PHLX options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. The Commission does not object to an extension of the pilot program until December 31, 1996, in response to the PHLX's assertion that continuation of the pilot will provide the Exchange with a better opportunity to study its operation and effectiveness prior to permanent approval of the program.[6] The Commission notes further that the Exchange has represented that from January 1995 until the present, AUTOM has functioned properly and efficiently, that no material problems have been reported by PHLX members or AUTOM users, and that AUTOM has not had significant malfunctions or operational failures.

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 in order to permit the PHLX to continue the AUTOM pilot program on an uninterrupted basis. Specifically, the Commission believes that the PHLX's proposal to extend the AUTOM pilot program does not raise any new issues since it merely extends the pilot program as it is currently operating. Further, the Commission believes that the pilot is beneficial in maintaining the quality and efficiency of the PHLX's market. In addition, the Commission notes that there have been no adverse comments concerning the pilot program since its implemention. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 11A of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PHLX–95–78) is approved through December 31, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30763 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f and 78k–1 (1988).

[6] The PHLX will submit a request for permanent approval of the program no later than November 1, 1996. This request will be accompanied by a report covering the period between Janaury 1, 1996, and June 30, 1996, that will include: (1) a description of the benefits provided by AUTOM; (2) the degree of AUTOM usage, including the number and size of the orders routed through AUTOM and the number and size of the orders executed automatically through the AUTO–X system; (3) the system capacity of AUTOM and AUTO–X; and (4) any problems the Exchange has encountered with the routing and execution features.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1994).

[Investment Company Act Release No. 21593; International Series Release No. 901; 812–9816]

First National Bank of Southern Africa Limited; Notice of Application

December 12, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: First National Bank of Southern Africa Limited (''First National bank'').

RELEVANT ACT SECTIONS: Order under section 6(c) of the Act for an exemption from section 17(f).

SUMMARY OF APPLICATION: First National Bank requests an order that would permit United States registered investment companies (a ''U.S. Investment Company''), other than investment companies registered under section 7(d), for which First National Bank serves as custodian or subcustodian, to maintain foreign securities and other assets in the custody of foreign affiliates located in Botswana, Namibia, and Zimbabwe.

FILING DATE: The application was filed on September 5, 1995 and amended on December 12, 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 8, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549.

Applicant: 3 First Place, BankCity, Johannesburg, Republic of South Africa; cc: Michael Gruson, Esq., Shearman & Sterling, 599 Lexington Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0565, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. First National Bank requests an order to permit First National Bank, any U.S. Investment Company, and any custodian for a U.S. Investment Company, to maintain foreign securities, cash, and cash equivalents (collectively, ''Assets'') in the custody of First National Bank of Botswana Limited (''First Botswana''), First National Bank of Namibia Limited (''First Namibia''), and First Merchant Bank of Zimbabwe Limited (''First Zimbabwe,'' together the ''Foreign Affiliates'') located in the countries of Botswana, Namibia, and Zimbabwe, respectively. For the purposes of this application, ''Foreign securities'' includes: (a) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and (b) securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof or by any agency thereof or by any entity organized under the laws of the United States or of any state thereof which have been issued and sold primarily outside the United States.

2. First National Bank, a bank organized under the laws of the Republic of South Africa, is regulated in South Africa by the Registrar of Banks of South Africa under the banks Act of 1990. First National Bank is a wholly-owned subsidiary of First National Bank Holdings Limited (''First National Bank Group''), a South African public limited company. First National Bank Group is one of the largest financial service groups in South Africa and is engaged in a broad range of banking and financing services for both individual an corporate customers. As of September 30, 1994, First National Bank had shareholders' equity of approximately $427,500,000.

3. First Botswana is an 80 percent owned subsidiary of First National Bank Group and is supervised by the Bank of Botswana. First Namibia is a wholly-owned subsidiary of First National Bank Group and is supervised by the Central Bank of Namibia. First Zimbabwe operates under the banking Act of Zimbabwe (Chapter 188, Regulatory Controls). First Zimbabwe is appointed as subcustodian by First National Bank but is neither a branch nor a subsidiary of First National Bank.

Applicant's Legal Analysis

1. First National Bank requests an order under section 6(c) of the Act exempting First National Bank, any U.S. Investment Company, and any custodian for such U.S. Investment Company from section 17(f) of the Act to permit the deposit and custody of Assets with the Foreign Affiliates in their respective countries.

2. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including a bank having at all times aggregate capital, surplus, and undivided profits of at least $500,000. A ''bank,'' as that term is defined in section 2(a)(5) of the Act, includes: (a) a banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; and (c) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised or examined by state or federal authority having supervision over banks, and which is not operated for the purposes of evading the Act.

3. The only entities located outside the United States that section 17(f) authorizes to serve as custodians for registered management investment companies are the overseas branches of qualified United States banks. Rule 17f–5 expands the group of entities that are permitted to serve as foreign custodians. Rule 17f–5(c)(2)(i) defines the term ''Eligible Foreign Custodian'' to include a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of $200,000,000 or its equivalent.

4. First National Bank meets the requirements for an Eligible Foreign Custodian under rule 17f–5 because it has shareholders' equity in excess of $200,000,000, is organized and existing under the laws of a country other than the United States, and is regulated as a bank under the laws of South Africa.

5. The Foreign Affiliates also satisfy the requirements of rule 17f–5 insofar as each is a banking institution or trust company incorporated or organized under the laws of a country other than the United States and is regulated as such by such country's government or an agency thereof. The Foreign Affiliates, however, do not meet the minimum shareholders' equity requirement of the rule. Accordingly, the Foreign Affiliates are not Eligible Foreign Custodians under the rule and, absent exemptive relief, could not serve as custodians for the Assets of U.S. Investment Companies.

6. Section 6(c) provides, in relevant part, that the SEC may exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. First National Bank submits that its request satisfies this standard.

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed regarding the Foreign Affiliates satisfy the requirements of rule 17f–5 in all respects other than the Foreign Affiliate's level of shareholders' equity.

2. First National Bank will deposit the Assets in Botswana, Namibia, or Zimbabwe, as the case may be, with First Botswana, First Namibia, or First Zimbabwe, respectively only in accordance with an agreement (the ''Agreement'') required to remain in effect at all times during which the Foreign Affiliates fail to satisfy the requirements of rule 17f–5. Each Agreement will be a three-party agreement among First National Bank, the Foreign Affiliate, and the U.S. Investment Group (or its custodian) pursuant to which First National Bank will undertake to provide specified custody or subcustody services for a U.S. Investment Company or its custodian, and will delegate to the Foreign Affiliate such of the duties and

obligations of First National Bank as will be necessary to permit First Botswana, First Namibia, or First Zimbabwe, as the case may be, to hold in custody the U.S. Investment Company's Assets in Botswana, Namibia, and Zimbabwe, respectively. The Agreement will further provide that First National Bank will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by a Foreign Affiliate of its responsibilities under the Agreement to the same extent as if First National Bank had been required to provide custody services under such agreement.

3. First National Bank currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30709 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–9965]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Keithley Instruments, Inc., Common Shares, Without Par Value)

December 13, 1995.

Keithley Instruments, Inc. (''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, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. (''NYSE''). The Security commenced trading on the NYSE at the opening of business on November 28, 1995 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant with maintaining the dual listing of the security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before January 5, 1996 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. 95–30711 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–10814]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (ReadiCare, Inc., Common Stock, $.01 Par Value)

December 13, 1995.

ReadiCare, Inc. (''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 Nasdaq National Market.

The decision of the Board followed a lengthy review 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:

(a) The Company believes that the Nasdaq/NM system of competing market makers will result in increased visibility and sponsorship for the Security than is presently available on the Amex;

(b) The Company believes that the Nasdaq/NM system will offer an opportunity for the Company to secure its own group of market makers and to expand the capital base available for trading in the Security; and

(c) The Company believes that the firms making a market in the Security on the Nasdaq/NM system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports to the investment community.

Any interested person may, on or before January 5, 1996 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. 95–30710 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21594; 812–9712]

Sirrom Capital Corporation; Notice of Application

December 13, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Sirrom Capital Corporation.

RELEVANT ACT SECTION: Section 61(a)(3)(B).

SUMMARY OF APPLICATION: Applicant requests an order approving applicant's 1995 Stock Option Plan for Non-Employee Directors (the ''Plan'') and the grant of certain stock options thereunder.

FILING DATES: The application was filed on August 7, 1995 and amended on October 30, 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 8, 1996 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the requests, 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, 511 Union Street, Nashville City Center, Suite 2310, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, 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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] Applicant requests an order pursuant to section 61(a)(3)(B) of the Act approving the Plan and pursuant to the Plan, the automatic grant of options to purchase shares of applicant's common stock to each director who is neither an officer nor an employee of applicant (''non-employee director'') and to each new non-employee director of applicant who may be elected or appointed in the future to applicant's board of directors. Applicant will submit the Plan to applicant's shareholders for their approval at the next meeting for shareholders to be held in the Spring of 1996. Applicant will implement the Plan subsequent to receiving approval by applicant's shareholders and an order of the SEC (''Approval Date'').

2. Applicant states that its primary investment objectives are to achieve a high level of current income and long-term growth in the value of its assets. Applicant is primarily engaged in the business of making loans to small, privately owned companies whose securities have no established public market. Applicant's investment decisions are made by a loan approval committee comprised of senior management of applicant in accordance with policies approved by applicant's board of directors. Applicant makes available to its investee companies significant managerial assistance, and helps its investee companies establish boards of directors. In addition, applicant assists its investee companies in obtaining necessary financing and increasing the value of the investee companies. Applicant does not have an external ''investment adviser'' within the meaning of the Act.

3. Each non-employee director of applicant receives $1,000 for each board and committee meeting attended and reimbursement for expenses incurred in attending meetings. Non-employee directors receive no other compensation for their services to applicant.

4. Grants of options under the Plan would be limited to (a) 18,000 shares of applicant's common stock for non-employee directors elected prior to December 1, 1994, (b) 12,000 shares of applicant's common stock for non-employee directors elected between December 1, 1994 and the Approval Date, and (c) 6,000 shares of applicant's common stock for non-employee directors elected or appointed after the Approval Date. On the Approval Date, the aggregate amount of applicant's voting securities that would result from the exercise of all options issued or issuable under the Plan and applicant's existing employee stock option plan would be 614,000 shares, or approximately 6.7% of the 9,195,116 shares of applicant's common stock outstanding as of September 30, 1995. Applicant has no warrants, options, or rights to purchase its voting securities outstanding, other than those granted or to be granted as of the Approval Date to its directors, officers, and employees pursuant to the executive compensation plans described in the application.

5. Pursuant to the terms of the Plan, the options would vest and become exercisable on the first anniversary of the date of grant. Options would be exercisable at any time after they become exercisable until the tenth anniversary of the date of the grant. The exercise price of the options would be 100% of the current market value of applicant's common stock on the date of issuance.

6. In the event of a non-employee director's death or disability during the director's service, all of the director's unexercised options would immediately become exercisable for a period of three years following the date of death or one year following the date of disability, but in no event after the expiration dates of the options. In the event of the termination of a non-employee director for cause, any options held by the director not exercised shall terminate immediately upon termination of service and may not be exercised thereafter. If a non-employee director's service is terminated for any reason other than by death, disability, or by applicant for cause, his or her options may be exercised within one year following the date of termination, but in no event after the expiration date of the options.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) the options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no such market exists, the then current net asset value of the underlying securities; (c) the proposal to issue such options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will, or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors,

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities. Such issuers are small, nascent companies whose securities typically are illiquid.

officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 20% of the outstanding voting securities of the BDC.

4. Applicant represents that the Plan, the stock options to be granted automatically to applicant's non-employee directors, and the stock options to be granted automatically to applicant's future non-employee directors pursuant to the Plan would meet the requirements of section 61(a): (a) the options would expire within ten years from the date of grant; (b) the exercise price of the options would be the current market value of applicant's common stock on the date of issuance; (c) the proposal to issue the options would be authorized by applicant's shareholders; (d) the options would not be transferable except for disposition by gift, will, or intestacy; (e) applicant does not have an investment adviser; and (f) applicant does not have a profit-sharing plan as described in section 57(n) of the Act. In addition, the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance would not exceed 20% of the outstanding voting securities of applicant.

5. Applicant represents that its directors are actively involved in the oversight of applicant's affairs, and that applicant relies on the judgment and experience of its directors. Applicant's directors have experience in many of the industries in which applicant's investee companies operate. The directors' backgrounds enhance applicant's ability to review and evaluate its investee companies and their performance. Applicant states that in order to attract and retain qualified personnel, it must provide non-employee directors with incentives in the form of an executive compensation program, as contemplated by section 61(a) of the Act.

6. Applicant submits that the terms of the Plan and the stock options to be granted automatically to applicant's non-employee directors are fair and reasonable and do not involve any overreaching of applicant or its shareholders. Options granted to purchase 6,000, 12,000, or 18,000 shares of applicant's common stock would currently represent only .07%, .13%, and .20%, respectively, of applicant's outstanding common stock. Given these relatively small amounts of stock, applicant submits that the exercise of the options would not, absent extraordinary circumstances, have a substantial dilutive effect on the net asset value of applicant's common stock.

7. Applicant asserts that because the stock options granted to a non-employee director would not vest until after the first anniversary of the date of grant, the Plan would provide non-employee directors with incentives to remain directors of applicant. In addition, applicant contends that because the options granted pursuant to the Plan have no value unless the price of applicant's common stock exceeds the exercise price of the option, the options provide significant incentives for its non-employee directors to devote their best efforts to the success of applicant's business. Applicant also represents that the options provide a means for the directors to increase their ownership interests in applicant, thereby helping to ensure close identification of their interests with those of applicant and its shareholders. Applicant contends that incentives in the form of stock options enable it to maintain continuity in the membership of its board of directors and to attract and retain as directors the highly experienced, successful, and dedicated business and professional people that are critical to applicant's success as a BDC and to the success of its investee companies.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30764 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC. 21592; File No. 812–9236]

Variable Insurance Funds, et al.

December 12, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Variable Insurance Funds (the ''Trust''), The Winsbury Company (''Winsbury'') and Qualivest Capital Management, Inc. (''Qualivest'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of each existing and future series of the Trust and shares of any other investment company that is designed to fund insurance products and for which Winsbury, or any of its affiliates, may serve as principal underwriter and administrator (collectively with the Trust, ''Funds'') to be sold to and held by variable annuity and variable life separate accounts of both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on September 21, 1994 and amended on May 9, 1995.

HEARING AND NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on January 8, 1996, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: The Trust and Winsbury, 1900 East Dublin-Granville Road, Columbus, Ohio 34229; Qualivest, 111 S.W. Fifth Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, on (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Trust, an open-end management investment company organized as a Massachusetts business trust, currently consists of four series, each with its own investment objective and policies. Additional series may be established in the future.

2. Winsbury, a registered broker-dealer and member of the National Association of Securities Dealers, Inc., serves as the administrator and the principal underwriter of the Trust, Winsbury is a division of BISYS Group, Inc.

3. Qualivest serves as the investment adviser of each existing series of the Trust. Qualivest is an affiliate of United States National Bank of Oregon, which is a wholly owned subsidiary of U.S. Bancorp.

4. Shares of each series of the Trust will be offered initially only to one separate account to serve as the investment vehicle for variable annuity contracts issued by one life insurance company (the ''Company''). The Trust intends, however, to offer shares of its existing and future series to separate accounts of other insurance companies, including insurance companies that are not affiliated with the Company (together with the Company, the ''participating insurance companies''), to serve as the investment vehicle for variable annuity contracts, scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts (collectively, ''variable contracts'').

Applicants' Legal Analysis

1. In connection with scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account (and any investment adviser, principal underwriter and depositor thereof) by Rule 6e–2(b)(15), however, are not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated insurance company (''mixed funding''). In addition, the relief granted by Rule 6e–2(b) (15) is not available if shares of the underlying investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated insurance companies (''shared funding''). Accordingly, Applicants seek an order exempting scheduled premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed funding and shared funding.

2. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account (and to any investment adviser, principal underwriter and depositor thereof) by Rule 6e–3(T)(b)(15) permit mixed funding of flexible premium variable life insurance but preclude shared funding. Accordingly, Applicants seek an order exempting flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rule 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold to separate accounts in connection with shared funding.

3. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). However, Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitation discussion above on mixed and shared funding. These exemptions limit the disqualification to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company. Applicants state that the exemptions contained in Rules 6e–2(b)(15) and 6e–(T)(b)(15) recognized that it is unnecessary to apply Section 9(a) to the many individuals in an insurance complex, most of whom will have no connection with the investment company funding the separate account. Applicants believe that it is unnecessary to limit the applicability of the rules merely because shares of the Funds may be sold in connection with mixed and shared funding. Therefore, Applicants assert that applying the restrictions of Section 9(a) serve no regulatory purpose.

4. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contractowners in certain limited circumstances when required to do so by an insurance regulatory authority. Paragraph (b)(15) of both Rules 6e–2 and 6e–3(T) provides that the insurance company may disregard voting instructions if its contractowners initiate any change in such company's investment policies, principal underwriter or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to certain other provisions in the rules. However, a particular insurer's disregard of voting instructions could conflict with the majority of contractowner voting instructions. Applicants state that if a particular insurance company's disregard of voting instructions conflicted with a majority of the contractowners' voting instructions, or precluded a majority vote, the insurer may be required, at a Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty would be imposed as a result of such withdrawal.

5. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

6. Applicants argue that mixed funding and shared funding should benefit variable contractowners by: (1) Eliminating a significant portion of the costs of establishing and administering separate funds; (2) allowing for a greater amount of assets available for investment by a fund, thereby promoting economies of scale, permitting greater safety through greater diversification, and/or making the addition of new series more feasible; and (3) encouraging more insurance companies to offer variable contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Each Fund will be managed to attempt to achieve its investment objectives and not to favor or disfavor any particular participating insurer or type of insurance product. Applicants see no significant legal

impediment to permitting mixed and shared funding. According to Applicants, separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Finally, Applicants represent that they believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

Applicants consent to the following conditions if an order is granted:

1. A majority of the Board of Trustees or Board of Directors (''Board'') of each Fund shall consist of persons who are not ''interested persons'' of the Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (i) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of any Fund or series are being managed; (v) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners; or (vi) a decision by an insurer to disregard the voting instructions of contractowners.

3. Participating insurance companies, Winsbury and any other investment adviser of a Fund or series will report any potential or existing conflicts to the Board. Participating insurance companies, Winsbury, and the investment adviser(s) will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contractowner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in a Fund under their agreements governing participation in a Fund and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners.

4. If it is determined by a majority of the Board, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant participating insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the distinguished trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series thereof and reinvesting such assets in a different investment medium (including another series, if any, of the Fund) or submitting the question of whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners, life insurance contractowners, or variable contractowners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (ii) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of the contractowners.

For the purposes of this condition (4), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contractowners materially adversely affected by the material irreconcilable conflict.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all participating insurance companies.

6. Participating insurance companies will provide pass-through voting privileges to all variable contractowners for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contractowners. Accordingly, participating insurance companies will vote shares of each Fund or series thereof held in their separate accounts in a manner consistent with timely voting instructions received from contractowners. Each participating insurance company also will vote shares of each Fund or series held in its separate accounts for which no timely voting instructions are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in a Fund calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in a Fund shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

7. A Fund will notify all participating insurance companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in every prospectus that (1) shares of the Fund are offered to insurance company separate accounts which fund both annuity and life

insurance contracts, (2) due to differences of tax treatment or other considerations, the interests of various contractowners participating in the Fund might at some time be in conflict, and (3) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this application, then each Fund and/or the participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Fund), and in particular the Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16 not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Sections 16(a) and, if and when applicable, 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. The participating insurance companies, Winsbury, and/or any other investment adviser to a Fund or series, shall at least annually submit to the Fund's Board such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the application and said reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the participating insurance companies to provide these reports, materials and data to the Board when it so reasonably requests, shall be a contractual obligation of all participating insurance companies under their agreements governing participation in each Fund.

Conclusion

For the reasons and upon the facts stated above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30708 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Northern District of Texas, Dallas Division, dated November 3, 1995, the United States Small Business Administration hereby revokes the license of Diversified Capital Funding Corporation, a Texas corporation, to function as a small business investment company under the Small Business Investment Company License No.06/10–0125 issued to Diversified Capital Funding Corporation on September 27, 1962 and said license is hereby declared null and void as of December 13, 1995.

Small Business Administration.

Dated: December 11, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–30758 Filed 12–18–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2301]

Advisory Committee on International Communications and Information Policy; Public Meeting

The Department of State is holding the third meeting of its advisory Committee on International Communications and Information Policy. The Committee was reestablished on August 11, 1994, in order to provide a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The 24-person committee was appointed by Ambassador Vonya B. McCann, United States Coordinator for International Communications and Information Policy, U.S. Department of State, and serves under the Chairmanship of Ed Black, President, Computer & Communications Industry Association.

The purpose of this meeting will be to follow up on the recent creation of working groups on various issues that will help chart the future direction and work plan of the committee. The members will look at the substantive issues on which the committee should focus, as well as specific countries and regions of interest to the committee.

The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d), 5 U.S.C. 552b(c) (1) and (4) that a meeting or a portion of the meeting should be closed to the public.

This meeting will be held on Thursday, January 18, 1996, from 9:30 a.m.–12:00 noon in Room 1912 of the Main Building of the U.S. Department of State, located at 2201 ''C'' Street, NW., Washington, DC 20520. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, and date of birth to Sylvia Conley at (202) 647–5233 or by fax at (202) 647–5957. All attendees must use the ''C'' Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

For further information, contact the Executive Secretary of the committee, at (202) 647–5385.

Dated: December 7, 1995.

Timothy C. Finton,

Executive Secretary, Advisory Committee for International Communications and Information Policy.

[FR Doc. 95–30702 Filed 12–18–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, Ft. Lauderdale-Hollywood International Airport, Ft. Lauderdale, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Broward County Aviation Department under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 1, 1995, the FAA determined that the noise exposure maps submitted by the Broward County Aviation Department under Part 150 were in compliance with applicable requirements. On November 28, 1995, the Administrator approved the Ft. Lauderdale-Hollywood International Airport noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Ft. Lauderdale-Hollywood International Airport noise compatibility program is November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., The Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, (407) 648–6583, Extension 29. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Ft. Lauderdale-Hollywood International Airport, effective November 28, 1995.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses.

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The Broward County Aviation Department submitted to the FAA on May 22, 1995, updated noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 25, 1992 through May 18, 1995. The Ft. Lauderdale-Hollywood International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 1, 1995. Notice of this determination was published in the Federal Register.

The Ft. Lauderdale-Hollywood International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2000. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on June 1, 1995, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twelve (12) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective November 28, 1995.

Outright approval was granted for ten (10) of the twelve (12) specific program measures. Two (2) measures were partially approved. The approval action was for the following program controls:

OPERATIONAL MEASURES

Noise Abatement Measure Number	Description	NCP Pages
1	Preferential Flight Tracks: This measure recommends continued use of preferential flight tracks at the Airport as diagrammed on the exhibits in Appendix A of the NCP report. These procedures are implemented through the Informal Runway Use Program, Appendix B. FAA Action: Approved as a voluntary measure.	Pgs. 6–1, 6–10, 6–11 and 7–1; Table 7–1; and Appendices A and B.
2	Noise Abatement Departure Procedures: This measure recommends continued use of existing noise abatement departure procedures at the Airport as indicated in the Informal Runway Use Program (Appendix B). Departures 9L, 9R, 27R, 27L: Remain on runway heading until 3,000 feet or three (3) miles. Departure 13: Turn left heading 090 degrees as soon as practical, maintain 090 degrees until reaching 3,000 feet or three (3) miles. Departure 31: Turn left heading 270 degrees as soon as practical, maintain 270 degrees until reaching 3,000 feet or three (3) miles. FAA Action: Approved as a voluntary measure.	Pgs. 6–1, 6–10, 6–11 and 7–1; Table 7–1; and Appendix B.
3	Preferential Runway Use: This measure recommends continued preferential runway use provided in the Airport's Informal Runway Use Program (Appendix B). The program applies to all turbojet aircraft regardless of weight and includes the following runway use procedures. Runway 9L is the preferred runway and is the calm wind runway. All turbojet arrivals and departures will use Runway 9L–27R. Runway 9R–27L is closed from 2200–0700 local time for noise abatement. This nighttime closure of Runway 9R–27L has not affected the operational capability and capacity of Runway 9L–27R. FAA Action: Approved as a voluntary measure.	Pgs. 6–1, 6–2, 6–10, 6–11, 6–31, 6–32, 7–1; Table 7–1; and Appendix B.
4	Airport Noise Monitoring Program: This measure will continue the Airport Noise Monitoring Program to include, among other things, provision of staff services by the Broward County Aviation Department (BCAD) on behalf of the Airport Noise Abatement Committee (ANAC), monitoring the operation of the Airport's permanent noise monitoring system, administration of an Airport users education program, and administration of a public information program as described in the Fort Lauderdale-Hollywood International Airport FAR Part 150 Program Update. FAA Action: Approved.	Pgs. 6–2, 6–3, 6–10, 6–11, 7–1, 7–2; and Table 7–1.
5	Test of Noise Abatement Departure Profiles: This measure recommends a test of the noise abatement departure profiles (NADPs) described in FAA Advisory Circular 91–53A be conducted at FLL to determine the noise-related benefits of requesting the airlines serving the Airport to use either ''close-in'' or ''distant'' community NADP when specific aircraft types are being operated on specific runways. The test will measure differences in SEL values and be used to calculate the anticipated changes in cumulative noise exposure. Test results will be used to prepare recommendations for selection of the NADP with the greatest noise benefit for individual aircraft types being operated from the different runways at the Airport. Such recommendations would be implemented by seeking voluntary compliance from the airlines serving the Airport. FAA Action: Approved in concept. FAA approves further study to determine whether a close-in or distant procedure is the most beneficial for particular runways. However, an actual test of procedures is not necessary as the benefits of the procedures described in FAA Advisory Circular 91–53A may be modeled using the INM.	Pgs. 6–11, 6–12, 7–2; and Table 7–1.
6	Stage 2 Preferential Runway Use: This measure recommends BCAD and the ATCT manager take all actions necessary to restrict all stage 2 aircraft to Runway 9L–27R except when wind, weather, maintenance, operational, or emergency conditions require the use of Runway 13–31 or 9R–27L. In addition to air carriers, this would include any Stage 2 business jets as well as air taxi/commuter aircraft. The NCP recommends implementing this measure in the Tower Order through an amendment to the Informal Runway Use Program. Stage 2 business jet operations on Runway 9R–27L are considered to be largely responsible for sideline noise impacts immediately south of the airport (in the Melaleuca Gardens neighborhood). FAA Action: Approved as voluntary.	Pgs. 6–13, 7–2, 7–3; Table 7–1; and Appendix B.
7	Relocate Engine Maintenance Runup Facility: This measure will relocate the aircraft engine maintenance runup facility from its present site on Runway 13–31 to the east end of Runway 9L–27R following removal of the BCAD ''Chassis Master'' maintenance area from the latter location. Engine noise at the new location can be directed toward the east away from any existing or planned residential development. FAA Action: Approved.	Pgs. 6–14 to 6–17, 7–3; and Table 7–1.
8	Permanent Noise and Operations Monitoring System: It is recommended the 1987 FAR Part 150 Noise Compatibility Program be amended to include the installation and use of a permanent noise and operations monitoring system at the Airport. This includes reimbursement for the existing permanent monitoring system and the installation of a radar direct connect to upgrade the system. (pgs. 6–2, 6–3, 7–3; and Table 7–1). FAA Action: Approved.	Pgs. 6–2, 6–3, 7–3; and Table 7–1.

OPERATIONAL MEASURES—Continued

Noise Abatement Measure Number	Description	NCP Pages
	Land Use Measures	
1	Acquistion of Real Property by Condemnation: It is recommended that the 1987 FAR Part 150 Noise Compatibility Program be amended so as to include the Trail's End Mobile Home Park in Dania and the unincorporated Ravenswood neighborhood south of SW 39th Street, west of Ravenswood Road, north of the Dania Cut-off Canal, and east of the Alandco/TCW property line within the land use management category ''Acquisition (Condemnation)'' instead of ''Acquisition (at Homeowner's Request)''. The respective land use categories are shown on Exhibits IX–2 and IX–3 of the 1987 Part 150 Program Technical Report (as revised in December 1988 and certified in January 1989). Broward County has already acquired these properties as part of the (1987 approved) land acquisition program by means of condemnation rather than by voluntary acquisition. The condemnation process was used at the request of virtually all of the homeowners. FAA Action: Approved.	Pgs. 6–4 to 6–8, 7–3; Exhibits 5–2 and 6–1; Table 7–2; and Exhibits IX–2 and IX–3 of the 1987 Part 150 Program Technical Report (as revised in December 1988 and certified in January 1989).
2	Easement Acquisition: It is recommended that Broward County acquire avigation easements from the owners of certain noise-sensitive properties located within the Ldn 65–70 contour area, as shown on Exhibit 5–2, Future (1997) Conditions Noise Exposure Map. This acquisition program would involve three residential areas and three mobile home parks. FAA Action: Approved in part, with respect to easement acquisition for noise compatibility purposes from owners of single-family residences, from owners of multi-family residential property, and from the mobile home park owners. Easement valuation and acquisition requirements and criteria are not included within the scope of FAR Part 150, but are addressed by other FAA program requirements concerning the acquisition of real property on FAA grant assisted projects. It is noted that the proposed valuation and acquisition process for this measure do not conform to these requirements, and significant modification of the described easement valuation and acquisition process would be required to secure reimbursement of costs under a FAA grant. The measure is Disapproved in part for purposes of Part 150, with respect to the described payments proposed to be made personally to mobile home owner occupants in addition to the proposed easement acquisition from the mobile home park owner. These proposed additional payments do not contribute to the goals of reducing existing noncompatible land use and preventing the introduction of additional noncompatible land uses.	Pgs. 6–9, 6–20, 6–21, 7–3, 7–4; Exhibit 5–2; and Table 7–2.
3	Voluntary Sales Assistance: It is recommended that the BCAD assist eligible single-family homeowners to sell their property and relocate from the 1997 Ldn 65–70 area. Such assistance would be in the form of specified relocation payments if an eligible property were to be sold within 3 years after an offer had been made by Broward County to purchase an avigation easement from the owner(s) and an appropriate avigation easement had been acquired from an eligible owner. FAA Action: Approved. The measure is approved with respect to the provision of specified relocation payments as a sales assistance measure. It is noted for the application of this measure that owners accepting assistance on the sale of their homes are not displaced persons, as defined under the Uniform Act (49 CFR 24.2(g)(2)(viii)), and are not entitled to relocation assistance payments described under the Uniform Act for Federally assisted projects. Also, it is noted that reliance on valuation and acquisition procedures described for the above easement acquisition measure may not be acceptable for FAA grant funding.	Pgs. 6–9, 6–21, 6–22 and 7–4, Exhibit 5–2; and Table 7–2.
4	Soundproofing: It is recommended that BCAD complete the Wesley Chapel United Methodist Church insulation project and offer once again to sound insulate Edgewood Elementary School in Fort Lauderdale and the Church of the Resurrection in Dania as required to provide an interior sound level of Ldn 45 or less. An easement would be conveyed in return for the sound insulation of Edgewood School and the Church of the Resurrection. FAA Action: Approved.	Pgs. 6–8, 6–23 and 7–4; Exhibit 5–2; and Table 7–2.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on November 28, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Broward County Aviation Department.

Issued in Orlando, Florida on December 12, 1995.

Charles E. Blair,

Manager, Orlando Airports District Office.

[FR Doc. 95–30779 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–M

Antidrug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT,

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum annual random drug testing rate for the period January 1, 1996, through December 31, 1996, will remain at 25 percent of covered aviation employees since the industry-wide random drug testing positive rate continues to be below 1.0 percent.

FOR FURTHER INFORMATION CONTACT: Ms. Julie B. Murdoch, Office of Aviation Medicine, Drug Abatement Division (AAM–800), Federal Aviation Administration, 400 7th Street SW., Washington, DC 20590; telephone (202) 366–6710.

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 1996 Random Drug Testing Rate

In a final rule published on December 2, 1994 (59 FR 62218), the FAA announced that is will set future minimum random drug testing rates according to the aviation industry's positive rate, which is determined using annual aviation antidrug program data taken from the FAA's Management Information System. (The term ''positive rate'' for tests required under 14 CFR part 121, appendix I, means the number of positive results for random drug tests plus total number of random drug tests plus the number of refusals to take random drug tests.) Using this performance-based system, the FAA can lower the minimum random drug testing rate to 25 percent whenever the positive rate is less than 1.0 percent of two calendar years while testing at 50 percent. The FAA must return the rate to 50 percent if the positive rate is 1.0 percent or higher in any subsequent calendar year. Each year, the Administrator will publish a notice in the Federal Register announcing the minimum annual random drug testing rate for the following year. (There is a similar provision in the alcohol testing rule. Since alcohol testing only commenced in January 1995, there is insufficient data to modify the current alcohol testing rate of 25 percent; industry-wide data on which to make the required determination will not be available until 1997.)

In 1994, the FAA set the 1995 minimum random drug testing rate at 25 percent because 1992 and 1993 aviation industry drug testing data indicated a positive rate below 1.0 percent. In this notice, the FAA announces that the minimum random drug testing rate will continue to be 25 percent of covered aviation employees for the period January 1, 1996, through December 31, 1996, since the aviation industry positive rate for 1994 was approximately 0.5 percent.

Dated: December 13, 1995.

Jon. L. Jordan,

Federal Air Surgeon.

[FR Doc. 95–30773 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from January 22 through January 25, 1996, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Le Baron Hotel, 1350 N First Street, San Jose, CA.

FOR FURTHER INFORMATION CONTACT: Mr. W. Frank Price, Executive Director, ATPAC, Air Traffic Rules and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held January 22 through January 25, 1996, at the Le Baron Hotel, 1350 N First Street, San Jose, California

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 19, 1996. The next quarterly meeting of the FAA ATPAC is planned to be held from April 15–18, 1996, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on December 13, 1995.

W. Frank Price,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 95–30778 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 95–104]

Extension of Caesar J. Thibodeaux, Inc.'s Customs Gauger Approval & Laboratory Accreditation to the New Site Located in Corpus Christi, Texas

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Caesar J. Thibodeaux, Inc.'s Customs gauger approval and laboratory accreditation to include its Corpus Christi, Texas new facility.

SUMMARY: Caesar J. Thibodeaux, Inc., of Pasadena, Texas, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval and laboratory accreditation to include the Corpus Christi, Texas new site. Specifically, this office has been given Customs approval under Part

151.13(a)(1) of the Customs Regulations to gauge petroleum and petroleum products, organic chemicals in bulk and liquid form and animal and vegetable oils in all Customs districts; and accreditation to perform the following tests as listed under Part 151.13(a)(2): API gravity, distillation characteristics, Reid vapor pressure, water by distillation, sediment and water by centrifuge, sediment by extraction and viscosity.

SUPPLEMENTARY INFORMATION:

Background

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Caesar J. Thibodeaux, Inc., a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval and laboratory accreditation to its Corpus Christi, Texas new facility. Review of the qualifications of the site shows that the extension is warranted and, accordingly, has been granted.

Location

Caesar J. Thibodeaux, Inc.'s site is located at 4422 Baldwin Street, Corpus Christi, Texas, 78408.

EFFECTIVE DATE: August 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: November 9, 1995.

A.W. Tennant,

Director, Laboratories and Scientific Services.

[FR Doc. 95–30787 Filed 12–18–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–103]

Customs Approval of Freeboard International, as a Commercial Gauger

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Approval of Freeboard International as a Commercial Gauger.

SUMMARY: Freeboard International of Winsted, Connecticut has applied to U.S. Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under Part 151.13 of the Customs Regulations (19 CFR 151.13) at its Winsted, Connecticut facility. Customs has determined that the Winsted, Connecticut office meets all of the requirements for approval as a commercial gauger. Therefore, in accordance with Part 151.13(f) of the Customs Regulations, Freeboard International, Winsted, Connecticut facility is approved to gauge the products named above in all Customs districts.

LOCATION: Freeboard International's approved site is located at: 202 Coe Street, Winsted, Connecticut.

EFFECTIVE DATE: May 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: May 18, 1995.

A.W. Tennant,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 95–30788 Filed 12–18–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–105]

Extension of Inspectorate America Corporation's Customs Gauger Approval and Laboratory Accreditation to the New Site Located in Houston, Texas

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

ACTION: Notice of the extension of Inspectorate America Corporation's Customs gauger approval and laboratory accreditation to include its Houston, Texas new facility.

SUMMARY: Inspectorate America Corporation of Houston, Texas, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval and laboratory accreditation to include the Houston, Texas new site. Specifically, this office has been given Customs approval under Part 151.13(a)(1) of the Customs Regulations to gauge petroleum and petroleum products, organic chemicals in bulk and liquid form and animal and vegetable oils in all Customs districts; and accreditation to perform the following tests as listed under Part 151.13(a)(2): API gravity, water by distillation, sediment by extraction, viscosity and percent by weight sulphur.

SUPPLEMENTARY INFORMATION:

Background

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Inspectorate America Corporation, a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval and laboratory accreditation to its Houston, Texas new facility. Review of the qualifications of the site shows that the extension is warranted and, accordingly, has been granted

Location

Inspectorate America Corporation's site is located at 16640–B Jacintoport Boulevard, Houston, Texas, 77015.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: November 9, 1995.

A.W. Tennant,

Director, Laboratories and Scientific Service.

[FR Doc. 95–30786 Filed 12–18–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–102]

Customs Commercial Gauger Approval of Inter-Globe Marine Consultants

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Approval of Inter-Globe Marine Consultants, as a Commercial Gauger.

SUMMARY: Inter-Globe Marine Consultants of Houston, Texas has applied to U.S. Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under Part 151.13 of the Customs Regulations (19 CFR 151.13) at their Houston, Texas facility. Customs has determined that this facility meets all of the requirements for approval as a commercial gauger. Therefore, in accordance with Part 151.13(f) of the Customs Regulations, Inter-Globe Marine Consultants' Houston, Texas site is approved to gauge the products named above in all Customs districts.

LOCATION: Inter-Globe Marine Consultants' approved site is located at: 12605 East Freeway, Suite 507, Houston, Texas 77015.

EFFECTIVE DATE: November 20, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services,

U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 at (202) 927–1060.

Dated: December 12, 1995.

A.W. Tennant,

Director, Laboratories and Scientific Services.

[FR Doc. 95–30789 Filed 12–18–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–106]

Customs Commercial Laboratory Accreditation of Gulf Coast Systems and Associates, Inc.

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of the accreditation of Gulf Coast Systems and Associates, Inc., as a Customs accredited laboratory to perform certain petroleum analyses.

SUMMARY: Gulf Coast Systems and Associates, Inc., of Groves, Texas, has been given Customs laboratory accreditations under Part 151.13 of the Customs Regulations (19 CFR 151.13). Specifically, the Groves, Texas, site is accredited to perform the following tests: API Gravity, distillation characteristics, water by distillation, sediment and water by centrifuge, sediment by extraction, identity and percent composition of organic compounds in bulk and in liquid form.

SUPPLEMENTARY INFORMATION:

Background

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Gulf Coast Systems and Associates, Inc., of Groves, Texas, has applied to Customs for certain laboratory accreditations. Customs has determined that Gulf Coast Systems and Associates, Inc., meets all the requirements for accreditation as a commercial laboratory.

Therefore, in accordance with part 151.13(f) of the Customs Regulations, Gulf Coast Systems and Associates, Inc.'s Groves, Texas, site is accredited to perform the laboratory analyses listed above.

Location

Gulf Coast Systems and Associates, Inc.'s site is located at 4300 Main Street, Groves, Texas, 77619.

EFFECTIVE DATE: October 24, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: November 8, 1995.

A.W. Tennant,

Director, Laboratories and Scientific Services.

[FR Doc. 95–30785 Filed 12–18–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–107]

Revocation of Gauger Approval and Revocation of Laboratory Accreditations of Johnnie Wilson Inspections, Inc.

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Revocation of Approval and Accreditations of a Customs Commercial Gauger and Laboratory.

SUMMARY: Johnnie Wilson Inspections, Inc., of Angleton, Texas, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has requested that the U.S. Customs Service revoke its gauger approval and laboratory accreditations. Accordingly, pursuant to 151.13(f) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval and laboratory accreditations of Johnnie Wilson Inspections, Inc., has been revoked without prejudice.

EFFECTIVE DATE: August 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: November 9, 1995.

A.W. Tennant,

Director, Laboratories and Scientific Services.

[FR Doc. 95–30783 Filed 12–18–95; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 243

Tuesday, December 19, 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).

ASSASSINATION RECORDS REVIEW BOARD

DATE: January 5, 1996.

PLACE: ARRB, 600 E Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: January 5, 1996, 9:00 a.m.

1. Review and Accept Minutes of December 12–13, 1995 Closed Meeting
2. Review of Assassination Records
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 95–30876 Filed 12–15–95; 10:30 am]

BILLING CODE 6118–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 14, 1995.

PLACE: Room 600, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announced items, the Commission will consider and act upon the following:

2. Peabody Coal Co., Docket No. KENT 93–318–R, etc. (Issues include whether the judge erred in determining that the violations of 30 C.F.R. § 70.100(a) were caused by Peabody's unwarrantable failure.)

No earlier announcement of the addition to the agenda was possible.

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/for toll free TDD Relay 1–800–877–8339.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–30956 Filed 12–15–95; 2:52 pm]

BILLING CODE 6735–01–M

Nuclear Regulatory Commission

DATE: Weeks of December 18, 25, 1995 and January 1 and 8, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of December 18

Tuesday, December 19

10:00 a.m.

Briefing on Mechanism for Addressing Generic Safety Issues (Public Meeting) (Contact: Denny Crutchfield, 301–415–1199)

2:00 p.m.

Briefing on Generic Implications of Recent Events Involving Ingestion of Radioactive Material at Research Facilities (Public Meeting) (Contact: John Glenn, 301–415–6187)

Week of December 25—Tentative

There are no meetings scheduled for the Week of December 25.

Week of January 1—Tentative

Friday, January 5

10:00 a.m.

Briefing by NRC Staff on Industry Restructuring and Deregulation (Public Meeting) (Contact: Scott Newberry, 301–415–1183)

1:30 p.m.

Discussion on Full Power Operating License for Watts Bar (Public Meeting) (Contact: Fred Hebdon, 301–415–2024)+

Week of January 8—Tentative

There are no meetings scheduled for the Week of January 8.

ADDITIONAL INFORMATION: Affirmation of ''Sequoyah Fuel Corporation and General Atomics; LBP–95–05 Ruling on Motions for Protective Order'' and ''Curators of the University of Missouri; Intervenors' Petition for Reconsideration'' (Public Meeting) was held on December 14.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: December 15, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–30993 Filed 12–15–95; 3:45 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
December 19, 1995

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Municipal Waste Combustors and Emission Guidelines; Final Rules, Proposed Rule and Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–5327–3]

Standards of Performance for Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action amends the ''Standards of Performance for Municipal Waste Combustors'' (subpart Ea). These amendments are being made to improve the clarity of subpart Ea and to make subpart Ea consistent with subparts Eb and Cb.

DATES: The direct final rule §§ 60.17, 60.50a, 60.51a, 60.56a, 60.58a, and 60.59a will be effective January 29, 1996 unless significant adverse comments are received by January 18, 1996. If significant adverse comments are received on any amendment in this rule, that amendment will be withdrawn by timely publication in the Federal Register. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of January 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Stevenson at (919) 541–5264 or Mr. Fred Porter at (919) 541–5251, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: If significant adverse comments are received on any amendment of this direct final rule, the comments will be addressed in a subsequent rulemaking in the Federal Register based on those provisions of the proposed rule contained in the Proposed Rules Section of this Federal Register that is identical to this direct final rule. The amendments in question will be withdrawn from this direct final rule. Amendments of the direct final rule that do not receive any significant adverse comments will become final 40 days from today's Federal Register notice. If no significant adverse comments are filed on any provision of this direct final rule, then the entire direct final rule will become effective 40 days from today's Federal Register notice and no further action is contemplated on the parallel proposal published today.

On February 11, 1991 (56 FR 5488), the EPA promulgated in the Federal Register new source performance standards (NSPS) for municipal waste combustors (MWC's) for which construction, modification, or reconstruction is commenced after December 20, 1989. The regulations were promulgated as subpart Ea in 40 CFR part 60.

Today's action modifies the applicability and definitions sections of the final regulation to improve clarity and make them consistent with those of subparts Eb (standards of performance for new MWC's for which construction commenced after September 20, 1994 or modification or reconstruction commenced after June 19, 1996, and Cb (emission guidelines for existing MWC's for which construction commenced on or before September 20, 1994) that are being promulgated in a separate section of today's Federal Register. Today's changes do not significantly modify the requirements of the regulation. The revisions are discussed in the order in which they appear in the subpart Ea regulation.

Preamble Outline: The following outline is provided to aid in locating information in this preamble.

I. Description of Changes
A. Dates of Applicability
B. Applicability of Cofired Combustors and Tire-Burning Facilities
C. Applicability of Subpart Ea to Certain Other Facilities
D. Definitions
1. Definitions of Modification and Reconstruction
2. Definition of MSW and Calculation of MWC Unit Capacity
3. Definition of an MWC
E. Clarification of the Carbon Monoxide Standard
F. Update of Operator Training Specifications
G. Clarification of MWC Unit Load Measurement
II. Judicial Review
III. Administrative
A. Paperwork Reduction Act
B. Executive Order 12291 Review
C. Regulatory Flexibility Act

I. Description of Changes

A. Dates of Applicability

Subpart Ea is applicable to MWC units with capacities greater than 225 megagrams per day (Mg/day) of municipal solid waste (MSW) for which construction, modification, or reconstruction was commenced after December 20, 1989. To avoid overlap with the subpart Eb NSPS, the dates for applicability for subpart Ea specified in § 60.50a(a) are being changed to apply to MWC's (1) commencing construction after December 20, 1989 and on or before September 20, 1994 or (2) commencing modification or reconstruction after December 20, 1989 and on or before June 19, 1996. The MWC plants that commence construction after September 20, 1994 or that commence modification or reconstruction after June 19, 1996 are subject to subpart Eb, which is more stringent than subpart Ea. The change is also being made to subpart Ea to avoid the same MWC plant being subject to duplicative requirements under two NSPS (subparts Ea and Eb). This change is reflected in the definitions for ''MWC plant'' and ''MWC plant capacity'' in § 60.51a. It should be noted that plants that are subject to subpart Ea will also be subject to the emission guidelines contained in subpart Cb, which apply to plants constructed on or before September 20, 1994.

B. Applicability to Cofired Combustors and Tire-Burning Facilities

The wording in § 60.50a (c), (d), and (e) is being changed so that cofired facilities and facilities that only burn tires are clearly defined as not being subject to any sections of subpart Ea. Currently, they are exempt from all requirements of subpart Ea except recordkeeping requirements. This change will make subpart Ea consistent with subparts Eb and Cb. It will also clarify that, for purposes of the title V operating permits program, such facilities are not considered subject to subpart Ea. In addition, because the applicability to cofired combustors has been clarified, the definition of ''cofired combustor'' has been revised in § 60.51a. Relative to these changes, § 60.58(j)(3) is being removed and items in § 60.59a (a)(1), (b)(14), and (m) are being moved to § 60.50a(d).

C. Applicability of Subpart Ea to Certain Other Facilities

Section 129 of the Clean Air Act (Act) specifies that qualifying cogeneration facilities, qualifying small independent power producers, Solid Waste Disposal Act section 3005 permitted facilities, and materials recovery facilities recovering metals are not MWC's and are not regulated under section 129. Subparts Eb and Cb specify that these units are not subject to subparts Eb and Cb. Additionally, subparts Eb and Cb specify that pyrolysis/combustion units that are an integrated part of a plastics/rubber processing unit are not subject to the MWC regulations. These exemptions are being incorporated into subpart Ea (§ 60.50a (g), (h), (i), (j), and (k)) to be consistent with subparts Eb and Cb.

D. Definitions

Revisions are being made to 13 definitions, 13 new definitions are being added, and 2 are being deleted to clarify subpart Ea and make it consistent with

the terms defined in subpart Eb. Several of these definitions are discussed below.

1. Definitions of Modification and Reconstruction

Two new terms, ''modification'' (or ''modified municipal waste combustor'') and ''reconstruction'', are being added to § 60.51a to incorporate the section 129 definition of ''modified solid waste incineration unit.'' These definitions are very similar to the definitions of these two terms in §§ 60.14 and 60.15 of 40 CFR 60 subpart A (the NSPS general provisions). The addition of these definitions will clarify subpart Ea and make the terms used in subparts Ea, Eb, Cb, and section 129 relating to modification and reconstruction consistent with each other.

2. Definition of MSW and Calculation of MWC Unit Capacity

To avoid confusion and possible conflict with the pending medical waste incinerator (MWI) regulations which were proposed in February 1995 and are scheduled to be promulgated in the near future, the definition of MSW in § 60.51a of subpart Ea is being revised to be consistent with subparts Eb and Cb. Additionally, the determination of ''MWC unit capacity'' in § 60.58a(j)(4) and its definition in § 60.51a are being revised so that only a single heat input value is used for MSW. This change is being made so that subpart Ea will be consistent with subparts Eb and Cb. Section 60.59a(b)(15) is also being deleted.

In addition to the clarification concerning medical waste, the definition of MSW in § 60.51a is being revised to specify that ''clean wood'' is excluded, while refuse-derived fuel (RDF) and yard waste are included. To ensure clarity, definitions for ''clean wood'', ''untreated lumber'', and ''yard waste'' are being added to § 60.51a. Because the definition of MSW is being revised to clarify that RDF is a type of preprocessed MSW and not a different type of waste, the phrase ''MSW or RDF'' in several paragraphs is being replaced with ''MSW'' to avoid redundancy. These clarifications are consistent with the intent of subpart Ea, and will make the definition of MSW consistent with subparts Eb and Cb.

3. Definition of an MWC

The definition of an MWC in § 60.51a is being revised to be consistent with that in subpart Eb. The most significant difference is the addition of a description of the physical boundaries of an MWC. The clarification of the boundaries of the affected facility will assist in considering cost for making reconstruction determinations.

E. Clarification of the Carbon Monoxide Standard

The specifications for the carbon monoxide (CO) standards in §§ 60.56a(a) and 60.58(a) (h)(1) and (h)(2) are being revised to clarify the EPA's intent as to which standard applies to which combustor type. It was intended that the mass burn refractory unit CO standard apply to both mass burn refractory units and rotary mass burn refractory units. This was not clear in the promulgated regulation because the definition in § 60.51a of mass burn refractory units excluded rotary mass burn refractory units. In order to clarify this, the definition of mass burn refractory unit is being clarified to include rotary mass burn rotary refractory units.

It was also intended that the CO standard for coal/RDF mixed fuel-fired units be applicable to pulverized coal-type units, as opposed to spreader stoker-type units that would fall under the RDF stoker standard. Accordingly, the coal/RDF mixed fuel-fired combustor CO standard is being renamed the pulverized coal/RDF mixed fuel-fired combustor CO standard, and a CO standard for spreader stoker coal/RDF mixed fuel-fired combustors equivalent to the RDF stoker standard is being listed separately. Corresponding definitions are being added and revised in § 60.51a.

F. Update of Operator Training Specifications

The operator training requirements in § 60.56a(d) specify that provisional or operator certification shall be obtained in accordance with the American Society of Mechanical Engineers (ASME) QRO–1–1989 requirements or an equivalent State-approved certification program. The ASME standard was updated in 1994 and so, to be consistent with subparts Eb and Cb, the reference is being updated to QRO–1–1994.

G. Clarification of MWC Unit Load Measurement

The MWC unit load measurement specified in § 60.58a(h)(6) is being modified to include feedwater flow monitoring as an alternative to steam flow measurement. The wording of this section is being revised to match the wording in subparts Eb and Cb and a definition of ''MWC unit load'' is being added to § 60.51a.

II. Judicial Review

Under section 307(b)(1) of the Act, judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the Act, the requirements that are subject to today's rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

III. Administrative

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NSPS were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (the ICR number is 1506.4, with an OMB approval number 2060–0210) may be obtained from Sandy Farmer, Regulatory Information Division (Code 2136), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NSPS will have no significant impact on the information collection burden estimates made previously. The burden will be reduced slightly. Consequently, the ICR has not been revised.

B. Executive Order 12291 Review

The MWC NSPS promulgated on February 11, 1991 was considered a ''major rule'' under Executive Order 12291 and a regulatory impact analysis (RIA) was prepared. The amendments issued today clarify the rule and do not add any additional control requirements. The EPA concludes these amendments would have a negligible impact on the results of the RIA and the change is considered to be within the flexibility of the analysis.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a regulatory flexibility analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a regulatory flexibility analysis has not been prepared.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: October 31, 1995.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, part 60, subpart Ea of the Code of Federal Regulations is corrected as follows:

PART 60—[AMENDED]

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

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

Subpart Ea Heading—[Revised]

2. The heading for subpart Ea is revised to read as follows:

Subpart Ea—Standards of Performance for Municipal Waste Combustors for which Construction is Commenced after December 20, 1989 and on or before September 20, 1994

3. Section 60.17 of subpart A of part 60 is amended by revising paragraphs (h)(1), (h)(2), and (h)(3) to read as follows:

§ 60.17 Incorporation by reference.

* * * * *

(h) * * *

(1) ASME QRO–1–1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators, IBR approved for § 60.56a.

(2) ASME PTC 4.1–1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda), IBR approved for §§ 60.46b and 60.58a(h)(6)(ii).

(3) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971), IBR approved for § 60.58a(h)(6)(ii).

* * * * *

4. Section 60.50a is amended by revising paragraphs (a), (c), (d), (e), and (f), removing paragraph (g), redesignating paragraph (h) as paragraph (l), redesignating paragraph (i) as paragraph (m), and adding new paragraphs (g), (h), (i), (j), and (k) to read as follows:

§ 60.50a Applicability and delegation of authority.

(a) The affected facility to which this subpart applies is each municipal waste combustor unit with a municipal waste combustor unit capacity greater than 225 megagrams per day (250 tons per day) of municipal solid waste for which construction, modification, or reconstruction is commenced as specified in paragraphs (a)(1) and (a)(2) of this section.

(1) Construction is commenced after December 20, 1989 and on or before September 20, 1994.

(2) Modification or reconstruction is commenced after December 20, 1989 and on or before June 19, 1996.

* * * * *

(c) Any unit combusting a single-item waste stream of tires is not subject to this subpart if the owner or operator of the unit:

(1) Notifies the Administrator of an exemption claim; and

(2) Provides data documenting that the unit qualifies for this exemption.

(d) Any cofired combustor, as defined under § 60.51a, located at a plant that meets the capacity specifications in paragraph (a) of this section is not subject to this subpart if the owner or operator of the cofired combustor:

(1) Notifies the Administrator of an exemption claim;

(2) Provides a copy of the federally enforceable permit (specified in the definition of cofired combustor in this section); and

(3) Keeps a record on a calendar quarter basis of the weight of municipal solid waste combusted at the cofired combustor and the weight of all other fuels combusted at the cofired combustor.

(e) Any cofired combustor that is subject to a federally enforceable permit limiting the operation of the combustor to no more than 225 megagrams per day (250 tons per day) of municipal solid waste is not subject to this subpart.

(f) Physical or operational changes made to an existing municipal waste combustor unit primarily for the purpose of complying with emission guidelines under subpart Cb are not considered a modification or reconstruction and do not result in an existing municipal waste combustor unit becoming subject to this subpart.

(g) A qualifying small power production facility, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy is not subject to this subpart if the owner or operator of the facility notifies the Administrator of an exemption claim and provides data documenting that the facility qualifies for this exemption.

(h) A qualifying cogeneration facility, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes, is not subject to this subpart if the owner or operator of the facility notifies the Administrator of an exemption claim and provides data documenting that the facility qualifies for this exemption.

(i) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is not subject to this subpart.

(j) Any materials recovery facility (including primary or secondary smelters) that combusts waste for the primary purpose of recovering metals is not subject to this subpart.

(k) Pyrolysis/combustion units that are an integrated part of a plastics/rubber recycling unit (as defined in § 60.51a) are not subject to this subpart if the owner or operator of the plastics/rubber recycling unit keeps records of: the weight of plastics, rubber, and/or rubber tires processed on a calendar quarter basis; the weight of chemical plant feedstocks and petroleum refinery feedstocks produced and marketed on a calendar quarter basis; and the name and address of the purchaser of the feedstocks. The combustion of gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units are not subject to this subpart.

* * * * *

5. Section 60.51a is amended:

a. by removing the definitions of ''coal/RDF mixed fuel fired combustor'', ''large MWC plant'', ''mass burn refractory MWC'', ''mass burn rotary waterwall MWC'', ''mass burn waterwall MWC'', ''maximum demonstrated MWC unit load'', ''medical waste'', ''municipal-type solid waste or MSW'', ''municipal waste combustor or MWC unit'', ''MWC plant'', ''MWC plant capacity'', and ''MWC unit capacity'', and;

b. by revising the definitions for ''cofired combustor'', ''maximum demonstrated particulate matter control device temperature'', and ''standard conditions'', and;

c. by adding new entries to the section. The revised entries and the new entries are set out to read as follows:

§ 60.51a Definitions.

* * * * *

Calendar quarter means a consecutive 3-month period (nonoverlapping) beginning on January 1, April 1, July 1, and October 1.

* * * * *

Clean wood means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include yard waste, which is defined elsewhere in this section, or construction, renovation, and demolition wastes (which includes but is not limited to railroad ties and telephone poles), which are exempt from the definition of municipal solid waste in this section.

Cofired combustor means a unit combusting municipal solid waste with nonmunicipal solid waste fuel (e.g., coal, industrial process waste) and subject to a federally enforceable permit limiting the unit to combusting a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal solid waste as measured on a calendar quarter basis.

* * * * *

Large municipal waste combustor plant means a municipal waste combustor plant with a municipal waste combustor aggregate plant capacity for affected facilities that is greater than 225 megagrams per day (250 tons per day) of municipal solid waste.

Mass burn refractory municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, this includes combustors with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

Mass burn waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a waterwall furnace.

Maximum demonstrated municipal waste combustor unit load means the highest 4-hour arithmetic average municipal waste combustor unit load achieved during four consecutive hours during the most recent dioxin/furan performance test demonstrating compliance with the applicable limit for municipal waste combustor organics specified under § 60.53a.

Maximum demonstrated particulate matter control device temperature means the highest 4-hour arithmetic average flue gas temperature measured at the particulate matter control device inlet during four consecutive hours during the most recent dioxin/furan performance test demonstrating compliance with the applicable limit for municipal waste combustor organics specified under § 60.53a.

* * * * *

Modification or *modified municipal waste combustor unit* means a municipal waste combustor unit to which changes have been made if the cumulative cost of the changes, over the life of the unit, exceed 50 percent of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs; or any physical change in the municipal waste combustor unit or change in the method of operation of the municipal waste combustor unit increases the amount of any air pollutant emitted by the unit for which standards have been established under section 129 or section 111. Increases in the amount of any air pollutant emitted by the municipal waste combustor unit are determined at 100-percent physical load capability and downstream of all air pollution control devices, with no consideration given for load restrictions based on permits or other nonphysical operational restrictions.

* * * * *

Municipal solid waste or *municipal-type solid waste* or *MSW* means household, commercial/retail, and/or institutional waste. Household waste includes material discarded by single and multiple residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which includes but is not limited to railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff). Household, commercial/retail, and institutional wastes include:

(1) Yard waste;

(2) Refuse-derived fuel; and

(3) Motor vehicle maintenance materials limited to vehicle batteries and tires except as specified in § 60.50a(c).

Municipal waste combustor, MWC, or *municipal waste combustor unit:* (1) Means any setting or equipment that combusts solid, liquid, or gasified MSW including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved-air or excess-air), boilers (i.e., steam-generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Municipal waste combustors do not include pyrolysis/combustion units located at plastics/rubber recycling units (as specified in § 60.50a(k) of this section). Municipal waste combustors do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of an MWC are defined as follows. The MWC unit includes, but is not limited to, the MSW fuel feed system, grate system, flue gas system, bottom ash system, and the combustor water system. The MWC boundary starts at the MSW pit or hopper and extends through:

(i) The combustor flue gas system, which ends immediately following the heat recovery equipment or, if there is no heat recovery equipment, immediately following the combustion chamber;

(ii) The combustor bottom ash system, which ends at the truck loading station or similar ash handling equipment that transfer the ash to final disposal, including all ash handling systems that are connected to the bottom ash handling system; and

(iii) The combustor water system, which starts at the feed water pump and ends at the piping exiting the steam drum or superheater.

(3) The MWC unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine generator set.

* * * * *

Municipal waste combustor plant means one or more MWC units at the same location for which construction, modification, or reconstruction is commenced after December 20, 1989 and on or before September 20, 1994.

Municipal waste combustor plant capacity means the aggregate MWC unit capacity of all MWC units at an MWC plant for which construction, modification, or reconstruction of the units commenced after December 20,

1989 and on or before September 20, 1994. Any MWC units for which construction, modification, or reconstruction is commenced on or before December 20, 1989 or after September 20, 1994 are not included for determining applicability under this subpart.

Municipal waste combustor unit capacity means the maximum design charging rate of an MWC unit expressed in megagrams per day (tons per day) of MSW combusted, calculated according to the procedures under § 60.58a(j). Municipal waste combustor unit capacity is calculated using a design heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound) for MSW. The calculational procedures under § 60.58a(j) include procedures for determining MWC unit capacity for continuous and batch feed MWC's.

Municipal waste combustor unit load means the steam load of the MWC unit measured as specified in § 60.58a(h)(6).

* * * * *

Plastics/rubber recycling unit means an integrated processing unit where plastics, rubber, and/or rubber tires are the only feed materials (incidental contaminants may be included in the feed materials) and they are processed into a chemical plant feedstock or petroleum refinery feedstock, where the feedstock is marketed to and used by a chemical plant or petroleum refinery as input feedstock. The combined weight of the chemical plant feedstock and petroleum refinery feedstock produced by the plastics/rubber recycling unit on a calendar quarter basis shall be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires processed by the plastics/rubber recycling unit on a calendar quarter basis. The plastics, rubber, and/or rubber tire feed materials to the plastics/rubber recycling unit may originate from the separation or diversion of plastics, rubber, or rubber tires from MSW or industrial solid waste, and may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards. The plastics, rubber, and rubber tire feed materials to the plastics/rubber recycling unit may contain incidental contaminants (e.g., paper labels on plastic bottles, metal rings on plastic bottle caps, etc.).

* * * * *

Pulverized coal/refuse-derived fuel mixed fuel-fired combustor or *pulverized coal/RDF mixed fuel-fired combustor* means a combustor that fires coal and RDF simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is fired in suspension. This includes both conventional pulverized coal and micropulverized coal.

Pyrolysis/combustion unit means a unit that produces gases, liquids, or solids through the heating of MSW, and the gases, liquids, or solids produced are combusted and emissions vented to the atmosphere.

Reconstruction means rebuilding an MWC unit for which the cumulative costs of the construction over the life of the unit exceed 50 percent of the original cost of construction and installation of the unit (not including any cost of land purchased in connection with such construction or installation) updated to current costs (current dollars).

Refractory unit or *refractory wall furnace* means a combustion unit having no energy recovery (e.g., via a waterwall) in the furnace (i.e., radiant heat transfer section) of the combustor.

* * * * *

Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor or *spreader stoker coal/RDF mixed fuel-fired combustor* means a combustor that fires coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

Standard conditions means a temperature of 20 °C (68 °F) and a pressure of 101.3 kilopascals (29.92 inches of mercury).

* * * * *

Untreated lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or ''pressure-treated.'' Pressure-treating compounds include, but are not limited to, chromate copper arsenate, pentachlorophenol, and creosote.

Waterwall furnace means a combustion unit having energy (heat) recovery in the furnace (i.e., radiant heat transfer section) of the combustor.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that are generated by residential, commercial/retail, institutional, and/or industrial sources as part of maintenance activities associated with yards or other private or public lands. Yard waste does not include construction, renovation, and demolition wastes, which are exempt from the definition of MSW in this section. Yard waste does not include clean wood, which is exempt from the definition of MSW in this section.

6. Section 60.56a, paragraph (a), Table 1, is amended by removing the entry for ''Coal/RDF mixed fuel-fired combustors'' and adding entries for ''Pulverized coal/RDF mixed fuel-fired combustor'' and ''Spreader stoker coal/RDF mixed fuel-fired combustor'' to the end of the table; by revising paragraph (d); and by removing and reserving paragraph (f)(9) to read as follows:

§ 60.56a Standards for municipal waste combustor operating practices.

(a) * * *

TABLE 1.—MWC OPERATING STANDARDS

MWC technology	Carbon monoxide emission limit (parts per million by volume)[1]
* * * * * * *	
Pulverized coal/RDF mixed fuel-fired combustor	150
Spreader stoker coal/RDF mixed fuel-fired combustor	150

[1] Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen (dry basis). The averaging times are specified in § 60.58a(h).

* * * * *

(d) Within 24 months from the date of start-up of an affected facility or before February 11, 1993, whichever is later, each chief facility operator and shift

supervisor of an affected faciltiy located within a large MWC plant shall obtain and keep current either a provisional or operator certification in accordance with ASME QRO–1–1994 (incorporated by reference, see § 60.17) or an equivalent State-approved certification program.

* * * * *

(f) * * *

(9) [Reserved]

* * * * *

7. Section 60.58a is amended by revising paragraphs (h)(1), (h)(2), (h)(6)(i), (h)(6)(ii), and (h)(10), redesignating paragraph (h)(6)(iii) as paragraph (h)(6)(v), adding new paragraphs (h)(6)(iii) and (h)(6)(iv), removing and reserving paragraph (j)(3), and revising paragraph (j)(4), to read as follows:

§ 60.58a Compliance and performance testing.

* * * * *

(h) * * *

(1) Compliance with the carbon monoxide emission limits in § 60.56a(a) shall be determined using a 4-hour block arithmetic average for all types of affected facilities except mass burn rotary waterwall MWC's, RDF stokers, and spreader stoker/RDF mixed fuel-fired combustors.

(2) For affected mass burn rotary waterwall MWC's, RDF stokers, and spreader stoker/RDF mixed fuel-fired combustors, compliance with the carbon monoxide emission limits in § 60.56a(a) shall be determined using a 24-hour daily arithmetic average.

* * * * *

(6) * * *

(i) The owner or operator of an affected facility with steam generation capability shall install, calibrate, maintain, and operate a steam flow meter or a feedwater flow meter; measure steam or feedwater flow in kilograms per hour (pounds per hour) on a continuous basis; and record the output of the monitor. Steam or feedwater flow shall be calculated in 4-hour block arithmetic averages.

(ii) The method included in ''American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964'', Section 4 (incorporated by reference, see § 60.17) shall be used for calculating the steam (or feedwater flow) required under paragraph (h)(6)(i) of this section. The recommendations of ''American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971),'' chapter 4 (incorporated by reference, see § 60.17) shall be followed for design, construction, installation, calibration, and use of nozzles and orifices except as specified in (h)(6)(iii) of this section.

(iii) Measurement devices such as flow nozzles and orifices are not required to be recalibrated after they are installed.

(iv) All signal conversion elements associated with steam (or feedwater flow) measurements must be calibrated according to the manufacturer's instructions before each dioxin/furan compliance and performance test, and at least once per year.

* * * * *

(10) At a minimum, valid CEMS data for carbon monoxide, steam or feedwater flow, and particulate matter control device inlet temperature shall be obtained 75 percent of the hours per day for 75 percent of the days per month the affected facility is operated and combusting MSW.

* * * * *

(j) * * *

(3) [Reserved]

(4) The MWC unit capacity shall be calculated using a design heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound) for all MSW.

* * * * *

§ 60.59a [Amended]

8. Section 60.59a is amended by removing paragraphs (a)(1), (b)(14), (b)(15), and (m), and removing the third sentence of paragraph (e).

[FR Doc. 95–30254 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 60

[AD-FRL–5327–5]

RIN 2060–AD00

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources

Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action adds standards of performance for new municipal waste combustor (MWC) units and emission guidelines for existing MWC's. The standards and guidelines implement sections 111 and 129 of the Clean Air Act and are based on the Administrator's determination that MWC's cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. The standards and guidelines apply to MWC units at plants with aggregate capacities to combust greater than 35 megagrams per day (Mg/day) (approximately 40 tons per day) of municipal solid waste (MSW) and require sources to achieve emission levels reflecting the maximum degree of reduction in emissions of air pollutants that the Administrator determined is achievable, taking into consideration the cost of achieving such emission reduction, and any non-air-quality health and environmental impacts and energy requirements. The promulgated standards and guidelines establish emission levels for MWC organics (dioxins/furans), MWC metals (cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), and opacity), MWC acid gases (hydrogen chloride (HCl) and sulfur dioxide (SO_2)), nitrogen oxides (NO_X), and MWC fugitive ash emissions. Some of the pollutants being regulated are considered to be carcinogens and at sufficient concentrations can cause toxic effects following exposure. The standards and guidelines also establish requirements for MWC operating practices (carbon monoxide (CO), load, flue gas temperature at the PM control device inlet, and operator training/certification). Additionally, the standards for new MWC plants also require a siting analysis and materials separation plan.

DATES: *Effective Dates.* June 19, 1996 for the standards for new sources (§§ 60.50b through 60.59b) and December 19, 1995 for the emission guidelines for existing sources (§§ 60.30b through 60.39b). The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 19, 1996 for the standards for new sources. See table 3 of this preamble for a summary of the retrofit schedules for existing MWC sources. See **SUPPLEMENTARY INFORMATION** for a discussion of the schedule for judicial review.

Comments. Comments on the Information Collection Request (ICR) document associated with the final standards for new sources are requested, as discussed in section VI.B of this preamble. Comments on the ICR document must be received on or before February 20, 1996. Refer to Section VI.B for further information on this request for comment.

ADDRESSES: *Comments.* As noted above, comments on the ICR document

associated with the final standards for new source are requested. See section VI.B and the **SUPPLEMENTARY INFORMATION** section of this preamble for further information on obtaining a copy of the ICR document and addresses for submitting comments on the ICR document.

Background Information. The principal background information for the final standards and guidelines includes: (1) A background information document (BID) entitled, ''Municipal Waste Combustion: Background Information for Promulgated Standards and Guidelines—Summary of Public Comments and Responses'' (EPA–453/R–95–0136), which contains a summary of all the significant public comments submitted regarding the proposed standards and guidelines, the EPA's response to these comments, and a summary of the changes made to the standards and guidelines as a result of the comments; and (2) several technical documents listed under **SUPPLEMENTARY INFORMATION,** including all of the background information documents that supported the proposal and promulgation of the subpart Ea standards and subpart Ca guidelines. A document entitled ''FACT SHEET: New Municipal Waste Combustors—Subpart Eb Standards,'' which succinctly summarizes the final standards, and a document entitled ''FACT SHEET: Existing Municipal Waste Combustors—Subpart Cb Emission Guidelines,'' which succinctly summarizes the guidelines, are also available. See **SUPPLEMENTARY INFORMATION** for instructions and addresses for obtaining these documents.

Docket. Docket Nos. A–90–45 and A–89–08, containing supporting information used in developing the standards and guidelines, are available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday except for Federal holidays at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street SW, Washington DC 20460 [phone: (202) 260–7548]. The docket is located at the above address in room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Stevenson at (919) 541–5264 or Mr. Fred Porter at (919) 541–5251, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background Information.

On December 20, 1989, the EPA proposed standards and guidelines for MWC's in subparts Ea and Ca of 40 CFR 60, respectively. The subparts Ea and Ca were promulgated on February 11, 1991 and were developed under authority of paragraph (b) of section 111 of the Clean Air Act of 1977. The 1990 Amendments to the Clean Air Act required the EPA to review these emission standards and guidelines and determine if they were fully consistent with the requirements of section 129. The EPA reviewed the subpart Ea standards and subpart Ca guidelines and concluded that they were not fully consistent with the requirements of section 129. Therefore, the EPA proposed to revise the standards and guidelines in a September 20, 1994 proposal to make the standards and guidelines fully consistent with the requirements of section 129. Municipal waste combustors that begin construction after September 20, 1994 or that begin modification or reconstruction after June 19, 1996 and that meet all other applicability criteria are subject to the revised standards (subpart Eb). Municipal waste combustors that were constructed on or before September 20, 1994 and that meet all other applicability criteria are subject to the revised guidelines (subpart Cb). Municipal waste combustors that were constructed after December 20, 1989 and on or before September 20, 1994 and that meet all other applicability criteria are subject to both the subpart Ea standards (1991 standards for new sources) and the subpart Cb guidelines (1995 retrofit guidelines for existing sources). In this final rule, the EPA is withdrawing the subpart Ca guidelines (1991 guidelines for existing sources). In a separate action in today's Federal Register the EPA is publishing a direct final rule amending the text of subpart Ea.

This Federal Register final rule discusses: (1) The standards for new MWC's, (2) the guidelines for existing MWC's, (3) the withdrawal of the 1991 subpart Ca guidelines for existing MWC's, and (4) a request for public comment on the ICR document. This preamble and regulatory text are available on the EPA's Technology Transfer Network (TTN) electronic bulletin board. Also available on the EPA's TTN are FACT SHEETS, which summarize the final standards and guidelines. They are suggested reading for persons requiring an overview of the standards and guidelines. The FACT SHEETS can also be obtained by calling Donna Collins at (919) 541–5578. The TTN contains 18 electronic bulletin boards, and the following 5 items are included in the Clean Air Act Amendments (CAAA) bulletin board under menu item ''Recently Signed Rules'' in file ''MWC2.ZIP'':

(1) ''FACT SHEET: New Municipal Waste Combustors—Subpart Eb Standards (1995).''

(2) ''FACT SHEET: Existing Municipal Waste Combustors—Subpart Cb Emission Guidelines (1995).''

(3) Federal Register notice for this promulgation: ''Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Municipal Waste Combustors'' (this document).

(4) ''Municipal Waste Combustion: Background Information for Promulgated Standards and Guidelines—Summary of Public Comments and Responses,'' EPA–453/R–95–0136.

(5) Information Collection Request document for these standards for new sources: ''Standard Form 83 Supporting Statement for ICR No. 1506.5—1995 Standards for New Municipal Waste Combustors (Subpart Eb),'' September 29, 1995.

The TTN is accessible 24 hours per day, 7 days per week except Monday morning from 8:00 a.m. to 12:00 p.m. when the system is updated. The service is free except for the cost of the phone call. Dial (919) 541–5742 to access the TTN. The TTN is compatible with up to a 14,400 bits-per-second (bps) modem. An alternative way to access the TTN is by ''telenet,'' using access code ''ttnbbs.rtpnc.epa.gov''. Further instructions for accessing the TTN can be obtained by calling the help desk at (919) 541–5384.

Documents in the Docket. The background information for today's promulgation includes all of the documents that supported the proposal and promulgation of the subpart Ea standards and subpart Ca guidelines (docket No. A–90–45 and docket No. A–89–08). Key background information documents used in developing the subpart Ea standards, the subpart Ca guidelines, and today's promulgated standards and guidelines are as follows:

(1) ''Municipal Waste Combustors—Background Information for Proposed Standards: 111(b) Model Plant Description and Cost Report,'' EPA–450/3–89–27b, August 1989;

(2) ''Municipal Waste Combustors—Background Information for Proposed Standards: Post-Combustion Technology Performance,'' EPA–450/3–89–27c, August 1989;

(3) ''Municipal Waste Combustion Assessment: Combustion Control at

Existing Facilities,'' EPA–600/8–89–057, August 1989;

(4) ''Municipal Waste Combustion Assessment, Technical Basis for Good Combustion Practices,'' EPA–600/8–89–063, August 1989;

(5) ''Municipal Waste Combustors—Background Information for Proposed Standards: Control of NO_X Emissions,'' EPA–450/3–89–27d, August 1989;

(6) ''Municipal Waste Combustors—Background Information for Proposed Standards: Cost Procedures,'' EPA–450/3–89–27a, August 1989;

(7) ''Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors,'' EPA–450/3–91–029, March 1994;

(8) ''Municipal Waste Combustors—Background Information for Proposed Guidelines for Existing Facilities,'' EPA–450/3–89–27e, August 1989;

(9) ''Municipal Waste Combustion: Background Information for Promulgated Standards and Guidelines—Summary of Public Comments and Responses,'' EPA–453/R–95–0136, 1995.

These documents and additional technical information are contained in dockets A–90–45 and A–89–08. Docket materials are available for inspection and copying as described in the ADDRESSES section of this preamble.

Judicial Review. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are in today's notice may not be challenged later in the civil or criminal proceedings brought by the EPA to enforce these requirements (42 U.S.C. 7607(b)).

Preamble Outline. The following outline is provided to aid in locating information in the introductory text (preamble) to the final standards and guidelines.

I. Acronyms, Abbreviations, and Measurement Units

A. Acronyms
B. Abbreviations and Measurement Units

II. Background and Withdrawal of the 1991 Subpart Ca Emission Guidelines

III. Summary of Considerations in Developing the 1995 Standards for New Sources and Guidelines for Existing Sources

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I. Acronyms, Abbreviations, and Measurement Units

The following definitions, acronyms, and measurement units are provided to clarify the preamble to the final standards and guidelines.

A. Acronyms

ASME American Society of Mechanical Engineers
BID Background Information Document
CEMS continuous emissions monitoring system(s)
COMS continuous opacity monitoring system(s) dioxins/furans polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans
DSI dry sorbent injection
EPA U.S. Environmental Protection Agency
ESP electrostatic precipitator
FF fabric filter
GCP good combustion practices
ICR information collection request
MACT maximum achievable control technology
MSW municipal solid waste
MWC municipal waste combustor
MWI medical waste incinerator
NSR New Source Review
NO_X nitrogen oxides
OAQPS Office of Air Quality Planning Standards
OMB Office of Management and Budget
PM particulate matter
RDF refuse-derived fuel
RFA Regulatory Flexibility Act
SD spray dryer
SNCR selective noncatalytic reduction
TEQ basis 2,3,7,8-tetrachlorinated dibenzo-p-dioxin toxic equivalent based on the 1989 international toxic equivalency factors

B. Abbreviations and Measurement Units

°C=degrees Celsius (degrees Fahrenheit=°C*9/5+32)
Cd=cadmium
CO=carbon monoxide
CO_2=carbon dioxide
dscf=dry standard cubic feet (at 14.7 pounds per square inch, 68 °F)
dscm=dry standard cubic meters (at 14 pounds per square inch, 68 °F)
g=gram (454 grams per pound)
g/yr=grams per year
gr=grains (7,000 grains per pound)
HCl=hydrogen chloride
Hg=mercury
kg=kilogram (0.454 kilograms per pound)
kg/yr=kilograms per year
m3=cubic meter (35.3 cubic feet per cubic meter)
mg=milligrams (10^{-3} grams)
Mg=megagram (1.1 tons)
Mg/d=megagrams per day
Mg/yr=megagrams per year
ng=nanogram (10^{-9} grams)
Pb=lead
ppmv=parts per million by volume
SO_2=sulfur dioxide
tons/d=tons per day
tons/yr=tons per year
total mass basis (dioxins/furans=total mass of tetra- through octa-chlorinated dibenzo-p-dioxins and dibzofurans

II. Background and Withdrawal of the 1991 Subpart Ca Emission Guidelines

By the mid-1980's, several studies had been performed to determine whether MWC emissions should be regulated and, if so, under what section of the Clean Air Act. As set forth in the Advanced Notice of Proposed Rulemaking (52 FR 25399, July 7, 1987), the EPA decided to regulate air emissions from MWC's under section 111 of the Clean Air Act, and to base the

regulation on best demonstrated technology, as required by section 111. On December 20, 1989, the EPA proposed standards for new MWC's and guidelines for existing MWC's (54 FR 52251 and 54 FR 52209, respectively). On November 15, 1990, 1990 Amendments to the Clean Air Act were enacted and added section 129 to the Clean Air Act. Section 129 of the Clean Air Act specifies that revised standards and guidelines must be developed for MWC's in accordance with the requirements of both section 111 and new section 129. Section 129 further specifies that revised standards and guidelines be developed for both large and small MWC plants and that the revised standards and guidelines must reflect more restrictive performance levels. Section 129 includes a schedule for revising the 1991 standards and guidelines.

When the EPA did not comply with the section 129 schedule, the Sierra Club, the Natural Resources Defense Council, and the Integrated Waste Services Association filed complaints with the U.S. District Court for the Eastern District of New York. The resulting consent decree required the EPA Administrator to sign a notice of proposed rulemaking not later than September 1, 1994 and a notice of promulgation not later than October 31, 1995 (Nos. CV–92–2093, CV–93–0284, and CV–93–5144). The proposal notice for the standards and guidelines was signed as scheduled and published on September 20, 1994 (59 FR 48198 and 59 FR 48228, respectively). This notice responds to the requirement for the Administrator to sign the final standards and guidelines by October 31, 1995.

The standards and guidelines promulgated on February 11, 1991 (56 FR 5488 and 56 FR 5514, respectively) apply to only large MWC's (capacities above 225 Mg/day) and reflect best demonstrated technology. Today's notice promulgates revised standards and guidelines that are fully consistent with sections 111 and 129 of the Clean Air Act and extend coverage of the revised standards and guidelines to MWC units located at MWC plants with aggregate plant capacity above 35 Mg/day.

Today's promulgated standards for new sources are more stringent than the standards promulgated on February 11, 1991. Today's promulgated standards will apply to plants for which construction commenced after September 20, 1994 or for which reconstruction or modification commenced after June 19, 1996. The guidelines will apply to all MWC's constructed prior to September 20, 1994. The February 11, 1991 subpart Ea standards will remain in effect for plants constructed, modified, or reconstructed between December 20, 1989 and September 20, 1994. Sources subject to the February 11, 1991 subpart Ea standards are also subject to the guidelines being promulgated today under subpart Cb. In some cases, the promulgated subpart Cb guidelines are more stringent than the existing subpart Ea standards. The control technologies being used to meet the emission limits included in the 1991 subpart Ea standards will be able to comply with the promulgated subpart Cb guidelines, except supplemental controls would be required to reduce Hg emissions and fugitive ash emissions. The direct final rule also being published in today's Federal Register will provide consistency between the subpart Ea and Cb rules.

Today's promulgated guidelines under subpart Cb for existing sources are more stringent than the guidelines promulgated under subpart Ca on February 11, 1991. Today's promulgated guidelines will apply to MWC's for which construction commenced on or before September 20, 1994. Today's promulgated guidelines are based on maximum achievable control technology, or MACT, and will require MWC plants to purchase and install different types of air pollution control equipment than the best demonstrated technology-based guidelines promulgated in 1991 under subpart Ca. In consideration of public comments, which supported the withdrawal of subpart Ca, and to satisfy the MACT requirements of section 129 of the Clean Air Act, the EPA is withdrawing the 1991 subpart Ca guidelines as a part of today's action.

III. Summary of Considerations in Developing the 1995 Standards for New Sources and Guidelines for Existing Sources

A. Purpose of the Standards and Guidelines

Under sections 111 and 129 of the Clean Air Act, the EPA is required to develop and adopt performance standards and guidelines for MWC's. Congress specifically added section 129 to the Clean Air Act to address public concerns about MWC's and other solid waste combustion units. Under section 111, performance standards and guidelines must be developed for new and existing stationary sources that may contribute to air pollution and that may reasonably be anticipated to endanger public health or welfare. Under section 129 of the Clean Air Act, the standards and guidelines adopted for MWC's must be based on MACT.

Independent of Clean Air Act requirements, the general public is concerned about emissions from all sources including MWC's. This is understandable considering (1) about two-thirds of the MWC population is located in air quality nonattainment areas with high population densities, and (2) the EPA's 1994 MWC Dioxin Survey identified a limited number of older poorly controlled MWC's with atypically high dioxin/furan emissions (interim corrective actions have been taken at these MWC's).

The MWC industry has aggressively controlled new MWC plants built since 1990, and almost half of the existing population currently is equipped with high efficiency air pollution control equipment. The other older half of the population has control equipment with lower efficiency. As mentioned earlier, health effects are associated with many of the pollutants emitted from MWC's, and the standards and guidelines being promulgated today will bring all MWC units up to the same high performance level.

The EPA estimates that in the United States, there are about 307 operating MWC units at 128 plants, providing a total U.S. MSW combustion capacity of about 94,000 Mg/day. Approximately 16 percent of MSW generated in the United States is combusted.

Emissions from MWC's contain organics (dioxins/furans), metals (Cd, Pb, Hg, PM, and opacity), acid gases (Hcl and SO_2), and NO_X. These pollutants can have adverse effects on both public health and welfare. The EPA recently released a draft report reassessing the health effects of human exposure to dioxins/furans. In the draft report, which is currently undergoing review, MWC's are identified as one source of dioxin/furan emissions. Other MWC emissions of principal concern include Pb, Cd, and Hg. Acid gas and NO_X emissions contribute to acid rain when emissions of SO_2 and NO_X are chemically transformed in the atmosphere into sulfuric and nitric acids and return to earth as wet deposition such as rain, fog, or snow, or as dry deposition such as fine particles or gases. Acid deposition damages lakes and harms forests and buildings. Nitrogen oxides also contribute to low-level ozone and urban area smog formation.

Today's standards and guidelines are set forth as emission limits and will significantly reduce MWC emissions.

B. Technical Basis of Standards and Guidelines

Section 129(a)(2) of the Clean Air Act requires the revised standards for new MWC's and revised guidelines for existing MWC's to reflect the maximum degree of reduction in emissions of designated air pollutants, taking into consideration the cost of achieving such emission reduction, and any non-air-quality health and environmental impacts and energy requirements that the Administrator determines are achievable for a particular category of sources. (This control level is commonly referred to as the ''maximum achievable control technology, or ''MACT''.) Section 129 also provides that standards for new sources may not be less stringent than the emissions control achieved in practice by the best controlled similar unit. This is commonly referred to as the ''MACT floor'' for new MWC units. Additionally, section 129 provides that the emission limitations in the guidelines for existing MWC's may not be less stringent than the average emission limitations achieved by the best performing 12 percent of units in the category. This is commonly referred to as the ''MACT floor'' for existing MWC units. Emission control options less stringent than the MACT floor can not be considered in developing section 129 standards and guidelines.

Technical data on the number and size of MWC's, control technologies in use, permit emission limits, and emission test data were used to determine the MACT floor for new and existing MWC's and to define control alternatives. The types of data EPA considered in selecting final standards and guidelines included the following: (1) Over 100 MWC plant-specific questionnaires; (2) emissions information from literature, and State and local agencies; and (3) EPA and industry test reports. Overall, the EPA used performance test data from over 60 MWC plants to develop the standards and guidelines. After proposal, the EPA reviewed additional data submitted with public comments on the proposal and data that EPA gathered from States and industry. Based on the new information, the EPA reviewed both the proposed MACT determinations for new and existing MWC's and the regulatory alternatives. The reassessment of the standards and guidelines in light of the new data resulted in the EPA revising the MACT emission rates for some pollutants.

The most significant changes to the standards and guidelines since proposal are summarized in sections IV.B and V.B., respectively, of this preamble. The rationales for these changes as well as other changes are summarized in the preamble and discussed in more detail in the BID. In keeping with the Administrator's ''reinventing government'' initiative, several of the changes to the guidelines and standards were made to streamline the regulations and provide increased flexibility while optimizing environmental control by using common sense initiatives. Examples of these changes include the following: (1) Reduced dioxin/furan testing for MWC plants with low dioxin/furan emission levels; (2) NO_X guidelines for large MWC plants that allow plants to use an emissions averaging plan to demonstrate compliance for two or more existing MWC units located at the same facility; (3) clarification of siting requirements for new MWC's; (4) providing additional time for MWC operators to obtain operator training and certification; (5) replacing quarterly reporting with annual reporting (semiannual reporting if noncompliance); (6) revised text to clarify that the regulations do not apply to MWC plants with combustion capacity less than 35 Mg/day; (7) exemption for plants firing small amounts of MSW (10 Mg/day or less); (8) exemption for combustion of clean wood; and (9) allowing certain records to be maintained in either electronic or paper format without duplication. All of these changes are discussed further in sections IV and V of this preamble, and represent changes that improve the effectiveness and efficiency of the standards and guidelines without any reduction in environmental protection.

C. Stakeholders and Public Involvement

Prior to proposal, in accordance with section 117 of the Clean Air Act, the EPA consulated with advisory committees, independent experts, Federal departments and agencies, and owners, operators, and manufacturers of MWC's. Numerous discussions were held with governmental entities, industry representatives, and environmental groups including, but not limited to, the following groups: the U.S. Conference of Majors, the National League of Cities, the National Association of Counties, the Municipal Waste Management Association, the Solid Waste Association of North America, the Integrated Waste Services Association, the Sierra Club, and the Natural Resources Defense Council.

The standards and guidelines being adopted today were proposed in the Federal Register on September 20, 1994 (59 FR 48198 and 59 FR 48228, respectively). The preambles for the proposed standards and guidelines describe the rationale for the proposed standards and guidelines. After proposal, the EPA provided interested persons the opportunity to comment through a written comment period. The public comment period was from September 20, 1994 to November 21, 1994. Comments were received from private citizens, industry representatives, environmental groups, and governmental entities. The comments have been carefully considered, and changes have been made in the standards and guidelines where appropriate. Sections IV and V of this preamble discuss the major revisions to the standards and guidelines to address the commenters' concerns.

IV. Standards of Performance for New Sources (1995)—Summary of the Standards, Impacts of the Standards, and Significant Issues and Changes to the Proposed Standards

This section presents a summary of the final standards, including identification of the source category and pollutants being regulated, and presentation of the final emission limits and their associated performance testing, monitoring, recordkeeping and reporting requirements. This section also discusses the most significant changes to the proposed standards. Also discussed are the impacts of the final standards.

A. Summary of the Standards

The final standards (subpart Eb) apply to each new MWC unit located at an MWC facility that has an aggregate plant capacity to combust over 35 Mg/day of MSW, for which construction commenced after September 20, 1994 or modification or reconstruction commenced after June 19, 1996. Municipal waste combustors that commenced construction on or before September 20, 1994 are not covered under the subpart Eb standards. Municipal waste combustors constructed on or before September 20, 1994 are considered existing sources and are subject to the guidelines that are addressed in section V of this notice.

An MWC is defined as any setting or equipment that combusts MSW including air curtain incinerators. Municipal solid waste combustion includes the direct combustion of MSW or the combustion of MSW gases from pyrolysis or gasification. The MWC unit includes any type of setting or equipment including combustion equipment with or without heat recovery.

Municipal solid waste is defined as a mixture or a single-item waste stream of household, commercial, and/or institutional discards. This would include materials such as paper, yard waste, plastics, leather, rubber, glass, metals, and other combustible and noncombustible materials. The final MSW definition is revised slightly from proposal to make it clear that MSW does not include used motor oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (including but not limited to railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles. Although these wastes are not MSW, they can be intermixed with MSW and can be combusted in MWC plants. The regulations do not prohibit their combustion. The definition of MSW includes RDF, which is municipal solid waste that is shredded (or pelletized) before combustion. Any medical, industrial, or other type of waste combustor plant with capability to combust greater than 35 Mg/day of MSW and is in compliance with a federally enforceable permit to combust less than 10 Mg/day of MSW is not covered by this standard. Furthermore, cofired MWC plants that combust less than 30 percent MSW (on a calendar quarter basis) are exempt. A summary of the final standards is presented in table 1. In table 1, significant revisions made since proposal are marked with an asterisk (*) and are discussed in section IV.B.

TABLE 1.—SUMMARY OF STANDARDS FOR NEW MWC'S (SUBPART EB)[a]

[* indicates a significant change since proposal and the change is discussed in this preamble]

Applicability

The final standards apply to new MWC units located at plants with capacities to combust greater than 35 Mg/day of residential, commercial, and/or institutional discards. Industrial manufacturing discards are not covered by the standards. Any medical, industrial manufacturing, municipal, or other type of waste combustor plant with capacity to combust greater than 35 Mg/day of MSW and with a federally enforceable permit to combust less than 10 Mg/day of MSW is not covered.*

Plant Size (MSW combustion capacity)	Requirement.
≤35 Mg/day*	Not covered by standards.
>Mg/day but ≤225 Mg/day (referred to as small MWC plants)	Subject to provisions listed below.
>225 Mg/day (referred to as large MWC plants)	Subject to provisions listed below.

Good Combustion Practices

- Applies to large and small MWC plants.
- A site-specific operator training manual is required to be developed and made available for MWC personnel.
- The EPA or State MWC operator training course must be completed by the MWC chief facility operator, shift supervisors, and control room operators.
- The ASME (or State-equivalent) operator certification must be obtained by the MWC chief facility operator (mandatory), shift supervisors (mandatory), and control room operators (optional).*
- The MWC load level is required to be measured and not to exceed 110 percent of the maximum load level measured during the most recent dioxin/furan performance test.
- The PM control device inlet flue gas temperature is required to be measured and not to exceed the temperature 17 °C above the maximum temperature measured during the most recent dioxin/furan performance test.
- The CO level is required to be measured using CEMS, and the concentration in the flue gas is required not to exceed the following:

MWC type	CO level	Averaging time (hours)
Modular starved-air and excess-air	50 ppmv	4
Mass burn waterwall and refractory	100 ppmv	4
Mass burn rotary refractory	100 ppmv	4
Fluidized-bed combustion	100 ppmv	4
Pulverized coal/RDF mixed fuel-fired	150 ppmv*	4
Spreader stoker coal/RDF mixed fuel-fired	150 ppmv*	24
RDF stoker	150 ppmv	24
Mass burn rotary waterwall	100 ppmv	24
MWC Organic Emissions (measured as total mass dioxins/furans):		
• Dioxins/furans (performance test by EPA Reference Method 23)		
Large and small MWC plants	13 ng/dscm total mass (mandatory) or 7 ng/dscm total mass (optional to qualify for less frequent testing).*[b].	

MWC type	CO level	Averaging time (hours)
• Basis for dioxin/furan limit	GCP and SD/FF/carbon injection.	
MWC Metal Emissions:		
• PM (performance test by EPA Reference Method 5)		
Large and small MWC plants	24 mg/dscm (0.010 gr/dscf).*	
• Opacity (performance test by EPA Reference Method 9)		
Large and small MWC plants	10 percent (6-minute average)	
• Cd (performance test by EPA Reference Method 29)		
Large and small MWC plants	0.020 mg/dscm (8.7 gr/million dscf).*	
• Pb (performance test by EPA Reference Method 29)		
Large and small MWC plants	0.20 mg/dscm (87 gr/million dscf).*	
• Hg (performance test by EPA Reference Method 29)		
Large and small MWC plants	0.080 mg/dscm (35 gr/million dscf) or 85-percent reduction in Hg emissions	
• Basis for PM, opacity, Cd, Pb, and Hg limits		
Large and small MWC plants	See basis for dioxin/furan limit	
MWC Acid Gas Emissions:		
• SO_2 (performance test by CEMS)		
Large and small MWC plants	30 ppmv or 80-percent reduction in SO_2 emissions	
• HCl (performance test by EPA Reference Method 26)		
Large and small MWC plants	25 ppmv or 95-percent reduction in HCl emissions	
• Basis for SO_2 and HCl limits	See basis for dioxin/furan limit..	
Nitrogen Oxides Emissions:		
• NOx (performance test by CEMS)		
Large MWC plants	150 ppmv, except 180 ppmv is allowed for the first year of operation.*	
Small MWC plants	No NO_X control requirement	
• Basis for NO_X limit		
Large MWC plants	SNCR	
Small MWC plants	No NO_X control requirement.	

MWC type	CO level	Averaging time (hours)
Fugitive Ash Emissions:		
• Fugitive emissions (performance test by EPA Reference Method 22)		
Large and small MWC plants	Visible emissions less than 5 percent of the time from the ash transfer system except during maintenance and repair activities.*.	
• Basis for fugitive emissions limit	Wet ash handling or enclosed ash handling.	
Siting Requirements:		
• Large and small MWC plants	(1) Siting analysis*, (2) materials separation plan, and (3) public meetings (including response to comments)	
Performance Testing and Monitoring Requirements:		
• Reporting frequency	Annual (semi-annual if violation).*	
• Load, flue gas temperature	Continuous monitoring, 4-hour block arithmetic average.	
• CO	CEMS, 4-hour block or 24-hour daily arithmetic average, as applicable.	
• Dioxins/furans, PM, Cd, Pb, HC1, and Hg		
Large MWC plants	Annual stack test (see reduced testing option for low emitters of dioxins/furans).*	
Small MWC plants	Annual or third year stack test.*	
• Opacity	COMS (6-minute average) and annual stack test.	
• SO_2	CEMS, 24-hour daily geometric mean.	

MWC type	CO level	Averaging time (hours)
• NO_X (large MWC plants only)	CEMS, 24-hour daily arithmetic average.	
• Fugitive ash emissions	Annual test.	

*=a significant change since proposal, and the change is discussed in this preamble.
[a] All concentration levels in the table are corrected to 7 percent O_2, dry basis.
[b] Although not part of the dioxin/furan limit, the limit of 13 ng/dscm total mass is equal to about 0.1 to 0.3 ng/dscm TEQ. The optional reduced testing limit of 7 ng/dscm total mass is equal to about 0.1 to 0.2 ng/dscm TEQ.

B. *Significant Issues and Changes to the Proposed Standards* (Issues were marked with the ''*'' symbol in table 1)

The most significant changes to the standards since proposal are discussed below. Additional rationales for these changes, as well as other changes being made are provided in the promulgation BID (EPA–453/R–95–0136). Some of the changes made that are not discussed below include GCP requirements, monitoring requirements, and reporting and recordkeeping requirements.

1. Applicability

At proposal, an MWC plant of 35 Mg/day capacity that cofired 30 percent (10 Mg/day) or less MSW would have been exempt from the standards. This 30 percent cofiring provision was retained in the final rule. Additionally, a 10 Mg/day exemption has been added to the final rule to exempt all combustion units independent of size that fire only a small amount of MSW. In the final standards, any medical, industrial manufacturing, or other type of waste combustor capable of combusting more than 35 Mg/day MSW but actually combusting less than 10 Mg/day of MSW is not subject to this rule, provided it submits an initial report containing a copy of the plant's federally enforceable permit limiting the amount of MSW that may be combusted by the plant to less than 10 Mg/day and keeps records on the daily weight of MSW fired.

At proposal, a cofired combustor was defined as a unit combusting a fuel feed stream where 30 percent or less was comprised of MSW, as measured on a 24-hour daily basis. Several commenters expressed concern about a cofired status determination being made on a daily basis. For example, some facilities that burn biomass material including yard waste would have difficulty making a determination of cofired status on a daily basis. Biomass material including yard waste (which is MSW) and clean wood (which is not MSW) are often collected together and stored on- or off-site for a period of time and intermixed before being combusted. In such cases, it is difficult or impossible to determine what percentage of the waste combusted daily was yard waste. After considering the public comments, the EPA determined that the definition of cofired combustor should be revised to allow for measuring the percent MSW burned on a calendar quarterly basis. This change is consistent with current waste refuse storage and recordkeeping procedures.

Also under the proposal, MWC plants of 25 to 35 Mg/day capacity were required to submit an initial notification of construction, but they were not subject to the proposed standards or guidelines. Only MWC plants greater than 35 Mg/day capacity were covered by the proposal. As part of the Administrator's ''reinventing government'' initiative, the initial notification requirement for MWC plants between 25 and 35 Mg/day capacity was removed from the final rule to minimize the reporting requirement for smaller plants. This change reduced reporting and recordkeeping requirements for both the MWC and the EPA, but did not reduce the level of environmental protection provided by the standards and guidelines being adopted today.

Under the proposed standards, clean wood was included in the definition of MSW. Several commenters disagreed with this decision to cover clean wood under the MWC standards. Under the final rule, clean wood is not considered to be MSW. Clean wood includes untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood is exempt from the definition of MSW because available data indicate that combustion of clean wood results in low emission of dioxins/furans, Hg, and other pollutants. Clean wood is predominantly an agricultural, industrial, or other nonmunicipal solid waste; regulation of the combustion of these types of wastes is currently being addressed under a separate rulemaking. Clean wood does not include yard waste, which is covered by the final MWC standards; yard waste includes grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that are generated by residential, commercial/retail, institutional, or nonmanufacturing industrial sources as part of maintenance activities associated with yards or other private or public lands.

2. Emission Limits for MWC Metals, Acid Gases, Organics, Nitrogen Oxides, and Ash Fugitive Emissions

Many commenters expressed concern as to whether the proposed emission limits for all regulated pollutants are actually achievable by an MWC. These commenters noted that no single MWC existed with all the controls proposed as MACT (SD/FF/SNCR and carbon injection) and the standards may not be achievable. Since proposal, the EPA has obtained data from 12 new MWC units at 5 MWC plants that have recently begun operation and all are equipped with the full set of controls proposed as MACT (SD/FF/SNCR and carbon injection). Data from these plants show that all proposed emission limits for all pollutants are simultaneously being achieved. Therefore, the EPA remains convinced that properly designed, constructed, maintained, and operated MWC plants can comply with all pollutant emission limits included in the final standards.

For new sources, the MACT floor for each regulated pollutant was established as the emission level achievable by the best controlled source. To determine new source MACT for proposal, the EPA evaluated the performance of SD/FF/SNCR/carbon injection. Since proposal, the EPA obtained additional information regarding the performance of the control technologies determined to be MACT (SD/FF/SNCR/carbon injection). Based on the new information and a reevaluation of the data used for proposal, the EPA revised the achievable performance levels for PM, Cd, Pb, Hg, dioxins/furans, and NO_X. Changes to the MACT floor levels and the selected MACT standards resulting from these reevaluations are discussed below.

a. *MWC Acid Gases.* The MACT floor levels and selected MACT emission limits for MWC acid gases are the same as proposed.

b. *MWC Metals.* Based on comments and data received since proposal, the EPA reassessed the achievable performance levels for PM, Cd, and Pb by SD/FF systems. Based on this reassessment of available data, the selected PM, Cd, and Pb MACT emission limits were revised. For both large and small plants, the PM MACT floor and selected MACT limit were revised to 24 mg/dscm (proposal was 15 mg/dscm). The Cd MACT floor and selected MACT limit were revised to 0.020 mg/dscm (proposal was 0.010 mg/dscm). The Pb MACT floor and selected MACT limit were revised to 0.20 mg/dscm (proposal was 0.10 mg/dscm). The selected MACT limits for all three pollutants were revised because, based on available data, emission levels more stringent than these levels are not considered to be continuously achievable.

The final MACT limits for Hg emissions for large and small plants remain at the same levels as proposed (0.080 mg/dscm or an 85 percent reduction in Hg emissions); however, the MACT floor level was revised. At proposal, the MACT floor for Hg was based on use of an SD/FF system combined with GCP. Carbon injection was not commercially operational at any MWC. At proposal, MACT for Hg was based on use of an SD/FF system in combination with carbon injection. This MACT selection was based on evaluation of emission reductions, costs, and other factors, as described in the proposal preamble (59 FR 48198, September 20, 1994). Several commenters questioned the selection of an Hg MACT limit based on carbon injection when carbon injection was not commercially operated. Since proposal, data have become available for 12 new MWC units initiating operation using carbon injection commercially, and all were meeting the proposed Hg limits. Since carbon injection is now in commercial operation, the EPA revised the final MACT floor for Hg to be based on SD/FF in combination with carbon injection and GCP.

c. *MWC Organics.* The final emission limits for dioxins/furans for new MWC's remain at the same level as proposed; however, the technology basis for the floor level of control has been changed. As discussed in section IV.B.2.b regarding MWC metals (Hg), the EPA reviewed new data received since proposal and concluded that SD/FF combined with GCP and carbon injection is the best emission control technology being used by MWC's for Hg and dioxin/furan control, and is, therefore, the basis of the final MACT floor. The data gathered prior to proposal as well as data for new units operating with these controls show that a dioxin/furan level of 13 ng/dscm is achievable. The final MACT emission limit for dioxins/furans for new units at both large and small plants is equal to the MACT floor and remains at 13 ng/dscm (total mass basis).

The format of the final dioxin/furan emission limit changed from the proposed format. The EPA proposed a dual format for the dioxin/furan emission limit (total or TEQ) and requested comments on the use of this dual format. No commenters agreed with the dual format as proposed. The EPA has selected total mass dioxin/furan emissions in the final standards. The TEQ format is not used. There is no indication that TEQ's would be a better measure of emissions control performance than total dioxins/furans. Furthermore, most test data on which the standards are based were expressed as total dioxins/furans. Additionally, because there have been different methods for calculating TEQ over time and the ratio of total dioxins/furans to TEQ dioxins/furans varies among MWC's, there would be additional uncertainty in using a TEQ data base. Refer to the promulgation preamble (56 FR 5504) for the 1991 subpart Ea standards for additional discussion.

Although not part of the dioxin/furan limit, the limit of 13 ng/dscm total mass is equal to about 0.1 to 0.3 ng/dscm TEQ.

In addition to the final dioxin/furan limit of 13 ng/dscm, a provision has been added to the final standards allowing less frequent dioxin/furan testing for new plants achieving dioxin/furan emission levels lower than 7 ng/dscm. Data for new MWC's using SD/FF/SNCR/carbon injection technology suggest this is a realistic goal for many new MWC's and will encourage MWC's to optimize performance of pollution control systems. Refer to section IV.B.7 for a description of the alternative dioxin/furan testing schedule.

d. *Nitrogen Oxides.* As explained at proposal (59 FR 48198, September 20, 1994), the combination of SD/FF, GCP, and SNCR was the basis of the new source MACT floor for NO_X. These technologies remain the basis for the final NO_X MACT floor. Since proposal, the EPA has obtained additional NO_X data showing that large MWC plants equipped with SNCR can continuously achieve an emission level of 150 ppmv over a 24-hour averaging period. The new data were obtained from the same plant that was the basis of the proposed NO_X emission level of 180 ppmv. The new data are representative of what NO_X emission level can be achieved after a plant has had a period of time to adjust to operation with the SNCR system. Applications of SNCR typically require some site-specific fine-tuning to achieve optimum performance levels. Based on the revised data, a two-phase standard is being adopted. The final NO_X standard for MWC's at large plants allows time to ''fine-tune'' the SNCR system. The final standard for MWC's at large plants is 180 ppmv (24-hour averaging period) for the first year of operation, and 150 ppmv (24-hour averaging period) thereafter.

The final standards do not require NO_X control for MWC's at small plants.

e. *MWC Fugitive Ash Emissions.* The proposed fugitive ash emission limit allowed no visible emissions from ash handling and transfer points. Several commenters objected to the proposed level of no visible emissions. The commenters were concerned that even where the best ash management practices such as wetting the ash or enclosing transfer systems, there may be short periods of time when visible emissions are observed, such as during maintenance. The proposal was based on about 16 hours of method 22 visible emissions data for ash handling practices at two MWC plants and observations (not using method 22) at two additional MWC plants. Since proposal, the EPA has reviewed visible emission data from other industries that use similar transfer systems. Based on comments received and the review of additional data, the final fugitive ash emission limit was revised to limit visible emissions to no more than 5 percent of the time.

As part of the final fugitive ash emission requirements, an exemption has been provided during maintenance and repair activities, because these necessary activities may require opening of an enclosure that could generate short-term visible emissions.

3. Good Combustion Practices

The proposed standards included CO limits for nine categories of combustor technologies, including, among others, RDF stoker combustors and coal/RDF mixed fuel-fired combustors. Commenters requested clarification on which CO limit applies to a stoker unit that is designed to combust coal and RDF but only combusts RDF. Under the final standards, a spreader stoker unit burning RDF only or cofiring RDF with coal would be subject to the proposed RDF stoker CO limit. To clarify this

requirement, the final CO requirements include an additional category of combustor technology referred to as ''spreader stoker coal/RDF mixed fuel-fired combustors,'' which are assigned the same CO limit and averaging time as RDF stoker combustors (150 ppmv, 24-hour averaging time). The final standards further clarify that the category of combustors referred to in the proposed standards as coal/RDF mixed fuel-fired combustors only includes pulverized coal/RDF mixed fuel streams, and the CO limit and averaging time remains the same as proposed (150 ppmv, 4-hour averaging time).

4. Operator Training and Certification

The proposed standards required full ASME certification of chief facility operators and shift supervisors within 6 months of startup of an affected MWC. Various commenters including ASME pointed out that the proposed standards did not include sufficient time for ASME to conduct full certification exams for all MWC operators. After considering these comments, the EPA revised the operator training requirements to allow additional time for ASME (or State) certification exams. In the final standards, chief facility operators and shift supervisors at new MWC plants must obtain ASME or State-approved provisional certification within 1 year after promulgation or 6 months after startup, whichever is later. In addition, by this same date (1 year after promulgation or 6 months after startup, whichever is later), the same personnel must be either fully certified or scheduled with ASME or the State to take a full certification exam (instead of actually obtaining full certification within 1 year, as proposed).

5. Air Curtain Incinerators

No changes were made to the proposed standards for air curtain incinerators. As discussed above in section IV.B.1, the final standards do not cover combustion of clean wood; therefore, air curtain incinerators combusting only clean wood are not covered by the standards.

6. Siting Analysis/Materials Separation Plan

Various commenters said the proposed siting analysis was not consistent with section 129 of the Clean Air Act. Commenters also argued that the proposed siting requirements were either too stringent or not stringent enough. The siting analysis in the final rule has been reworded to allow for a consideration of alternatives, on a site-specific basis, to minimize to the maximum extent practicable potential risks to the public health or the environment. These changes ensure consistency with section 129(a)(3) of the Clean Air Act.

7. Compliance and Performance Testing

Both the proposed and final standards require all plants to perform annual performance tests for dioxin/furan emissions. However, a provision for less frequent dioxin/furan testing has been added to the final rule to encourage MWC plants to achieve emission levels significantly lower than 13 ng/dscm. By achieving low dioxin/furan emissions, they would qualify for less frequent testing and thereby reduce their testing costs. If all MWC units at an MWC plant achieve 7 ng/dscm dioxins/furans or less during performance testing for 2 consecutive years of operation, the plant can elect to conduct dioxin/furan testing on one unit per year. The plant must test units in sequence (e.g., a 3-unit plant would test unit 1 (year 1), unit 2 (year 2), unit 3 (year 3), unit 1 (year 4), etc.). If an annual performance test conducted on any unit indicates total dioxin/furan emissions are greater than 7 ng/dscm, the plant must revert to testing all units annually beginning the following year until the 2-year compliance record is reestablished.

For small plants, two options are provided. The one-unit incentive schedule discussed above is provided for dioxin/furan testing. An alternative 3-year testing option is also provided for small plants. The alternative 3-year testing option allows small plants to conduct performance tests for dioxins/furans, as well as PM, HCl, Cd, Pb, and Hg only once every 3 years if the plant demonstrates compliance with all pollutant emission limits for 3 consecutive years and continues to demonstrate compliance every third year. The owner or operator of a small plant may choose either option for performance testing.

8. Reporting and Recordkeeping Requirements

Reporting requirements have been changed from quarterly as proposed to annual (semiannual if any emission limits or operating parameters are violated) to reduce the burden on affected plants. In recognition of the cost associated with reporting requirements, the EPA reconsidered the effectiveness of quarterly versus annual reporting for the purpose of determining compliance. After careful reconsideration, the EPA has concluded that annual reporting will provide adequate information for most plants. [The EPA notes, however, that once an MWC is required to obtain a Title V Operating Permit, the Title V reporting requirements given in Section 504(a) of the Act will supersede the annual reporting requirements presented above. Section 504(a) requires permittees to submit monitoring reports to the permitting authority no less often than every six months. See 42 U.S.C. 7661c(a).]

C. Impacts of the Standards

The final standards can be achieved by utilizing any technology. The basis for the MACT-based limits at both proposal and promulgation remain the combination of GCP/SD/FF and carbon injection for new large and small plants, and the additional use of SNCR at large plants. Because the technology basis for the final standards is the same as at proposal, the impacts analysis presented at proposal has not been revised. Table 2 provides a brief summary of the air and cost impacts of the standards. The summary in table 2 provides impacts estimates relative to two baseline scenarios: a pre-1989 baseline (typical control prior to the 1991 subpart Ea standards) and a 1991 baseline (typical control under the 1991 subpart Ea standards). Refer to the preamble to the proposed standards (59 FR 48198) for a detailed summary of these air and control cost impacts, as well as a discussion of the water, solid waste, energy, and economic impacts of the rule. The national impacts estimates provided in table 2 and discussed in the proposal preamble represent the EPA's estimate of the worst case of impacts that would result from implementation of the standards. Recent data suggest a reduction in the construction of new MWC's. This would reduce the cost of the standards.

TABLE 2.—IMPACTS OF THE CURRENT SUBPART EA AND PROMULGATED SUBPART EB STANDARDS

Parameter	Increment of promulgated standards over the 1991 standards	1991 Standards [a]	Total [b]
New MWC's subject to Standards in the Fifth Year After Promulgation:			
Combustion capacity (10^6 Mg/yr)	0.8	16.8	17.6
Number of MWC plants	24	48	72
Cost (1990 Dollars):			
Capital cost ($\$10^6$)	156	613	769
Annualized cost ($\$10^6$/yr)	43	157	200
Average cost increase ($/Mg MSW combusted)	1.95	11.55	13.50
Annual Emissions Reduction (Mg/yr):			
SO_2	3,000	35,000	38,000
Hcl	4,000	46,000	50,000
PM	800	5,700	6,500
Cd	1	9	10
Pb	17	140	157
Hg	18	9	27
No_x	200	10,300	10,500
Total dioxins/furans (kg/yr)	1	28	29

[a] The impacts are based on a pre-1989 baseline (i.e., a baseline prior to the effective date of the subpart Ea standards.
[b] The total impacts are calculated by adding the incremental impacts of the promulgated standards (subpart Eb) to the impacts of the 1991 standards (subpart Ea). These impacts would be equivalent to the total impacts of the promulgated standards over a pre-1989 baseline.

A number of comments were received on the possible effects on EPA's costing analysis following the recent Supreme Court decision that ''flow control'' is unconstitutional. The EPA considered the effect of flow control on the financing of new MWC's. In summary, the EPA finds that if tipping fees are raised to cover the increased costs of these regulations, then the lack of ''flow control'' requirements will likely result in fewer MWC's being constructed and a shift of wastes to other disposal options. The impacts of the flow control decision is likely to be very place-specific depending on the relative tipping fees of MWC's and other disposal options, transportation costs, and institutional factors.

V. Guidelines for Existing Sources (1995)—Summary of the Guidelines, Impacts of the Guidelines, and Significant Issues and Changes to the Proposed Guidelines

This section presents a summary of the final guidelines, including identification of the source category and pollutants being regulated, and presentation of the final emission limits and their associated performance testing, monitoring, recordkeeping, and reporting requirements and compliance schedules. This section also provides a discussion of the most significant issues and changes to the proposed guidelines. Also mentioned are the impacts of the final guidelines.

The EPA strongly believes (based on emissions data from MWC's which incorporate the necessary control technology) that the air pollution control technology to be retrofitted to existing MWC's to meet the emission guidelines will reduce actual emissions to levels significantly below the limits established by the emission guidelines. There remains, however, some uncertainty as to the actual performance level that will be achieved on a continuous basis by the control technology when installed at large MWC plants where ESP-based scrubber systems are used. Therefore, the dioxin/furan emission limits included in the emission guidelines for some types of MWC's, while still significantly below the MACT floor, are slightly less stringent than those included in the proposal.

The EPA will track the implementation of the guidelines and annual performance test results in order to monitor the level of emissions including dioxin/furan control actually achieved by the guidelines. Additionally, the EPA may conduct supplemental dioxin/furan tests. The EPA will also meet with MWC owners and operators as needed to review the performance of the air pollution control technology and the effectiveness of maintenance and operational practices in order to provide information that will lead to optimal performance of emission control technology, and will work with MWC owners and operators to assure a continued high level of public safety.

A. Summary of the Guidelines

The final guidelines require States to develop emission regulations limiting air emissions from each existing MWC unit located at a MWC plant that has an aggregate plant capacity to combust more than 35 Mg/day of MSW, for which construction commenced on or before September 20, 1994.

The aggregate design capacity of all existing MWC's at an MWC plant shall be considered in determining: (1) Whether a plant is subject to the guidelines; and (2) what control levels are applicable. The capacity of new MWC's (i.e., those that commenced construction after September 20, 1994 or that commenced modification or reconstruction after June 19, 1996 that are located at the MWC plant are not considered in determining applicability of the guidelines but would be considered in determining the applicability of subpart Eb (standards for new sources). Only MWC units constructed before September 20, 1994 are considered for determining the applicability of the guidelines. Modification of an existing MWC (or funds spent) to comply with the emission guidelines would not be considered in determining if an existing MWC unit was subject to the standards for new MWC's (subpart Ea or Eb).

Municipal waste combustion plants with a federally enforceable permit to combust less than 10 Mg/day of MSW are exempt from the requirements of the guidelines as long as they submit a notification of exemption and keep daily records of the weight of MSW combusted.

Cofired combustors (i.e., that combust less than 30 percent MSW) located at a plant with an aggregate plant capacity greater than 35 Mg/day are exempt from the requirements of the guidelines as

long as they submit a notification of exemption and keep records of the weight of MSW combusted on a calendar quarter basis.

The definitions of MWC and MSW have been revised but are the same for the guidelines as for the standards, and are discussed in the summary of the standards in section IV.A of this notice.

A summary of the final guidelines is presented in table 3.

TABLE 3. SUMMARY OF GUIDELINES FOR EXISTING MWC'S (SUBPART CB) [a]

[* indicates a significant change since proposal and the change is discussed in this preamble]

Applicability	
The final guidelines apply to existing MWC's located at plants with capacities to combust greater than 35 Mg/day of residential, commercial, and/or institutional discards. Industrial manufacturing discards are not covered by the guidelines. Any medical, industrial manufacturing, municipal, or other type of waste combustor plant with capacity to combust greater than 35 Mg/day of MSW and with a federally enforceable permit to combust less than 10 Mg/day of MSW is not covered.*	
Plant Size (MSW combustion capacity)	Requirement
<35 Mg/day*	Not covered by guidelines.
> 35 Mg/day but ≥225 Mg/day (referred to as small MWC plants)	Subject to provisions listed below.
> 225 Mg/day (referred to as large MWC plants)	Subject to provisions listed below.

Good Combustion Practices

- Applies to large and small MWC plants.
- A site-specific operator training manual is required to be developed and made available for MWC personnel.
- The EPA or a State MWC operator training course would be required to be completed by the MWC chief facility operator, shift supervisors, and control room operators.
- The ASME (or State-equivalent) provisional and full operator certification must be obtained by the MWC chief facility operator (mandatory), shift supervisors (mandatory), and control room operators (optional).*
- The MWC load level is required to be measured and not to exceed 110 percent of the maximum load level measured during the most recent dioxin/furan performance test.
- The maximum PM control device inlet flue gas temperature is required to be measured and not to exceed the temperature 17°C above the maximum temperature measured during the most recent dioxin/furan performance test.
- The CO level is required to be measured using a CEMS, and the concentration in the flue gas is required not to exceed the following:

MWC type	CO level	Averaging time (hours)
Modular starved-air and excess-air	50 ppmv	4
Mass burn waterwall and refractory	100 ppmv	4
Mass burn rotary refractory	100 ppmv	24
Fluidized-bed combustion	100 ppmv	4
Pulverized coal/RDF mixed fuel-fired	150 ppmv*	4
Spreader stoker coal/RDF mixed fuel-fired	200 ppmv*	24
RDF stoker	200 ppmv	24
Mass burn rotary waterwall	250 ppmv	24

MWC Organic Emissions (measured as total mass dioxins/furans):	
• Dioxins/furans (performance test by EPA Reference Method 23)	
Large MWC plants	
MWC units utilizing an ESP-based air pollution control system	60 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing).* [c]
MWC units utilizing a nonESP-based air pollution control system	30 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing).* [c]
Small MWC plants	125 ng/dscm total mass (mandatory) or 30 ng/dscm total mass (optional to qualify for less frequent testing).* [c]
• Basis for dioxin/furan limits	
Large MWC plants	GCP and SD/ESP or GCP and SD/FF, as specified above.
Small MWC plants	GCP and DSI/ESP.
MWC Metal Emissions:	
• PM (performance test by EPA Reference Method 5)	
Large MWC plants	27 mg/dscm (0.012 gr/dscf).
Small MWC plants	70 mg/dscm (0.030 gr/dscf).*
• Opacity (performance test by EPA Reference Method 9)	
Large and small MWC plants	10 percent (6-minute average)
• Cd (performance test by EPA Reference Method 29)	
Large MWC plants	0.040 mg/dscm (18 gr/million dscf).
Small MWC plants	0.10 mg/dscm (44 gr/million dscf).
• Pb (performance test by EPA Reference Method 29)	
Large MWC plants	0.49 mg/dscm (200 gr/million dscf).*
Small MWC plants	1.6 mg/dscm (700 gr/million dscf).
• Hg (performance test by EPA Reference Method 29)	
Large and small MWC plants	0.080 mg/dscm (35 gr/million dscf) or 85-percent reduction in Hg emissions.
• Basis for PM, opacity, Cd, Pb, and Hg limits	
Large MWC plants	GCP and SD/ESP/CI or GCP and SD/FF/CI

Small MWC plants	GCP and DSI/ESP/CI.
MWC Acid Gas Emissions:	
• SO_2 (performance test by CEMS)	
Large MWC plants	31 ppmv or 75-percent reduction in SO_2 emissions.*
Small MWC plants	80 ppmv or 50-percent reduction in SO_2 emissions.
• HCl (performance test by EPA Reference Method 26)	
Large MWC plants	31 ppmv or 95-percent reduction in HCl emissions.*
Small MWC plants	250 ppmv or 50-percent reduction in HCl emissions.
• Basis for SO_2 and HCl limits	
Large and small MWC plants	See basis for MWC metals.
Nitrogen Oxides Emissions	
• NO_X (performance test by CEMS)	
Large MWC plants:	
Mass burn waterwall	200 ppmv[b].
Mass burn rotary waterwall	250 ppmv[b].
Refuse-derived fuel combustor	250 ppmv[b].
Fluidized bed combustor	240 ppmv[b].
Mass burn refractory	No NO_X control[b] requirement
Other	200 ppmv[b].
Small MWC plants	No NO_x control requirement.
• Basis for NO_x limits	
Large MWC plants	SNCR.
Refractory MWC plants	No NO_X control requirement
Small MWC plants	No NO_X control requirement.
Fugitive Ash Emissions:	
• Fugitive Emissions (performance test by EPA Reference Method 22)	
Large and small plants	Visible emissions 5 percent of the time from ash transfer systems except for maintenance and repair activities.*
• Basis for fugitive emission limit	Wet ash handling or enclosed ash handling.
Performance Testing and Monitoring Requirements:	
• Reporting frequency	Annual (semiannual if violation)*.
• Load, flue gas temperature	Continuous monitoring, 4-hour block arithmetic average
• CO	CEMS, 4-hour block or 24-hour daily arithmetic average, as applicable
• Dioxins/furans, PM, Cd, Pb, HCl, and Hg	
Large MWC plants	Annual stack test.*
Small MWC plants	Annual or third year stack test.
• Opacity	COMS (6-minute average) and annual stack test.
• SO_2	CEMS, 24-hour daily geometric mean.
• NO_X (large MWC plants only)	CEMS, 24-hour daily arithmetic average.
• Fugitive ash emissions	Annual test.*
Compliance Schedule:	
• Large MWC plants	
State plans are required to include one of the following three retrofit schedules for compliance with regulatory requirements: (1) Full compliance or closure within 1 year following EPA approval of the State plan; (2) full compliance in 1 to 3 years following issuance of a revised construction or operation permit if a permit modification is required or 1 to 3 years following EPA approval of the State plan if a permit modification is not required, provided the State plan includes measurable and enforceable incremental steps of progress toward compliance; or (3) closure in 1 to 3 years following approval of the State plan, provided the State plan includes a closure agreement. If a State plan allows the second or third scheduling options (i.e., more than 1 year), the State plan submitted to EPA must contain post-1990 test data for dioxins/furans for all MWC units at large plants under the extended schedule. (See § 60.21(h) of subpart B of 40 CFR 60 for additional information relating to measurable and enforceable incremental steps of progress toward compliance).	
• Small MWC plants	
State plans must require full compliance or closure with regulatory requirements in 3 years or less following issuance of a revised construction or operation permit if a permit modification is required, or within 3 years following EPA approval of the State plan if a permit modification is not required.	
• State plans are required to specify that all MWC's at large MWC plants for which construction was commenced after June 26, 1987 comply with the guidelines for Hg and dioxins/furans within 1 year following issuance of a revised construction or operation permit if a permit modification is required, or within 1 year following EPA approval of the State plan, whichever is later.	
• State plans are required to specify that owners or operators of MWC's comply with the operator training and certification requirements by 6 months after startup or 1 year after State plan approval by the EPA, whichever is later, for large plants and by 6 months after startup or 18 months after State plan approval by the EPA, whichever is later, for small plants.	

*=significant change since proposal, and the change is discussed in this preamble.

[a] All concentration levels in the table are converted to 7 percent O_2, dry basis.

[b] State plans may allow NO_X emissions averaging between existing MWC units at a large MWC plant. The daily weighted average NO_X emissions concentration from the MWC units included in the emissions averaging plan must comply with the following 24-hour limits: 180 ppmv for mass burn waterwall combustors; 220 ppmv for mass burn rotary waterwall combustors; 230 ppmv for refuse-derived fuel combustors; 220 ppmv for fluidized bed combustors; and 180 ppmv for other combustor types (excluding mass burn refractory combustors). Refer to the regulatory text of the emission guidelines for additional requirements. State plans may also establish a program to allow emissions trading between non-contiguous MWC plants. Such a program shall meet the requirements of the Open Market Trading Rule of Ozone Smog Precursors, proposed August 3, 1995 (60 FR 39668) as finally promulgated.

[c] Although not part of the dioxin/furan limit, the dioxin/furan total mass limits of 30 ng/dscm, 60 ng/dscm, and 125 ng/dscm are equal to about 0.3 to 0.8 ng/dscm TEQ, 0.7 to 1.4 ng/dscm TEQ, and 1.7 to 2.9 ng/dscm TEQ, respectively. The optional reduced testing limits of 15 ng/dscm and 30 ng/dscm total mass are equal to about 0.1 to 0.3 ng/dscm TEQ and 0.3 to 0.8 ng/dscm TEQ, respectively.

B. Significant Issues and Changes to the Proposed Guidelines

The most significant changes to the proposed guidelines are discussed below. Rationales for these changes as well as other changes not discussed below are provided in the promulgation BID (EPA–453/R–95–0136). Issues not discussed below include additional changes to GCP requirements, monitoring requirements, recordkeeping and reporting requirements, and compliance schedules.

1. Designated Facilities

Under the final guidelines, any medical, municipal, industrial manufacturing, or other type of waste combustion plant capable of combusting greater than 35 Mg/day MSW but actually combusting less than 10 Mg/day of MSW is not a designated facility, as long as the plant submits an initial report and keeps certain records. This exemption was not included in the proposed guidelines. This exemption is identical to the exemption in the standards for new sources. Section IV.B.1 provides further discussion of the exemption.

Under the final guidelines, a cofired combustor is defined as a unit combusting a fuel feed stream 30 percent or less MSW, as measured on a calendar quarterly basis. At proposal, determination of status as a cofired combustor was measured on a daily basis. This change is identical to the change made in the standards. Refer to section IV.B.1 for further discussion on the change.

The initial reporting requirement in the proposed guidelines for MWC plants with combustion capacity greater than 25 Mg/day but less than or equal to 35 Mg/day is not included in the final guidelines. Both the proposed and final guidelines exempt plants with capacity less than 35 Mg/day. Also, an exemption for combustion of clean wood or clean wood products is included in the final guidelines. This exemption is identical to the exemption in the standards. Refer to section IV.B.1 for discussion of EPA's rationale for this exemption.

2. Emission Limits for MWC Metals, Acid Gases, Organics, and Nitrogen Oxides, and Ash Fugitive Emissions

For existing MWC's, the MACT floor levels and the emission limits for several pollutants have been revised since proposal. See the proposal preamble (59 FR 48228, September 20, 1994), the promulgation BID (EPA–453/R–95–0136), and docket A–90–45 for additional details on the MACT floor analysis methodology and the selection of MACT.

Since proposal, the EPA revised the MACT floors for existing plants based on new permit information received and an updated inventory of operating MWC plants. This revision resulted in revised MACT floor levels for various pollutants for small and large MWC plants. The revised MACT floor pollutant levels for large plants have resulted in more stringent MACT emission limits for SO_2, HCl, and Pb. In addition, the revised MACT floors and emission limits for NO_X for large plants include emission levels based on combustor type. Revisions to the MACT floor that resulted in revisions to the selected MACT level of control for specific pollutants are discussed below.

While the final emission limits are somewhat different from proposal, the limits can be achieved using the same control technologies that were the basis of the proposed emission limits. The technology bases for large and small plants are summarized in table 3.

a. *MWC Acid Gases.* Based on the new information and test data received after proposal and the revised MACT floor analysis, the EPA revised the MACT limits for SO_2 and HCl for the final guidelines for large plants.

The revised SO_2 MACT floor for large plants is 31 ppmv. The final SO_2 emission limit for large plants, which was set at the MACT floor level of 35 ppmv at proposal, is 31 ppmv because of the change in the MACT floor at promulgation.

The MACT-based SO_2 limit of 80 ppmv for small plants has not changed from proposal; however, the SO_2 MACT floor for small plants is revised to 98 ppmv. Because the revised floor is more stringent than the proposal floor (the floor at proposal was 118 ppmv), the EPA's conclusion that acid gas controls will be needed to achieve the floor remains the same. In addition, the EPA's conclusion that a lower emission rate of 80 ppmv is achievable at minimal cost also remains the same. Therefore, the final SO_2 emission limit for small plants remains at 80 ppmv.

The revised HCl MACT floor for large plants is 31 ppmv. The final HCl emission limit for large plants, which was set at the MACT floor level of 35 ppmv at proposal, is 31 ppmv because of the change in the MACT floor at promulgation.

b. *MWC Metals.* Based on the new information and test data received after proposal and the revised MACT floor analysis, the Pb limit for large plants was revised for the final guidelines. The proposed Pb MACT emission level for large plants was 0.50 mg/dscm; however, the revised Pb MACT floor emission level for large plants is 0.49 mg/dscm. Therefore, the final Pb emission limit for large plants has been revised to 0.49 mg/dscm.

c. *MWC Organics.* The dioxin/furan emission limits for large and small plants were revised since proposal. The MACT floor for dioxins/furans for MWC's at large plants is 126 ng/dscm total mass. As documented in the preambles to these proposed guidelines (59 FR 48228, September 20, 1994) and the promulgated subpart Ca guidelines (56 FR 5514, February 11, 1991), in combination with GCP, SD/ESP systems can achieve dioxin/furan total mass emissions of 60 ng/dscm and SD/FF systems can achieve dioxin/furan total mass emissions of 30 ng/dscm. Therefore, the MACT floor of 126 ng/dscm can be achieved with either SD/ESP or SD/FF systems.

When determining the final MACT standard (which may be more stringent than the MACT floor), section 129(a)(2) requires the Administrator to consider certain factors, including the cost of achieving the emission reduction. In the Administrator's judgment, it would be prohibitively expensive and unreasonable to require existing MWC's with ESP's that can meet a dioxin/furan emission limit of 60 ng/dscm to retrofit an SD/FF in order to achieve an additional 30 ng/dscm reduction in emissions. For example, at a typical 1,400 Mg/day MWC plant already equipped with an SD/ESP, the capital cost to remove the ESP and retrofit a new FF would be about $14 million. This cost would be in addition to paying the remaining debt for a relatively new ESP (about $5 million including interest payments) and would result in a relatively small increase in control device efficiency.

For the final rule, the Administrator considered several regulatory options more stringent than the MACT floor; however, because of this high pollution control device retrofit cost, the Administrator decided to set separate MACT limits for MWC's with ESP-based control systems and MWC's with nonESP-based control systems. For MWC's with ESP-based control systems, the EPA selected a MACT level of 60 ng/dscm total mass, based on the performance of SD/ESP systems. For MWC's using or retrofitting nonESP-based control systems, the EPA selected a MACT level of 30 ng/dscm total mass, based on the performance of SD/FF systems. The number of MWC plants that will comply by using an SD/ESP will be limited (only about 10 percent of the MWC plants). The vast majority of MWC's are expected to use SD/FF systems to comply.

The MACT floor for dioxins/furans at small MWC plants is 1,500 ng/dscm total mass. As with large MWC plants, the final emission guidelines limit for dioxins/furans is more stringent than the MACT floor. The final guideline limit for dioxins/furans at small MWC plants is 125 ng/dscm total mass and is based on DSI/ESP technology.

The final MACT limit for Hg is based on use of activated carbon injection. Activated carbon injection technology used in combination with DSI/ESP, SD/ESP, or SD/FF technology is expected to result in supplemental dioxin/furan control, reducing dioxin/furan emissions from these control systems by more than 50 percent. The final MACT guideline levels for dioxins/furans for existing units at small and large plants do not consider supplemental dioxin/furan control from activated carbon injection because an insufficient amount of emissions data exist to adequately determine the performance level of activated carbon injection retrofitted to existing MWC air pollution control systems. Nonetheless, it is expected that the use of activated carbon injection will result in additional reduction of dioxins/furans to levels below the emission limits in the final guidelines.

As with the standards for new MWC's, the final guidelines include a provision that allows less frequent dioxin/furan testing if a plant is achieving a significantly lower level of dioxin/furan emissions (15 ng/dscm for MWC's at large plants and 30 ng/dscm for MWC's at small plants). This option will encourage optimal performance and minimal emissions. Refer to section IV.B.7 for a description of the alternative testing schedule.

Relative to the proposal, the optional TEQ format of the proposed dioxin/furan emission limits was removed in the final standards, as explained in section IV.B.2.c. Although not part of the dioxin/furan limit, the dioxin/furan total mass limits of 30 ng/dscm, 60 ng/dscm, and 125 ng/dscm are equal to about 0.3 to 0.8 ng/dscm TEQ, 0.7 to 1.4 ng/dscm TEQ, and 1.7 to 2.9 ng/dscm TEQ, respectively.

d. *Nitrogen Oxides.* After considering data submitted by commenters regarding requiring SNCR for MWC units at large plants where some could already achieve the MACT floor level without SNCR, the EPA changed the proposed NO_X emission limit of 180 ppmv for all large plants. The NO_X MACT floor was revised by calculating the MACT floor separately for each subcategory of combustor type, and the MACT limits are being promulgated at levels equivalent to the MACT floors for each combustor type. The final guideline MACT limits are: 200 ppmv for mass burn waterwall combustors; 250 ppmv for refuse-derived fuel combustors; 250 ppmv for mass burn rotary waterwall combustors; 240 ppmv for fluidized bed combustors; no limit for mass burn refractory combustors; and 200 ppmv for other combustors not listed above.

In addition, the EPA has revised the emission guidelines to allow States to include in their State plans options for averaging of emissions from units within a large MWC plant, and for trading emissions between MWC plants. The plant average emission limits for units being included in an emissions averaging plan within a plant are approximately 10 percent less than the MACT limits for each combustor type, as follows: 180 ppmv for mass burn waterwall combustors; 220 ppmv for mass burn rotary waterwall combustors; 230 ppmv for refuse-derived fuel combustors; 220 ppmv for fluidized bed combustors; and 180 ppmv for other combustor types (excluding mass burn rotary refractory combustors). Emissions trading between units at noncontiguous plants must be consistent with the requirements of the Open Market Trading Rule for Ozone Smog Precursors, proposed August 3, 1995 (60 FR 39668), as finally promulgated. Until the Open Market trading rule is finalized, it is not possible to reference the rule in the guidelines text. In the interim, the guideline text indicates NO_X emissions trading must be approved by the Administrator prior to implementation. After the Open Market Trading Rule is finalized, it is preapproved for use under the guidelines.

e. *Fugitive Ash Emissions.* The emission limit for fugitive ash emissions under the final guidelines is visible emissions no more than 5 percent of the time from ash conveying and transfer systems at MWC's. An exemption for maintenance and repair activities has been added. These same changes were made to the standards for new sources. See the discussion of the standards in section IV.B.2.e for an explanation of the reasons for these changes.

3. Good Combustion Practices

The final CO guidelines include an additional category of combustor technology referred to as ''spreader stoker coal/RDF mixed fuel-fired combustors,'' which is assigned the same CO limit and averaging time as the RDF stoker combustor category (200 ppmv, 24-hour averaging time). In the final guidelines, the category of combustors referred to in the proposal as ''coal/RDF mixed fuel-fired combustors'' was revised to ''pulverized coal/RDF mixed fuel-fired combustors,'' and the CO limit and averaging time remains the same as proposed (150 ppmv, 4-hour averaging time). These same changes were made to the standards for new sources. See the discussion of the standards in section IV.B.3 for an explanation of the reasons for these changes.

4. Operator Training and Certification

As discussed in section IV.B.4 for the standards for new sources, the EPA has clarified the provisional certification requirements and revised the schedule for full certification of chief facility operators and shift supervisors to allow sufficient time to schedule exams. As stated in the proposal preamble, a State-approved ASME-equivalent certification program may be substituted for ASME certification.

For large plants, the final guidelines specify that a State plan must require chief facility operators and shift supervisors to obtain ASME provisional certification by 1 year after State plan approval or 6 months after startup, whichever is later. In addition, a State plan must require that, by the same date, these personnel obtain full certification or be scheduled with ASME to take the ASME full certification exam (instead of actually obtaining full certification within 1 year as proposed).

For small plants, the final guidelines specify that a State plan must require chief facility operators and shift supervisors to obtain ASME provisional certification by 18 months after State plan approval or 6 months after startup, whichever is later. In addition, a State plan must require that, by the same date, these personnel obtain full certification or be scheduled with ASME to take the ASME full certification exam (instead of actually obtaining full certification within 1 year as proposed).

5. Air Curtain Incinerators

No changes were made to the proposed guidelines for air curtain incinerators. As discussed in section V.B.1, the final guidelines do not cover combustion of clean wood; therefore, air curtain incinerators combusting only clean wood are not covered by the guidelines.

6. Compliance and Performance Testing

Under the final guidelines, State plans must specify that all plants are required to perform annual performance testing for dioxin/furan emissions. However, a provision for less frequent testing has been added to encourage plants to

optimize performance and achieve emission levels significantly lower than the dioxin/furan emission limits in the final guidelines. State plans may require that, to take advantage of this provision, existing MWC's must meet a dioxin/furan level of 15 ng/dscm (large plants) or 30 ng/dscm (small plants), for 2 consecutive years. Refer to the discussion on the standards for new MWC's under section IV.B.7 for a description of this reduced testing schedule.

7. Reporting and Recordkeeping Requirements and Compliance Schedules

Reporting requirements have been changed from quarterly to annual (semiannual if exceeding the emission limit for any pollutant) to reduce the economic burden on MWC's. Refer to section IV.B.8 for an explanation of the reasons for this change.

The EPA revised the proposed compliance schedule for large and small plants to allow more time for small plants to comply with the guidelines and to clarify the schedule for plants that select to close down operation rather than retrofit to comply with the guidelines. The final compliance schedule is as follows. For large MWC plants, State plans may allow three alternative compliance schedules: (1) Full compliance or closure within 1 year following approval of the State plan; (2) full compliance in 1 to 3 years following issuance of a revised construction or operation permit if a permit modification is required or 1 to 3 years following approval of the State plan if a permit modification is not required, provided the State plan includes measurable and enforceable incremental steps of progress toward compliance; or (3) closure in 1 to 3 years following approval of the State plan, provided the State plan includes a closure agreement. If a State plan allows the second or third scheduling options (i.e., more than 1 year), the State plan submitted to EPA must include post-1990 test data for dioxins/furans for all MWC units at large plants under the schedule. For small MWC plants, State plans must require full compliance or closure in up to 3 years following issuance of a revised construction or operation permit if a permit modification is required, or 3 years following approval of the State plan if a permit modification is not required.

C. Impacts of the Guidelines

The final guidelines can be achieved by designated facilities that utilize the same control technologies that were the basis for the proposed guidelines. The basis for the MACT guidelines selected at both proposal and promulgation is GCP/SD/ESP(or FF)/SNCR and carbon injection for large plants and GCP/DSI/ESP and carbon injection for small plants. Because the technology basis for the final guidelines is the same as at proposal, the impacts analysis presented at proposal has not been revised for the promulgated rule. Table 4 provides a brief summary of the air and cost impacts of the guidelines. The summary in table 4 provides impacts estimates based on two baseline scenarios: A pre-1989 baseline (control level prior to the 1991 subpart Ca guidelines) and a 1991 baseline (control level after the 1991 subpart Ca guidelines.) Refer to the preamble to the proposed guidelines (59 FR 48228) for a detailed summary of these air and control cost impacts, as well as a discussion of the water, solid waste, energy, and economic impacts of the guidelines.

TABLE 4.—IMPACTS OF THE 1991 SUBPART CA AND PROMULGATED SUBPART CB GUIDELINES

Parameter	1991 subpart Ca guidelines [a]	Promulgated 1995 subpart Cb guidelines [a]	Increment of promulgated 1995 subpart Cb guidelines over the 1991 subpart Ca guidelines [b]
Characteristics of Existing MWC's:			
Combustion capacity (10^6 Mg/yr)	35.9	39.0	3.1
Number of MWC plants	158	179	21
Cost (1990 Dollars):			
Capital cost ($\$10^6$)	888	2,100	1,212
Annualized cost ($\$10^6$/yr)	168	445	277
Average cost increase ($/Mg MSW combusted)	6.40	13.60	7.20
Annual Emissions Reduction (Mg/yr):			
SO_2	25,000	43,000	18,000
HCl	36,000	56,000	20,000
PM	1,100	3,100	2,000
Cd	2	5	3
Pb	30	83	53
Hg	11	47	36
NO_X	0	19,000	19,000
Total dioxins/furans (kg/yr)	117	157	40

[a] The impacts are based on a pre-1989 baseline (i.e., a baseline prior to the effective date of the subpart Ca guidelines).
[b] The impacts are calculated by subtracting the impacts of the 1991 subpart Ca guidelines from the impacts of the promulgated 1995 subpart Cb guidelines (based on a pre-1989 baseline).

The national impacts estimates provided in table 4 and discussed in the proposal preamble represent EPA's estimate of the upper limit of impacts that would result from implementation of the guidelines. To the extent that any existing MWC's close rather than comply with the guidelines or switch to other disposal options that may cost less, the national costs will be lower and air emissions will be less.

A number of comments were received on the possible effects on EPA's costing analysis following the recent Supreme Court decision that ''flow control'' is unconstitutional. The EPA considered the effect of flow control on the financing of existing MWC's. In summary, the EPA finds that if MWC's raise tipping fees to cover the increased costs of these regulations, then the lack of ''flow control'' will likely result in a shift of some wastes to other disposal options. The combined impacts of no flow control and increased tipping fees on individual MWC's and municipalities are likely to be very

place-specific depending on the relative tipping fees of MWC's and other disposal options, transportation costs, and institutional factors. If tipping fees are not raised to offset emission control costs, then operators of MWC's will have to finance the costs of the regulations out of current revenues.

The EPA has identified several ways that State and local governments can guarantee a continued source of MSW for the MWC's and provide funds from the general revenue to support the operation of MWC facilities, accomplishing some of the outcomes that flow control can produce, including: (1) Government provision of collection services; (2) contractor provision of collection services under government contract; (3) franchising collection and hauling to designated facilities; (4) subsidizing facilities from the general revenues; and (5) supporting integrated solid waste management programs from the general revenue.

VI. Administrative Requirements

This section addresses the following administrative requirements: Docket, Paperwork Reduction Act, Executive Orders 12866 and 12875, Unfunded Mandates Act, Regulatory Flexibility Act, and Clean Air Act Procedural Requirements.

A. Docket

The docket is an organized and complete file of all the information considered in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review, except for interagency review material. 42 U.S.C. § 7607(d)(7)(A). The docket number for this rulemaking is A–90–45. Docket No. A–89–08 also includes background information for this rulemaking that supported the proposal and promulgation of the subpart Ea standards and subpart Ca guidelines.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1506.5) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740. This ICR document is also available on the EPA's TTN Clean Air Act Amendments electronic bulletin board. See the **SUPPLEMENTARY INFORMATION** section of this preamble for information on accessing EPA's TTN electronic bulletin board.

The information required to be collected by this rule is necessary to identify the regulated entities who are subject to the rule and to ensure their compliance with the rule. The recordkeeping and reporting requirements are mandatory and are being established under authority of Section 114 of the Act. All information submitted as part of a report to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976, amended by 43 FR 39999, September 28, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

The annual reporting and recordkeeping burden presented in this ICR document reflects only part of the burden imposed by this rule. The rest of the burden was presented to and approved by the OMB in an ICR document in 1991 for the subpart Ea NSPS promulgated in February 1991. The ICR document that accompanied the subpart Ea rulemaking summarized the reporting and recordkeeping requirements that MWC owners and operators of large MWC units are required to follow to demonstrate compliance with the 1991 NSPS. As explained elsewhere in this document, the Clean Air Act Amendments were passed by Congress in 1990, and they included section 129 that directs the Administrator to extend the NSPS to small MWC plants, as well as to include emission limits for additional pollutants and siting requirements. This ICR document for subpart Eb presents this additional burden imposed by section 129 of the Act, by summarizing the total annual burden on small plants (i.e., for the reporting and recordkeeping requirements associated with all pollutant emission limits and siting) and the additional annual burden on large MWC plants (i.e., only for requirements associated with Cd, Pb, Hg, and fugitive ash emission limits and siting).

The total annual reporting and recordkeeping burden summarized in this ICR document for this collection averaged over the first 3 years of NSPS application to new MWC's is estimated to be about 69,700 person hours per year. This would be the estimated annual burden for 64 respondents (i.e., MWC units). This is a worst-case burden estimate, as discussed under section IV.C. If fewer MWC units are constructed than have been projected, then the burden will be less than reported here. The average burden per respondent is about 1,100 person hours per year. The rule requires an initial one-time notification from each new MWC regarding all pollutant emission levels and siting and subsequent annual compliance reports regarding all pollutant emission levels. Additionally, if any of the pollutant emission limits are exceeded, respondents would be required to submit semi-annual reports. The rule includes continuous monitoring requirements for SO_2, opacity, CO, CO_2, O_2 and annual stack testing requirements for PM, dioxins/furans, opacity, HCl, Cd, Pb, Hg, and fugitive ash. Efforts were made to reduce the burden on small plants by allowing them to test emissions once every 3 years instead of annually if they demonstrate that they consistently meet the emissions requirements. This burden estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Comments on the ICR document are requested, including the Agency's need for the information presented in this ICR document, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St. S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. N.W.; Washington, DC 20503; marked ''Attention: Desk Officer for EPA''. Include the ICR number in any correspondence. Since the OMB is required to make a decision concerning the ICR between 30 and 60 days after December 19, 1995, a comment to OMB is best assured of having its full effect if OMB receives it by January 18, 1996. The EPA will publish a response to

OMB and public comments on the information collection requirements contained in this proposal in a subsequent Federal Register notice.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the 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 lead to 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 Executive Order 12866, the promulgated standards for new sources will not be a ''significant'' rule because the annual effect on the economy is expected not to exceed $43 million over the cost of the existing subpart Ea standards. However, the EPA considers these promulgated standards to be ''significant'' because of their relationship to the guidelines for MWC's that are also being promulgated today. The final guidelines will cost $450 million per year or less based on a baseline prior to the effective date of the subpart Ea standards. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public docket for this rulemaking.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more in any 1 year. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Under section 205(a), the EPA generally must select the ''least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule'' and is consistent with statutory requirements. The EPA has complied with section 205 of the Unfunded Mandates Act, by promulgating a rule that is the most cost-effective alternative for regulation of these sources that meets the statutory requirements under the Clean Air Act. For Hg and dioxins/furans, the EPA adopted standards that are more stringent than the MACT floor level of control. In the case of dioxins/furans, the EPA concluded that a standard more stringent than the MACT floor can be achieved at little or no cost, and thus represents the most cost-effective control. In the case of Hg, the MACT floor emissions level is equal to current uncontrolled levels. However, the EPA concluded, after considering the requisite factors in section 129(a)(2), that an uncontrolled floor level could not be justified under the Clean Air Act and that a more stringent emissions standard based on the use of carbon injection as an add-on control would be cost-effective. The EPA was unable in this rulemaking to identify any alternatives other than carbon injection for control of Hg emissions. To the extent that section 205(a) of the Unfunded Mandates Reform Act (UMRA) may be read to have the EPA consider a less stringent level of Hg control, the EPA concluded that such an alternative would be ''inconsistent with law'' within the meaning of section 205(b)(2) of the UMRA. Accordingly, the alternative selected for Hg is the most cost-effective one available under these circumstances.

The unfunded mandates statement under section 202 must include: (1) A citation of the statutory authority under which the rule is proposed, (2) an assessment of the costs and benefits of the rule including the effect of the mandate on health, safety and the environment, and the Federal resources available to defray the costs, (3) where feasible, estimates of future compliance costs and disproportionate impacts upon particular geographic or social segments of the nation or industry, (4) where relevant, an estimate of the effect on the national economy, and (5) a description of the EPA's consultation with State, local, and tribal officials.

Since this rule is estimated to impose costs to the private sector and government entities in excess of $100 million, the EPA has prepared the following statement with respect to these impacts.

1. Statutory Authority

The statutory authority for this rulemaking, sections 111 and 129 of the Clean Air Act, is fully discussed in section II of this preamble. The rule establishes emission guidelines for existing MWC's and standards of performance for new MWC's.

Section 129(a)(2) requires the Administrator to promulgate standards for new solid waste incinerator units and emission guidelines for existing units that ''reflect the maximum degree of reduction in emissions of air pollutants listed under section (a)(4) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air-quality health and environmental impacts and energy requirements, determines is achievable for new or existing units in each category. The Administrator may distinguish among classes, types (including mass-burn, refuse-derived fuel, modular and other types of units), and sizes of units within a category in establishing such standards * * *'' 42 U.S.C § 7429(a)(2) (emphasis added). This is commonly referred to as maximum achievable control technology, or MACT. Section 129(a)(2) further defines a minimum level of stringency that can be considered for MACT standards—commonly referred to as the MACT floor—which for new units, is the level of control achieved by the best controlled similar unit, and for existing units, is the level of control achieved by the average of the best performing 12 percent of units in the category. *Id.*

In the final rule, the Administrator determined for new MWC's that MACT for all pollutants was equivalent to the pollutants' MACT floor levels—i.e., the MACT floor levels reflect the maximum achievable, cost-effective reduction in emissions of the air pollutants specified in section 129(a)(4) of the Clean Air Act. The promulgated MACT levels reflect the performance of emission control technology that is in commercial use at the best controlled similar source (i.e., an MWC equipped with an SD/FF system, carbon injection, and SNCR, in combination with GCP's). The September 20, 1994 proposed standards were more stringent than the MACT floor levels because the proposed levels were based on carbon injection technology, which was not in commercial use at the time of proposal. Since proposal, a dozen MWC units equipped with carbon injection technology have initiated operation; thus, the best controlled similar unit in the final rule includes carbon injection (i.e., basis for the MACT floor).

For existing MWC's, some of the emission limits included in the emission guidelines promulgated today are the same as the final MACT floor levels. For several pollutants, however, the Administrator decided, consistent with section 129(a)(2) after considering costs and non-air-quality health and environmental impacts and energy requirements, to set MACT standards more stringent than the MACT floor, since more stringent levels could be achieved at either no additional cost, or minimal costs. The MACT floor levels for acid gases and PM are stringent enough for existing units at both small and large plants that they require an acid gas/PM control system. Since an acid gas/PM control system also controls emissions of all regulated pollutants except Hg and NO_x, establishing emission limits for acid gases and PM effectively establishes emission limits for the other pollutants (except Hg and NO_x). The cost to comply with the selected emission limits relative to the cost of the acid gas/PM control system are minimal.

For example, the same acid gas/PM control system that owners and operators of MWC's need to meet the MACT emissions guideline levels for SO_2 and PM also controls dioxins/furans to levels more stringent than the dioxin/furan MACT floor level. Thus, the Administrator determined that the final dioxin/furan emission guidelines may be achieved at no additional control costs. In the final rule, for MWC's at large plants, the Administrator distinguished between the dioxin/furan emission guidelines for MWC's equipped with ESP-based control systems and MWC's equipped with nonESP-based control systems. In the Administrator's judgment, it would be prohibitively expensive and unreasonable to require existing ESP's that can meet a limit of 60 ng/dscm to retrofit an SD/FF in order to achieve additional reduction in emissions beyond the MACT floor (see the proposal preamble, 50 FR 48228, September 20, 1994, for a more detailed discussion). For the final rule, the Administrator considered several regulatory options more stringent than the MACT floor; however, because of the high cost of pollution control device retrofit, the Administrator determined that MACT for dioxins/furans emitted from MWC's with ESP-based control systems is 60 ng/dscm, and MACT for dioxins/furans emitted from MWC's with SD/FF systems is 30 ng/dscm.

The MACT floor for Hg is 0.36 mg/dscm, and MACT for Hg is more stringent than the MACT floor at a level of 0.080 mg/dscm. To achieve the Hg emission limit in the emission guidelines, carbon injection will be required (this exceeds MACT floor requirements). Because of the toxicity and bioaccumulation potential of Hg, the Administrator considered the small cost of adding Hg control to be cost-effective. The cost of Hg control is about $0.25 to $0.35 per gram Hg removed ($250,000 to $350,000 per Mg), which translates to approximately $0.05 to $0.07 per month for a household served by an MWC.

2. Social Costs and Benefits

This assessment of the cost and benefits to State, local, and tribal governments of the guidelines is based on EPA's ''Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Solid Waste Combustors.'' Measuring the social costs of the guidelines requires identification of the affected entities by ownership (public or private), consideration of regulatory alternatives, calculation of the regulatory compliance costs for each affected entity, and assessment of the market implications of the additional pollution control costs. Calculating the social benefits of the guidelines requires estimating the anticipated reductions in emissions at MWC's due to regulation, identification of the harmful effects of exposure to MWC emissions, and valuing the expected reductions in these damages to society.

a. *Affected Entities.* For 1996, the base year of the analysis, there are 179 MWC's in the population of operational facilities affected by the guidelines. Of this total, 100 are publicly owned and operated (i.e., facilities owned by State or local governments). There are no MWC's currently owned, or expected to be owned in the near future, by tribal governments, so there is no impact on tribal governments. The remaining 79 MWC's are privately owned and operated. The EPA developed 16 model plants to characterize the existing facilities based on the technologies used for combustion and air pollution control at baseline. Table 5 shows the distribution of publicly and privately owned MWC's and the estimated MSW volumes managed by the existing MWC model plants. Of the 100 publicly owned and operated MWC plants, 38 plants are located in communities with a population less than 50,000, 11 plants are located in communities with a population between 50,000 and 100,000, 21 plants are located in communities with a population between 100,000 and 250,000, and 30 plants are located in communities with a population greater than 250,000. A detailed description of the model plants used to characterize operational MWC's is presented in table 3–4 of the ''Economic Impact Analysis of Proposed Emissions Standards and Guidelines for Municipal Waste Combustors'' (EPA–450/3–91–029, 1994).

TABLE 5.—SUMMARY OF TOTAL MSW THROUGHPUT AT PUBLIC AND PRIVATE MWC'S BY MODEL PLANT

Model plant[a]	Ownership				
	Public throughput (Mg/yr)	Public share (%)	Private throughput (Mg/yr)	Private share (%)	Total throughput (Mg/yr)
1	813,244	100.0	0	0.0	813,244
2	1,158,112	81.9	256,034	18.1	1,414,146
3	1,397,867	100.0	0	0.0	1,397,867
4	1,914,896	19.3	7,995,967	80.7	9,910,863
5	3,956,410	61.1	2,523,329	38.9	6,479,739
6	374,566	56.7	286,119	43.3	660,685
7	1,008,603	57.5	746,477	42.5	1,755,080
8	1,547,612	66.5	777,981	33.5	2,325,593
9	400,346	73.3	145,661	26.7	546,007
10	425,552	82.5	90,472	17.5	516,024
11	166,082	42.0	228,966	58.0	395,048
12	284,596	72.6	107,219	27.4	391,815
14	343,596	48.4	366,785	51.6	710,381
15	937,280	29.2	2,277,088	70.8	3,214,368

TABLE 5.—SUMMARY OF TOTAL MSW THROUGHPUT AT PUBLIC AND PRIVATE MWC'S BY MODEL PLANT—Continued

Model plant[a]	Ownership				
	Public throughput (Mg/yr)	Public share (%)	Private throughput (Mg/yr)	Private share (%)	Total throughput (Mg/yr)
16	58,462	6.7	819,320	93.3	877,782
17	745,501	52.9	662,673	47.1	1,408,174
Total:	15,078,823	45.9	17,737,993	54.1	32,816,816

[a] There is no model plant that matches model plant #13 in the Economic Impact Analysis (EPA–450/3–91–029, March 1994).

b. *Regulatory Alternatives Considered.* The two broad categories of regulatory standards available include design standards and emission standards. Design standards specify the type of control equipment polluters must install, whereas emission standards specify the maximum quantity of a given pollutant that any one polluter may release.

Design standards offer the least flexible approach considered in this analysis. Municipal waste combustors would have to install the specified control equipment regardless of the additional emission reductions achieved or the relative cost of alternative means of emission reductions.

Emission standards allow greater flexibility in the methods used to reduce emissions. Municipal waste combustors are free to meet the emission limit in the manner that is least costly to them. Consequently, for a given level of emission reductions, emission standards are generally less costly than design standards. Furthermore, emission standards give MWC's an incentive to develop more effective means of controlling emissions. In addition, the Act requires the Administrator to promulgate emission standards unless such standards are not feasible. See 42 U.S.C. §§ 7411(h) and 7429(a)(1). Since emission standards for MWC's are feasible, the EPA is barred from promulgating design standards for MWC's.

Even though emission standards generally result in a more efficient allocation of costs than design standards, uniform emission standards can be more costly than necessary. Uniform emission standards require the same level of emission control of every discharger. Because marginal control costs differ for plants of different sizes, different technologies, different levels of product recovery (i.e., in the chemical industry), and different levels of baseline control, an effective solution can be reached if standards are carefully tailored to the special characteristics of each discharger. This type of standard is referred to as a differentiated standard.

In formulating its MWC regulatory alternatives, EPA selected candidate regulatory alternatives that contain control limits for MWC's differentiated by MWC size classification. Large facilities are defined as MWC plants with aggregate plant capacities over 225 Mg/day. Small facilities are defined as MWC plants with aggregate plant capacities between 35 and 225 Mg/day. Plants with aggregate plant capacities less than 35 Mg/day are not covered by today's rulemaking. The lower size threshold of 35 Mg/day aggregate plant capacity for controlling MWC emissions under today's rulemaking was selected after reviewing the population distributions of MWI's and MWC's. Most incinerators at medical waste facilities are smaller incinerators that fire segregated medical waste with general hospital discards (MSW), and these incinerators would have the potential to be covered by today's rulemaking. To avoid overlap with the upcoming MWI rulemaking, this rulemaking includes the lower size cutoff of 35 Mg/day plant capacity and MWC plants with aggregate capacities less than or equal to 35 Mg/day will be addressed under a separate rulemaking. With a lower size cutoff of 35 Mg/day, today's promulgated MWC rulemaking will cover over 99 percent of the total U.S. MWC combustion capacity but will exclude 97 percent of the total MWI combustion capacity.

The regulatory alternatives for the two selected size classifications did not specify a particular control technology; rather, they specified emission limits that facilities would be required to meet. Current practice indicates that the emission guideline limits for acid gases, PM, and metals will likely be met with one of six different types of control technologies, depending on the applicable emission limits. Table 6 presents acid gas, PM, and metals control technologies listed in order of increasing efficiency.

TABLE 6.—CONTROL TECHNOLOGIES ASSOCIATED WITH ACID GAS, PARTICULATE MATTER, AND METALS CONTROL

GCP + ESP
GCP + DSI/ESP
GCP + DSI/FF
GCP + SD/ESP
GCP + SD/FF

In designing MWC regulatory alternatives, the EPA considered emission limits consistent with the combinations of the acid gas control technologies listed in table 6. Small plants may be required to meet one control limit and large plants another under a given regulatory alternative. Under the final guidelines, more stringent control requirements are in fact applicable to large plants than to small plants. This was done in an attempt to equalize the cost impact on small and large plants. Under the final guidelines the unit cost for air pollution control retrofit for large plants would be about $16 per Mg of waste combusted. For similar small plants the retrofit costs would be about $17 per Mg of waste combusted. Table 7 shows the control technologies evaluated for the guidelines regulatory alternatives under two compliance scenarios for acid gas, PM, and metals control. The control technology bases identified in this table are not intended to imply a design standard. Rather, the technology bases are identified only for the purpose of estimating costs and emission reductions.

TABLE 7.—EMISSION GUIDELINES FOR EXISTING MWC'S: CONTROL TECHNOLOGY BASES USED TO ESTIMATE THE IMPACTS OF THE REGULATORY ALTERNATIVES [a b]

Regulatory alternative, and baseline APCD	Size Classification (Mg MSW/day)	
	Small (35 to 225)	Large (over 225)
Reg. Alt. I:		
No control	GCP+ESP	GCP+SD/FF+CI+SNCR
ESP (low)	GCP+ESP	GCP+SD/ESP(m)+CI+SNCR
SD/ESP	GCP+SD/ESP	GCP+SD/ESP(m)+CI+SNCR
SD/FF	GCP+SD/FF	GCP+SD/FF+CI+SNCR
Reg. Alt. II–A:		
No control	GCP+DSI/FF+CI	GCP+SD/FF+CI+SNCR
ESP (low)	GCP+DSI/ESP+CI	GCP+SD/ESP(m)+CI+SNCR
SD/ESP	GCP+SD/ESP+CI	GCP+SD/ESP(m)+CI+SNCR
SD/FF	GCP+SD/FF+CI	GCP+SD/FF+CI+SNCR
Reg. Alt. II–B:		
No control	GCP+DSI/FF+CI	GCP+SD/FF+CI+SNCR
ESP (low)	GCP+DSI/ESP+CI	GCP+SD/FF+CI+SNCR
SD/ESP	GCP+SD/ESP+CI	GCP+SD/ESP(m)+CI+SNCR
SD/FF	GCP+SD/FF+CI	GCP+SD/FF+CI+SNCR
Reg. Alt. III;		
No control	GCP+SD/FF+CI	GCP+SD/FF+CI+SNCR
ESP (low)	GCP+SD/FF+CI	GCP+SD/FF+CI+SNCR
SD/ESP	GCP+SD/FF+CI	GCP+SD/FF+CI+SNCR
SD/FF	GCP+SD/FF+CI	GCP+SD/FF+CI+SNCR
MACT Floor:		
No control	GCP+DSI/FF	GCP+SD/FF+SNCR
ESP (low)	GCP+DSI/ESP	GCP+SD/ESP(M)+SNCR
SD/ESP	GCP+SD/ESP	GCP+SD/ESP(m)+SNCR
SD/FF	GCP+SD/FF	GCP+SD/FF+SNCR

Source: This table is an extract of table 4–2 of the document entitled ''Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors,'' EPA–450/3–91–029, March 1994. See **SUPPLEMENTARY INFORMATION** for information on obtaining this document.

[a] The MWC regulation does not mandate a specific type of control equipment. The MWC owner/operator may use any control equipment that meets the emission standards. The control technologies are the projected compliance strategies used as the basis for computing costs. If the MWC has equipment that is meeting or exceeding the control requirements, no additional costs are incurred.

[b] CI=carbon injection.

TABLE 7A.—EMISSION GUIDELINES FOR EXISTING MWC'S: EMISSION REDUCTIONS AND ANNUALIZED COSTS OF THE REGULATORY ALTERNATIVES [a]

Pollutant category (Mg/yr)/annualized cost ($1990 10^6/yr)	Regulatory alternative				
	Reg. alt. I	Reg. alt. II–A	Reg. alt. II–B	Reg. alt. III	Mact floor
SO_2	41,200	43,300	43,300	45,000	43,300
HCl	51,600	56,300	56,300	57,300	56,300
PM	3,070	3,070	3,070	3,240	3,070
Pb	74.8	74.8	91.1	102	74.8
Cd	5.24	5.24	5.56	6.02	5.24
Hg	44.7	47.5	47.5	47.5	0
NO_X	8,680	8,680	8,690	8,690	8,680
CO	19,300	19,300	19,300	19,300	19,300
Dioxins/furans (total mass)	0.154	0.156	0.157	0.158	[b] 0.153

TABLE 7A.—EMISSION GUIDELINES FOR EXISTING MWC'S: EMISSION REDUCTIONS AND ANNUALIZED COSTS OF THE REGULATORY ALTERNATIVES [a]—Continued

Pollutant category (Mg/yr)/annualized cost ($1990 10^6/yr)	Regulatory alternative				
	Reg. alt. I	Reg. alt. II–A	Reg. alt. II–B	Reg. alt. III	Mact floor
Annualized cost ($1990 10^6/yr)	412	443	448	487	425

Source: This table is an extract of tables 5–14 and 5–21 of the document entitled ''Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors,'' EPA–450/3–91–029, March 1994. See **SUPPLEMENTARY INFORMATION** for information on obtaining this document.

[a] The MWC regulation does not mandate a specific type of control equipment. The MWC owner/operator may use any control equipment that meets the emission standards. The control technologies are the projected compliance strategies used as the basis for computing costs. If the MWC has equipment that is meeting or exceeding the control requirements, no additional costs are incurred.

[b] The MACT floor is regulatory alternative II–A without carbon injection for mercury and dioxin/furan control. The majority of the dioxin/furan emission control is achieved by acid gas controls included in alternative II–A and the floor. It is assumed that adding mercury control (carbon injection) to acid gas control reduces dioxin/furan emissions by at least an additional 50 percent. The dioxin/furan emission reduction estimate for the MACT floor is not provided in the ''Economic Impacts Analysis.''

The regulatory alternatives represent alternative levels of control considered by the EPA, whereas the compliance scenarios represent potential alternative responses by the MWC owners and operators to the emission requirements. Generally speaking, the EPA assumed that MWC owners and operators will choose the minimum-cost control technology that will meet the emission requirements. However, where there is uncertainty regarding the actual emission limits that a particular control technology will achieve in practice, owners may choose a more conservative (and potentially more costly) compliance strategy to reduce the risk of noncompliance. A conservative investment decision is particularly likely when the investment decision affects the facility's ability to remain in operation (e.g., noncompliance results in plant shutdown), is a long-term decision, or involves a significant capital outlay. Consequently, we evaluate two compliance scenarios for meeting the acid gas, PM, and metals control requirements for existing plants subject to guidelines.

A more detailed discussion of the regulatory alternatives EPA considered may be found in the ''Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors,'' EPA–450/3–91–029, March 1994 (see **SUPPLEMENTARY INFORMATION** for information on obtaining this document). Control alternatives were also developed for NO_X control and Hg control. Discussion of these alternatives can be found in the following memos that may be obtained from the EPA's Air Docket, as specified in the **SUPPLEMENTARY INFORMATION** section of this preamble: (1) ''Update Report on Mercury Control Technologies for Municipal Waste Combustors'' prepared by K. Nebel and D. White, Radian Corporation, for W. Stevenson, U.S. Environmental Protection Agency, July 1993; (2) ''NO_X Control on Existing MWC's,'' prepared by E. Soderberg et al., Radian Corporation, for W. Stevenson, U.S. Environmental Protection Agency, August 23, 1991; (3) ''Wet Scrubbing Systems Performance and Cost,'' prepared by K. Nebel, et al., Radian Corporation, for W. Stevenson, U.S. Environmental Protection Agency, June 22, 1994; and (4) ''A Summary of Mercury Emissions and Applicable Control Technologies for Municipal Waste Combustors,'' prepared by K. Nebel and D. White, Radian Corporation, for W. Stevenson, U.S. Environmental Protection Agency, September 1991.

c. *Social Costs.* The regulatory compliance costs of reducing air emissions from MWC's include the total and annualized capital costs; operating and maintenance costs; monitoring, inspection, recordkeeping, and reporting costs; and total annual costs. The annualized capital cost is calculated using a 4-percent discount rate for publicly-owned MWC's and an 8-percent discount rate for privately-owned MWC's. The total annual cost is calculated as the sum of the annualized capital cost; operating and maintenance costs; and the monitoring, inspection, recordkeeping, and reporting costs. There are no Federal funds available to assist State and local governments in meeting these costs.

Table 8 provides the estimated compliance costs for the final regulations and their distribution across public and private MWC's. As shown, the national annual compliance costs for existing MWC's total $405.5 million, with publicly-owned facilities incurring $229.9 million. This total both represents 56.7 percent of the estimated national compliance costs and forms the basis for allocating benefits to publicly-owned MWC's. (The analysis has assumed that benefits are linear with emission reductions). The level of compliance costs depends not only on the absolute number of facilities, but also on the baseline level of pollution control. It is assumed that higher compliance costs are associated with higher emission reductions and are, thus, appropriate for allocating the benefits associated with the reduced emissions.

TABLE 8.—SUMMARY OF REGULATORY COMPLIANCE COSTS FOR EXISTING MWC'S BY OWNERSHIP ($1990, 10^3)

Ownership category	Annual capital costs	Annual operating and maintenance costs	Annual MIRR costs [a]	Total annual costs
Public	67,625	154,163	8,092	229,881
Private	83,936	87,161	4,575	175,672
Total	151,561	241,325	12,667	405,553

[a] MIRR=Monitoring, inspection, reporting, and recordkeeping.

The analysis assumes that the entire increase in costs of combustion services for both public and private entities will be passed through to MWC customers in the form of increases in the tipping fee charged by MWC's. As shown in table 9, the estimated increases in the average tipping fee for publicly-owned MWC's are significant and range from 36 to 59 percent. The range for privately-owned MWC's is 41 to 65 percent.

TABLE 9.—AVERAGE TIPPING FEE INCREASES FOR EXISTING MWC'S BY OWNERSHIP

Ownership	Small MWC plants (35 to 225 Mg/day MSW) (percent change)	Large MWC plants [a] (over 225 Mg/day MSW) (percent change)
Public	59	36
Private	65	41

[a] Fee increases are computed using the average cost per megagram of MSW reported in tables 5–10 and 5–11 of the EPA's ''Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Solid Waste Combustors,'' (EPA–450/3–91–029) and an average tipping fee of $57/Mg of MSW. The average tipping fee is based on the 1993 average tipping fee for MWC's reported in *Waste Age* (Berenyi & Gould, 1993) converted to 1990 dollars.

Section 7.3.1 of the EPA's economic impact analysis (EPA–450/3–91–029) provides a distributional analysis of the impacts on governmental entities with respect to their ability to finance the regulatory compliance capital through revenue bonds. A community's ability to finance the regulatory compliance capital through revenue bonds is estimated by comparing the estimated average annual cost per household to the average annual household income for the community. If the cost per household exceeds one percent of average annual household income, then the community is assumed to have potential difficulty issuing revenue bonds. Of the estimated 100 governmental entities subject to the guidelines, no governmental entities with a population above 50,000 are projected to have difficulty issuing revenue bonds as a result of the regulation on existing sources. Overall, 3 of the 100 governmental entities (all 3 of which have population below 50,000) are projected to have difficulty issuing such bonds.

Without market adjustments, the social costs of the guidelines should be equivalent to the national compliance costs shown in table 8. However, in this analysis, the social costs differ, both because the total capital costs for both public and private MWC's were discounted at the social rate equal to 7 percent, and because of tax differences. Table 10 shows the estimated social cost of the regulations and the distribution across public and private MWC's. The estimated annual social cost of the guidelines is $443 million of which 56.7 percent, or $251.1 million, is attributed to publicly-owned MWC's. This estimate of social cost is greater than the national compliance costs because the total capital costs for publicly-owned MWC's is discounted at the social rate of 7 percent, as opposed to the 4 percent rate used to compute the national compliance costs.

TABLE 10.—SUMMARY OF ESTIMATED ANNUAL SOCIAL COST BY OWNERSHIP ($1990)

Ownership category	Total social costs ($10^3 per year)	Share (percent)
Public	251,107	56.7
Private	191,893	43.3
Total	443,000	100.0

Table 10A provides typical costs of air pollution control retrofits for existing MWC's. The costs shown in table 10A are for 17 model existing plants.

TABLE 10A.—Typical Cost of Air Pollution Control Retrofit for Existing MWC'S

Plant size (Mg/day)	MWC type	Costs ($1990×10^6)		Model plant number
		Capital	Annual	
45	MOD/SA	2	0.5	10
136	MOD/SA	3	10.5	9
181	MOD/EA	3	0.4	11
181	MB/WW	5	0.9	6
454	MB/RWW	13	1.6	12
980	MB/WW	25	3.2	5
2,041	MB/WW	46	5.0	4
181	MB/WW	[a]5	0.8	14
454	MB/RWW	[a]13	1.6	17
544	RDF	28	2.3	8
1,814	RDF	64	4.8	7
1,814	RDF	[a]33	4.4	15
544	RDF	[a]17	2.0	16
218	MB/REF	8	0.9	2
680	MB/REF	39	2.3	1
816	MB/REF	35	4.1	3

Note: See table 5–1 of the ''Economic Impacts Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors'' (EPA–450/3–91–029) for more information.

[a] These model plants are assumed to be relatively new units that originally incorporated good combustion in their design and, therefore, do not need to retrofit good combustion to comply with the guidelines.

d. *Social Benefits.* Society will benefit from the proposed guidelines through the reduction of emissions of dioxins/furans, Cd, Pb, Hg, PM, HCl, SO_2, and NO_X. These pollutant categories are emitted by various types of sources, including MWC's. The level of pollutant emissions and health effects vary among types of sources, and total national emissions of these pollutants has been shown to have the health effects listed in table 11.

TABLE 11.—HEALTH AND OTHER EFFECTS

Pollutant category	Health and other effects
Organics	• Mortality, morbidity. • Carcinogenicity.
Metals	• Retardation and brain damage. • Hypertension. • Central nervous system injury. • Renal dysfunction.
Acid gases	• Materials damage. • Dental erosion. • Acid rain. • Mortality, morbidity. • Respiratory tract problems, permanent harm to lung. • Soiling and materials damage. • Reduced agricultural yield. • Ozone formation.
Particulate matter.	• Mortality, morbidity. • Eye and throat irritation, bronchitis, lung damage. • Impaired visibility. • Soiling and materials damage.

Because of limitations on data on the concentration-response function and valuation of these functions, benefits have not been quantified for all pollutants. Benefits have been quantified only for emissions of SO_2 and PM. Benefits have not been quantified for dioxins/furans, Cd, Pb, Hg, HCl or NO_X emission control. Benefits to the public and environment will result from the control of these hazardous air pollutants (HAP's) and criteria pollutants. For the HAP's, dioxin/furan compounds have been associated with chloracne, reproductive/developmental effects, immune system toxicity, and cancer (probable human carcinogen). Particulate-associated metals including Pb and Cd are toxic and can cause effects such as mucous membrane irritation, gastrointestinal effects, nervous system disorders, skin irritation, and reproductive and developmental disorders. In regard to volatile metals, Hg in all forms may be characterized as quite toxic with each form exhibiting different health effects, including gastrointestinal and respiratory tract disturbances, central nervous system effects, and developmental effects. Additionally, HCl is corrosive and effects the eyes, skin, and mucus membranes, and dermatitis has been reported from long-term exposure.

Table 12 provides the estimated social benefits associated with reductions in PM and SO_2 emissions from MWC's and their distribution across public and private MWC's. The estimated social benefit of reduced PM and SO_2 emissions is $106 million with $60.3 million being attributed to reductions at publicly-owned MWC facilities. These benefits would be experienced annually by the residents of these municipalities. Proper allocation of these benefits would be based on the expected emission reductions at public and private MWC's. However, due to lack of data at the model plant level, these benefits are allocated across public and private MWC's in the same proportion as the estimated national compliance costs (i.e., 56.7 percent for public and 43.3 percent for private).

TABLE 12.—SOCIAL BENEFIT ESTIMATES FOR SO_2 and PM Emission Reductions by Ownership ($1990)

Ownership category	Social benefits ($10[3] per year) [a b]		
	PM	SO_2	Total
Public	30,779	29,475	60,254
Private ...	23,521	22,525	46,046

TABLE 12.—SOCIAL BENEFIT ESTIMATES FOR SO_2 and PM Emission Reductions by Ownership ($1990)—Continued

Ownership category	Social benefits ($10[3] per year) [a b]		
	PM	SO_2	Total
Total	54,300	52,000	106,300

[a] Benefit estimates are $1,200 per Mg of SO_2 reduced and $17,700 per Mg of PM reduced. (This estimate is derived valuing all mortalities at $4.4 million per life saved. This approach does not consider the length of the changes in longevity resulting from PM exposure). Social benefits attributable to public and private MWC's are proportionate to their share of the total annual costs.

[b] Does not include benefit credits for dioxins/furans, Cd, and Hg control.

Table 13 presents a comparison of the estimated social costs and benefits of the guidelines. Unfortunately, because benefit estimates are not computed for all pollutants, the social benefit provided in table 13 is a partial estimate. Because of this fact, the net benefits (i.e., benefits minus costs) shown in table 13 cannot be used to reach conclusions regarding the total net benefits of the rule for existing sources.

TABLE 13.—SOCIAL COSTS AND PARTIAL SOCIAL BENEFITS FROM REDUCING EMISSIONS AT MWC'S BY OWNERSHIP ($1990, 10^3 PER YEAR)

Ownership category	Total social costs	Partial social benefits
Public	251,107	60,254
Private	191,893	46,046
Total	443,000	106,300

3. Effects on the National Economy

The Unfunded Mandates Act requires that the EPA estimate ''the effect'' of this rule

''on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of the U.S. goods and services, if and to the extent that the EPA in its sole discretion determines that

accurate estimates are reasonably feasible and that such effect is relevant and material.''

As stated in the Unfunded Mandates Act, such macroeconomic effects tend to be measurable, in nationwide econometric models, only if the economic impact of the regulation reaches 0.25 to 0.5 percent of gross domestic product (in the range of $1.5 billion to $3 billion). A regulation with a smaller aggregate effect is highly unlikely to have any measurable impact in macroeconomic terms unless it is highly focused on a particular geographic region or economic sector. For this reason, no estimate of this rule's effect on the national economy has been conducted.

4. Consultation with Government Officials

The Unfunded Mandates Act requires that the EPA describe the extent of the EPA's consultation with affected State, local, and tribal officials, summarize the officials' comments or concerns, and summarize the EPA's response to those comments or concerns. In addition, section 203 of the Clean Air Act requires that the EPA develop a plan for informing and advising small governments that may be significantly or uniquely impacted by a proposal. Throughout the development of these rules (pre-proposal through pre-promulgation phases), the EPA consulted with representatives of affected State and local governments, including the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, the Solid Waste Association of North America, and the Municipal Waste Management Association, to inform them of the proposed rule and determine their concerns. (The EPA also consulted with representatives from other entities affected by the proposed rule, such as the Integrated Waste Services Association, the Sierra Club, and the Natural Resources Defense Council.)

As part of EPA's consultation efforts in this rulemaking, the EPA mailed a copy of the regulatory summary (FACT SHEET) for the September 20, 1994 proposed MWC standards and guidelines to every elected official in an area with either an operating MWC, an MWC under construction, or a planned MWC. (The EPA also mailed copies of the summary to all owners and operators of these MWC's.) This mailout exceeded 400 informational packages. Since approximately half of the MWC's are owned and/or operated by municipalities, with this effort, the EPA was able to ensure that every affected State and local government was made aware of the proposed rule and had the necessary information to provide comment.

In addition, over a 3-month period, EPA staff consulted with State and local government representatives to discuss their comments regarding the final draft package. Letters were received during this time period from the U.S. Conference Mayors and the Integrated Waste Services Association (see docket A–90–45, items IV–D–44 and IV-D–85, respectively), which raised various concerns; however, in subsequent meetings, the EPA learned that State and local officials, as well as industry representatives, were mainly concerned with the following sections of the final draft emission guidelines: (1) The achievability for some MWC's of the final draft NO_X emission limit included in the emission guidelines; (2) the fact that because the EPA had not subcategorized by combustor type for purposes of determining the NO_X emission limit as it had when it determined the CO emission limit, some MWC's would be forced to install retrofit technology in order to meet the more stringent NO_X limit, (3) the achievability for MWC's with large new ESP's of the final draft dioxin/furan emission limit included in the emission guidelines; and (4) the inconsistency between some of the definitions in the draft rules with the definitions given in 40 CFR part 60, subpart Ea, which establishes emission limits for MWC's that commence construction after December 20, 1989, but on or before September 20, 1994.

As a result of these consultations, the EPA decided to modify the final regulatory package to address these concerns. The final emission guidelines promulgated today:

(1) Subcategorize MWC's by combustor type for the purpose of establishing different NO_x emission guidelines; and

(2) Establish separate dioxin/furan emission guidelines for MWC's with ESP-based systems and MWC's with nonESP-based systems. In addition, in order to address the fourth concern identified by State and local governments, the EPA is publishing today under a separate Federal Register notice, a direct final rule that modifies the applicability and definitions sections of 40 CFR part 60, subpart Ea to improve clarity and make them consistent with those provided in the standards and emission guidelines promulgated in this notice.

Documentation of the EPA's consideration of comments on the proposed standards and guidelines is provided in the BID's for the proposed and final standards and guidelines. Refer to the **SUPPLEMENTARY INFORMATION** and **ADDRESSES** sections of this preamble for information on how to acquire copies of these documents.

As discussed in section IV.F, the number of affected small entities is not expected to be substantial. The full analysis of potential regulatory impacts on households, small governments, and small businesses is included in the economic impact analysis in the docket and listed under **SUPPLEMENTARY INFORMATION.** Because the number of affected small entities is expected to be insubstantial (i.e., the EPA considers that the regulation is likely to affect less than 20 percent of small entities with MWC's—see section IV.F for a more detailed explanation), no plan to inform and advise small governments is required under section 203 of the Unfunded Mandates Act. However, as described above, the EPA has communicated and consulted with small governments and businesses that will be affected by the standards and guidelines, keeping them informed about the content of this promulgation. Refer to section III.C. for a description of these communications.

E. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued Executive Order 12875 on October 26, 1993, entitled ''Enhancing the Intergovernmental Partnership.'' Under Executive Order 12875, the EPA is required to consult with representatives of affected State, local, and tribal governments, and keep these affected parties informed about the content and effect of the promulgated standards and emission guidelines. Section III.A of this notice provides a brief summary of the need for the final standards and guidelines. Sections IV.C and V.C provide brief summaries of the cost of the final guidelines and standards. Section III.C provides a brief account of the actions that the EPA has taken to communicate and consult with the affected parties. The discussion provided below provides a brief summary of the content of the final standards and guidelines. For more information on the content of the final standards and guidelines, refer to sections IV.A and V.A of this notice.

The promulgated standards and guidelines establish emission limitations for new and existing MWC units located at MWC plants with plant capacities to combust greater than 35 Mg/day of MSW. The standards and guidelines do not specify which type of air pollution control equipment must be

used at MWC's to meet the promulgated emission limitations. The EPA expects, however, that, as a result of the promulgated standards and guidelines, most new and existing MWC's at large MWC plants (plants with greater than 225 Mg/day capacity) will use SD/FF systems with activated carbon injection (new plants) or retrofit SD/FF or SD/ESP systems with activated carbon injection (existing plants) for dioxins/furans, metals, and acid gas control, and will use SNCR for NO_X control. New MWC's at small MWC plants (plants with 35 to 225 Mg/day capacity) are expected to install SD/FF systems with activated carbon injection, and existing MWC's at small plants are expected to install DSI/ESP systems with activated carbon injection. Selective noncatalytic reduction technology would not be necessary for either new or existing MWC's at small MWC plants.

F. Regulatory Flexibility Act

Section 605 of the RFA (5 U.S.C. 601 *et seq.*) requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. The major purpose of the RFA is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated without compromising the objectives of, in this case, the Clean Air Act.

If a regulation is likely to have a significant economic impact on a substantial number of small entities, the EPA may give special consideration to those small entities when analyzing regulatory alternatives and drafting the regulation. In the case at hand, the EPA considers that a regulation that is likely to affect 20 percent or more of small entities with MWC's is a regulation that will affect a substantial number of small entities.

Definitions of small entities are flexible. For analysis of the regulations being proposed today, the EPA considers a small business in this industry to be one with gross annual revenue less than $6 million, and a small government to be one that serves a population less than 50,000. (A typical city of 50,000 generates about 90 Mg/day of MSW.) Most small governments dispose of their MSW by landfilling and, therefore, will not be affected by regulation of MWC emissions. In regard to small organizations such as independent not-for-profit enterprises, the EPA finds that they have no more than a very minor involvement with MWC's, and for that reason the EPA has not found it necessary to study potential direct impacts on small organizations.

The final regulations do not apply to MWC plants with capacity less than 35 Mg/day. The EPA estimates that few if any small-entity MWC's would be affected by today's promulgated standards and guidelines.

Thus, the number of affected small entities is not expected to be substantial, and a regulatory flexibility analysis is not required. Nevertheless, the EPA has conducted an extensive analysis of potential regulatory impacts on households, small governments, and small businesses. The analysis is summarized in the preambles to the proposed standards (59 FR 48198) and guidelines (59 FR 48228.) The full analysis is included in the economic impact assessment in the docket and is listed at the beginning of today's notice under **SUPPLEMENTARY INFORMATION**.

On December 20, 1989, the EPA proposed standards and guidelines for MWC's that applied to all sizes of MWC's. The 1989 proposal had no lower size cutoff. Small businesses, small governments, and groups representing small-entity interests commented extensively on the need to lighten the potential regulatory burden on small entities. Most commenters suggested a small size cutoff considerably smaller than the one now being proposed. The most frequently suggested levels were 5 to 11 Mg/day, 18 Mg/day, 23 Mg/day, and 45 Mg/day. The EPA has used these suggestions and the information submitted by these commenters, as well as information from other sources, to fulfill the intent of the RFA. The EPA has incorporated into the standards and guidelines being promulgated today several features that will mitigate and, in most cases eliminate, any potential, adverse economic impacts on small entities. These features are as follows:

(1) The standards and guidelines will apply only to MWC's with a plant capacity of greater than 35 Mg/day. This cutoff eliminates from the purview of the regulation and guidelines the overwhelming majority of projected new and existing very small MWC's;

(2) The standards and guidelines are ''tiered'' so that the stringency (and therefore potential economic burden) of the emission standards and guidelines increases as the size of the MWC plant increases. Plants with capacities less than or equal to 35 Mg/day are not covered under the final standards and guidelines. Plants with capacities of 35 to 225 Mg/day are not required to control NO_x. Only plants with capacities larger than 225 Mg/day—plants not often associated with small entities—are subject to a full complement of rigorous standards;

(3) As opposed to design, equipment, work practice, or operational standards, the standards for new sources and the guidelines for existing sources consist predominantly of emission limits. Emission limits give MWC owners and operators of new and existing MWC's the freedom to select the most economical means of compliance.

(4) The guidelines are not the usual type of regulation governed by the RFA. The guidelines will not apply directly to any MWC's, but will be used as a guide by individual State air pollution control agencies in developing site-specific regulations for MWC's. States are allowed some flexibility in implementing the guidelines.

Pursuant to the provisions of 5 U.S.C. 605(b), the EPA certifies that the standards and guidelines will not have a significant economic impact on a substantial number of small entities because the number of small entities affected is not substantial.

G. Clean Air Act Procedural Requirements

The following procedural requirements of the Clean Air Act are addressed: Administrative listing, periodic review, external participation, and economic impact assessment.

1. Administrator Listing—Sections 111 and 129 of the Clean Air Act

As prescribed by section 111 of the Clean Air Act, establishment of standards of performance and emission guidelines for MWC's is based on the Administrator's determination (52 FR 25399, July 7, 1987) that these sources contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Additionally, section 129 of the 1990 Amendments to the Clean Air Act directs the Administrator to promulgate revised standards for new MWC's and guidelines for existing MWC's.

2. Periodic Review—Sections 111 and 129 of the Clean Air Act

Sections 111 and 129 of the Clean Air Act require that the standards and guidelines be reviewed not later than 5 years following the initial promulgation. At that time and at 5-year intervals thereafter, the Administrator shall review the standards and guidelines and revise them if necessary. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

3. External Participation

In accordance with section 117 of the Clean Air Act, publication of this promulgation was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

4. Economic Impact Assessment

Section 317A of the Clean Air Act requires the EPA to prepare an economic impact assessment for any standards or guidelines promulgated under section 111(b) of the Clean Air Act. An economic impact assessment was prepared for the promulgated standards and guidelines. In the manner described in the sections of this preamble regarding the impacts of and rationale for the promulgated standards and guidelines, the EPA considered all aspects of the economic impact assessment in promulgating the standards and guidelines. The economic impact assessment is included in the list of key technical documents at the beginning of today's notice under **SUPPLEMENTARY INFORMATION.**

List of Subjects in 40 CFR Part 60

Environmental Protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: October 31, 1995.

Carol M. Browner,

Administrator.

Part 60, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

2. Section 60.17 of subpart A of part 60 is amended by revising paragraphs (h)(1), (h)(2), and (h)(3) to read as follows:

§ 60.17 Incorporation by reference.

* * * * *

(h) * * *

(1) ASME QRO–1–1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators, IBR approved for §§ 60.56a, 60.54b(a) and 60.54b(b).

(2) ASME PTC 4.1–1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda), IBR approved for §§ 60.46b, 60.58a(h)(6)(ii), and 60.58b(i)(6)(ii).

(3) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971), IBR approved for §§ 60.58a(h)(6)(ii) and 60.58b(i)(6)(ii).

* * * * *

3. Section 60.23 of subpart B of part 60 is amended by revising paragraph (a)(1) to read as follows:

§ 60.23 Adoption and submittal of State plans; public hearings.

(a) * * *

(1) Unless otherwise specified in the applicable subpart, within 9 months after notice of the availability of a final guideline document is published under § 60.22(a), each State shall adopt and submit to the Administrator, in accordance with § 60.4 of subpart A of this part, a plan for the control of the designated pollutant to which the guideline document applies.

* * * * *

4. Section 60.24 of subpart B of part 60 is amended by revising paragraph (f) introductory text to read as follows:

§ 60.24 Emission standards and compliance schedules.

* * * * *

(f) Unless otherwise specified in the applicable subpart on a case-by-case basis for particular designated facilities or classes of facilities, States may provide for the application of less stringent emissions standards or longer compliance schedules than those otherwise required by paragraph (c) of this section, provided that the State demonstrates with respect to each such facility (or class of facilities):

* * * * *

5. Subpart C of part 60 is amended by revising § 60.30 to read as follows:

§ 60.30 Scope.

The following subparts contain emission guidelines and compliance times for the control of certain designated pollutants in accordance with section 111(d) and section 129 of the Clean Air Act and subpart B of this part.

(a) Subpart Ca—[Removed and Reserved]

(b) Subpart Cb—Municipal Waste Combustors

(c) Subpart Cc—[Reserved]

(d) Subpart Cd—Sulfuric Acid Production Plants

Subpart Ca—[Removed and Reserved]

5a. Part 60 is amended by removing and reserving subpart Ca.

Subpart Cb—[Redesignated as Subpart Cd]

Subpart Cc—[Reserved]

6. Part 60 is amended by redesignating subpart Cb as Cd, reserving subpart Cc, and revising the new subpart Cd to read as follows:

Subpart Cd—Emissions Guidelines and Compliance Times for Sulfuric Acid Production Units

Sec.
60.30d Designated facilities.
60.31d Emission guidelines.
60.32d Compliance times.

Subpart Cd—Emission Guidelines and Compliance Times for Sulfuric Acid Production Units

§ 60.30d Designated facilities.

Sulfuric acid production units. The designated facility to which §§ 60.31d and 60.32d apply is each existing ''sulfuric acid production unit'' as defined in § 60.81(a) of subpart H of this part.

§ 60.31d Emissions guidelines.

Sulfuric acid production units. The emission guideline for designated facilities is 0.25 grams sulfuric acid mist (as measured by EPA Reference Method 8 of appendix A of this part) per kilogram (0.5 pounds per ton) of sulfuric acid produced, the production being expressed as 100 percent sulfuric acid.

§ 60.32d Compliance times.

Sulfuric acid production units. Planning, awarding of contracts, and installation of equipment capable of attaining the level of the emission guideline established under § 60.31d can be accomplished within 17 months after the effective date of a State emission standard for sulfuric acid mist.

7. Part 60 is further amended by adding a new subpart Cb to read as follows:

Subpart Cb—Emissions Guidelines and Compliance Times for Municipal Waste Combustors That Are Constructed on or Before December 19, 1995

Sec.
60.30b Scope.
60.31b Definitions.
60.32b Designated facilities.
60.33b Emission guidelines for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.
60.34b Emission guidelines for municipal waste combustor operating practices.
60.35b Emission guidelines for municipal waste combustor operator training and certification.
60.36b Emission guidelines for municipal waste combustor fugitive ash emissions.
60.37b Emission guidelines for air curtain incinerators.

60.38b Compliance and performance testing.
60.39b Reporting and recordkeeping guidelines, and compliance schedules.

Subpart Cb—Emissions Guidelines and Compliance Schedules for Municipal Waste Combustors

§ 60.30b Scope.

This subpart contains emission guidelines and compliance schedules for the control of certain designated pollutants from certain municipal waste combustors in accordance with section 111(d) and section 129 of the Clean Air Act and subpart B of this part. The provisions in these emission guidelines supersede the provisions of § 60.24(f) of subpart B of this part.

§ 60.31b Definitions.

Terms used but not defined in this subpart have the meaning given them in the Clean Air Act and subparts A, B, and Eb of this part.

Municipal waste combustor plant means one or more municipal waste combustor units at the same location for which construction was commenced on or before September 20, 1994.

Municipal waste combustor plant capacity means the aggregate municipal waste combustor unit capacity of all municipal waste combustor units at a municipal waste combustor plant for which construction was commenced on or before September 20, 1994.

§ 60.32b Designated facilities.

(a) The designated facility to which these guidelines apply is each municipal waste combustor unit located within a municipal waste combustor plant with an aggregate municipal waste combustor plant capacity greater than 35 megagrams per day of municipal solid waste for which construction was commenced on or before September 20, 1994.

(b) Any waste combustion unit at a medical, industrial, or other type of waste combustor plant that is capable of combusting more than 35 megagrams per day of municipal solid waste and is subject to a federally enforceable permit limiting the plantwide maximum amount of municipal solid waste that may be combusted to less than or equal to 10 megagrams per day is not subject to this subpart if the owner or operator:

(1) Notifies the Administrator of an exemption claim,

(2) Provides a copy of the federally enforceable permit that limits the firing of municipal solid waste to less than 10 megagrams per day, and

(3) Keeps records of the amount of municipal solid waste fired on a daily basis.

(c) Physical or operational changes made to an existing municipal waste combustor unit primarily for the purpose of complying with emission guidelines under this subpart are not considered in determining whether the unit is a modified or reconstructed facility under subpart Ea or subpart Eb of this part.

(d) A qualifying small power production facility, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy is not subject to this subpart if the owner or operator of the facility notifies the Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(e) A qualifying cogeneration facility, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes, is not subject to this subpart if the owner or operator of the facility notifies the Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(f) Any unit combusting a single-item waste stream of tires is not subject to this subpart if the owner or operator of the unit:

(1) Notifies the Administrator of an exemption claim, and

(2) Provides data documenting that the unit qualifies for this exemption.

(g) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is not subject to this subpart.

(h) Any materials recovery facility (including primary or secondary smelters) that combusts waste for the primary purpose of recovering metals is not subject to this subpart.

(i) Any cofired combustor, as defined under § 60.51b of subpart Eb of this part, that meets the capacity specifications in paragraph (a) of this section is not subject to this subpart if the owner or operator of the cofired combustor:

(1) Notifies the Administrator of an exemption claim,

(2) Provides a copy of the federally enforceable permit (specified in the definition of cofired combustor in this section), and

(3) Keeps a record on a calendar quarter basis of the weight of municipal solid waste combusted at the cofired combustor and the weight of all other fuels combusted at the cofired combustor.

(j) Air curtain incinerators, as defined under § 60.51b of subpart Eb of this part, that meet the capacity specifications in paragraph (a) of this section, and that combust a fuel stream composed of 100 percent yard waste are exempt from all provisions of this subpart except the opacity standard under § 60.37b, the testing procedures under § 60.38b, and the reporting and recordkeeping provisions under § 60.39b.

(k) Air curtain incinerators that meet the capacity specifications in paragraph (a) of this section and that combust municipal solid waste other than yard waste are subject to all provisions of this subpart.

(l) Pyrolysis/combustion units that are an integrated part of a plastics/rubber recycling unit (as defined in § 60.51b) are not subject to this subpart if the owner or operator of the plastics/rubber recycling unit keeps records of the weight of plastics, rubber, and/or rubber tires processed on a calendar quarter basis; the weight of chemical plant feedstocks and petroleum refinery feedstocks produced and marketed on a calendar quarter basis; and the name and address of the purchaser of the feedstocks. The combustion of gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units are not subject to this subpart.

§ 60.33b Emission guidelines for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.

(a) The emission limits for municipal waste combustor metals are specified in paragraphs (a)(1) through (a)(3) of this section.

(1) For approval, a State plan shall include emission limits for particulate matter and opacity at least as protective as the emission limits for particulate matter and opacity specified in paragraphs (a)(1)(i) through (a)(1)(iii) of this section.

(i) The emission limit for particulate matter contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 27 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(ii) The emission limit for particulate matter contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant is 70

milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(iii) The emission limit for opacity exhibited by the gases discharged to the atmosphere from a designated facility located within a small or large municipal waste combustor plant is 10 percent (6-minute average).

(2) For approval, a State plan shall include emission limits for cadmium and lead at least as protective as the emission limits for cadmium and lead specified in paragraphs (a)(2)(i) through (a)(2)(iv) of this section.

(i) The emission limit for cadmium contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 0.040 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(ii) The emission limit for cadmium contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant is 0.10 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(iii) The emission limit for lead contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 0.49 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(iv) The emission limit for lead contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant is 1.6 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(3) For approval, a State plan shall include emission limits for mercury at least as protective as the emission limits specified in this paragraph. The emission limit for mercury contained in the gases discharged to the atmosphere from a designated facility located within a small or large municipal waste combustor plant is 0.080 milligrams per dry standard cubic meter or 15 percent of the potential mercury emission concentration (an 85-percent reduction by weight), corrected to 7 percent oxygen, whichever is less stringent.

(b) The emission limits for municipal waste combustor acid gases, expressed as sulfur dioxide and hydrogen chloride, are specified in paragraphs (b)(1) and (b)(2) of this section.

(1) For approval, a State plan shall include emission limits for sulfur dioxide at least as protective as the emission limits for sulfur dioxide specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) The emission limit for sulfur dioxide contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 31 parts per million by volume or 25 percent of the potential sulfur dioxide emission concentration (75-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(ii) The emission limit for sulfur dioxide contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant is 80 parts per million by volume or 50 percent of the potential sulfur dioxide emission concentration (50-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour geometric mean.

(2) For approval, a State plan shall include emission limits for hydrogen chloride at least as protective as the emission limits for hydrogen chloride specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(i) The emission limit for hydrogen chloride contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 31 parts per million by volume or 5 percent of the potential hydrogen chloride emission concentration (95-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(ii) The emission limit for hydrogen chloride contained in the gases discharged to the atmosphere from an affected facility located within a small municipal waste combustor plant is 250 parts per million by volume or 50 percent of the potential hydrogen chloride emission concentration (50-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(c) The emission limits for municipal waste combustor organics, expressed as total mass dioxins/furans, are specified in paragraphs (c)(1) and (c)(2) of this section.

(1) For approval, a State plan shall include an emission limit for dioxins/furans contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant at least as protective as the emission limit for dioxins/furans specified in either paragraph (c)(1)(i) or (c)(1)(ii) of this section, as applicable.

(i) The emission limit for designated facilities that employ an electrostatic precipitator-based emission control system is 60 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(ii) The emission limit for designated facilities that do not employ an electrostatic precipitator-based emission control system is 30 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(2) For approval, a State plan shall include an emission limit for dioxins/furans contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant at least as protective as the emission limit for dioxins/furans specified in this paragraph. The emission limit for dioxins/furans for designated facilities located within a small municipal waste combustor plant is 125 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(d) For approval, a State plan shall include emission limits for nitrogen oxides at least as protective as the emission limits listed in table 1 of this subpart for designated facilities located within large municipal waste combustor plants. Table 1 provides emission limits for the nitrogen oxides concentration level for each type of designated facility.

TABLE 1.—NITROGEN OXIDES GUIDELINES FOR DESIGNATED FACILITIES AT LARGE MUNICIPAL WASTE COMBUSTOR PLANTS

Municipal waste combustor technology	Nitrogen oxides emission limit (parts per million by volume) [a]
Mass burn waterwall	200
Mass burn rotary waterwall	250
Refuse-derived fuel combustor	250
Fluidized bed combustor	240
Mass burn refractory combustors	no limit
Other [b]	200

[a] Corrected to 7 percent oxygen, dry basis.
[b] Excludes mass burn refractory municipal waste combustors.

(1) A State plan may allow nitrogen oxides emissions averaging as specified in paragraphs (d)(1)(i) through (d)(1)(v) of this section.

(i) An owner or operator of a large municipal waste combustor plant may elect to implement a nitrogen oxides emissions averaging plan for the designated facilities that are located at that plant and that are subject to subpart Cb, except as specified in paragraphs

(d)(1)(i)(A) and (d)(1)(i)(B) of this section.

(A) Municipal waste combustor units subject to subpart Ea or Eb cannot be included in the emissions averaging plan.

(B) Mass burn refractory municipal waste combustor units cannot be included in the emissions averaging plan.

(ii) The designated facilities included in the nitrogen oxides emissions averaging plan must be identified in the initial compliance report specified in § 60.59b(f) or in the annual report specified in § 60.59b(g), as applicable, prior to implementing the averaging plan. The designated facilities being included in the averaging plan may be redesignated each calendar year. Partial year redesignation is allowable with State approval.

(iii) To implement the emissions averaging plan, the average daily (24-hour) nitrogen oxides emission concentration level for gases discharged from the designated facilities being included in the emissions averaging plan must be no greater than the levels specified in table 2 of this subpart. Table 2 provides emission limits for the nitrogen oxides concentration level for each type of designated facility.

TABLE 2.—NITROGEN OXIDES LIMITS FOR EXISTING DESIGNATED FACILITIES INCLUDED IN AN EMISSIONS AVERAGING PLAN AT LARGE MUNICIPAL WASTE COMBUSTOR PLANTS

Municipal waste combustor technology	Nitrogen oxides emission limit (parts per million by volume)[a]
Mass burn waterwall	180
Mass burn rotary waterwall	220
Refuse-derived fuel combustor	230
Fluidized bed combustor	220
Other[b]	180

[a] Corrected to 7 percent oxygen, dry basis.
[b] Excludes mass burn refractory municipal waste combustors. Mass burn refractory municipal waste combustors may not be included in an emissions averaging plan.

(iv) Under the emissions averaging plan, the average daily nitrogen oxides emissions specified in paragraph (d)(1)(iii) of this section shall be calculated using equation (1). Designated facilities that are offline shall not be included in calculating the average daily nitrogen oxides emission level.

$$NO_{X_{24-hr}} = \frac{\sum_{i=1}^{h}\left(NO_{X_i}\right)\left(S_i\right)}{\sum_{i=1}^{h}\left(S_i\right)} \qquad (1)$$

where:

$NO_{X\,24\text{-}hr}$=24-hr daily average nitrogen oxides emission concentration level for the emissions averaging plan (parts per million by volume corrected to 7 percent oxygen).

$NO_{X\,i\text{-}hr}$=24-hr daily average nitrogen oxides emission concentration level for designated facility i (parts per million by volume, corrected to 7 percent oxygen), calculated according to the procedures in § 60.58b(h) of this subpart.

S_i=maximum demonstrated municipal waste combustor unit load for designated facility i (pounds per hour steam or feedwater flow as determined in the most recent dioxin/furan performance test).

h=total number of designated facilities being included in the daily emissions average.

(v) For any day in which any designated facility included in the emissions averaging plan is offline, the owner or operator of the municipal waste combustor plant must demonstrate compliance according to either paragraph (d)(1)(v)(A) of this section or both paragraphs (d)(1)(v)(B) and (d)(1)(v)(C) of this section.

(A) Compliance with the applicable limits specified in table 2 of this subpart shall be demonstrated using the averaging procedure specified in paragraph (d)(1)(iv) of this section for the designated facilities that are online.

(B) For each of the designated facilities included in the emissions averaging plan, the nitrogen oxides emissions on a daily average basis shall be calculated and shall be equal to or less than the maximum daily nitrogen oxides emission level achieved by that designated facility on any of the days during which the emissions averaging plan was achieved with all designated facilities online during the most recent calendar quarter. The requirements of this paragraph do not apply during the first quarter of operation under the emissions averaging plan.

(C) The average nitrogen oxides emissions (kilograms per day) calculated according to paragraph (d)(1)(v)(C)(*2*) of this section shall not exceed the average nitrogen oxides emissions (kilograms per day) calculated according to paragraph (d)(1)(v)(C)(*1*) of this section.

(*1*) For all days during which the emissions averaging plan was implemented and achieved and during which all designated facilities were online, the average nitrogen oxides emissions shall be calculated. The average nitrogen oxides emissions (kilograms per day) shall be calculated on a calendar year basis according to paragraphs (d)(1)(v)(C)(*1*)(*i*) through (d)(1)(v)(C)(*1*)(*iii*) of this section.

(*i*) For each designated facility included in the emissions averaging plan, the daily amount of nitrogen oxides emitted (kilograms per day) shall be calculated based on the hourly nitrogen oxides data required under § 60.38b(a) and specified under § 60.58b(h)(5) of subpart Eb of this part, the flue gas flow rate determined using table 19–1 of EPA Reference Method 19 or a State-approved method, and the hourly average steam or feedwater flow rate.

(*ii*) The daily total nitrogen oxides emissions shall be calculated as the sum of the daily nitrogen oxides emissions from each designated facility calculated under paragraph (d)(1)(v)(C)(*1*)(*i*) of this section.

(*iii*) The average nitrogen oxides emissions (kilograms per day) on a calendar year basis shall be calculated as the sum of all daily total nitrogen oxides emissions calculated under paragraph (d)(1)(v)(C)(*1*)(*ii*) of this section divided by the number of calendar days for which a daily total was calculated.

(*2*) For all days during which one or more of the designated facilities under the emissions averaging plan was offline, the average nitrogen oxides emissions shall be calculated. The average nitrogen oxides emissions (kilograms per day) shall be calculated on a calendar year basis according to paragraphs (d)(1)(v)(C)(*2*)(*i*) through (d)(1)(v)(C)(*2*)(*iii*) of this section.

(*i*) For each designated facility included in the emissions averaging plan, the daily amount of nitrogen oxides emitted (kilograms per day) shall be calculated based on the hourly nitrogen oxides data required under § 60.38b(a) and specified under § 60.58b(h)(5) of subpart Eb of this part, the flue gas flow rate determined using table 19–1 of EPA Reference Method 19 or a State-approved method, and the hourly average steam or feedwater flow rate.

(*ii*) The daily total nitrogen oxides emissions shall be calculated as the sum of the daily nitrogen oxides emissions from each designated facility calculated under paragraph (d)(1)(v)(C)(*2*)(*i*) of this section.

(*iii*) The average nitrogen oxides emissions (kilograms per day) on a calendar year basis shall be calculated

as the sum of all daily total nitrogen oxides emissions calculated under paragraph (d)(1)(v)(C)(*2*)(*ii*) of this section divided by the number of calendar days for which a daily total was calculated.

(2) A State plan may establish a program to allow owners or operators of municipal waste combustor plants to engage in trading of nitrogen oxides emission credits. A trading program must be approved by the Administrator before implementation.

§ 60.34b Emission guidelines for municipal waste combustor operating practices.

(a) For approval, a State plan shall include emission limits for carbon monoxide at least as protective as the emission limits for carbon monoxide listed in table 3 of this subpart. Table 3 provides emission limits for the carbon monoxide concentration level for each type of designated facility located within a small or large municipal waste combustor plant.

TABLE 3.—MUNICIPAL WASTE COMBUSTOR OPERATING GUIDELINES

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume)[a]	Averaging time (hrs)
Mass burn waterwall	100	4
Mass burn refractory	100	4
Mass burn rotary refractory	100	24
Mass burn rotary waterwall	250	24
Modular starved air	50	4
Modular excess air	50	4
Refuse-derived fuel stoker	200	24
Buddling fluidized bed combustor	100	4
Circulating fluidized bed combustor	100	4
Pulverized coal/refuse-derived fuel mixed fuel-fired combustor	150	4
Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor	200	24

[a] Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen, dry basis. Calculated as an arithmetic average.

(b) For approval, a State plan shall include requirements for municipal waste combustor operating practices at least as protective as those requirements listed in § 60.53b(b) and (c) of subpart Eb of this part.

§ 60.35b Emission guidelines for municipal waste combustor operator training and certification.

For approval, a State plan shall include requirements for designated facilities located within small or large municipal waste combustor plants for municipal waste combustor operator training and certification at least as protective as those requirements listed in § 60.54b of subpart Eb of this part. The State plan shall require compliance with these requirements according to the schedule specified in § 60.39b(c)(4).

§ 60.36b Emission guidelines for municipal waste combustor fugitive ash emissions.

For approval, a State plan shall include requirements for municipal waste combustor fugitive ash emissions at least as protective as those requirements listed in § 60.55b of subpart Eb of this part.

§ 60.37b Emission guidelines for air curtain incinerators.

For approval, a State plan shall include emission limits for opacity for air curtain incinerators at least as protective as those listed in § 60.56b of subpart Eb of this part.

§ 60.38b Compliance and performance testing.

(a) For approval, a State plan shall include the performance testing methods listed in § 60.58b of subpart Eb of this part, as applicable, except as provided for under § 60.24(b)(2) of subpart B of this part and paragraphs (b) and (c) of this section.

(b) For approval, a State plan shall include for designated facilities at large municipal waste combustor plants the alternative performance testing schedule for dioxins/furans specified in § 60.58b(g)(5)(iii) of subpart Eb of this part, as applicable, for those designated facilities that achieve a dioxin/furan emission level less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen.

(c) For approval, a State plan shall include for designated facilities at small municipal waste combustor plants the alternative performance testing schedule for dioxins/furans specified in § 60.58b(g)(5)(iii) of subpart Eb of this part, as applicable, for those designated facilities that achieve a dioxin/furan emission level less than or equal to 30 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen.

§ 60.39b Reporting and recordkeeping guidelines and compliance schedules.

(a) For approval, a State plan shall include the reporting and recordkeeping provisions listed in § 60.59b of subpart Eb of this part, as applicable, except for the siting requirements under § 60.59b(a), (b)(5), and (d)(11) of subpart Eb of this part.

(b) Not later than December 19, 1996, each State in which a designated facility is operating shall submit to the Administrator a plan to implement and enforce the emission guidelines. The compliance schedule specified in this paragraph is in accordance with section 129(b)(2) of the Act and supersedes the compliance schedule provided in § 60.23(a)(1) of subpart B of this part.

(c) For approval, a State plan shall include the compliance schedules specified in paragraphs (c)(1) through (c)(5) of this section.

(1) A State plan shall allow designated facilities located within large municipal waste combustor plants to comply with all requirements of a State plan (or close) within 1 year after approval of the State plan, except as provided by paragraph (c)(1)(i) and (c)(1)(ii) of this section.

(i) A State plan that allows designated facilities more than 1 year but less than 3 years following the date of issuance of a revised construction or operation permit, if a permit modification is

required, or more than 1 year but less than 3 years following approval of the State plan, if a permit modification is not required, shall include measurable and enforceable incremental steps of progress toward compliance. Suggested measurable and enforceable activities are specified in paragraphs (c)(1)(i)(A) through (c)(1)(i)(J) of this section.

(A) Date for obtaining services of an architectural and engineering firm regarding the air pollution control device(s);

(B) Date for obtaining design drawings of the air pollution control device(s);

(C) Date for submittal of permit modifications, if necessary;

(D) Date for submittal of the final control plan to the Administrator. [§ 60.21 (h)(1) of subpart B of this part.];

(E) Date for ordering the air pollution control device(s);

(F) Date for obtaining the major components of the air pollution control device(s);

(G) Date for initiation of site preparation for installation of the air pollution control device(s);

(H) Date for initiation of installation of the air pollution control device(s);

(I) Date for initial startup of the air pollution control device(s); and

(J) Date for initial performance test(s) of the air pollution control device(s).

(ii) A State plan that allows designated facilities more than 1 year but up to 3 years after State plan approval to close shall require a closure agreement. The closure agreement must include the date of plant closure.

(2) If the State plan requirements for a designated facility located within a large municipal waste combustor plant include a compliance schedule longer than 1 year after approval of the State plan in accordance with paragraph (c)(1)(i) or (c)(1)(ii) of this section, the State plan submittal (for approval) shall include performance test results for dioxin/furan emissions for each designated facility that has a compliance schedule longer than 1 year following the approval of the State plan, and the performance test results shall have been conducted during or after 1990. The performance test shall be conducted according to the procedures in § 60.38b.

(3) A State plan shall allow designated facilities located within small municipal waste combustor plants to comply with all requirements of the State plan (or close) within 3 years following the date of issuance of a revised construction or operation permit, if a permit modification is required, or within 3 years following approval of the State plan, if a permit modification is not required.

(4) A State plan shall require compliance with the municipal waste combustor operator training and certification requirements under § 60.35b according to the schedule specified in paragraphs (c)(4)(i) through (c)(4)(iii) of this section.

(i) For designated facilities located within small municipal waste combustor plants, the State plan shall require compliance with the municipal waste combustor operator training and certification requirements specified under § 60.54b (a) through (c) of subpart Eb of this part by the date 6 months after startup of a designated facility or 18 months after State plan approval, whichever is later.

(ii) For designated facilities located within large municipal waste combustor plants, the State plan shall require compliance with the municipal waste combustor operator training and certification requirements specified under § 60.54b (a) through (c) of subpart Eb of this part by the date 6 months after the date of startup or 12 months after State plan approval, whichever is later.

(iii) For designated facilities located within small or large municipal waste combustor plants, the State plan shall require compliance with the requirements specified in § 60.54b (d), (f), and (g) of subpart Eb of this part no later than 6 months after startup or 12 months after State plan approval, whichever is later.

(A) The requirement specified in § 60.54b(d) of subpart Eb of this part does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the date of State plan approval.

(B) The owner or operator may request that the Administrator waive the requirement specified in § 60.54b(d) of subpart Eb of this part for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the date of State plan approval.

(C) The initial training requirements specified in § 60.54b(f)(1) of subpart Eb of this part shall be completed no later than the date specified in paragraph (c)(4)(iii)(C)(*1*), (c)(4)(iii)(C)(*2*), or (c)(4)(iii)(C)(*3*), of this section whichever is later.

(*1*) The date 6 months after the date of startup of the affected facility;

(*2*) Twelve months after State plan approval; or

(*3*) The date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation.

(5) A State plan shall require all designated facilities for which construction, modification, or reconstruction is commenced after June 26, 1987 that are located within a large municipal waste combustor plant to comply with the emission limit for mercury specified in § 60.33b(a)(3) and the emission limit for dioxins/furans specified in § 60.33b(c)(1) within 1 year following issuance of a revised construction or operation permit, if a permit modification is required, or within 1 year following approval of the State plan, whichever is later.

(d) In the event no plan for implementing the emission guidelines is adopted, all designated facilities meeting the applicability requirements under § 60.32b shall be in compliance with the guidelines no later than December 19, 2000.

8. Part 60 is amended by adding subpart Eb as follows:

Subpart Eb—Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994

Sec.
60.50b Applicability and delegation of authority.
60.51b Definitions.
60.52b Standards for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.
60.53b Standards for municipal waste combustor operating practices.
60.54b Standards for municipal waste combustor operator training and certification.
60.55b Standards for municipal waste combustor fugitive ash emissions.
60.56b Standards for air curtain incinerators.
60.57b Siting requirements.
60.58b Compliance and performance testing.
60.59b Reporting and recordkeeping requirements.

Subpart Eb—Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994

§ 60.50b Applicability and delegation of authority.

(a) The affected facility to which this subpart applies is each municipal waste combustor unit located within a municipal waste combustor plant with an aggregate municipal waste combustor plant capacity greater than 35 megagrams per day of municipal solid waste for which construction is commenced after September 20, 1994 or for which modification or reconstruction is commenced after June 19, 1996.

(b) Any waste combustion unit at a medical, industrial, or other type of waste combustor plant that is capable of combusting more than 35 megagrams per day of municipal solid waste and is subject to a federally enforceable permit limiting the plantwide maximum amount of municipal solid waste that may be combusted to less than or equal to 10 megagrams per day is not subject to this subpart if the owner or operator:

(1) Notifies the Administrator of an exemption claim;

(2) Provides a copy of the federally enforceable permit that limits the firing of municipal solid waste to less than 10 megagrams per day; and

(3) Keeps records of the amount of municipal solid waste fired on a daily basis.

(c) An affected facility to which this subpart applies is not subject to subpart E or Ea of this part.

(d) Physical or operational changes made to an existing municipal waste combustor unit primarily for the purpose of complying with emission guidelines under subpart Cb are not considered a modification or reconstruction and do not result in an existing municipal waste combustor unit becoming subject to this subpart.

(e) A qualifying small power production facility, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy is not subject to this subpart if the owner or operator of the facility notifies the Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(f) A qualifying cogeneration facility, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes, is not subject to this subpart if the owner or operator of the facility notifies the Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(g) Any unit combusting a single-item waste stream of tires is not subject to this subpart if the owner or operator of the unit:

(1) Notifies the Administrator of an exemption claim; and

(3) Provides data documenting that the unit qualifies for this exemption.

(h) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is not subject to this subpart.

(i) Any materials recovery facility (including primary or secondary smelters) that combusts waste for the primary purpose of recovering metals is not subject to this subpart.

(j) Any cofired combustor, as defined under § 60.51b, located at a plant that meets the capacity specifications in paragraph (a) of this section is not subject to this subpart if the owner or operator of the cofired combustor:

(1) Notifies the Administrator of an exemption claim;

(2) Provides a copy of the federally enforceable permit (specified in the definition of cofired combustor in this section); and

(3) Keeps a record on a calendar quarter basis of the weight of municipal solid waste combusted at the cofired combustor and the weight of all other fuels combusted at the cofired combustor.

(k) Air curtain incinerators, as defined under § 60.51b, located at a plant that meet the capacity specifications in paragraph (a) of this section and that combust a fuel stream composed of 100 percent yard waste are exempt from all provisions of this subpart except the opacity limit under § 60.56b, the testing procedures under § 60.58b(l), and the reporting and recordkeeping provisions under § 60.59b (e) and (i).

(l) Air curtain incinerators located at plants that meet the capacity specifications in paragraph (a) of this section combusting municipal solid waste other than yard waste are subject to all provisions of this subpart.

(m) Pyrolysis/combustion units that are an integrated part of a plastics/rubber recycling unit (as defined in § 60.51b) are not subject to this subpart if the owner or operator of the plastics/rubber recycling unit keeps records of the weight of plastics, rubber, and/or rubber tires processed on a calendar quarter basis; the weight of chemical plant feedstocks and petroleum refinery feedstocks produced and marketed on a calendar quarter basis; and the name and address of the purchaser of the feedstocks. The combustion of gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units are not subject to this subpart.

(n) The following authorities shall be retained by the Administrator and not transferred to a State: None.

(o) This subpart shall become effective June 19, 1996.

§ 60.51b Definitions.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which burning occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

Batch municipal waste combustor means a municipal waste combustor unit designed so that it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed while combustion is occurring.

Bubbling fluidized bed combustor means a fluidized bed combustor in which the majority of the bed material remains in a fluidized state in the primary combustion zone.

Calendar quarter means a consecutive 3-month period (nonoverlapping) beginning on January 1, April 1, July 1, and October 1.

Calendar year means the period including 365 days starting January 1 and ending on December 31.

Chief facility operator means the person in direct charge and control of the operation of a municipal waste combustor and who is responsible for daily onsite supervision, technical direction, management, and overall performance of the facility.

Circulating fluidized bed combustor means a fluidized bed combustor in which the majority of the fluidized bed material is carried out of the primary combustion zone and is transported back to the primary zone through a recirculation loop.

Clean wood means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include yard waste, which is defined elsewhere in this section, or construction, renovation, and demolition wastes (including but not limited to railroad ties and telephone poles), which are exempt from the definition of municipal solid waste in this section.

Cofired combustor means a unit combusting municipal solid waste with nonmunicipal solid waste fuel (e.g., coal, industrial process waste) and subject to a federally enforceable permit limiting the unit to combusting a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal solid waste as measured on a calendar quarter basis.

Continuous emission monitoring system means a monitoring system for continuously measuring the emissions of a pollutant from an affected facility.

Dioxin/furan means tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator including the requirements of 40 CFR parts 60, 61, and 63, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

First calendar half means the period starting on January 1 and ending on June 30 in any year.

Four-hour block average or *4-hour block average* means the average of all hourly emission concentrations when the affected facility is operating and combusting municipal solid waste measured over 4-hour periods of time from 12:00 midnight to 4 a.m., 4 a.m. to 8 a.m., 8 a.m. to 12:00 noon, 12:00 noon to 4 p.m., 4 p.m. to 8 p.m., and 8 p.m. to 12:00 midnight.

Large municipal waste combustor plant means a municipal waste combustor plant with a municipal waste combustor aggregate plant capacity for affected facilities that is greater than 225 megagrams per day of municipal solid waste.

Mass burn refractory municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, this includes combustors with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

Mass burn waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a waterwall furnace.

Materials separation plan means a plan that identifies both a goal and an approach to separate certain components of municipal solid waste for a given service area in order to make the separated materials available for recycling. A materials separation plan may include elements such as dropoff facilities, buy-back or deposit-return incentives, curbside pickup programs, or centralized mechanical separation systems. A materials separation plan may include different goals or approaches for different subareas in the service area, and may include no materials separation activities for certain subareas or, if warranted, an entire service area.

Maximum demonstrated municipal waste combustor unit load means the highest 4-hour arithmetic average municipal waste combustor unit load achieved during four consecutive hours during the most recent dioxin/furan performance test demonstrating compliance with the applicable limit for municipal waste combustor organics specified under § 60.52b(c).

Maximum demonstrated particulate matter control device temperature means the highest 4-hour arithmetic average flue gas temperature measured at the particulate matter control device inlet during four consecutive hours during the most recent dioxin/furan performance test demonstrating compliance with the applicable limit for municipal waste combustor organics specified under § 60.52b(c).

Modification or *modified municipal waste combustor unit* means a municipal waste combustor unit to which changes have been made after June 19, 1996 if the cumulative cost of the changes, over the life of the unit, exceed 50 percent of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs; or any physical change in the municipal waste combustor unit or change in the method of operation of the municipal waste combustor unit increases the amount of any air pollutant emitted by the unit for which standards have been established under section 129 or section 111. Increases in the amount of any air pollutant emitted by the municipal waste combustor unit are determined at 100-percent physical load capability and downstream of all air pollution control devices, with no consideration given for load restrictions based on permits or other nonphysical operational restrictions.

Modular excess-air municipal waste combustor means a combustor that combusts municipal solid waste and that is not field-erected and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

Modular starved-air municipal waste combustor means a combustor that combusts municipal solid waste and that is not field-erected and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

Municipal solid waste or *municipal-type solid waste* or *MSW* means household, commercial/retail, and/or institutional waste. Household waste includes material discarded by single and multiple residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which includes but is not limited to railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff). Household, commercial/retail, and institutional wastes include:

(1) Yard waste;

(2) Refuse-derived fuel; and

(3) Motor vehicle maintenance materials limited to vehicle batteries and tires except as specified in § 60.50b(g).

Municipal waste combustor, MWC, or *municipal waste combustor unit*: (1) Means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved-air or excess-air), boilers (i.e., steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Municipal waste combustors do not include pyrolysis/combustion units located at a plastics/rubber recycling unit (as specified in § 60.50b(m) of this section). Municipal waste combustors do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of a municipal solid waste combustor are defined as follows. The municipal waste combustor unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustor water system. The municipal waste combustor boundary starts at the

municipal solid waste pit or hopper and extends through:

(i) The combustor flue gas system, which ends immediately following the heat recovery equipment or, if there is no heat recovery equipment, immediately following the combustion chamber,

(ii) The combustor bottom ash system, which ends at the truck loading station or similar ash handling equipment that transfer the ash to final disposal, including all ash handling systems that are connected to the bottom ash handling system; and

(iii) The combustor water system, which starts at the feed water pump and ends at the piping exiting the steam drum or superheater.

(3) The municipal waste combustor unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set.

Municipal waste combustor acid gases means all acid gases emitted in the exhaust gases from municipal waste combustor units including, but not limited to, sulfur dioxide and hydrogen chloride gases.

Municipal waste combustor metals means metals and metal compounds emitted in the exhaust gases from municipal waste combustor units.

Municipal waste combustor organics means organic compounds emitted in the exhaust gases from municipal waste combustor units and includes tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans.

Municipal waste combustor plant means one or more municipal waste combustor units at the same location for which construction, modification, or reconstruction is commenced after September 20, 1994.

Municipal waste combustor plant capacity means the aggregate municipal waste combustor unit capacity of all municipal waste combustor units at a municipal waste combustor plant for which construction, modification, or reconstruction of the units commenced after September 20, 1994. Any municipal waste combustor units for which construction, modification, or reconstruction is commenced on or before September 20, 1994 are not included for determining applicability under this subpart.

Municipal waste combustor unit capacity means the maximum charging rate of a municipal waste combustor unit expressed in megagrams per day of municipal solid waste combusted, calculated according to the procedures under § 60.58b(j). Section 60.58b(j) includes procedures for determining municipal waste combustor unit capacity for continuous and batch feed municipal waste combustors.

Municipal waste combustor unit load means the steam load of the municipal waste combustor unit measured as specified in § 60.58b(i)(6).

Particulate matter means total particulate matter emitted from municipal waste combustor units as measured by EPA Reference Method 5 (see § 60.58b(c)).

Plastics/rubber recycling unit means an integrated processing unit where plastics, rubber, and/or rubber tires are the only feed materials (incidental contaminants may be included in the feed materials) and they are processed into a chemical plant feedstock or petroleum refinery feedstock, where the feedstock is marketed to and used by a chemical plant or petroleum refinery as input feedstock. The combined weight of the chemical plant feedstock and petroleum refinery feedstock produced by the plastics/rubber recycling unit on a calendar quarter basis shall be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires processed by the plastics/rubber recycling unit on a calendar quarter basis. The plastics, rubber, and/or rubber tire feed materials to the plastics/rubber recycling unit may originate from the separation or diversion of plastics, rubber, or rubber tires from MSW or industrial solid waste, and may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards. The plastics, rubber, and rubber tire feed materials to the plastics/rubber recycling unit may contain incidental contaminants (e.g., paper labels on plastic bottles, metal rings on plastic bottle caps, etc.).

Potential hydrogen chloride emission concentration means the hydrogen chloride emission concentration that would occur from combustion of municipal solid waste in the absence of any emission controls for municipal waste combustor acid gases.

Potential mercury emission concentration means the mercury emission concentration that would occur from combustion of municipal solid waste in the absence of any mercury emissions control.

Potential sulfur dioxide emissions means the sulfur dioxide emission concentration that would occur from combustion of municipal solid waste in the absence of any emission controls for municipal waste combustor acid gases.

Pulverized coal/refuse-derived fuel mixed fuel-fired combustor means a combustor that fires coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is fired in suspension. This includes both conventional pulverized coal and micropulverized coal.

Pyrolysis/combustion unit means a unit that produces gases, liquids, or solids through the heating of municipal solid waste, and the gases, liquids, or solids produced are combusted and emissions vented to the atmosphere.

Reconstruction means rebuilding a municipal waste combustor unit for which the reconstruction commenced after June 19, 1996, and the cumulative costs of the construction over the life of the unit exceed 50 percent of the original cost of construction and installation of the unit (not including any cost of land purchased in connection with such construction or installation) updated to current costs (current dollars).

Refractory unit or *refractory wall furnace* means a combustion unit having no energy recovery (e.g., via a waterwall) in the furnace (i.e., radiant heat transfer section) of the combustor.

Refuse-derived/fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including low-density fluff refuse-derived fuel through densified refuse-derived fuel and pelletized refuse-derived fuel.

Refuse-derived fuel stoker means a steam generating unit that combusts refuse-derived fuel in a semisuspension firing mode using air-fed distributors.

Same location means the same or contiguous property that is under common ownership or control including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof including any municipality or other governmental unit, or any quasi-governmental authority (e.g., a public utility district or regional waste disposal authority).

Second calendar half means the period starting July 1 and ending on December 31 in any year.

Shift supervisor means the person who is in direct charge and control of the operation of a municipal waste combustor and who is responsible for onsite supervision, technical direction, management, and overall performance of the facility during an assigned shift.

Small municipal waste combustor plant means a municipal waste combustor plant with a municipal waste combustor plant capacity for affected

facilities that is greater than 35 megagrams per day but equal to or less than 225 megagrams per day of municipal solid waste.

Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor means a combustor that fires coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

Standard conditions means a temperature of 20° C and a pressure of 101.3 kilopascals.

Total mass dioxin/furan or *total mass* means the total mass of tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans, as determined using EPA Reference Method 23 and the procedures specified under § 60.58b(g).

Twenty-four hour daily average or *24-hour daily average* means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the affected facility is operating and combusting municipal solid waste measured over a 24-hour period between 12:00 midnight and the following midnight.

Untreated lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or ''pressure-treated.'' Pressure-treating compounds include, but are not limited to, chromate copper arsenate, pentachlorophenol, and creosote.

Waterwall furnace means a combustion unit having energy (heat) recovery in the furnace (i.e., radiant heat transfer section) of the combustor.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that are generated by residential, commercial/retail, institutional, and/or industrial sources as part of maintenance activities associated with yards or other private or public lands. Yard waste does not include construction, renovation, and demolition wastes, which are exempt from the definition of municipal solid waste in this section. Yard waste does not include clean wood, which is exempt from the definition of municipal solid waste in this section.

§ 60.52b Standards for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.

(a) The limits for municipal waste combustor metals are specified in paragraphs (a)(1) through (a)(5) of this section.

(1) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter in excess of 24 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(2) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that exhibit greater than 10 percent opacity (6-minute average).

(3) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain cadmium in excess of 0.020 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(4) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from the affected facility any gases that contain lead in excess of 0.20 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(5) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from the affected facility any gases that contain mercury in excess of 0.080 milligrams per dry standard cubic meter or 15 percent of the potential mercury emission concentration (85-percent reduction by weight), corrected to 7 percent oxygen, whichever is less stringent.

(b) The limits for municipal waste combustor acid gases are specified in paragraphs (b)(1) and (b)(2) of this section.

(1) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain sulfur dioxide in excess of 30 parts per million by volume or 20 percent of the potential sulfur dioxide emission concentration (80-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. The averaging time is specified under § 60.58b(e).

(2) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain hydrogen chloride in excess of 25 parts per million by volume or 5 percent of the potential hydrogen chloride emission concentration (95-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(c) The limits for municipal waste combustor organics are specified in paragraphs (c)(1) and (c)(2) of this section.

(1) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant for which construction, modification, or reconstruction commences after September 20, 1994, but on or before November 20, 1997 shall cause to be discharged into the atmosphere from that affected facility any gases that contain dioxin/furan emissions that exceed 30 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen, for the first 3 years following the date of initial startup. After the first 3 years following the date of initial startup, no owner or operator shall cause to be discharged into the atmosphere from that affected facility any gases that contain dioxin/furan total mass emissions that exceed 13 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(2) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant for which construction,

modification, or reconstruction commences after November 20, 1997 shall cause to be discharged into the atmosphere from that affected facility any gases that contain dioxin/furan total mass emissions that exceed 13 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(d) The limits for nitrogen oxides are specified in paragraphs (d)(1) and (d)(2) of this section.

(1) During the first year of operation after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides in excess of 180 parts per million by volume, corrected to 7 percent oxygen (dry basis). The averaging time is specified under § 60.58b(h).

(2) After the first year of operation following the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides in excess of 150 parts per million by volume, corrected to 7 percent oxygen (dry basis). The averaging time is specified under § 60.58b(h).

§ 60.53b Standards for municipal waste combustor operating practices.

(a) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain carbon monoxide in excess of the emission limits specified in table 1 of this subpart.

TABLE 1.—MUNICIPAL WASTE COMBUSTOR OPERATING STANDARDS

Municipal waste combustor technology	Carbon monoxide emission limit (parts per million by volume) [a]	Averaging time (hours)
Mass burn waterwall	100	4
Mass burn refractory	100	4
Mass burn rotary waterwall	100	24
Modular starved air	50	4
Modular excess air	50	4
Refuse-derived fuel stoker	150	24
Bubbling fluidized bed combustor	100	4
Circulating fluidized bed combustor	100	4
Pulverized coal/refuse-derived fuel mixed fuel-fired combustor	150	4
Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor	150	24

[a] Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen (dry basis). The averaging times are specified in greater detail in § 60.58b(i).

(b) No owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause such facility to operate at a load level greater than 110 percent of the maximum demonstrated municipal waste combustor unit load as defined in § 60.51b, except as specified in paragraphs (b)(1) and (b)(2) of this section. The averaging time is specified under § 60.58b(i).

(1) During the annual dioxin/furan performance test and the 2 weeks preceding the annual dioxin/furan performance test, no municipal waste combustor unit load limit is applicable.

(2) The municipal waste combustor unit load limit may be waived in accordance with permission granted by the Administrator or delegated State regulatory authority for the purpose of evaluating system performance, testing new technology or control technologies, diagnostic testing, or related activities for the purpose of improving facility performance or advancing the state-of-the-art for controlling facility emissions.

(c) No owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause such facility to operate at a temperature, measured at the particulate matter control device inlet, exceeding 17 °C above the maximum demonstrated particulate matter control device temperature as defined in § 60.51b, except as specified in paragraphs (c)(1) and (c)(2) of this section. The averaging time is specified under § 60.58b(i). The requirements specified in this paragraph apply to each particulate matter control device utilized at the affected facility.

(1) During the annual dioxin/furan performance test and the 2 weeks preceding the annual dioxin/furan performance test, no particulate matter control device temperature limitations are applicable.

(2) The particulate matter control device temperature limits may be waived in accordance with permission granted by the Administrator or delegated State regulatory authority for the purpose of evaluating system performance, testing new technology or control technologies, diagnostic testing, or related activities for the purpose of improving facility performance or advancing the state-of-the-art for controlling facility emissions.

§ 60.54b Standards for municipal waste combustor operator training and certification.

(a) No later than the date 6 months after the date of startup of an affected facility located within a small or large municipal waste combustor plant or on December 19, 1996, whichever is later, each chief facility operator and shift supervisor shall obtain and maintain a current provisional operator certification from either the American Society of Mechanical Engineers [QRO–1–1994 (incorporated by reference—see § 60.17 of subpart A of this part)] or a State certification program.

(b) Not later than the date 6 months after the date of startup of an affected facility located within a small or large municipal waste combustor plant or on December 19, 1996, whichever is later, each chief facility operator and shift

supervisor shall have completed full certification or shall have scheduled a full certification exam with either the American Society of Mechanical Engineers [QRO–1–1994 (incorporated by reference—see § 60.17 of subpart A of this part)] or a State certification program.

(c) No owner or operator of an affected facility located within a small or large municipal waste combustor plant shall allow the facility to be operated at any time unless one of the following persons is on duty and at the affected facility: A fully certified chief facility operator, a provisionally certified chief facility operator who is scheduled to take the full certification exam according to the schedule specified in paragraph (b) of this section, a fully certified shift supervisor, or a provisionally certified shift supervisor who is scheduled to take the full certification exam according to the schedule specified in paragraph (b) of this section.

(i) The requirement specified in paragraph (c) of this section shall take effect 6 months after the date of startup of the affected facility or on December 19, 1996, whichever is later.

(ii) If one of the persons listed in paragraph (c) of this section must leave the affected facility during their operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirement in paragraph (c) of this section.

(d) All chief facility operators, shift supervisors, and control room operators at affected facilities located within a small or large municipal waste combustor plant must complete the EPA or State municipal waste combustor operator training course no later than the date 6 months after the date of startup of the affected facility or by December 19, 1996, whichever is later.

(e) The owner or operator of an affected facility located within a small or large municipal waste combustor plant shall develop and update on a yearly basis a site-specific operating manual that shall, at a minimum, address the elements of municipal waste combustor unit operation specified in paragraphs (e)(1) through (e)(11) of this section.

(1) A summary of the applicable standards under this subpart;

(2) A description of basic combustion theory applicable to a municipal waste combustor unit;

(3) Procedures for receiving, handling, and feeding municipal solid waste;

(4) Municipal waste combustor unit startup, shutdown, and malfunction procedures;

(5) Procedures for maintaining proper combustion air supply levels;

(6) Procedures for operating the municipal waste combustor unit within the standards established under this subpart;

(7) Procedures for responding to periodic upset or off-specification conditions;

(8) Procedures for minimizing particulate matter carryover;

(9) Procedures for handling ash;

(10) Procedures for monitoring municipal waste combustor unit emissions; and

(11) Reporting and recordkeeping procedures.

(f) The owner or operator of an affected facility located within a small or large municipal waste combustor plant shall establish a training program to review the operating manual according to the schedule specified in paragraphs (f)(1) and (f)(2) of this section with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane/load handlers.

(1) Each person specified in paragraph (f) of this section shall undergo initial training no later than the date specified in paragraph (f)(1)(i), (f)(1)(ii), or (f)(1)(iii) of this section whichever is later.

(i) The date 6 months after the date of startup of the affected facility;

(ii) The date prior to the day the person assumes responsibilities affecting municipal waste combustor unit operation; or

(iii) December 19, 1996.

(2) Annually, following the initial review required by paragraph (f)(1) of this section.

(g) The operating manual required by paragraph (e) of this section shall be kept in a readily accessible location for all persons required to undergo training under paragraph (f) of this section. The operating manual and records of training shall be available for inspection by the EPA or its delegated enforcement agency upon request.

§ 60.55b Standards for municipal waste combustor fugitive ash emissions.

(a) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of 5 percent of the observation period (i.e., 9 minutes per 3-hour period), as determined by EPA Reference Method 22 observations as specified in § 60.58b(k), except as provided in paragraphs (b) and (c) of this section.

(b) The emission limit specified in paragraph (a) of this section does not cover visible emissions discharged inside buildings or enclosures of ash conveying systems; however, the emission limit specified in paragraph (a) of this section does cover visible emissions discharged to the atmosphere from buildings or enclosures of ash conveying systems.

(c) The provisions specified in paragraph (a) of this section do not apply during maintenance and repair of ash conveying systems.

§ 60.56b Standards for air curtain incinerators.

On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, the owner or operator of an air curtain incinerator located at a plant with a plant capacity to combust greater than 35 megagrams per day of municipal solid waste and that combusts a fuel feed stream composed of 100 percent yard waste and no other municipal solid waste materials shall at no time cause to be discharged into the atmosphere from that incinerator any gases that exhibit greater than 10-percent opacity (6-minute average), except that an opacity level of up to 35 percent (6-minute average) is permitted during startup periods during the first 30 minutes of operation of the unit.

§ 60.57b Siting requirements.

(a) The owner or operator of an affected facility located within a small or large municipal waste combustor plant, for which the initial application for a construction permit under 40 CFR part 51, subpart I, or part 52, as applicable, is submitted after December 19, 1995, shall prepare a materials separation plan, as defined in § 60.51b, for the affected facility and its service area, and shall comply with the requirements specified in paragraphs (a)(1) through (a)(10) of this section. The initial application is defined as representing a good faith submittal for complying with the requirements under 40 CFR part 51, subpart I, or part 52, as applicable, as determined by the Administrator.

(1) The owner or operator shall prepare a preliminary draft materials separation plan and shall make the plan available to the public as specified in

paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(i) The owner or operator shall distribute the preliminary draft materials separation plan to the principal public libraries in the area where the affected facility is to be constructed.

(ii) The owner or operator shall publish a notification of a public meeting in the principal newspaper(s) serving the area where the affected facility is to be constructed and where the waste treated by the affected facility will primarily be collected. As a minimum, the notification shall include the information specified in paragraphs (a)(1)(ii)(A) through (a)(1)(ii)(D) of this section.

(A) The date, time, and location of the public meeting.

(B) The location of the public libraries where the preliminary draft materials separation plan may be found, including normal business hours of the libraries.

(C) An agenda of the issues to be discussed at the public meeting.

(D) The dates that the public comment period on the preliminary draft materials separation plan begins and ends.

(2) The owner or operator shall conduct a public meeting, accept comments on the preliminary draft materials separation plan, and comply with the requirements specified in paragraphs (a)(2)(i) through (a)(2)(iv) of this section.

(i) The public meeting shall be conducted in the county where the affected facility is to be located.

(ii) The public meeting shall be scheduled to occur 30 days or more after making the preliminary draft materials separation plan available to the public as specified under paragraph (a)(1) of this section.

(iii) Suggested issues to be addressed at the public meeting are listed in paragraphs (a)(2)(iii)(A) through (a)(2)(iii)(H) of this section.

(A) The expected size of the service area for the affected facility.

(B) The amount of waste generation anticipated for the service area.

(C) The types and estimated amounts of materials proposed for separation.

(D) The methods proposed for materials separation.

(E) The amount of residual waste to be disposed.

(F) Alternate disposal methods for handling the residual waste.

(G) Identification of the location(s) where responses to public comment on the preliminary draft materials separation plan will be available for inspection, as specified in paragraphs (a)(3) and (a)(4) of this section.

(H) Identification of the locations where the final draft materials separation plan will be available for inspection, as specified in paragraph (a)(7).

(iv) Nothing in this section shall preclude an owner or operator from combining this public meeting with any other public meeting required as part of any other Federal, State, or local permit review process except the public meeting required under paragraph (b)(4) of this section.

(3) Following the public meeting required by paragraph (a)(2) of this section, the owner or operator shall prepare responses to the comments received at the public meeting.

(4) The owner or operator shall make the document summarizing responses to public comments available to the public (including distribution to the principal public libraries used to announce the meeting) in the service area where the affected facility is to be located.

(5) The owner or operator shall prepare a final draft materials separation plan for the affected facility considering the public comments received at the public meeting.

(6) As required under § 60.59b(a), the owner or operator shall submit to the Administrator a copy of the notification of the public meeting, a transcript of the public meeting, the document summarizing responses to public comments, and copies of both the preliminary and final draft materials separation plans on or before the time the facility's application for a construction permit is submitted under 40 CFR part 51, subpart I, or part 52, as applicable.

(7) As part of the distribution of the siting analysis required under paragraph (b)(3) of this section, the owner or operator shall make the final draft materials separation plan required under paragraph (a)(5) of this section available to the public, as specified in paragraph (b)(3) of this section.

(8) As part of the public meeting for review of the siting analysis required under paragraph (b)(4) of this section, the owner or operator shall address questions concerning the final draft materials separation plan required by paragraph (a)(5) of this section including discussion of how the final draft materials separation plan has changed from the preliminary draft materials separation plan that was discussed at the first public meeting required by paragraph (a)(2) of this section.

(9) If the owner or operator receives any comments on the final draft materials separation plan during the public meeting required in paragraph (b)(4) of this section, the owner or operator shall respond to those comments in the document prepared in accordance with paragraph (b)(5) of this section.

(10) The owner or operator shall prepare a final materials separation plan and shall submit, as required under § 60.59b(b)(5)(ii), the final materials separation plan as part of the initial notification of construction.

(b) The owner or operator of an affected facility located within a small or large municipal waste combustor plant, for which the initial application for a construction permit under 40 CFR part 51, subpart I, or part 52, as applicable, is submitted after December 19, 1995 shall prepare a siting analysis in accordance with paragraphs (b)(1) and (b)(2) of this section and shall comply with the requirements specified in paragraphs (b)(3) through (b)(7) of this section.

(1) The siting analysis shall be an analysis of the impact of the affected facility on ambient air quality, visibility, soils, and vegetation.

(2) The analysis shall consider air pollution control alternatives that minimize, on a site-specific basis, to the maximum extent practicable, potential risks to the public health or the environment.

(3) The owner or operator shall make the siting analysis and final draft materials separation plan required by paragraph (a)(5) of this section available to the public as specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(i) The owner or operator shall distribute the siting analysis and final draft materials separation plan to the principal public libraries in the area where the affected facility is to be constructed.

(ii) The owner or operator shall publish a notification of a public meeting in the principal newspaper(s) serving the area where the affected facility is to be constructed and where the waste treated by the affected facility will primarily be collected. As a minimum, the notification shall include the information specified in paragraphs (b)(3)(ii)(A) through (b)(3)(ii)(D) of this section.

(A) The date, time, and location of the public meeting.

(B) The location of the public libraries where the siting analyses and final draft materials separation plan may be found, including normal business hours.

(C) An agenda of the issues to be discussed at the public meeting.

(D) The dates that the public comment period on the siting analyses and final draft materials separation plan begins and ends.

(4) The owner or operator shall conduct a public meeting and accept comments on the siting analysis and the final draft materials separation plan required under paragraph (a)(5) of this section. The public meeting shall be conducted in the county where the affected facility is to be located and shall be scheduled to occur 30 days or more after making the siting analysis available to the public as specified under paragraph (b)(3) of this section.

(5) The owner or operator shall prepare responses to the comments on the siting analysis and the final draft materials separation plan that are received at the public meeting.

(6) The owner or operator shall make the document summarizing responses to public comments available to the public (including distribution to all public libraries) in the service area where the affected facility is to be located.

(7) As required under § 60.59b(b)(5), the owner or operator shall submit a copy of the notification of the public meeting, a transcript of the public meeting, the document summarizing responses to public comments, and the siting analysis as part of the initial notification of construction.

(c) The owner or operator of an affected facility located within a small or large municipal waste combustor plant, for which construction is commenced after September 20, 1994 shall prepare a siting analysis in accordance with 40 CFR part 51, Subpart I, or part 52, as applicable, and shall submit the siting analysis as part of the initial notification of construction. Affected facilities subject to paragraphs (a) and (b) of this section are not subject to this paragraph.

§ 60.58b Compliance and performance testing.

(a) The provisions for startup, shutdown, and malfunction are provided in paragraphs (a)(1) and (a)(2) of this section.

(1) Except as provided by § 60.56b, the standards under this subpart apply at all times except during periods of startup, shutdown, or malfunction. Duration of startup, shutdown, or malfunction periods are limited to 3 hours per occurrence.

(i) The startup period commences when the affected facility begins the continuous burning of municipal solid waste and does not include any warmup period when the affected facility is combusting fossil fuel or other nonmunicipal solid waste fuel, and no municipal solid waste is being fed to the combustor.

(ii) Continuous burning is the continuous, semicontinuous, or batch feeding of municipal solid waste for purposes of waste disposal, energy production, or providing heat to the combustion system in preparation for waste disposal or energy production. The use of municipal solid waste solely to provide thermal protection of the grate or hearth during the startup period when municipal solid waste is not being fed to the grate is not considered to be continuous burning.

(2) The opacity limits for air curtain incinerators specified in § 60.56b apply at all times as specified under § 60.56b except during periods of malfunction. Duration of malfunction periods are limited to 3 hours per occurrence.

(b) The owner or operator of a small or large municipal waste combustor plant shall install, calibrate, maintain, and operate a continuous emission monitoring system and record the output of the system for measuring the oxygen or carbon dioxide content of the flue gas at each location where carbon monoxide, sulfur dioxide, or nitrogen oxides emissions are monitored and shall comply with the test procedures and test methods specified in paragraphs (b)(1) through (b)(7) of this section.

(1) The span value of the oxygen (or carbon dioxide) monitor shall be 25 percent oxygen (or carbon dioxide).

(2) The monitor shall be installed, evaluated, and operated in accordance with § 60.13 of subpart A of this part.

(3) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the municipal waste combustor, as specified under § 60.8 of subpart A of this part.

(4) The monitor shall conform to Performance Specification 3 in appendix B of this part except for section 2.3 (relative accuracy requirement).

(5) The quality assurance procedures of appendix F of this part except for section 5.1.1 (relative accuracy test audit) shall apply to the monitor.

(6) If carbon dioxide is selected for use in diluent corrections, the relationship between oxygen and carbon dioxide levels shall be established during the initial performance test according to the procedures and methods specified in paragraphs (b)(6)(i) through (b)(6)(iv) of this section. This relationship may be reestablished during performance compliance tests.

(i) The emission rate correction factor and the integrated bag sampling and analysis procedure of EPA Reference Method 3B shall be used to determine the oxygen concentration at the same location as the carbon dioxide monitor.

(ii) Samples shall be taken for at least 30 minutes in each hour.

(iii) Each sample shall represent a 1-hour average.

(iv) A minimum of three runs shall be performed.

(7) As required by § 60.59b(f)(5), the relationship between carbon dioxide and oxygen concentrations that is established in accordance with paragraph (b)(6) of this section shall be submitted to the EPA as part of the initial performance test report.

(c) The procedures and test methods specified in paragraphs (c)(1) through (c)(11) of this section shall be used to determine compliance with the emission limits for particulate matter and opacity under § 60.52b(a)(1) and (a)(2).

(1) The EPA Reference Method 1 shall be used to select sampling site and number of traverse points.

(2) The EPA Reference Method 3 shall be used for gas analysis.

(3) The EPA Reference Method 5 shall be used for determining compliance with the particulate matter emission limit. The minimum sample volume shall be 1.7 cubic meters. The probe and filter holder heating systems in the sample train shall be set to provide a gas temperature no greater than 160±14 °C. An oxygen or carbon dioxide measurement shall be obtained simultaneously with each Method 5 run.

(4) An owner or operator may request that compliance with the particulate matter emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(5) As specified under § 60.8 of subpart A of this part, all performance tests shall consist of three test runs. The average of the particulate matter emission concentrations from the three test runs is used to determine compliance.

(6) In accordance with paragraphs (c)(7) and (c)(11) of this section, EPA Reference Method 9 shall be used for determining compliance with the opacity limit except as provided under § 60.11(e) of subpart A of this part.

(7) The owner or operator of an affected facility located within a small or large municipal waste combustor plant shall conduct an initial performance test for particulate matter emissions and opacity as required under § 60.8 of subpart A of this part.

(8) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous

opacity monitoring system for measuring opacity and shall follow the methods and procedures specified in paragraphs (c)(8)(i) through (c)(8)(iv) of this section.

(i) The output of the continuous opacity monitoring system shall be recorded on a 6-minute average basis.

(ii) The continuous opacity monitoring system shall be installed, evaluated, and operated in accordance with § 60.13 of subpart A of this part.

(iii) The continuous opacity monitoring system shall conform to Performance Specification 1 in appendix B of this part.

(iv) The initial performance evaluation shall be completed no later than 180 days after the date of the initial startup of the municipal waste combustor unit, as specified under § 60.8 of subpart A of this part.

(9) Following the date that the initial performance test for particulate matter is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility located within a large municipal waste combustor plant, the owner or operator shall conduct a performance test for particulate matter on an annual basis (no more than 12 calendar months following the previous performance test).

(10) Following the date that the initial performance test for particulate matter is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility located within a small municipal waste combustor plant, the owner or operator shall conduct a performance test for particulate matter on an annual basis (no more than 12 calendar months following the previous performance test). If all performance tests over a 3-year period indicate compliance with the particulate matter emission limit, the owner or operator may elect not to conduct a performance test for the subsequent 2 years. At a minimum, a performance test for particulate matter shall be conducted every third year (no more than 36 months following the previous performance test) at a small municipal waste combustor plant. If a performance test conducted every third year indicates compliance with the particulate matter emission limit, the owner or operator may elect not to conduct a performance test for an additional 2 years. If any performance test indicates noncompliance with the particulate matter emission limit, performance tests shall be required annually until all annual performance tests over a 3-year period indicate compliance with the particulate matter emission limit.

(11) Following the date that the initial performance test for opacity is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility located within a small or large municipal waste combustor plant, the owner or operator shall conduct a performance test for opacity on an annual basis (no more than 12 calendar months following the previous performance test) using the test method specified in paragraph (c)(6) of this section.

(d) The procedures and test methods specified in paragraphs (d)(1) and (d)(2) of this section shall be used to determine compliance with the emission limits for cadmium, lead, and mercury under § 60.52b(a).

(1) The procedures and test methods specified in paragraphs (d)(1)(i) through (d)(1)(ix) of this section shall be used to determine compliance with the emission limits for cadmium and lead under § 60.52b(a) (3) and (4).

(i) The EPA Reference Method 1 shall be used for determining the location and number of sampling points.

(ii) The EPA Reference Method 3 shall be used for flue gas analysis.

(iii) The EPA Reference Method 29 shall be used for determining compliance with the cadmium and lead emission limits.

(iv) An oxygen or carbon dioxide measurement shall be obtained simultaneously with each Method 29 test run for cadmium and lead required under paragraph (d)(1)(iii) of this section.

(v) An owner or operator may request that compliance with the cadmium or lead emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(vi) All performance tests shall consist of a minimum of three test runs conducted under representative full load operating conditions. The average of the cadmium or lead emission concentrations from three test runs or more shall be used to determine compliance.

(vii) Following the date of the initial performance test or the date on which the initial performance test is required to be completed under § 60.8 of subpart A of this part, the owner or operator of an affected facility located within a large municipal waste combustor plant shall conduct a performance test for compliance with the emission limits for cadmium and lead on an annual basis (no more than 12 calendar months following the previous performance test).

(viii) Following the date that the initial performance test for cadmium is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility located within a small municipal waste combustor plant, the owner or operator shall conduct a performance test for cadmium emissions on an annual basis (no more than 12 calendar months following the previous performance test). If all performance tests over a 3-year period indicate compliance with the cadmium emission limit, the owner or operator may elect not to conduct a performance test for the subsequent 2 years. At a minimum, a performance test for cadmium shall be conducted every third year (no more than 36 months following the previous performance test) at a small municipal waste combustor plant. If a performance test conducted every third year indicates compliance with the cadmium emission limit, the owner or operator may elect not to conduct a performance test for an additional 2 years. If any performance test indicates noncompliance with the cadmium emission limit, performance tests shall be conducted annually until all annual performance tests over a 3-year period indicate compliance with the cadmium emission limit.

(ix) Following the date that the initial performance test for lead is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility located within a small municipal waste combustor plant, the owner or operator shall conduct a performance test for lead emissions on an annual basis (no more than 12 calendar months following the previous performance test). If all three performance tests over a 3-year period indicate compliance with the lead emission limit, the owner or operator may elect not to conduct a performance test for the subsequent 2 years. At a minimum, a performance test for lead shall be conducted every third year (no more than 36 months following the previous performance test) at a small municipal waste combustor plant. If a performance test conducted every third year indicates compliance with the lead emission limit, the owner or operator may elect not to conduct a performance test for an additional 2 years. If any performance test indicates noncompliance with the lead emission limit, performance tests shall be conducted annually until all annual performance tests over a 3-year period indicate compliance with the lead emission limit.

(2) The procedures and test methods specified in paragraphs (d)(2)(i) through (d)(2)(xi) of this section shall be used to determine compliance with the mercury emission limit under § 60.52b(a)(5).

(i) The EPA Reference Method 1 shall be used for determining the location and number of sampling points.

(ii) The EPA Reference Method 3 shall be used for flue gas analysis.

(iii) The EPA Reference Method 29 shall be used to determine the mercury emission concentration. The minimum sample volume when using Method 29 for mercury shall be 1.7 cubic meters.

(iv) An oxygen (or carbon dioxide) measurement shall be obtained simultaneously with each Method 29 test run for mercury required under paragraph (d)(2)(iii) of this section.

(v) The percent reduction in the potential mercury emissions (%PHg) is computed using equation 1:

$$\left(\%P_{Hg}\right) = \left(\frac{E_i - E_o}{E_i}\right) \times 100 \qquad (1)$$

where:

$\%P_{Hg}$ = percent reduction of the potential mercury emissions achieved.

E_i = potential mercury emission concentration measured at the control device inlet, corrected to 7 percent oxygen (dry basis).

E_o = controlled mercury emission concentration measured at the mercury control device outlet, corrected to 7 percent oxygen (dry basis).

(vi) All performance tests shall consist of a minimum of three test runs conducted under representative full load operating conditions. The average of the mercury emission concentrations or percent reductions from three test runs or more is used to determine compliance.

(vii) An owner or operator may request that compliance with the mercury emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(viii) The owner or operator of an affected facility located within a small or large municipal waste combustor plant shall conduct an initial performance test for mercury emissions as required under § 60.8 of subpart A of this part.

(ix) Following the date that the initial performance test for mercury is completed or is required to be completed under § 60.8 of subpart A of this part, the owner or operator of an affected facility located within a large municipal waste combustor plant shall conduct a performance test for mercury emissions on a annual basis (no more than 12 calendar months from the previous performance test).

(x) Following the date that the initial performance test for mercury is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility located within a small municipal waste combustor plant, the owner or operator shall conduct a performance test for mercury emissions on an annual basis (no more than 12 calendar months following the previous performance test). If all three performance tests over a 3-year period indicate compliance with the mercury emission limit, the owner or operator may elect not to conduct a performance test for the subsequent 2 years. At a minimum, a performance test for mercury shall be conducted every third year (no more than 36 months following the previous performance test) at a small municipal waste combustor plant. If a performance test conducted every third year indicates compliance with the mercury emission limit, the owner or operator may elect not to conduct a performance test for an additional 2 years. If any performance test indicates noncompliance with the mercury emission limit, performance tests shall be conducted annually until all annual performance tests over a 3-year period indicate compliance with the mercury emission limit.

(xi) The owner or operator of an affected facility where activated carbon injection is used to comply with the mercury emission limit shall follow the procedures specified in paragraph (m) of this section for measuring and calculating carbon usage.

(e) The procedures and test methods specified in paragraphs (e)(1) through (e)(14) of this section shall be used for determining compliance with the sulfur dioxide emission limit under § 60.52b(b)(1).

(1) The EPA Reference Method 19, section 4.3, shall be used to calculate the daily geometric average sulfur dioxide emission concentration.

(2) The EPA Reference Method 19, section 5.4, shall be used to determine the daily geometric average percent reduction in the potential sulfur dioxide emission concentration.

(3) An owner or operator may request that compliance with the sulfur dioxide emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(4) The owner or operator of an affected facility shall conduct an initial performance test for sulfur dioxide emissions as required under § 60.8 of subpart A of this part. Compliance with the sulfur dioxide emission limit (concentration or percent reduction) shall be determined by using the continuous emission monitoring system specified in paragraph (e)(5) of this section to measure sulfur dioxide and calculating a 24-hour daily geometric average emission concentration or a 24-hour daily geometric average percent reduction using EPA Reference Method 19, sections 4.3 and 5.4, as applicable.

(5) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous emission monitoring system for measuring sulfur dioxide emissions discharged to the atmosphere and record the output of the system.

(6) Following the date that the initial performance test for sulfur dioxide is completed or is required to be completed under § 60.8 of subpart A of this part, compliance with the sulfur dioxide emission limit shall be determined based on the 24-hour daily geometric average of the hourly arithmetic average emission concentrations using continuous emission monitoring system outlet data if compliance is based on an emission concentration, or continuous emission monitoring system inlet and outlet data if compliance is based on a percent reduction.

(7) At a minimum, valid continuous monitoring system hourly averages shall be obtained as specified in paragraphs (e)(7)(i) and (e)(7)(ii) for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter that the affected facility is combusting municipal solid waste.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) Each sulfur dioxide 1-hour arithmetic average shall be corrected to 7 percent oxygen on an hourly basis using the 1-hour arithmetic average of the oxygen (or carbon dioxide) continuous emission monitoring system data.

(8) The 1-hour arithmetic averages required under paragraph (e)(6) of this section shall be expressed in parts per million corrected to 7 percent oxygen (dry basis) and used to calculate the 24-hour daily geometric average emission concentrations and daily geometric average emission percent reductions. The 1-hour arithmetic averages shall be calculated using the data points

required under § 60.13(e)(2) of subpart A of this part.

(9) All valid continuous emission monitoring system data shall be used in calculating average emission concentrations and percent reductions even if the minimum continuous emission monitoring system data requirements of paragraph (e)(7) of this section are not met.

(10) The procedures under § 60.13 of subpart A of this part shall be followed for installation, evaluation, and operation of the continuous emission monitoring system.

(11) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the municipal waste combustor as specified under § 60.8 of subpart A of this part.

(12) The continuous emission monitoring system shall be operated according to Performance Specification 2 in appendix B of this part.

(i) During each relative accuracy test run of the continuous emission monitoring system required by Performance Specification 2 in appendix B of this part, sulfur dioxide and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraphs (e)(12)(i)(A) and (e)(12)(i)(B) of this section.

(A) For sulfur dioxide, EPA Reference Method 6, 6A, or 6C shall be used.

(B) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B shall be used.

(ii) The span value of the continuous emissions monitoring system at the inlet to the sulfur dioxide control device shall be 125 percent of the maximum estimated hourly potential sulfur dioxide emissions of the municipal waste combustor unit. The span value of the continuous emission monitoring system at the outlet of the sulfur dioxide control device shall be 50 percent of the maximum estimated hourly potential sulfur dioxide emissions of the municipal waste combustor unit.

(13) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 1 in appendix F of this part.

(14) When sulfur dioxide emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 to provide, as necessary, valid emissions data for a minimum of 75 percent of the hours per day that the affected facility is operated and combusting municipal solid waste for 90 percent of the days per calendar quarter that the affected facility is operated and combusting municipal solid waste.

(f) The procedures and test methods specified in paragraphs (f)(1) through (f)(8) of this section shall be used for determining compliance with the hydrogen chloride emission limit under § 60.52b(b)(2).

(1) The EPA Reference Method 26 or 26A, as applicable, shall be used to determine the hydrogen chloride emission concentration. The minimum sampling time for Method 26 shall be 1 hour.

(2) An oxygen (or carbon dioxide) measurement shall be obtained simultaneously with each Method 26 test run for hydrogen chloride required by paragraph (f)(1) of this section.

(3) The percent reduction in potential hydrogen chloride emissions (% P_{HCl}) is computed using equation 2:

$$\left(\%P_{HCl}\right) = \left(\frac{E_i - E_o}{E_i}\right) \times 100 \qquad (2)$$

where:

$\%P_{HCl}$=percent reduction of the potential hydrogen chloride emissions achieved.

E_i=potential hydrogen chloride emission concentration measured at the control device inlet, corrected to 7 percent oxygen (dry basis).

E_o=controlled hydrogen chloride emission concentration measured at the control device outlet, corrected to 7 percent oxygen (dry basis).

(4) An owner or operator may request that compliance with the hydrogen chloride emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(5) As specified under § 60.8 of subpart A of this part, all performance tests shall consist of three test runs. The average of the hydrogen chloride emission concentrations or percent reductions from the three test runs is used to determine compliance.

(6) The owner or operator of an affected facility shall conduct an initial performance test for hydrogen chloride as required under § 60.8 of subpart A of this part.

(7) Following the date that the initial performance test for hydrogen chloride is completed or is required to be completed under § 60.8 of subpart A of this part, the owner or operator of an affected facility located within a large municipal waste combustor plant shall conduct a performance test for hydrogen chloride emissions on an annual basis (no more than 12 calendar months following the previous performance test).

(8) Following the date that the initial performance test for hydrogen chloride is completed or is required to be completed under § 60.8 of this part, the owner or operator of an affected facility located within a small municipal waste combustor plant shall conduct a performance test for hydrogen chloride emissions on an annual basis (no more than 12 calendar months following the previous performance test). If all performance tests over a 3-year period indicate compliance with the hydrogen chloride emission limit, the owner or operator may elect not to conduct a performance test for the subsequent 2 years. At a minimum, a performance test for hydrogen chloride shall be conducted every third year (no more than 36 months following the previous performance test) at a small municipal waste combustor plant. If a performance test conducted every third year indicates compliance with the hydrogen chloride emission limit, the owner or operator may elect not to conduct a performance test for an additional 2 years. If any performance test indicates noncompliance with the hydrogen chloride emission limit, performance tests shall be conducted annually until all annual performance tests over a 3-year period indicate compliance with the hydrogen chloride emission limit.

(g) The procedures and test methods specified in paragraphs (g)(1) through (g)(9) of this section shall be used to determine compliance with the limits for dioxin/furan emissions under § 60.52b(c).

(1) The EPA Reference Method 1 shall be used for determining the location and number of sampling points.

(2) The EPA Reference Method 3 shall be used for flue gas analysis.

(3) The EPA Reference Method 23 shall be used for determining the dioxin/furan emission concentration.

(i) The minimum sample time shall be 4 hours per test run.

(ii) An oxygen (or carbon dioxide) measurement shall be obtained simultaneously with each Method 23 test run for dioxins/furans.

(4) The owner or operator of an affected facility shall conduct an initial performance test for dioxin/furan emissions in accordance with paragraph (g)(3) of this section, as required under § 60.8 of subpart A of this part.

(5) Following the date that the initial performance test for dioxins/furans is completed or is required to be completed under § 60.8 of subpart A of this part, the owner or operator of an affected facility located within small and large municipal waste combustor plants shall conduct performance tests for dioxin/furan emissions in accordance with paragraph (g)(3) of this section, according to one of the schedules specified in paragraphs (g)(5)(i) through (g)(5)(iii) of this section.

(i) For affected facilities located within small and large municipal waste combustor plants, performance tests shall be conducted on an annual basis (no more than 12 calendar months following the previous performance test.)

(ii) For affected facilities located within small municipal waste combustor plants where all performance tests for an affected facility over a 3-year period indicate compliance with the dioxin/furan emission limit, the owner or operator may elect not to conduct a performance test for the subsequent 2 years for that affected facility. At a minimum, a performance test for dioxin/furan emissions shall be conducted every third year (no more than 36 months following the previous performance test) for each affected facility. If a performance test conducted every third year indicates compliance with the dioxin/furan emission limit, the owner or operator may elect not to conduct a performance test on the affected facility for an additional 2 years. If any performance test indicates noncompliance with the dioxin/furan emission limit, performance tests shall be conducted annually until all annual performance tests for the affected facility over a 3-year period indicate compliance with the dioxin/furan emission limit.

(iii) For affected facilities located within small or large municipal waste combustor plants where all performance tests for all affected facilities over a 2-year period indicate that dioxin/furan emissions are less than or equal to 7 nanograms per dry standard cubic meter (total mass) for all affected facilities located within a municipal waste combustor plant, the owner or operator of the municipal waste combustor plant may elect to conduct annual performance tests for one affected facility (i.e., unit) per year at the municipal waste combustor plant. At a minimum, a performance test for dioxin/furan emissions shall be conducted annually (no more than 12 months following the previous performance test) for one affected facility at the municipal waste combustor plant. Each year a different affected facility at the municipal waste combustor plant shall be tested, and the affected facilities at the plant shall be tested in sequence (e.g., unit 1, unit 2, unit 3, as applicable). If each annual performance test continues to indicate a dioxin/furan emission level less than or equal to 7 nanograms per dry standard cubic meter (total mass), the owner or operator may continue conducting a performance test on only one affected facility per year. If any annual performance test indicates a dioxin/furan emission level greater than 7 nanograms per dry standard cubic meter (total mass), performance tests thereafter shall be conducted annually on all affected facilities at the plant until and unless all annual performance tests for all affected facilities at the plant over a 2-year period indicate a dioxin/furan emission level less than or equal to 7 nanograms per dry standard cubic meter (total mass).

(6) The owner or operator of an affected facility that selects to follow the performance testing schedule specified in paragraph (g)(5)(iii) of this section shall follow the procedures specified in § 60.59b(g)(4) for reporting the selection of this schedule.

(7) The owner or operator of an affected facility where activated carbon is used to comply with the dioxin/furan emission limits specified in § 60.52b(c) or the dioxin/furan emission level specified in paragraph (g)(5)(iii) of this section shall follow the procedures specified in paragraph (m) of this section for measuring and calculating the carbon usage rate.

(8) An owner or operator may request that compliance with the dioxin/furan emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(9) As specified under § 60.8 of subpart A of this part, all performance tests shall consist of three test runs. The average of the dioxin/furan emission concentrations from the three test runs is used to determine compliance.

(h) The procedures and test methods specified in paragraphs (h)(1) through (h)(12) of this section shall be used to determine compliance with the nitrogen oxides emission limit for municipal waste combustors located at large municipal waste combustor plants under § 60.52b(d) (no nitrogen oxides performance tests are required for affected facilities located within small municipal waste combustor plants).

(1) The EPA Reference Method 19, section 4.1, shall be used for determining the daily arithmetic average nitrogen oxides emission concentration.

(2) An owner or operator may request that compliance with the nitrogen oxides emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(3) The owner or operator of an affected facility located within a large municipal waste combustor plant subject to the nitrogen oxides limit under § 60.52b(d) shall conduct an initial performance test for nitrogen oxides as required under § 60.8 of subpart A of this part. Compliance with the nitrogen oxides emission limit shall be determined by using the continuous emission monitoring system specified in paragraph (h)(4) of this section for measuring nitrogen oxides and calculating a 24-hour daily arithmetic average emission concentration using EPA Reference Method 19, section 4.1.

(4) The owner or operator of an affected facility located within a large municipal waste combustor plant subject to the nitrogen oxides emission limit under § 60.52b(d) shall install, calibrate, maintain, and operate a continuous emission monitoring system for measuring nitrogen oxides discharged to the atmosphere, and record the output of the system.

(5) Following the date that the initial performance test for nitrogen oxides is completed or is required to be completed under § 60.8 of subpart A of this part, compliance with the emission limit for nitrogen oxides required under § 60.52b(d) shall be determined based on the 24-hour daily arithmetic average of the hourly emission concentrations using continuous emission monitoring system outlet data.

(6) At a minimum, valid continuous emission monitoring system hourly averages shall be obtained as specified in paragraphs (h)(6)(i) and (h)(6)(ii) of this section for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter that the affected facility is combusting municipal solid waste.

(i) At least 2 data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) Each nitrogen oxides 1-hour arithmetic average shall be corrected to 7 percent oxygen on an hourly basis using the 1-hour arithmetic average of the oxygen (or carbon dioxide)

continuous emission monitoring system data.

(7) The 1-hour arithmetic averages required by paragraph (h)(5) of this section shall be expressed in parts per million by volume (dry basis) and used to calculate the 24-hour daily arithmetic average concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(8) All valid continuous emission monitoring system data must be used in calculating emission averages even if the minimum continuous emission monitoring system data requirements of paragraph (h)(6) of this section are not met.

(9) The procedures under § 60.13 of subpart A of this part shall be followed for installation, evaluation, and operation of the continuous emission monitoring system. The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the municipal waste combustor unit, as specified under § 60.8 of subpart A of this part.

(10) The owner or operator shall operate the continuous emission monitoring system according to Performance Specification 2 in appendix B of this part and shall follow the procedures and methods specified in paragraphs (h)(10)(i) and (h)(10)(ii) of this section.

(i) During each relative accuracy test run of the continuous emission monitoring system required by Performance Specification 2 of appendix B of this part, nitrogen oxides and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraphs (h)(10)(i)(A) and (h)(10)(i)(B) of this section.

(A) For nitrogen oxides, EPA Reference Method 7, 7A, 7C, 7D, or 7E shall be used.

(B) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B shall be used.

(ii) The span value of the continuous emission monitoring system shall be 125 percent of the maximum estimated hourly potential nitrogen oxide emissions of the municipal waste combustor unit.

(11) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 1 in appendix F of this part.

(12) When nitrogen oxides continuous emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained using other monitoring systems as approved by the Administrator or EPA Reference Method 19 to provide, as necessary, valid emissions data for a minimum of 75 percent of the hours per day for 90 percent of the days per calendar quarter the unit is operated and combusting municipal solid waste.

(i) The procedures specified in paragraphs (i)(1) through (i)(12) of this section shall be used for determining compliance with the operating requirements under § 60.53b.

(1) Compliance with the carbon monoxide emission limits in § 60.53b(a) shall be determined using a 4-hour block arithmetic average for all types of affected facilities except mass burn rotary waterwall municipal waste combustors and refuse-derived fuel stokers.

(2) For affected mass burn rotary waterwall municipal waste combustors and refuse-derived fuel stokers, compliance with the carbon monoxide emission limits in § 60.53b(a) shall be determined using a 24-hour daily arithmetic average.

(3) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous emission monitoring system for measuring carbon monoxide at the combustor outlet and record the output of the system and shall follow the procedures and methods specified in paragraphs (i)(3)(i) through (i)(3)(iii) of this section.

(i) The continuous emission monitoring system shall be operated according to Performance Specification 4A in appendix B of this part.

(ii) During each relative accuracy test run of the continuous emission monitoring system required by Performance Specification 4A in appendix B of this part, carbon monoxide and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraphs (i)(3)(ii)(A) and (i)(3)(ii)(B) of this section.

(A) For carbon monoxide, EPA Reference Method 10, 10A, or 10B shall be used.

(B) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B shall be used.

(iii) The span value of the continuous emission monitoring system shall be 125 percent of the maximum estimated hourly potential carbon monoxide emissions of the municipal waste combustor unit.

(4) The 4-hour block and 24-hour daily arithmetic averages specified in paragraphs (i)(1) and (i)(2) of this section shall be calculated from 1-hour arithmetic averages expressed in parts per million by volume corrected to 7 percent oxygen (dry basis). The 1-hour arithmetic averages shall be calculated using the data points generated by the continuous emission monitoring system. At least two data points shall be used to calculate each 1-hour arithmetic average.

(5) An owner or operator may request that compliance with the carbon monoxide emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(6) The procedures specified in paragraphs (i)(6)(i) through (i)(6)(v) of this section shall be used to determine compliance with load level requirements under § 60.53b(b).

(i) The owner or operator of an affected facility with steam generation capability shall install, calibrate, maintain, and operate a steam flow meter or a feedwater flow meter; measure steam (or feedwater) flow in kilograms per hour (or pounds per hour) on a continuous basis; and record the output of the monitor. Steam (or feedwater) flow shall be calculated in 4-hour block arithmetic averages.

(ii) The method included in the ''American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)'' section 4 (incorporated by reference, see § 60.17 of subpart A of this part) shall be used for calculating the steam (or feedwater) flow required under paragraph (i)(6)(i) of this section. The recommendations in ''American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971),'' chapter 4 (incorporated by reference—see § 60.17 of subpart A of this part) shall be followed for design, construction, installation, calibration, and use of nozzles and orifices except as specified in (i)(6)(iii) of this section.

(iii) Measurement devices such as flow nozzles and orifices are not required to be recalibrated after they are installed.

(iv) All signal conversion elements associated with steam (or feedwater flow) measurements must be calibrated according to the manufacturer's instructions before each dioxin/furan

performance test, and at least once per year.

(a) [Reserved].

(7) To determine compliance with the maximum particulate matter control device temperature requirements under § 60.53b(c), the owner or operator of an affected facility shall install, calibrate, maintain, and operate a device for measuring on a continuous basis the temperature of the flue gas stream at the inlet to each particulate matter control device utilized by the affected facility. Temperature shall be calculated in 4-hour block arithmetic averages.

(8) The maximum demonstrated municipal waste combustor unit load shall be determined during the initial performance test for dioxins/furans and each subsequent performance test during which compliance with the dioxin/furan emission limit specified in § 60.52b(c) is achieved. The maximum demonstrated municipal waste combustor unit load shall be the highest 4-hour arithmetic average load achieved during four consecutive hours during the most recent test during which compliance with the dioxin/furan emission limit was achieved.

(9) For each particulate matter control device employed at the affected facility, the maximum demonstrated particulate matter control device temperature shall be determined during the initial performance test for dioxins/furans and each subsequent performance test during which compliance with the dioxin/furan emission limit specified in § 60.52b(c) is achieved. The maximum demonstrated particulate matter control device temperature shall be the highest 4-hour arithmetic average temperature achieved at the particulate matter control device inlet during four consecutive hours during the most recent test during which compliance with the dioxin/furan limit was achieved.

(10) At a minimum, valid continuous emission monitoring system hourly averages shall be obtained as specified in paragraphs (i)(10)(i) and (i)(10)(ii) of this section for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter that the affected facility is combusting municipal solid waste.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) At a minimum, each carbon monoxide 1-hour arithmetic average shall be corrected to 7 percent oxygen on an hourly basis using the 1-hour arithmetic average of the oxygen (or carbon dioxide) continuous emission monitoring system data.

(11) All valid continuous emission monitoring system data must be used in calculating the parameters specified under paragraph (i) of this section even if the minimum data requirements of paragraph (i)(10) of this section are not met. When carbon monoxide continuous emission data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained using other monitoring systems as approved by the Administrator or EPA Reference Method 10 to provide, as necessary, the minimum valid emission data.

(12) Quarterly accuracy determinations and daily calibration drift tests for the carbon monoxide continuous emission monitoring system shall be performed in accordance with procedure 1 in appendix F of this part.

(j) The procedures specified in paragraphs (j)(1) and (j)(2) of this section shall be used for calculating municipal waste combustor unit capacity as defined under § 60.51b.

(1) For municipal waste combustor units capable of combusting municipal solid waste continuously for a 24-hour period, municipal waste combustor unit capacity, in megagrams per day of municipal solid waste combusted, shall be calculated based on 24 hours of operation at the maximum charging rate. The maximum charging rate shall be determined as specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this section as applicable.

(i) For combustors that are designed based on heat capacity, the maximum charging rate shall be calculated based on the maximum design heat input capacity of the unit and a heating value of 10,500 kilojoules per kilogram.

(ii) For combustors that are not designed based on heat capacity, the maximum charging rate shall be the maximum design charging rate.

(2) For batch feed municipal waste combustor units, municipal waste combustor unit capacity, in megagrams per day of municipal solid waste combusted, shall be calculated as the maximum design amount of municipal solid waste that can be charged per batch multiplied by the maximum number of batches that could be processed in a 24-hour period. The maximum number of batches that could be processed in a 24-hour period is calculated as 24 hours divided by the design number of hours required to process one batch of municipal solid waste, and may include fractional batches (e.g., if one batch requires 16 hours, then 24/16, or 1.5 batches, could be combusted in a 24-hour period). For batch combustors that are designed based on heat capacity, the design heating value of 10,500 kilojoules per kilogram for all municipal solid waste shall be used in calculating the municipal waste combustor unit capacity in megagrams per day of municipal solid waste.

(k) The procedures specified in paragraphs (k)(1) through (k)(3) of this section shall be used for determining compliance with the fugitive ash emission limit under § 60.55b.

(1) The EPA Reference Method 22 shall be used for determining compliance with the fugitive ash emission limit under § 60.55b. The minimum observation time shall be a series of three 1-hour observations. The observation period shall include times when the facility is transferring ash from the municipal waste combustor unit to the area where ash is stored or loaded into containers or trucks.

(2) The average duration of visible emissions per hour shall be calculated from the three 1-hour observations. The average shall be used to determine compliance with § 60.55b.

(3) The owner or operator of an affected facility shall conduct an initial performance test for fugitive ash emissions as required under § 60.8 of subpart A of this part.

(l) The procedures specified in paragraphs (l)(1) through (l)(3) of this section shall be used to determine compliance with the opacity limit for air curtain incinerators under § 60.56b.

(1) The EPA Reference Method 9 shall be used for determining compliance with the opacity limit.

(2) The owner or operator of the air curtain incinerator shall conduct an initial performance test for opacity as required under § 60.8 of subpart A of this part.

(3) Following the date that the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, the owner or operator of the air curtain incinerator shall conduct a performance test for opacity on an annual basis (no more than 12 calendar months following the previous performance test).

(m) The owner or operator of an affected facility where activated carbon injection is used to comply with the mercury emission limit under § 60.52b(a)(5), or the dioxin/furan emission limits under § 60.52(b)(c), or the dioxin/furan emission level specified in § 60.58b(g)(5)(iii) shall follow the procedures specified in paragraphs (m)(1) through (m)(3) of this section.

(1) During the performance tests for dioxins/furans and mercury, as

applicable, the owner or operator shall estimate an average carbon mass feed rate based on carbon injection system operating parameters such as the screw feeder speed, hopper volume, hopper refill frequency, or other parameters appropriate to the feed system being employed, as specified in paragraphs (m)(1)(i) and (m)(1)(ii) of this section.

(i) An average carbon mass feed rate in kilograms per hour or pounds per hour shall be estimated during the initial performance test for mercury emissions and each subsequent performance test for mercury emissions.

(ii) An average carbon mass feed rate in kilograms per hour or pounds per hour shall be estimated during the initial performance test for dioxin/furan emissions and each subsequent performance test for dioxin/furan emissions.

(2) During operation of the affected facility, the carbon injection system operating parameter(s) that are the primary indicator(s) of the carbon mass feed rate (e.g., screw feeder setting) must equal or exceed the level(s) documented during the performance tests specified under paragraphs (m)(1)(i) and (m)(1)(ii) of this section.

(3) The owner or operator shall estimate the total carbon usage of the plant (kilograms or pounds) for each calendar quarter by two independent methods, according to the procedures in paragraphs (m)(3)(i) and (m)(3)(ii) of this section.

(i) The weight of carbon delivered to the plant.

(ii) Estimate the average carbon mass feed rate in kilograms per hour or pounds per hour for each hour of operation for each affected facility based on the parameters specified under paragraph (m)(1) of this section, and sum the results for all affected facilities at the plant for the total number of hours of operation during the calendar quarter.

§ 60.59b Reporting and recordkeeping requirements.

(a) The owner or operator of an affected facility located at a municipal waste combustor plant with a capacity to combust greater than 35 megagrams per day shall submit, on or before the date the application for a construction permit is submitted under 40 CFR part 51, subpart I, or part 52, as applicable, the items specified in paragraphs (a)(1) through (a)(4) of this section.

(1) The preliminary and final draft materials separation plans required by § 60.57b(a)(1) and (a)(5).

(2) A copy of the notification of the public meeting required by § 60.57b(a)(1)(ii).

(3) A transcript of the public meeting required by § 60.57b(a)(2).

(4) A copy of the document summarizing responses to public comments required by § 60.57b(a)(3).

(b) The owner or operator of an affected facility located at a municipal waste combustor plant with a capacity to combust greater than 35 megagrams per day shall submit a notification of construction, which includes the information specified in paragraphs (b)(1) through (b)(5) of this section.

(1) Intent to construct.

(2) Planned initial startup date.

(3) The types of fuels that the owner or operator plans to combust in the affected facility.

(4) The municipal waste combustor unit capacity, municipal waste combustor plant capacity, and supporting capacity calculations prepared in accordance with § 60.58b(j).

(5) Documents associated with the siting requirements under § 60.57b (a) and (b), as specified in paragraphs (b)(5)(i) through (b)(5)(v) of this section.

(i) The siting analysis required by § 60.57b (b)(1) and (b)(2).

(ii) The final materials separation plan for the affected facility required by § 60.57b(a)(10).

(iii) A copy of the notification of the public meeting required by § 60.57b(b)(3)(ii).

(iv) A transcript of the public meeting required by § 60.57b(b)(4).

(v) A copy of the document summarizing responses to public comments required by § 60.57b (a)(9) and (b)(5).

(c) The owner or operator of an air curtain incinerator subject to the opacity limit under § 60.56b shall provide a notification of construction that includes the information specified in paragraphs (b)(1) through (b)(4) of this section.

(d) The owner or operator of an affected facility located within a small or large municipal waste combustor plant and subject to the standards under §§ 60.52b, 60.53b, 60.54b, 60.55b, and 60.57b shall maintain records of the information specified in paragraphs (d)(1) through (d)(15) of this section, as applicable, for each affected facility for a period of at least 5 years.

(1) The calendar date of each record.

(2) The emission concentrations and parameters measured using continuous monitoring systems as specified under paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(i) The measurements specified in paragraphs (d)(2)(i)(A) through (d)(2)(i)(D) of this section shall be recorded and be available for submittal to the Administrator or review onsite by an inspector.

(A) All 6-minute average opacity levels as specified under § 60.58b(c).

(B) All 1-hour average sulfur dioxide emission concentrations as specified under § 60.58b(e).

(C) All 1-hour average nitrogen oxides emission concentrations as specified under § 60.58b(h) (large municipal waste combustor plants only).

(D) All 1-hour average carbon monoxide emission concentrations, municipal waste combustor unit load measurements, and particulate matter control device inlet temperatures as specified under § 60.58b(i).

(ii) The average concentrations and percent reductions, as applicable, specified in paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(D) of this section shall be computed and recorded, and shall be available for submittal to the Administrator or review on-site by an inspector.

(A) All 24-hour daily geometric average sulfur dioxide emission concentrations and all 24-hour daily geometric average percent reductions in sulfur dioxide emissions as specified under § 60.58b(e).

(B) All 24-hour daily arithmetic average nitrogen oxides emission concentrations as specified under § 60.58b(h) (large municipal waste combustor plants only).

(C) All 4-hour block or 24-hour daily arithmetic average carbon monoxide emission concentrations, as applicable, as specified under § 60.58b(i).

(D) All 4-hour block arithmetic average municipal waste combustor unit load levels and particulate matter control device inlet temperatures as specified under § 60.58b(i).

(3) Identification of the calendar dates when any of the average emission concentrations, percent reductions, or operating parameters recorded under paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(E) of this section, or the opacity levels recorded under paragraph (d)(2)(i)(A) of this section are above the applicable limits, with reasons for such exceedances and a description of corrective actions taken.

(4) For affected facilities that apply activated carbon for mercury or dioxin/furan control, the records specified in paragraphs (d)(4)(i) through (d)(4)(v) of this section.

(i) The average carbon mass feed rate (in kilograms per hour or pounds per hour) estimated as required under § 60.58b(m)(1)(i) of this section during the initial mercury performance test and all subsequent annual performance tests, with supporting calculations.

(ii) The average carbon mass feed rate (in kilograms per hour or pounds per hour) estimated as required under

§ 60.58b(m)(1)(ii) of this section during the initial dioxin/furan performance test and all subsequent annual performance tests, with supporting calculations.

(iii) The average carbon mass feed rate (in kilograms per hour or pounds per hour) estimated for each hour of operation as required under § 60.58b(m)(3)(ii) of this section, with supporting calculations.

(iv) The total carbon usage for each calendar quarter estimated as specified by paragraph 60.58b(m)(3) of this section, with supporting calculations.

(v) Carbon injection system operating parameter data for the parameter(s) that are the primary indicator(s) of carbon feed rate (e.g., screw feeder speed).

(5) [Reserved]

(6) Identification of the calendar dates for which the minimum number of hours of any of the data specified in paragraphs (d)(6)(i) through (d)(6)(v) of this section have not been obtained including reasons for not obtaining sufficient data and a description of corrective actions taken.

(i) Sulfur dioxide emissions data;

(ii) Nitrogen oxides emissions data (large municipal waste combustor plants only);

(iii) Carbon monoxide emissions data;

(iv) Municipal waste combustor unit load data; and

(v) Particulate matter control device temperature data.

(7) Identification of each occurrence that sulfur dioxide emissions data, nitrogen oxides emissions data (large municipal waste combustors only), or operational data (i.e., carbon monoxide emissions, unit load, and particulate matter control device temperature) have been excluded from the calculation of average emission concentrations or parameters, and the reasons for excluding the data.

(8) The results of daily drift tests and quarterly accuracy determinations for sulfur dioxide, nitrogen oxides (large municipal waste combustors only), and carbon monoxide continuous emission monitoring systems, as required under appendix F of this part, procedure 1.

(9) The test reports documenting the results of the initial performance test and all annual performance tests listed in paragraphs (d)(9)(i) and (d)(9)(ii) of this section shall be recorded along with supporting calculations.

(i) The results of the initial performance test and all annual performance tests conducted to determine compliance with the particulate matter, opacity, cadmium, lead, mercury, dioxins/furans, hydrogen chloride, and fugitive ash emission limits.

(ii) For the initial dioxin/furan performance test and all subsequent dioxin/furan performance tests recorded under paragraph (d)(9)(i) of this section, the maximum demonstrated municipal waste combustor unit load and maximum demonstrated particulate matter control device temperature (for each particulate matter control device).

(10) [Reserved]

(11) For each municipal waste combustor subject to the siting provisions under § 60.57b, the siting analysis, the final materials separation plan, a record of the location and date of the public meetings, and the documentation of the responses to public comments received at the public meetings.

(12) The records specified in paragraphs (d)(12)(i) through (d)(12)(iii) of this section.

(i) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have been provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program as required by § 60.54b(a) including the dates of initial and renewal certifications and documentation of current certification.

(ii) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have been fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program as required by § 60.54b(a) including the dates of initial and renewal certifications and documentation of current certification.

(iii) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have completed the EPA municipal waste combustor operator training course or a State-approved equivalent course as required by § 60.54b(d) including documentation of training completion.

(13) Records showing the names of persons who have completed a review of the operating manual as required by § 60.54b(f) including the date of the initial review and subsequent annual reviews.

(14) For affected facilities that apply activated carbon for mercury or dioxin/furan control, identification of the calendar dates when the average carbon mass feed rates recorded under (d)(4)(iii) of this section were less than either of the hourly carbon feed rates estimated during performance tests for mercury or dioxin/furan emissions and recorded under paragraphs (d)(4)(i) and (d)(4)(ii) of this section, respectively, with reasons for such feed rates and a description of corrective actions taken.

(15) For affected facilities that apply activated carbon for mercury or dioxin/furan control, identification of the calendar dates when the carbon injection system operating parameter(s) that are the primary indicator(s) of carbon mass feed rate (e.g., screw feeder speed) recorded under paragraph (d)(4)(v) of this section are below the level(s) estimated during the performance tests as specified in § 60.58b(m)(1)(i) and § 60.58b(m)(1)(ii) of this section, with reasons for such occurrences and a description of corrective actions taken.

(e) The owner or operator of an air curtain incinerator subject to the opacity limit under § 60.56b shall maintain records of results of the initial opacity performance test and subsequent performance tests required by § 60.58b(l) for a period of at least 5 years.

(f) The owner or operator of an affected facility located within a small or large municipal waste combustor plant shall submit the information specified in paragraphs (f)(1) through (f)(6) of this section in the initial performance test report.

(1) The initial performance test data as recorded under paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(D) of this section for the initial performance test for sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load level, and particulate matter control device inlet temperature.

(2) The test report documenting the initial performance test recorded under paragraph (d)(9) of this section for particulate matter, opacity, cadmium, lead, mercury, dioxins/furans, hydrogen chloride, and fugitive ash emissions.

(3) The performance evaluation of the continuous emission monitoring system using the applicable performance specifications in appendix B of this part.

(4) The maximum demonstrated municipal waste combustor unit load and maximum demonstrated particulate matter control device inlet temperature(s) established during the initial dioxin/furan performance test as recorded under paragraph (d)(9) of this section.

(5) For affected facilities that apply activated carbon injection for mercury control, the owner or operator shall submit the average carbon mass feed rate recorded under paragraph (d)(4)(i) of this section.

(6) For those affected facilities that apply activated carbon injection for dioxin/furan control, the owner or

operator shall submit the average carbon mass feed rate recorded under paragraph (d)(4)(ii) of this section.

(g) Following the first year of municipal combustor operation, the owner or operator of an affected facility located within a small or large municipal waste combustor plant shall submit an annual report including the information specified in paragraphs (g)(1) through (g)(4) of this section, as applicable, no later than February 1 of each year following the calendar year in which the data were collected (once the unit is subject to permitting requirements under Title V of the Act, the owner or operator of an affected facility must submit these reports semiannually).

(1) A summary of data collected for all pollutants and parameters regulated under this subpart, which includes the information specified in paragraphs (g)(1)(i) through (g)(1)(v) of this section.

(i) A list of the particulate matter, opacity, cadmium, lead, mercury, dioxins/furans, hydrogen chloride, and fugitive ash emission levels achieved during the performance tests recorded under paragraph (d)(9) of this section.

(ii) A list of the highest emission level recorded for sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load level, and particulate matter control device inlet temperature based on the data recorded under paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(D) of this section.

(iii) List the highest opacity level measured, based on the data recorded under paragraph (d)(2)(i)(A) of this section.

(iv) The total number of days that the minimum number of hours of data for sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load, and particulate matter control device temperature data were not obtained based on the data recorded under paragraph (d)(6) of this section.

(v) The total number of hours that data for sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load, and particulate matter control device temperature were excluded from the calculation of average emission concentrations or parameters based on the data recorded under paragraph (d)(7) of this section.

(2) The summary of data reported under paragraph (g)(1) of this section shall also provide the types of data specified in paragraphs (g)(1)(i) through (g)(1)(vi) of this section for the calendar year preceding the year being reported, in order to provide the Administrator with a summary of the performance of the affected facility over a 2-year period.

(3) The summary of data including the information specified in paragraphs (g)(1) and (g)(2) of this section shall highlight any emission or parameter levels that did not achieve the emission or parameter limits specified under this subpart.

(4) A notification of intent to begin the reduced dioxin/furan performance testing schedule specified in § 60.58b(g)(5)(iii) of this section during the following calendar year.

(h) The owner or operator of an affected facility located within a small or large municipal waste combustor plant shall submit a semiannual report that includes the information specified in paragraphs (h)(1) through (h)(5) of this section for any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified under this subpart, according to the schedule specified under paragraph (h)(6) of this section.

(1) The semiannual report shall include information recorded under paragraph (d)(3) of this section for sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load level, particulate matter control device inlet temperature, and opacity.

(2) For each date recorded as required by paragraph (d)(3) of this section and reported as required by paragraph (h)(1) of this section, the semiannual report shall include the sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load level, particulate matter control device inlet temperature, or opacity data, as applicable, recorded under paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(D) and (d)(2)(i)(A) of this section, as applicable.

(3) If the test reports recorded under paragraph (d)(9) of this section document any particulate matter, opacity, cadmium, lead, mercury, dioxins/furans, hydrogen chloride, and fugitive ash emission levels that were above the applicable pollutant limits, the semiannual report shall include a copy of the test report documenting the emission levels and the corrective actions taken.

(4) The semiannual report shall include the information recorded under paragraph (d)(15) of this section for the carbon injection system operating parameter(s) that are the primary indicator(s) of carbon mass feed rate.

(5) For each operating date reported as required by paragraph (h)(4) of this section, the semiannual report shall include the carbon feed rate data recorded under paragraph (d)(4)(iii) of this section.

(6) Semiannual reports required by paragraph (h) of this section shall be submitted according to the schedule specified in paragraphs (h)(6)(i) and (h)(6)(ii) of this section.

(i) If the data reported in accordance with paragraphs (h)(1) through (h)(5) of this section were collected during the first calendar half, then the report shall be submitted by August 1 following the first calendar half.

(ii) If the data reported in accordance with paragraphs (h)(1) through (h)(5) of this section were collected during the second calendar half, then the report shall be submitted by February 1 following the second calendar half.

(i) The owner or operator of an air curtain incinerator subject to the opacity limit under § 60.56b shall submit the results of the initial opacity performance test and all subsequent annual performance tests recorded under paragraph (e) of this section. Annual performance tests shall be submitted by February 1 of the year following the year of the performance test.

(j) All reports specified under paragraphs (a), (b), (c), (f), (g), (h), and (i) of this section shall be submitted as a paper copy, postmarked on or before the submittal dates specified under these paragraphs, and maintained onsite as a paper copy for a period of 5 years.

(k) All records specified under paragraphs (d) and (e) of this section shall be maintained onsite in either paper copy or computer-readable format, unless an alternative format is approved by the Administrator.

(l) If an owner or operator would prefer to select a different annual or semiannual date for submitting the periodic reports required by paragraphs (g), (h) and (i) of this section, then the dates may be changed by mutual agreement between the owner or operator and the Administrator according to the procedures specified in § 60.19(c) of subpart A of this part.

[FR Doc. 95–30257 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 60

[AD–FRL–5327–1]

Standards of Performance for Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action revises the ''Standards of Performance for Municipal Waste Combustors'' (subpart Ea). These amendments are being made to improve the clarity of subpart Ea and to make subpart Ea consistent with subparts Eb and Cb. Because the amendments clarify regulatory text and make subpart Ea consistent with subparts Eb and Cb, the Agency does not anticipate receiving adverse comments. Consequently the amendments are also being issued as a direct final rule in the final rules section of this Federal Register. If no significant adverse comments are received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

DATES: *Comments.* Comments must be received on or before January 18, 1996, unless a public hearing is requested by December 29, 1995. If a hearing is requested, written comments must be received by February 2, 1996.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than December 29, 1995. If a hearing is held, it will take place on January 3, 1996, 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 Number A–89–08 (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 Ms. Donna Collins, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone (919) 541–5578.

Docket. Docket Nos. A–89–08 and A–90–45, containing supporting information, 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, D.C. 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Stevenson at (919) 541–5264 or Fred Porter at (919) 541–5251, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of this Federal Register notice will automatically go into effect on the date specified in this rule. If significant adverse comments are timely received on any amendment, that amendment of the direct final rule will be withdrawn and all public comments received on that amendment will be addressed in a subsequent final rule based on the relevant portions of this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplementary information, the detailed rationale, and the rule amendments, see the information provided in the direct final rule in the final rules section of this Federal Register.

Paperwork Reduction Act

The information collection requirements of the previously promulgated NSPS were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (the ICR number is 1506.4, with an OMB approval number 2060–0210) may be obtained from Sandy Farmer, Regulatory Information Division (Code 2136), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NSPS will have no significant impact on the information collection burden estimates made previously. The burden will be reduced slightly. Consequently, the ICR has not been revised.

Executive Order 12291 Review

The MWC NSPS promulgated on February 11, 1991 was considered a ''major rule'' under Executive Order 12291 and a regulatory impact analysis (RIA) was prepared. The amendments issued today clarify the rule and do not add any additional control requirements. The EPA concludes these amendments would have a negligible impact on the results of the RIA and the change is considered to be within the flexibility of the analysis.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a regulatory flexibility analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a regulatory flexibility analysis has not been prepared.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control.

Dated: October 31, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–30256 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5327–4]

New Source Performance Standards and Emission Guidelines for Municipal Waste Combustors; Combustion of Lead-Acid Vehicle Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice/Review of decision.

SUMMARY: On December 20, 1989, the U.S. Environmental Protection Agency proposed standards of performance for new MWC's and emission guidelines for existing MWC's under section 111 of the Clean Air Act (Act). The proposed standards and guidelines included a prohibition on the combustion of lead-acid vehicle batteries in MWC's. On February 11, 1991, the EPA promulgated standards and guidelines for new and existing MWC's. The promulgated standards and guidelines did not prohibit the combustion of lead-acid vehicle batteries. The decision not to include a prohibition on the combustion of lead-acid vehicle batteries was challenged in the U.S. Court of Appeals. The U.S. Court of Appeals issued its decision on July 14, 1992 and remanded the issue of lead-acid vehicle battery combustion to the EPA for further explanation of its decision to remove the lead-acid battery combustion prohibition from the 1991 MWC regulations. This supplemental notice responds to the remand.

In response to the remand, the EPA presents the following discussion on the issue of lead-acid battery combustion in MWC's. Based on the information and test data discussed below, the EPA concludes it is unnecessary to include lead-acid battery combustion restrictions in the standards or guidelines and no lead-acid battery combustion prohibitions are being established. This notice describes the basis of the EPA's decision

ADDRESSES: *Docket:* Docket No. A–89–08, containing the information considered by the EPA in reaching a decision with respect to lead-acid battery combustion, is available for public inspection and copying between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday excluding Federal holidays, at the EPA's Air and Radiation Docket and Information Center, Room M1500, 1st floor, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Stevenson, 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) 541–5264.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this Federal Register notice.

I. Background
II. Basis of the EPA's 1991 Decision
III. Supplemental Information on Lead-Acid Batteries in Municipal Solid Waste
IV. Supplemental Information on the Effects of Lead-Acid Battery Combustion on MWC Emissions
V. Conclusions Regarding the EPA's 1991 Decision

I. Background

On December 20, 1989, the EPA proposed standards (subpart Ea) and guidelines (subpart Ca) for new and existing MWC's under section 111 of the Act, 42 U.S.C. section 7411. The proposed standards and guidelines included a prohibition on the combustion of lead-acid vehicle batteries in MWC's. The EPA's intent in proposing the prohibition was to reduce the amount of lead (Pb) in the municipal solid waste (MSW) stream and, therefore, reduce the potential for Pb emissions from MSW combustion. Specifically, under the proposed standards and guidelines, all MWC's would be prohibited from combusting lead-acid batteries weighing more than 5 kilograms (kg) (11 pounds (1b)) (i.e., automobile-type batteries). Lead-acid batteries would have been separated from MSW by onsite mechanical or manual separation, a community-based material separation (recycling) program, or a combination thereof prior to combustion of the MSW. Monthly records and annual reports of the weight of batteries separated from the MSW stream would have been required.

Many public comments were received on the 1989 proposed standards and guidelines; some supported the combustion prohibition, others did not. Some commenters cited studies indicating that lead-acid batteries contribute to over 50 percent of the Pb found in the MSW stream. Other commenters questioned whether lead-acid batteries are actually a major source of Pb in MWC emissions.

Several comments on the 1989 proposal indicated that it would be too difficult or too costly to separate lead-acid batteries from MSW, even though technologies were commercially available for identifying large Pb objects in MSW. Other comments encouraged the use of deposit or mandatory take-back programs to encourage recycling and reduce the number of batteries being disposed of as MSW. Finally, several commenters felt that an absolute prohibition on combustion of batteries was unworkable and that 100-percent compliance would be impossible to achieve because neither deposit/take-back systems nor screening devices could ensure removal of all batteries from MSW. These commenters argued that requiring a ''best effort'' or ''reasonable effort'' to remove batteries was more reasonable and enforceable.

The final standards and guidelines promulgated on February 11, 1991 (subparts Ca and Ea) did not prohibit the combustion of lead-acid batteries. The EPA stated in the preamble to the 1991 standards and guidelines that although lead-acid batteries are a significant source of Pb in MSW, there are already regulatory mechanisms in place to discourage lead-acid battery combustion. In addition, the EPA stated that many commenters questioned whether it would be possible to achieve 100-percent compliance with a prohibition. For these reasons, the Agency did not believe that a prohibition was necessary, and one was not included in the standards and guidelines promulgated on February 11, 1991.

The decision by the EPA to delete the lead-acid battery combustion prohibition from the promulgated standards and guidelines was challenged in the U.S. Court of Appeals by the Natural Resources Defense Council (NRDC), the State of New York, and the State of Florida. The petitioners argued that if 100-percent compliance with the prohibition was not possible, then the EPA could have adopted a lesser restriction (such as a 99- or 95-percent ban) or could have required a best or reasonable effort to prevent battery combustion. The petitioners also argued that the mere existence of other regulations and programs to discourage lead-acid battery combustion and to promote recycling is not sufficient to explain why some type of combustion prohibition would not constitute the best demonstrated technology for reducing emissions if lead-acid battery combustion is a significant source of Pb emissions. The case was argued in court on February 6, 1992.

The U.S. Court of Appeals issued its decision on July 14, 1992. The Court remanded the issue of lead-acid vehicle battery combustion to the EPA and asked the EPA to explain its decision to remove the lead-acid battery combustion prohibition from the 1991

MWC standards and guidelines. A subsequent consent decree among the Sierra Club, NRDC, and the EPA established a schedule for the EPA to respond to the remand. The consent decree requires a final response to be published in the Federal Register. This notice constitutes the EPA's response to the remand.

II. Basis of the EPA's 1991 Decision

At the time the MWC standards and guidelines were promulgated in 1991, there was a lack of sufficient data to support a decision to adopt a lead-acid battery combustion prohibition. Only two studies were available that quantified the contribution of lead-acid batteries to the concentration of Pb in MSW. One study was based on a ''life-cycle'' analysis of products containing Pb that may become part of MSW and was not based on an analysis of actual MSW composition or MWC emissions data. Only one study, conducted in 1987 at a materials recovery facility in Gallatin, Tennessee, recorded the frequency of lead-acid batteries in MSW by sampling actual MSW. At the same time, there were no data available on the effect of lead-acid batteries on MWC emissions or on the effect of lead-acid batteries relative to other sources of Pb in MSW. Finally, the information available on the feasibility and effectiveness of lead-acid battery detection and removal procedures at MWC's was incomplete and inconclusive at the time the 1991 MWC standards and guidelines were promulgated.

As a result, the EPA had no reliable data on which to estimate the emission reductions or other environmental benefits that would be gained from a lead-acid battery combustion prohibition. The EPA also had no basis for estimating the cost impacts of such a prohibition. Furthermore, between proposal and promulgation of the standards and guidelines, the 1990 Amendments to the Clean Air Act became law. Section 129 of the 1990 Amendments required the EPA to reexamine the 1991 MWC regulations and also to establish numerical emission limits for Pb and other metals. Because of these requirements and the lack of sufficient data on the issue of lead-acid battery combustion in 1991, the EPA determined it would be more effective not to promulgate regulations in 1991. Instead, the EPA indicated ti would address lead-acid battery combustion at the same time it investigated and established numerical Pb emission limits under section 129.

The EPA has reviewed the lead-acid battery combustion issue. Additional data that have become available since the 1991 standards and guidelines were promulgated have been reviewed. These data confirm the EPA's original decision not to promulgate standards and guidelines to prohibit lead-acid battery combustion. These new data are discussed in sections III and IV, below, of this notice.

III. Supplemental Information on Lead-Acid Batteries in Municipal Solid Waste

The EPA supports a hierarchical integrated solid waste management (ISWM) approach. At the top of the hierarchy is solid waste reduction, followed by reuse and recycling. At the bottom of the ISWM hierarchy are disposal options including solid waste combustion or landfilling of the solid waste fraction that cannot be reduced, reused, or recycled.

In 1992, approximately 87.8 million used lead-acid batteries were generated in the United States. Most of these (about 66.7 million) were passenger car and light truck batteries; the remainder included batteries for heavy equipment, tractors, marine applications, motorcycles, aircraft, golf carts, and other miscellaneous uses. In 1992, the recycling rate for used lead-acid batteries was 94.4 percent. Recycling rates for 1987 through 1991 were 88.6, 91.0, 95.3, 97.8, and 96.8 percent, respectively. Lead-acid batteries are recycled at specialized recycling facilities known as secondary lead smelters. These facilities recover the Pb metal and compounds, plastic case material, and sulfuric acid electrolyte and, therefore, represent the best treatment option for used lead-acid batteries.

The recycling rate for used lead-acid batteries is relatively high because of the economic value of the lead they contain and because of the recycling infrastructure that is available. Lead is an internationally traded commodity and is subject to price fluctuations over which the battery manufacturers and secondary lead smelters have no control. In order to keep the price of lead-acid batteries constant, battery manufacturers and their distributors collect used batteries. The manufacturers exchange these batteries for an equivalent amount of recycled Pb bullion from secondary lead smelters, instead of having to purchase Pb at the current market price. The manufacturer pays the smelter only a fixed ''tolling fee'' for the cost of processing the used batteries into Pb bullion.

The battery manufacturers and distributors collect the used batteries from their retailers who, in turn, collect them from consumers purchasing new batteries. To encourage consumers to return used batteries, retailers accept used batteries for recycling, even without the purchase of a new battery. Most distributors and retailers will charge the consumer a ''core charge,'' usually between $5 and $10, if a used battery is not returned when a new battery is purchased. The core charge is refunded to the consumer if a used battery is later brought in after it has been replaced with the new battery.

Several nationwide battery distributors participate in a battery collection network similar to the one described above. According to one distributor contacted by the EPA, battery collection and recycling networks extend to every county in every State in the United States. Therefore, no used lead-acid batteries should be discarded in MSW for lack of a collection point for recycling.

Although there are strong economic incentives to encourage recycling, many States have also adopted regulations to encourage lead-acid battery recycling. A total of 37 States have adopted battery recycling laws based on a model rule developed by the Battery Council International (BCI). The BCI model rule encourages lead-acid battery recycling at the retailer level through mandatory take-back and deposit requirements. Only five States in which MWC's are located have not adopted a battery recycling rule based on the BCI model rule. However, in the service area of the MWC's located in these five States, there are retailers that have voluntarily adopted a take-back and deposit program or there are battery collection sites as part of household hazardous waste collection programs.

Based on a lead-acid battery recycling rate of 94.4 percent and a total of 87.8 million used batteries generated per year, approximately 5 million automotive-type lead-acid batteries were not recycled in 1992. Some of these batteries enter the MSW stream and are disposed of in landfills or MWC's. Some used batteries are stored in household garages or basements and then indirectly enter the MSW stream or the recycling network. A survey of 1,000 households found that 19 percent of households had at least one old battery (7 percent had one battery, 8 percent had two or three, 2 percent had four or five, and 2 percent had six or more). As many as 45 million batteries may be in storage in individual households. Battery storage by households, therefore, may represent a significant reservoir of automotive-type lead-acid batteries that do not immediately enter the MSW stream or the recycling system.

Only limited data are available on the actual concentration of lead-acid batteries in MSW. A 1987 study at a materials recovery facility in Gallatin, Tennessee, removed about 70 batteries from 6,332 megagrams (Mg) (6,965 tons) of MSW over a 3-month period. This is equivalent to about one battery per 90 Mg (100 tons) of MSW. However, contacts with other material recovery facility operators indicate that the concentration of lead-acid batteries in MSW may range from one battery per 300 Mg of MSW up to one battery per 700 Mg MSW. Where lead-acid battery collection/separation programs have been implemented, battery contamination levels of less than one battery per 500 Mg of MSW are probably typical. One of the facilities contacted by the EPA reported finding no batteries in the MSW inspected at the facility over a 6-month period during which the facility processed 4,000 tons of MSW per month.

One lead-acid automotive battery (containing about 20 pounds of Pb) per 500 Mg (550 tons) of MSW is equivalent to a Pb concentration in MSW of about 20 parts per million (ppm). However, lead-acid batteries are not the sole source of Pb in MSW. Other sources are lead foils, light bulbs, circuit boards in electrical devices, automobile wheel weights, polyvinyl chloride plastics, yard waste, wood, food, textiles, paper, and inks for some newspapers, magazines, and packaging. One 1988 report estimated that the combustible fraction of MSW had a Pb concentration of 330 ppm based on a life-cycle analysis of lead-containing products.

The concentration of Pb in MSW can be estimated from the concentrations of Pb in MWC ash. There is a relatively constant relationship between the weight of MSW combusted and the weight of ash produced (bottom ash plus fly ash collected from the air pollution control devices (APCD's)). Furthermore, nearly all of the Pb (greater than 99 percent) entering the MWC in the MSW stream is retained in the bottom ash from the MWC and residue (ash) discharged from the APCD. The typical Pb concentration in combined MWC ash and APCD residue ash in about 2000 ppm, by weight, and combined ash represents about 30 percent, by weight, of the original MSW combusted. Based on these relationships, the estimated lead concentration in MSW is about 600 ppm. This estimate is considered to be a good estimate of the Pb concentration in MSW.

Based on a Pb concentration in MSW of 600 ppm, one battery per 100 tons of MSW would contribute about 100 ppm of Pb, or 16 percent of the total Pb in MSW. One battery per 500 tons of MSW would contribute about 20 ppm of Pb, or about 3 percent of total Pb input. At these contribution levels, additional efforts to remove lead-acid batteries from the MSW entering an MWC would have little impact on the amount of lead entering the MWC and little effect on controlled lead emissions.

IV. Supplemental Information on the Effects of Lead-Acid Battery Combustion on MWC Emissions

The remand requires the EPA to explain why it did not include a lead-acid battery prohibition in the February 11, 1991 standards and guidelines. The remand raises the question of whether lead-acid battery removal from MSW would reduce Pb emissions from MWC's. It is clear that Pb is contained in both the MSW stream being combusted and in MWC emissions discharged to the atmosphere. However, it is not clear whether uncontrolled and controlled Pb emissions are proportional only to the total amount of Pb input, or whether they may also be related to the form in which Pb or Pb compounds occur in the MSW. That is, is Pb more efficiently volatilized when it is in the metallic form, such as in lead-acid batteries, than when it is a trace component of paper, plastics, or other MSW material?

In order to determine the effect of lead-acid battery combustion on MWC emissions, a test program was sponsored by Environment Canada, the EPA, the International Lead Zinc Research Organization, and the Greater Vancouver Regional District in British Columbia, Canada. The test program studied the effect of lead-acid batteries on MWC stack emissions and on Pb levels in the fly ash and bottom ash by intentionally spiking MSW being combusted with lead-acid batteries.

Testing was performed on a 240 Mg/day (265 ton/day) mass burn/waterwall combustion unit at the Burnaby, British Columbia, MWC in June 1991. This MWC has a spray dryer/fabric filter-type acid gas/particulate matter APCD. The testing consisted of spiking MSW fed to the MWC unit with lead-acid batteries at the rate of four batteries per hour. This spiking increased the Pb input to the unit by about eight times (800 percent increase), from about 7 kg (15 lb) per hour (baseline) to about 56 kg (125 lb) per hour. The spiking was equivalent to 40 batteries per 90 Mg (100 tons) of MSW, or a Pb concentration in the MSW of about 4,000 ppm.

At the Burnaby MWC, about 1 hour is needed for MSW to travel from one end of the combustion grate to the other. At a spiking rate of four batteries per hour, there were four batteries, on average, on the grate at any given time during the spiking tests.

Testing at the Burnaby MWC consisted of 10 4-hour test runs over a 5-day period. Spiking with lead-acid batteries was performed during two of the runs. Other runs served as baseline control runs. During each run, the MSW fed to the unit was sampled, sorted into 78 categories, and analyzed for metals content. This test is the first to perform controlled spiking of lead-acid batteries to an MWC to study their effect on stack Pb emissions. It is also one of the most through analyses of the metals content of MSW.

The spiking of batteries to the Burnaby MWC did not measurably alter the Pb concentration in the stack gases either before or after the APCD. There were significant Pb increases in the ash residues from the boiler and from below the combustor grate. In the boiler, Pb increased in the section where the temperature is low enough to promote lead chloride (PbCl) condensation. The Pb increase in the grate siftings ash is caused by the Pb metal and Pb sulfate in the battery melting and dripping through the grate and forming beads of Pb metal in the grate siftings and bottom ash. The Pb in lead-acid batteries is not exposed to the appropriate conditions to be volatilized and carried into the flue gas to the APCD's or to the stack. The results of the Burnaby MWC testing program are summarized in table 1.

TABLE 1.—LEAD CONCENTRATION AT AIR POLLUTION CONTROL DEVICE INLET AND OUTLET DURING CONTROL AND BATTERY SPIKING RUNS

Test condition	APCD inlet (µg/dscm)[a]	APCD outlet (µg/dscm)[a b]	APCD efficiency (percent)
Baseline condition	8,764	51.8	99.4
(Range)	.....	(42.0–61.6)	.....

TABLE 1.—LEAD CONCENTRATION AT AIR POLLUTION CONTROL DEVICE INLET AND OUTLET DURING CONTROL AND BATTERY SPIKING RUNS—Continued

Test condition	APCD inlet (μg/dscm)[a]	APCD outlet (μg/dscm)[a b]	APCD efficiency (percent)
Spiking test	6,412	56.0	99.1
(Range)	(3766–9058)	(47.6–63.0)	

[a] Micrograms per dry standard cubic meter, corrected to 7 percent oxygen; original data were reported at 11 percent oxygen.
[b] The APCD consisted of a spray dryer followed by a fabric filter.

In summary, lead-acid batteries do not appear to be a measurable source of stack gas Pb emissions. Lead emissions from MWC's result from other sources of Pb in MSW and prohibiting lead-acid battery combustion is unnecessary.

V. Conclusions Regarding the EPA's 1991 Decision

Based on the information discussed in sections III and IV of this notice, the EPA has determined that lead-acid batteries do not measurably contribute to Pb stack emissions from MWC's. Prohibiting the combustion of lead-acid batteries would not reduce stack gas Pb emissions. Furthermore, lead-acid batteries only represent a small fraction of the Pb found in MSW entering MWC's because most batteries (greater than 90 percent) are being recycled. There are battery retailers in every community in the United States that will accept used lead-acid batteries for recycling. Relative to the lead-acid battery remand discussed in section I of this notice, the EPA is not proposing any change to the standards or guidelines promulgated February 11, 1991 for existing and new MWC's (40 CFR 60.30a and 40 CFR 60.50a) and is not including a prohibition on the combustion of lead-acid batteries in the subpart Eb standards or subpart Cb guidelines promulgated elsewhere in today's Federal Register.

List of Subjects

Environmental Protection, Air pollution control.

Dated: October 31, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–30255 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
December 19, 1995

Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3405

Higher Education Challenge Grants Program, Administrative Provisions; Proposed Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3405

Higher Education Challenge Grants Program; Administrative Provisions

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) proposes to add a new Part 3405 to title 7, subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering Higher Education Challenge Grants Program conducted under the authority of section 1417(b)(1) of the National Agriculture Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152). This action establishes and codifies the administrative procedures to be followed annually in the solicitation of competitive proposals, the evaluation of such proposals, and the award of grants under this program.

DATES: Written comments are invited from interested individuals and organizations. To be considered in the formulation of a final rule, comments must be received on or before January 18, 1996.

ADDRESSES: Comments should be sent to Dr. Jeffrey L. Gilmore, Higher Education Grant Programs Manager, Science and Education Resources Development, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2251, Washington, DC 20250–2251. Comments may also be sent via electronic mail to jgilmore@reeusda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey L. Gilmore at 202–720–1973 (voice), 202–720–2030 (fax) or via electronic mail at jgilmore@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. Chapter 35), the collection of information requirements contained in this proposed rule have been reviewed and approved by the Office of Management and Budget (OMB) and given the OMB Document Nos. 0524–0022, 0524–0024, and 0524–0030. The public reporting burden for the information collections contained in these regulations (Forms CSRS–663, CSRS–708, CSRS–711, CSRS–712, and CSRS–713 as well as the Proposal Summary and Proposal Narrative) is estimated to be 39½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Analyst, OIRM, Ag Box 7630, Washington, DC 20250–7630, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Executive Order No. 12866

This proposed rule has been reviewed under Executive Order No. 12866, and it has been determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866.

Regulatory Flexibility Act

The Administrator, CSREES, certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601 *et seq.*).

Executive Order No. 12612

This rule involves no policies that have federalism implications under Executive Order No. 12612, Federalism, dated October 26, 1987.

Executive Order No. 12778

This rule has been reviewed in accordance with Executive Order No. 12778, Civil Justice Reform, and the required certification has been made to OMB. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.217, Higher Education Challenge Grants Program. For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, 57 FR 15278, April 27, 1992, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

This document proposes to add a new part 3405 to title 7, subtitle B, chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the Higher Education Challenge Grants Program. Under the authority of section 1417(b)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(1)), the Secretary of Agriculture is authorized to conduct competitive grant programs to strengthen institutional capacities, including curriculum, faculty, scientific instrumentation, instruction delivery systems, and student recruitment and retention, to respond to identified State, regional, national, or international educational needs in the food and agricultural sciences. The issuance of this rule will establish and codify the administrative procedures to be followed annually in the solicitation of competitive grant proposals, the evaluation of such proposals, and the award of grants under this program.

The Challenge Grants Program is intended to assist colleges and universities in the United States, having a demonstrable capacity to carry out the teaching of the food and agricultural sciences, in providing high quality educational programs in the food and agricultural sciences. These programs will, in turn, attract outstanding students and produce graduates capable of strengthening the Nation's food and agricultural scientific and professional work force.

List of Subjects in 7 CFR Part 3405

Grant programs—agriculture, Agriculture higher education.

For the reasons set forth in the preamble, it is proposed to amend title 7, subtitle B, chapter XXXIV, of the Code of Federal Regulations by adding part 3405 to read as follows:

PART 3405—HIGHER EDUCATION CHALLENGE GRANTS PROGRAM

Subpart A—General Information

Sec.
3405.1 Applicability of regulations.
3405.2 Definitions.
3405.3 Institutional eligibility.

Subpart B—Program Description

3405.4 Purpose of the program.
3405.5 Matching funds.
3405.6 Scope of program.
3405.7 Joint project proposals.
3405.8 Complementary project proposals.
3405.9 Use of funds for facilities.

Subpart C—Preparation of a Proposal

3405.10 Program application materials.
3405.11 Content of a proposal.

Subpart D—Submission of a Proposal

3405.12 Intent to submit a proposal.
3405.13 When and where to submit a proposal.

Subpart E—Proposal Review and Evaluation

3405.14 Proposal review.
3405.15 Evaluation criteria.

Subpart F—Supplementary Information

3405.16 Access to peer review information.
3405.17 Grant awards.
3405.18 Use of funds; changes.
3405.19 Monitoring progress of funded projects.
3405.20 Other Federal statutes and regulations that apply.
3405.21 Confidential aspects of proposals and awards.
3405.22 Evaluation of program.

Authority: Sec. 1470, National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

Subpart A—General Information

§ 3405.1 Applicability of regulations.

(a) The regulations of this part only apply to competitive Higher Education Challenge Grants awarded under the provisions of section 1417(b)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(1)), to strengthen institutional capacities, including curriculum, faculty, scientific instrumentation, instruction delivery systems, and student recruitment and retention. Section 1405 of NARETPA (7 U.S.C. 3121) designates the U.S. Department of Agriculture (USDA) as the lead Federal agency for agricultural research, extension, and teaching in the food and agricultural sciences. It authorizes the Secretary of Agriculture, who has delegated the authority to the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES), to make competitive grants to land-grant colleges and universities, to colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other U.S. colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, for a period not to exceed 5 years, to administer and conduct programs to respond to identified State, regional, national, or international educational needs in the food and agricultural sciences.

(b) To the extent that funds are available, each year CSREES will publish a Federal Register notice announcing the program and soliciting grant applications.

(c)(1) Based on the amount of funds appropriated in any fiscal year, CSREES will determine and cite in the program announcement:

(i) The targeted need area(s) to be supported or, if the entire scope of a particular targeted need area is not to be supported, the specific special interest(s) within that targeted need area to be supported;

(ii) The degree level(s) to be supported;

(iii) The maximum project period a proposal may request;

(iv) The maximum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal; and

(v) The maximum total funds that may be awarded to an institution under the program in a given fiscal year, including how funds awarded for complementary and for joint project proposals will be counted toward the institutional maximum.

(2) The program announcement will also specify the deadline date for proposal submission, the number of copies of each proposal that must be submitted, the address to which a proposal must be submitted, and whether or not Form CSRS–711, ''Intent to Submit a Proposal,'' is requested.

(d)(1) If it is deemed by CSREES that, for a given fiscal year, additional determinations are necessary, each, as relevant, will be stated in the program announcement. Such determinations may include:

(i) Limits on the subject matter/emphasis areas to be supported;

(ii) The maximum number of proposals that may be submitted on behalf of the same school, college, or equivalent administrative unit within an institution;

(iii) The maximum total number of proposals that may be submitted by an institution;

(iv) The minimum project period a proposal may request;

(v) The minimum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal;

(vi) The proportion of the appropriation reserved for, or available to, regular, complementary, and joint project proposals;

(vii) The proportion of the appropriation reserved for, or available to, projects in each announced targeted need area;

(viii) The proportion of the appropriation reserved for, or available to, each subject matter/emphasis area;

(ix) The maximum number of grants that may be awarded to an institution under the program in a given fiscal year; and

(x) Limits on the use of grant funds for travel or to purchase equipment, if any.

(2) The program announcement also will contain any other limitations deemed necessary by CSREES for proper conduct of the program in the applicable year.

(e) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3405.2 Definitions.

As used in this part:

(a) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(b) *Authorized organizational representative* means the president of the institution or the official, designated by the president of the institution, who has the authority to commit the resources of the institution.

(c) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(d) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(e) *Citizen or national of the United States* means:

(1) A citizen or native resident of a State; or,

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(f) *College* or *University* means an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of

graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such States to provide a program of education beyond secondary education;

(3) Provides an educational program for which a baccalaureate degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(g) *Complementary project proposal* means a proposal for a project which involves coordination with one or more other projects for which funding was awarded under this program in a previous fiscal year, or for which funding is requested under this program in the current fiscal year.

(h) *Department* or *USDA* means the United States Department of Agriculture.

(i) *Eligible institution* means land-grant and other U.S. colleges and universities offering a baccalaureate or first professional degree in at least one discipline or area of the food and agricultural sciences.

(j) *Eligible participant* means, for purposes of § 3405.6(b), Faculty Preparation and Enhancement for Teaching, and § 3405.6(f), Student Recruitment and Retention, an individual who: Is a citizen or national of the United States, as defined in § 3405.2(e); or Is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. Where eligibility is claimed under § 3405.2(e)(2), documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to CSREES upon request.

(k) *Food and agricultural sciences* means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, and inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied disciplines.

(l) *Grantee* means the institution designated in the grant award document as the responsible legal entity to which a grant is awarded.

(m) *Joint project proposal* means a proposal for a project, which will involve the applicant institution and two or more other colleges, universities, community colleges, junior colleges, or other institutions, each of which will assume a major role in the conduct of the proposed project, and for which the applicant institution will transfer at least one-half of the awarded funds to the other institutions participating in the project. Only the applicant must meet the definition of ''eligible institution'' as specified in § 3405.2(i); the other institutions participating in a joint project proposal are not required to meet the definition of ''eligible institution'' as specified in § 3405.2(i), nor required to meet the definition of ''college'' or ''university'' as specified in § 3405.2(f).

(n) *Land-grant colleges and universities* means those institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503–505, as amended; 7 U.S.C. 301–305, 307 and 308), or the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326 and 328), including Tuskegee University.

(o) *Matching* or *Cost-sharing* means that portion of project costs not borne by the Federal Government, including the value of in-kind contributions.

(p) *Peer review panel* means a group of experts or consultants, qualified by training and experience in particular fields of science, education, or technology to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

(q) *Project director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

(r) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in § 3405.2(a) of this part.

(s) *Project* means the particular activity within the scope of one or more of the targeted areas supported by a grant awarded under this program.

(t) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(u) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(v) *State* means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

(w) *Teaching* means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters related thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

(x) *Third party in-kind contributions* means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

(y) *United States* means the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

§ 3405.3 Institutional eligibility.

Proposals may be submitted by land-grant and other U.S. colleges and universities offering a baccalaureate or first professional degree in at least one discipline or area of the food and agricultural sciences. Each applicant must have a demonstrable capacity for, and a significant ongoing commitment to, the teaching of food and agricultural sciences generally and to the specific need and/or subject area(s) for which a grant is requested. Awards may be made only to eligible institutions as defined in § 3405.2(i).

Subpart B—Program Description

§ 3405.4 Purpose of the program.

The Department of Agriculture is designated as the lead Federal agency for higher education in the food and agricultural sciences. In this context, CSREES has specific responsibility to initiate and support projects to strengthen college and university teaching programs in the food and agricultural sciences. One national initiative for carrying out this responsibility is the competitive Higher Education Challenge Grants Program. A primary goal of the program is to attract and ensure a continual flow of outstanding programs and to provide

them with an education of the highest quality available anywhere in the world and which reflects the unique needs of the Nation. It is designed to stimulate and enable colleges and universities to provide the quality of education necessary to produce baccalaureate or higher degree level graduates capable of strengthening the Nation's food and agricultural scientific and professional work force. It is intended that projects supported by the program will:

(a) Address a State, regional, national, or international educational need;

(b) Involve a creative or nontraditional approach toward addressing that need which can serve as a model to others;

(c) Encourage and facilitate better working relationships in the universities and the private sector, to enhance program quality and supplement available resources; and

(d) Result in benefits which will likely transcend the project duration and USDA support.

§ 3405.5 Matching funds.

Each application must provide for matching support from a non-Federal source. CSREES will cite in the program announcement the required percentage of institutional cost sharing.

§ 3405.6 Scope of program.

This program supports projects related to strengthening undergraduate or graduate teaching programs as specified in the annual program announcement. Only proposals addressing one or more of the specific targeted need areas(s) identified in the program announcement will be funded. Proposals may focus on any subject matter area(s) in the food and agricultural sciences unless limited by determinations as specified in the annual program announcement. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curiculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology). Targeted need areas will consist of one or more of the following:

(a) *Curricula design and materials development.* (1) The purpose of this initiative is to promote new and improved curricula and materials to increase the quality of, and continuously renew, the Nation's academic programs in the food and agricultural sciences. The overall objective is to stimulate the development and facilitate the use of exemplary education models and materials that incorporate the most recent advances in subject matter, research on teaching and learning theory, and instructional technology. Proposals may emphasize: the development of courses of study, degree programs, and instructional materials; the use of new approaches to the study of traditional subjects; or the introduction of new subjects, or new applications of knowledge, pertaining to the food and agricultural sciences.

(2) Examples include, but are not limited to, curricula and materials that promote:

(i) Raising the level of scholastic achievement of the Nation's graduates in the food and agricultural sciences.

(ii) Addressing the special needs of particular groups of students, such as minorities, gifted and talented, or those with educational backgrounds that warrant enrichment.

(iii) Using alternative instructional strategies or methodologies, including computer-assisted instruction or simulation modeling, media programs that reach large audiences efficiently and effectively, activities that provide hands-on learning experiences, and educational programs that extend learning beyond the classroom.

(iv) Using sound pedagogy, particularly with regard to recent research on how to motivate students to learn, retain, apply, and transfer knowledge, skills, and competencies.

(v) Building student competencies to integrate and synthesize knowledge from several disciplines.

(b) *Faculty preparation and enhancement for teaching.* (1) The purpose of this initiative is to advance faculty development in the areas of teaching competency, subject matter expertise, or student recruitment and advising skills. Teachers are central to education. They serve as models, motivators, and mentors—the catalysts of the learning process. Moreover, teachers are agents for developing, replicating, and exchanging effective teaching materials and methods. For these reasons, education can be strengthened only when teachers are adequately prepared, highly motivated, and appropriately recognized and rewarded.

(2) Each faculty recipient of support for developmental activities under § 3405.6(b) must be an ''eligible participant'' as defined in § 3405.2(j) of this part.

(3) Examples of developmental activities include, but are not limited to, those which enable teaching faculty to:

(i) Gain experience with recent developments or innovative technology relevant to their teaching responsibilities.

(ii) Work under the guidance and direction of experts who have substantial expertise in an area related to the developmental goals of the project.

(iii) Work with scientists or professionals in government, industry, or other colleges or universities to learn new applications in a field.

(iv) Obtain personal experience working with new ideas and techniques.

(v) Expand competence with new methods of information delivery, such as computer-assisted or televised instruction.

(vi) Increase understanding of the special needs of non-traditional students or students from groups that are underrepresented in the food and agricultural sciences workforce.

(c) *Instruction delivery systems.* (1) The purpose of this initiative is to encourage the use of alternative methods of delivering instruction to enhance the quality, effectiveness, and cost efficiency of teaching programs. The importance of this initiative is evidenced by advances in educational research which have substantiated the theory that differences in the learning styles of students often require alternative instructional methodologies. Also, the rising costs of higher education strongly suggest that colleges and universities undertake more efforts of a collaborative nature in order to deliver instruction which maximizes program quality and reduces unnecessary duplication. At the same time, advancements in knowledge and technology continue to introduce new subject matter areas which warrant consideration and implementation of innovative instruction techniques, methodologies, and delivery systems.

(2) Examples include, but are not limited to:

(i) Use of computers.

(ii) Teleconferencing.

(iii) Networking via satellite communications.

(iv) Regionalization of academic programs.

(v) Mobile classrooms and laboratories.

(vi) Individualized learning centers.

(vii) Symposia, forums, regional or national workshops, etc.

(d) *Scientific instrumentation for teaching.* (1) The purpose of this initiative is to provide students in science-oriented courses the necessary

experience with suitable, up-to-date equipment in order to involve them in work central to scientific understanding and progress. This program initiative will support the acquisition of instructional laboratory and classroom equipment to assure the achievement and maintenance of outstanding food and agricultural sciences higher education programs. A proposal may request support for acquiring new, state-of-the-art instructional scientific equipment, upgrading existing equipment, or replacing non-functional or clearly obsolete equipment.

(2) Examples include, but are not limited to:

(i) Rental or purchase of modern instruments to improve student learning experiences in courses, laboratories, and field work.

(ii) Development of new ways of using instrumentation to extend instructional capabilities.

(iii) Establishment of equipment-sharing capability via consortia or centers that develop innovative opportunities, such as mobile laboratories or satellite access to industry or government laboratories.

(e) *Student experimental learning.* (1) The purpose of this initiative is to further the development of student scientific and professional competencies through experiential learning programs which provide students with opportunities to solve complex problems in the context of real-world situations. Effective experiential learning is essential in preparing future graduates to advance knowledge and technology, enhance quality of life, conserve resources, and revitalize the Nation's economic competitiveness. Such experiential learning opportunities are most effective when they serve to advance decision-making and communication skills as well as technological expertise.

(2) Examples, include, but are not limited to, projects which:

(i) Provide opportunities for students to participate in research projects, either as a part of an ongoing research project or in a project designed especially for this program.

(ii) Provide opportunities for students to complete apprenticeships, internships, or similar participatory learning experiences.

(iii) Expand and enrich courses which are of a practicum nature.

(iv) Provide career mentoring experiences that link students with outstanding professionals.

(f) *Student recruitment and retention.* (1) The purpose of this initiative is to strengthen student recruitment and retention programs in order to promote the future strength of the Nation's scientific and professional work force. The Nation's economic competitiveness and quality of life rest upon the availability of a cadre of outstanding research scientists, university faculty, and other professionals in the food and agricultural sciences. A substantial need exists to supplement efforts to attract increased numbers of academically outstanding students to prepare for careers as food and agricultural scientists and professionals. It is particularly important to augment the racial, ethnic, and gender diversity of the student body in order to promote a robust exchange of ideas and a more effective use of the full breadth of the Nation's intellectual resources.

(2) Each student recipient of monetary support for education costs or developmental purposes under § 3405.6(f) must be enrolled at an eligible institution and meet the requirement of an ''eligible participant'' as defined in § 3405.2(j) of this part.

(3) Examples include, but are not limited to:

(i) Special outreach programs for elementary and secondary students as well as parents, counselors, and the general public to broaden awareness of the extensive nature and diversity of career opportunities for graduates in the food and agricultural sciences.

(ii) Special activities and materials to establish more effective linkages with high school science classes.

(iii) Unique or innovative student recruitment activities, materials, and personnel.

(iv) Special retention programs to assure student progression through and completion of an educational program.

(v) Development and dissemination of stimulating career information materials.

(vi) Use of regional or national media to promote food and agricultural sciences higher education.

(vii) Providing financial incentives to enable and encourage students to pursue and complete an undergraduate or graduate degree in an area of the food and agricultural sciences.

(viii) Special recruitment programs to increase the participation of students from non-traditional or underrepresented groups in courses of study in the food and agricultural sciences.

§ 3405.7 Joint project proposals.

Applicants are encouraged to submit joint project proposals as defined in § 3405.2(m), which address regional or national problems and which will result overall in strengthening higher education in the food and agricultural sciences. The goals of such joint initiatives should include maximizing the use of limited resources by generating a critical mass of expertise and activity focused on a targeted need area(s), increasing cost-effectiveness through achieving economies of scale, strengthening the scope and quality of a project's impact, and promoting coalition building likely to transcend the project's lifetime and lead to future ventures.

§ 3405.8 Complementary project proposals.

Institutions may submit proposals that are complementary in nature as defined in § 3405.2(g). Such complementary project proposals may be submitted by the same or by different eligible institutions.

§ 3405.9 Use of funds for facilities.

Under the Higher Education Challenge Grants Program, the use of grant funds to plan, acquire, or construct a building or facility is not allowed. With prior approval, in accordance with the cost principles set forth in OMB Circular No. A–21, some grant funds may be used for minor alterations, renovations, or repairs deemed necessary to retrofit existing teaching spaces in order to carry out a funded project. However, requests to use grant funds for such purposes must demonstrate that the alterations, renovations, or repairs are incidental to the major purpose for which a grant is made.

Subpart C—Preparation of a Proposal

§ 3405.10 Program application materials.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit grant applications under the program.

§ 3405.11 Content of a proposal.

(a) *Proposal cover page.* (1) Form CSRS–712, ''Higher Education Proposal Cover Page,'' must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(2) One copy of the Form CSRS–712 must contain the pen-and-ink signatures of the Project Director(s) and authorized organizational representative for the applicant institution.

(3) The title of the project shown on the ''Higher Education Proposal Cover

Page'' must be brief (80-character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form CSRS–712, enter ''Higher Education Challenge Grants Program.''

(5) In block 8.a. of Form CSRS–712, enter ''Teaching.'' In block 8.b. identify the code for the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project and place an asterisk (*) immediately following the code for the primary targeted need area. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project. This information will be used by program staff for the proper assignment of proposals to reviewers.

(6) In block 9. of Form CSRS–712, indicate if the proposal is a complementary project proposal or a joint project proposal as defined in § 3405.2(g) and § 3405.2(m) of this part. If it is not a complementary project proposal or a joint project proposal, identify it as a regular project proposal.

(7) In block 13. of Form CSRS–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under, the Higher Education Challenge Grants Program in a previous competition.

(b) *Table of contents.* For ease in locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(c) *Project summary.* (1) A Project Summary should immediately follow the Table of Contents. The information provided in the Project Summary may be used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers and providing information to reviewers prior to the peer panels meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the ''Higher Education Proposal Cover Page.''

(2) If the proposal is a complementary project proposal, as defined in § 3405.2(g) of this part, indicate such and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the project director, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in § 3405.2(m) of this part, indicate such and identify the other participating institutions and the key faculty member or other individual responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text must not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: The objectives of the project; a synopsis of the plan of operation; a description of how the project will strengthen higher education in the food and agricultural sciences in the United States; and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(d) *Resubmission of a proposal.*—(1) *Resubmission of previously unfunded proposals.* If a proposal has been submitted previously, but was not funded, such should be indicated in block 13. on Form CSRS–712, ''Higher Education Proposal Cover Page,'' and the following information should be included in the proposal: The fiscal year(s) in which the proposal was submitted previously; a summary of the peer reviewers' comments; and how these comments have been addressed in the current proposal, including the page numbers in the current proposal where the reviewers' comments have been addressed. This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the Appendix (see § 3405.11(i)). In either case, the location of this information should be indicated in the Table of Contents. Further, when possible, the information should be presented in tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) *Resubmission of previously funded proposals.* The Higher Education Challenge Grants Program is not designed to support activities that essentially are repetitive in nature over multiple grant awards. Project directors who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for further funding. Proposals that are sequential continuations or new stages of previously funded Challenge Grants Program projects must compete with first-time proposals. Therefore, project directors should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (i.e., demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the new phase promotes innovativeness and creativity beyond the scope of the previously funded project.

(e) *Narrative of a proposal.* The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the Table of Contents must be paginated. It should be noted that reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) *Potential for advancing the quality of education.*—(i) *Impact.* (A) Identify the targeted need area(s).

(B) Clearly state the specific instructional problem or opportunity to be addressed.

(C) Describe how and by whom the focus and scope of the project were determined. Summarize the body of knowledge which substantiates the need for the proposed project.

(D) Describe ongoing or recently completed significant activities related to the proposed project for which previous funding was received under this program.

(E) Discuss how the project will be of value at the State, regional, national, or international level(s).

(F) Discuss how the benefits to be derived from the project will transcend the applicant institution or the grant period. Also discuss the probabilities of the project being adapted by other institutions. For example, can the project serve as a model for others?

(ii) *Continuation plans.* Discuss the likelihood of, or plans for, continuation or expansion of the project beyond USDA support. For example, does the institution's long-range budget or academic plan provide for the realistic continuation or expansion of the initiative undertaken by this project after the end of the grant period, are plans for eventual self-support built into the project, are plans being made to institutionalize the project, are plans being made to institutionalize the program if it meets with success, and are there indications of other continuing non-Federal support?

(iii) *Innovation.* Describe the degree to which the proposal reflects an innovative or non-traditional approach to solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences.

(iv) *Products and results.* Explain the expected products and results and their potential impact on strengthening food and agricultural sciences higher education in the United States.

(2) *Overall approach and cooperative linkages.*—(i) *Proposed approach.*—(A) *Objectives.* Cite and discuss the specific objectives to be accomplished under the project.

(B) *Plan of operation. (1)* Describe procedures for accomplishing the objectives of the project.

(2) Describe plans for management of the project to ensure its proper and efficient administration.

(3) Describe the way in which resources and personnel will be used to conduct the project.

(C) *Timetable.* Provide a timetable for conducting the project. Identify all important project milestones and dates as they relate to project start-up, execution, evaluation, dissemination, and close-out.

(ii) *Evaluation plans.* (A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any data to be collected and analyzed, and explain the methodology that will be used to determine the extent to which the needs underlying the project are met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in § 3405.11(e)(2)(ii)(A).

(iii) *Dissemination plans.* Discuss plans to disseminate project results and products. Identify target audiences and explain methods of communication.

(iv) *Partnerships and collaborative efforts.* (A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail.

(3) *Institutional commitment and resources.*—(i) *Institutional commitment.* Discuss the institution's commitment to the project. For example, substantiate that the institution attributes a high priority to the project, discuss how the project will contribute to the achievement of the institution's long-term (five- to ten-year) goals, explain how the project will help satisfy the institution's high-priority objectives, or show how this project is linked to and supported by the institution's strategic plan.

(ii) *Institutional resources.* Document the commitment of institutional resources to the project, and show that the institutional resources to be made available to the project, when combined with the support requested from USDA, will be adequate to carry out the activities of the project. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(f) *Key personnel.* A Form CSRS–708, ''Summary Vita—Teaching Proposal,'' should be included for each key person associated with the project.

(g) *Budget and cost-effectiveness.*—(1) *Budget form.* (i) Prepare Form CSRS–713, ''Higher Education Budget,'' in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form CSRS–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these administrative provisions, and can be justified as necessary for the successful conduct of the proposed project.

(ii) The approved negotiated instruction rate or the rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from USDA, the remaining allowable indirect costs may be used as matching funds.

(2) *Matching funds.* When documenting matching contributions, use the following guidelines:

(i) When preparing the column of Form CSRS–713 entitled ''Applicant Contributions To Matching Funds,'' only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form CSRS–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To be counted toward the matching requirements stated in § 3405.5 of this part, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(*5*) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements referenced in § 3405.11(g)(2)(iii) (A) and (B) must be placed in the proposal immediately following Form CSRS–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations,'' and A–21, ''Cost Principles for Educational Institutions,'' for further guidance and other requirements relating to matching and allowable costs.

(3) *Chart on shared budget for joint project proposal.* For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating: the names of the participating institutions; the amount of funds to be disbursed to those institutions; and the way in which such funds will be used in accordance with items A through L of Form CSRS–713, ''Higher Education Budget.'' If a proposal is not for a joint project, such a chart is not required.

(4) *Budget narrative.* (i) Discuss how the budget specifically supports the proposed project activities. Explain how such budget items as professional or technical staff, travel, equipment, etc., are essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a targeted need area, or to promote coalition building that could lead to future ventures.

(iv) Include the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area (e.g., student experiential learning and instruction delivery systems), estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(h) *Current and pending support.* Each applicant must complete Form CSRS–663, ''Current and Pending Support,'' identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(i) *Appendix.* Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in an Appendix should not be used to circumvent the 20-page limitation of the proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in an Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information on previously submitted proposals may also be presented in the Appendix (refer to § 3405.11(d)). When possible, information in the Appendix should be presented in tabular format. A complete set for the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form CSRS–712 of the proposal and the name(s) of the project director(s). The Appendix must be referenced in the proposal narrative.

Subpart D—Submission of a Proposal

§ 3405.12 Intent to submit a proposal.

To assist CSREES in preparing for the review of proposals, institutions planning to submit proposals may be requested to complete Form CSRS–711, ''Intent to Submit a Proposal,'' provided in the application package. CSREES will determine each year if Intent to Submit a Proposal forms will be requested and provide such information in the program announcement. If Intent to Submit a Proposal forms are required, one form should be completed and returned for each proposal an institution anticipates submitting. Submitting this form does failure to send this form prohibit an institution from submitting a proposal.

§ 3405.13 When and where to submit a proposal.

The program announcement will provide the deadline date for submitting a proposal, the number of copies of each proposal that must be submitted, and the address to which proposals must be submitted.

Subpart E—Proposal Review and Evaluation

§ 3405.14 Proposal review.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials. Peer review panels will be selected and structured to provide optimum expertise and

objective judgment in the evaluation of proposals.

§ 3405.15 Evaluation criteria.

The maximum score a proposal can receive is 200 points. Unless otherwise stated in the annual solicitation published in the Federal Register, the peer review panel will consider the following criteria and weights to evaluate proposals submitted:

Evaluation criterion	Weight (points)
(a) Potential for advancing the quality of education:	
This criterion is used to assess the likelihood that the project will have a substantial impact upon and advance the quality of food and agricultural sciences higher education by strengthening institutional capacities through promoting education reform to meet clearly delineated needs	
(1) Impact—Does the project address a targeted need area(s)? Is the problem or opportunity clearly documented? Does the project address a State, regional, national, or international problem or opportunity? Will the benefits to be derived from the project transcend the applicant institution and/or the grant period? is it probable that other institutions will adapt this project for their own use? Can the project serve as a model for others?	20
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?	10
(3) Innovation—Are significant aspects of the project based on an innovation or a non-traditional approach toward solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences? If successful, is the project likely to lead to education reform?	20
(4) Products and results—Are the expected products and results of the project clearly explained? Do they have the potential to strengthen food and agricultural sciences higher education? Are the products likely to be of high quality? Will the project contribute to a better understanding of or improvement in the quality, distribution, effectiveness, or racial, ethnic, or gender diversity of the Nation's food and agricultural scientific and professional expertise base?	20
(b) Overall approach and cooperative linkages:	
This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the targeted need area(s) and the impact anticipated? Are the procedures managerially, educationally, and/or scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Does the timetable appear to be readily achievable?	20
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous and/or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	10
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, and/or use by faculty development or research/teaching skills workshops?	10
(4) Partnerships and collaborative efforts—Will the project expand partnership ventures among disciplines at a university, between colleges and universities, or with the private sector? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance program quality or supplement resources available to food and agricultural sciences higher education?	20
(c) Institutional commitment and resources:	
This criterion relates to the institution's commitment to the project and the adequacy of institutional resources available to carry out the project	
(1) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans?	10
(2) Institutional resources—Will the project have adequate support to carry out the proposed activities? Will the project have reasonable access to needed resources such as instructional instrumentation, facilities, computer services, library and other instruction support resources?	10
(d) Key personnel:	
This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes?	20
(e) Budget and cost-effectiveness:	
This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?	10
(f) Overall quality of proposal:	
This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, and thoroughly explained, etc.)?	10

Subpart F—Supplementary Information

§ 3405.16 Access to peer review information.

After final decisions have been announced, CSREES will, upon request, inform the project director of the reasons for its decision on a proposal. Verbatim copies of summary reviews, not including the identity of the reviewers, will be made available to respective project directors upon specific request.

§ 3405.17 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the authorized departmental officer shall make project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced targeted need areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

(b) *Organizational management information.* Specific management information relating to a proposing institution shall be submitted on a one-time basis prior to the award of a project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of the forms used to fulfill this requirement will be sent to the proposing institution by the sponsoring agency as part of the pre-award process.

(c) *Notice of grant award.* The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of project director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort without requiring reapplication for funds.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authority(ies) under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of this particular project grant.

(d) *Obligation of the Federal Government.* Neither the approval of any application nor the award of any project grant shall legally commit or obligate CSREES or the United States to provide further support of a project or any portion thereof.

§ 3405.18 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee or the project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes. In no event shall requests for such changes be approved that are outside the scope of the approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the authorized departmental officer without additional financial support for such additional period(s) as the authorized departmental officer determines may be necessary to complete or fulfill the purposes of an approved project. However, due to statutory restriction, no grant may be extended beyond five years from the original start date of the grant. Grant extensions shall be conditioned upon prior request by the grantee and approval in writing by the authorized departmental officer.

(d) *Changes in approved budget.* Changes in an approved budget shall be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

§ 3405.19 Monitoring progress of funded projects.

(a) During the tenure of a grant, project directors must attend at least one national project directors meeting, if offered, in Washington, D.C. or any other announced location. The purpose of the meeting will be to discuss project and grant management, opportunities for collaborative efforts, future directions for education reform, and opportunities to enhance dissemination of exemplary end products/results.

(b) An Annual Performance Report must be submitted to the USDA program contact person within 90 days after the completion of the first year of the project and annually thereafter during the life of the grant. Generally, the Annual Performance Reports should include a summary of the overall progress toward project objectives, current problems or unusual developments, the next year's activities, and any other information that is pertinent to the ongoing project or which may be specified in the terms and conditions of the award.

(c) A Final Performance Report must be submitted to the USDA program contact person within 90 days after the expiration date of the project. The expiration date is specified in the award documents and modifications thereto, if any. Generally, the Final Performance Report should be a summary of the completed project, including: A review of project objectives and accomplishments; a description of any products and outcomes resulting from the project; activities undertaken to

disseminate products and outcomes; partnerships and collaborative ventures that resulted from the project; future initiatives that are planned as a result of the project; the impact of the project on the project director(s), the institution, and the food and agricultural sciences higher education system; and data on project personnel and beneficiaries. The Final Performance Report should be accompanied by samples or copies of any products or publications resulting from or developed by the project. The Final Performance Report must also contain any other information which may be specified in the terms and conditions of the award.

§ 3405.20 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this part. These include but are not limited to:

7 CFR part 1 Subpart A—USDA implementation of Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3017, as amended—Governmentwide Debarment Suspension (Nonprocurement); Governmentwide Requirements for Drug-Free Workplace (Grants), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

7 CFR part 3018—Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

7 CFR part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3051—USDA implementation of OMB Circular No. A–133 regarding audits of institutions of higher education and other nonprofit institutions.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3405.21 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3405.22 Evaluation of program.

Grantees should be aware that CSREES may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities. Thus, grantees should be prepared to cooperate with CSREES personnel, or persons retained by CSREES, evaluating the institutional context and the impact of any supported project. Grantees may be asked to provide general information on any students and faculty supported, in whole or in part, by a grant awarded under this program; information that may be requested includes, but is not limited to, standardized academic achievement test scores, grade point average, academic standing, career patterns, age, race/ethnicity, gender, citizenship, and disability.

Done at Washington, DC, this 11th day of December, 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–30626 Filed 12–18–95; 8:45 am]

BILLING CODE 3410–22–M

federal register

Tuesday
December 19, 1995

Part IV

Nuclear Regulatory Commission

10 CFR Part 50

Fracture Toughness Requirements for Light Water Reactor Pressure Vessels; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AD57

Fracture Toughness Requirements for Light Water Reactor Pressure Vessels

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations for light-water-cooled nuclear power plants to clarify several items related to the fracture toughness requirements for reactor pressure vessels (RPV). The amendments will clarify the pressurized thermal shock (PTS) requirements, make changes to the Fracture Toughness Requirements and the Reactor Vessel Material Surveillance Program Requirements, and provide new requirements for thermal annealing of a reactor pressure vessel.

EFFECTIVE DATE: January 18, 1996.

FOR FURTHER INFORMATION CONTACT: Alfred Taboada, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–00001, telephone: (301) 415–6014.

SUPPLEMENTARY INFORMATION: On October 4, 1994 (59 FR 50513), the NRC published in the Federal Register a proposed amendment to clarify several items related to fracture toughness requirements for reactor pressure vessels (RPV) and to add a new section on thermal annealing of a reactor vessel to 10 CFR Part 50.

Background

Maintaining the structural integrity of the reactor pressure vessel of light-water-cooled reactors is a critical concern related to the safe operation of nuclear power plants. To assure the structural integrity of RPVs, NRC regulations and regulatory guides have been developed to provide analysis and measurements methods and procedures to establish that each RPV has adequate safety margin for continued operation. Structural integrity of a RPV is generally assured through a fracture mechanics evaluation, including measurement or estimation of the fracture toughness of the materials which compose the RPV. However, the fracture toughness of the RPV materials varies with time. As the plant operates, neutrons escaping from the reactor core impact the vessel beltline materials (e.g. the materials that surround the reactor core), causing embrittlement of those materials. The NRC's regulations and regulatory guides related to RPV integrity provide the criteria and methods needed to estimate the extent of the embrittlement, to evaluate the consequences of the embrittlement in terms of the structural integrity of the RPV, and to provide methods to mitigate the deleterious effects of the embrittlement.

The NRC has several regulations and regulatory guides that establish criteria and procedures for assuring the structural integrity of RPVs. With the addition of the thermal annealing requirements in this rule and several regulatory guides, the regulatory documents contribute to a comprehensive set of regulations and regulatory guidance pertaining to RPV integrity.

This final rule adds requirements for thermal annealing of the RPV as a method for mitigating the effects of neutron irradiation (10 CFR 50.66) and amends the following:

1. The Pressurized Thermal Shock (PTS) rule (10 CFR 50.61).
2. Appendix G of 10 CFR Part 50, ''Fracture Toughness Requirements.''
3. Appendix H of 10 CFR Part 50, ''Reactor Vessel Material Surveillance Program Requirements.''

Overview of the Final Rule

PTS Rule (10 CFR 50.61)

This amendment to the PTS rule makes three changes:

1. The rule incorporates in total, and therefore makes binding by rule, the method for determining the reference temperature, RT_{NDT}, including treatment of the unirradiated RT_{NDT} value, the margin term, and the explicit definition of ''credible'' surveillance data, which is currently described in Regulatory Guide 1.99, Revision 2.
2. The section is restructured to improve clarity, with the requirements section giving only the requirements for the value for the reference temperature for end of life fluence, RT_{PTS}. The method for calculating RT_{PTS} is moved to a new paragraph of the rule.
3. Thermal annealing is identified as a method for mitigating the effects of neutron irradiation, thereby reducing RT_{PTS}.

Thermal Annealing Rule (10 CFR 50.66)

The thermal annealing rule, 10 CFR 50.66, provides a consistent set of requirements for the use of thermal annealing to mitigate the effects of neutron irradiation and replaces the requirements for annealing in the current Appendix G of 10 CFR Part 50. The final rule requires, prior to initiation of thermal annealing, submittal of a Thermal Annealing Report containing: (1) A Thermal Annealing Operating Plan, (2) a Requalification Inspection and Test Program, (3) a Fracture Toughness Recovery and Reembrittlement Trend Assurance Program, and (4) Identification of Unreviewed Safety Questions and Technical Specifications Changes. The report must be submitted at least 3 years before the date at which the limiting fracture toughness criteria in 50.61 and Appendix G to Part 50 would be exceeded. This 3-year period is specified to provide the NRC staff with sufficient time to review the thermal annealing program. Under § 50.66(a), the NRC will, within three years of submission of a licensee's Thermal Annealing Report, document its views on the plan, including whether thermal annealing constitutes an unreviewed safety question.

In order to provide for public participation in the regulatory process, Section 50.66(f)(1) requires that the NRC hold a public meeting a minimum of 30 days before the licensee starts to thermal anneal the reactor vessel. The Commission will notify and solicit comments from cognizant local and state governments, and will publish a notice in the Federal Register and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, in order to solicit comments from the public.

The thermal annealing operating plan must include an evaluation of the effects of temperature, and of mechanical and thermal stresses on the reactor and associated equipment such as containment, the biological shield, and attached piping, to demonstrate that the operability of the reactor will not be detrimentally affected. The bounding conditions of the temperatures and times used in this analysis define the proposed annealing conditions. If these conditions are exceeded during the vessel annealing, then the evaluation would no longer be valid, and the acceptability of the actual vessel annealing would have to be demonstrated as discussed below in the next paragraph.

Upon completion of the thermal annealing, the licensee must confirm in writing to the Director, Office of Nuclear Reactor Regulation (NRR), that the thermal annealing was performed in accordance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program. Within 15 days of the licensee's written confirmation that the thermal annealing was completed in accordance with the

Thermal Annealing Plan, and prior to restart, the NRC shall: (1) Briefly document whether the thermal annealing was performed in compliance with the licensee's Thermal Annealing Operating Plan and the Requalification Inspection and Test Program, with the documentation to be placed in the NRC public document room, and (2) hold a public meeting to: (1) permit the licensee to explain the results of the reactor vessel annealing to the NRC and the public, (2) allow the NRC to discuss its inspection of the reactor vessel annealing, and (3) provide an opportunity for the public to comment to the NRC on the thermal annealing. The licensee may restart its reactor after the meeting has been completed, unless the NRC orders otherwise. Within 45 days of the licensee's written confirmation that the thermal annealing was completed in accordance with the Thermal Annealing Operating plan and the Requalification Inspection and Test Program, the NRC staff shall complete full documentation of the NRC's inspection of the licensee's annealing process and place the documentation in the Public Document Room.

If the thermal annealing was completed but not performed in accordance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program, including the bounding conditions of the temperature and times as discussed above, the licensee must submit a summary of lack of compliance and a justification for subsequent operations. The licensee must also identify any changes to the facility which are attributable to the noncompliances which constitute unreviewed safety questions and any changes to the technical specifications which are required for operation as a result of the noncompliances. This identification does not relieve the licensee from complying with applicable requirements of the Commission regulations and the operating license, and if, as a result of the annealing operation, these requirements cannot be met, the licensee must obtain the appropriate exemption per 10 CFR 50.12. If unreviewed safety questions or changes to technical specifications are not identified as necessary for resumed operation, the licensee may restart after the NRC staff places a summary of its inspection of the thermal annealing in the Public Document Room, and the NRC holds a public meeting on the thermal annealing. On the other hand, if unreviewed safety questions or changes to technical specifications are identified as necessary for resumed operation, the licensee may restart only after the Director of NRR authorizes restart, the summary of the NRC staff inspection is placed in the public document room, and a public meeting on the thermal annealing is held.

The final Thermal Annealing Rule also sets forth the requirements that a licensee must follow if the thermal annealing was terminated prior to completion. In general, the process and requirements for partial annealing are analogous to the situations where the thermal annealing was completed; *viz.*, where the partial annealing was otherwise performed in compliance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program, the licensee submits written confirmation of such compliance and may restart following, *inter alia,* holding of a public meeting on the annealing. By contrast, where the partial annealing was not performed in accordance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program, the licensee is required to submit a summary of lack of compliance and a justification for subsequent operations, and identify any changes to the facility which are attributable to the noncompliances which constitute unreviewed safety questions and changes to the technical specifications which are required for operation as a result of the noncompliances with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program. If Unreviewed Safety Questions and/or changes to technical specifications are identified as necessary for resumed operation, the licensee may restart only after the Director of NRR authorizes restart and the public meeting on the thermal annealing is held.

Every licensee that either completes a thermal annealing or terminates an annealing but elects to take full or partial credit for the annealing shall provide a Thermal Annealing Results Report detailing: (1) The time and temperature profile of the actual thermal anneal, (2) the post-anneal RT_{NDT} and Charpy upper shelf energy values of the reactor material to be used in subsequent operations, (3) the projected post-anneal reembrittlement trends for both RT_{NDT} and Charpy upper-shelf energy, and (4) the projected values of RT_{PTS} and Charpy upper-shelf energy at the end of the proposed period of operation addressed in the application. The report must be submitted within three months of completing the thermal anneal, unless an extension is authorized by the Director, NRR.

Two items of particular importance to the overall annealing are the recovery of fracture toughness and the degree of reembrittlement of the RPV beltline materials. This final rule provides alternative methods for determining these values, ranging from assessments using plant-specific materials to an assessment using a generic computation.

Two methods provided for evaluating annealing recovery are experimental methods to determine plant-specific annealing recovery, and a third method is a generic computational method. Experimental methods and the computational method are also provided for estimating recovery of RT_{NDT} and Charpy upper-shelf energy of the beltline materials. The experimental methods for estimating recovery of RT_{NDT} and the Charpy upper-shelf energy utilize either surveillance program specimens or material removed from the vessel beltline. The experimental methods provide a plant-specific estimate of recovery, rather than the generic value evaluated from the computational method. This final rule requires that surveillance specimens from ''credible'' surveillance programs must be used to develop plant-specific recovery data, if such specimens are available. This final rule does not require the removal of material from the RPV beltline to permit plant-specific evaluation of recovery.

As described previously, the computational method requires appropriate justification.

Post anneal reembrittlement trends of both the RT_{NDT} and the Charpy upper shelf energy must be estimated and monitored using a surveillance program described in the Thermal Annealing Report.

The reactor pressure vessel is perhaps the most important single component in the reactor coolant system. As such, ensuring its integrity is a fundamental element of plant safety. Thermal annealing is a positive action that could be taken to reduce the level of embrittlement in the pressure vessel beltline and, thereby, improve the ability of a pressure vessel to withstand accident loadings. While thermal annealing is a positive action, there are numerous complex technical questions regarding its application in the U.S. that are unanswered.

Thermal annealing of a commercial reactor pressure vessel has never been accomplished in the United States. Thermal annealing has been successfully employed in Eastern Europe and Russia on Russian-designed pressure vessels. However, there are significant differences between the U.S. and Russian designs in terms of the

geometry of the pressure vessels, the attached piping, and the surrounding structures. The staff has observed one of these annealing operations. While informative, the East European and Russian experience does not provide answers to all of the potential questions related to annealing of U.S. designed pressure vessels.

Research analyses performed previously indicated the potential for plastic deformation of the main coolant piping for a typical U.S. plant design and anticipated annealing conditions. There are also questions regarding how thermal growth of the pressure vessel is treated, and the adequacy of the thermal and stress analyses used to predict response of the overall system under thermal annealing conditions. Additionally, there may be questions in other areas such as temperature limits for the concrete structures, and potential radiological hazards associated with removing and storing the reactor internals during the annealing process, and fire hazards associated with heating the vessel.

Recognition of the numerous complex technical questions related to thermal annealing, and of the potential benefits for operating nuclear power plants, has resulted in a cooperative effort, funded by the U.S. Department of Energy and the industry, to perform Annealing Demonstration Projects. Projects are planned to demonstrate two different annealing processes, evaluating heater designs and vessel designs. It is anticipated that the annealing demonstration projects will answer many of the generic questions regarding thermal annealing of U.S. pressure vessel and piping designs.

The thermal annealing report, required by the thermal annealing rule, is designed to facilitate a detailed review by the licensee of plant-specific questions and considerations in performing a thermal annealing. The proposed rule specifically discusses the potential for unreviewed safety questions and technical specification changes that may result from or be related to thermal annealing of the reactor pressure vessel. With completion of the demonstration projects and as the staff and industry gain experience with thermal annealing, many of the issues related to annealing will be better understood and related questions will be answered. However, until this experience is realized, the staff will critically review licensee determinations regarding unreviewed safety questions and the need for technical specification changes associated with each proposed thermal annealing.

The thermal annealing rule has been structured to provide time for the staff to thoroughly review the licensee's annealing plan and determination regarding unreviewed safety questions and the need for technical specification changes. If the staff identifies an unreviewed safety question or the need for a technical specification change, the licensee would be so notified and the existing NRC regulatory practices would be invoked to address the issues.

Appendix G of 10 CFR Part 50

Appendix G of 10 CFR Part 50 specifies fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light-water-cooled nuclear power reactors. These requirements provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests. The amendments to Appendix G are principally of a clarifying or a restructuring nature. Requirements for ''volumetric inspection'' and ''additional evidence of fracture toughness'' have been removed because they were unnecessary, given the inspection and performance demonstration programs currently required under 10 CFR 50.55a. The ''additional evidence of fracture toughness'' requirement in Section V.C.2 is incorporated in the ''equivalent margins'' analysis in Section IV.A.1 as a provisional method for developing fracture toughness data needed for that analysis.

The pressure-temperature and minimum permissible temperature requirements in Section IV have been restructured. The principal feature is the addition of a table which summarizes the pressure-temperature limit requirements and minimum temperature requirements as a function of the plant operating condition, the vessel pressure, whether fuel is in the vessel, and whether the core is critical. In addition, Section IV has been reworded to clarify the minimum permissible temperature requirement by indicating the criteria for use in determining the location in the component or material which must satisfy the minimum temperature requirement. This minimum temperature is defined in Section IV as the metal temperature of the controlling material in the region which has the least favorable combination of stress and temperature for the appropriate plant condition. An explicit statement has been added to require that pressure and leak tests of the reactor pressure vessel required by Section XI of the American Society of Mechanical Engineers Boiler & Pressure Vessel (B&PV) Code (ASME Code) must be completed before the core is critical.

The requirement that all pressure and leak tests of the RPV required by Section XI of the ASME Code must be completed before the core is critical is intended to prohibit the use of nuclear heat, i.e., core criticality, in the conduct of ASME, Section XI pressure and leak tests. The use of nuclear heat before the completion of such tests is not consistent with basic defense-in-depth nuclear safety principle for several reasons, including the hindrance of finding leaks with the vessel at such a high temperature and the potential for exacerbating the consequences of a vessel rupture (in the extremely unlikely event that it should occur) by having the core critical. The explicit prohibition of nuclear heat in these cases was discussed in a letter to Messrs. Reynolds and Stenger of the Nuclear Utility Backfitting and Reform Group from James M. Taylor, Executive Director of Operations, dated February 2, 1990.

The current requirements in 10 CFR Part 50, Appendix G, Section V. D. with respect to reactor vessel thermal annealing are being replaced by a sentence which references the new Thermal Annealing rule, 10 CFR 50.66.

Appendix H of 10 CFR Part 50

Appendix H of 10 CFR Part 50, ''Reactor Vessel Material Surveillance Program Requirements'' provides the rules for monitoring the changes in the fracture toughness properties of the RPV beltline materials due to irradiation embrittlement using a surveillance program. Appendix H references American Society for Testing and Materials (ASTM) standard E 185 (''Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels'') for many of the detailed requirements of surveillance programs, and permits the use of integrated surveillance programs, wherein surveillance program capsules for one reactor are irradiated in another reactor.

Integrated surveillance programs are permitted under Section II.C of Appendix H of 10 CFR Part 50. One provision of this section is that ''the amount of testing may be reduced if the initial results agree with predictions.'' This provision was deleted, although previous authorizations granted by the Director, Office of Nuclear Reactor Regulation, continue in effect.

A second change to Appendix H restructures Section II.C to clarify the

requirements for integrated surveillance programs.

The other principal change to Appendix H clarifies the version of ASTM Standard E 185 that applies to the various portions of the surveillance programs. Appendix H recognizes the need to separate surveillance programs into two essential parts, specifically the design of the program and the subsequent testing and reporting of results from the surveillance capsules. Because the design of the surveillance program cannot be changed once the program is in place, the requirements for design of the surveillance program are static for each plant. However, the testing and reporting requirements are updated along with technical improvements made to ASTM standard E 185.

Request for Public Comments

At the request of the Commission, the proposed rule contained a request for public comments on the following specific issues related to the proposed regulation on thermal annealing:

1. The technical adequacy of the staff's guidance;
2. The sufficiency of the guidance and criteria to support a certification that if satisfied, a plant with an annealed vessel can safely resume operation;
3. Whether health and safety concerns are best served by approval of the thermal annealing plan or of readiness for restart;
4. The preferred regulatory process (including opportunities for public participation) and the commenter's basis for recommending a particular process; and
5. Whether there are health and safety issues concerning thermal annealing that cannot be addressed generically and would warrant plant-specific consideration.

The supplementary information section of the proposed rule also discussed the issue of opportunity for public participation in regulating thermal annealing of pressure vessels.

The response to the request for public comments on these issues, along with other items, are summarized below.

Summary of Comments

The following includes a summary of the comments received on the proposed rule, on the five issues identified by the Commission, and on the options for public participation in thermal annealing.

Comments were received from nine separate sources. These sources consist of five utilities, the Nuclear Energy Institute (NEI), the Nuclear Utility Backfitting and Reform Group (NUBARG) represented by the firm Winston & Strawn, one public citizens group (Ohio Citizens for Responsible Energy (OCRE)), and one nuclear steam system supplier (NSSS).

NEI provided detailed comments on 10 CFR 50.61, 10 CFR 50.66, Appendix G to 10 CFR Part 50, and Appendix H to 10 CFR Part 50, responded to the request for comments on the five issues related to thermal annealing and included detailed comments on the opportunities for public participation. The five utilities and the NSSS endorsed the NEI comments. Three of the five utilities provided additional comments on 10 CFR 50.61; one of the five utilities provided additional comments on 10 CFR Part 50, Appendix G; two of the utilities provided additional comments on 10 CFR Part 50, Appendix H; and one of the five utilities disagreed with the NEI position on the opportunity for public participation and submitted a separate comment. OCRE provided comments on the opportunity for public participation. NUBARG provided comments on the backfitting aspects of the proposed rule and the staff's backfit justification.

NEI and one of the utilities included comments on the Draft Regulatory Guide DG–1027, ''Format and Content of Application for Approval for Thermal Annealing of Reactor Pressure Vessels,'' that was discussed in the proposed rule. These comments on Draft Regulatory Guide DG–1027 are being reviewed by the NRC staff and will be addressed separately in the resolution of comments on the regulatory guide.

The NRC reviewed the comments received on the proposed rule, the comments on the five questions related to thermal annealing and the issue of opportunities for public participation. The resolution of these comments is presented below.

PTS Rule (10 CFR 50.61)

Sixteen specific comments in the submittals from NEI and three utilities addressed 10 CFR 50.61. A general comment argued that both the existing 10 CFR 50.61 and the proposed modifications contained an excessive amount of prescriptive technical detail that limits licensee compliance flexibility. The commenters proposed that these prescriptive technical details be removed from the rule and placed in a regulatory guide. These commenters suggested that the rule not be issued until it has been written to contain only those requirements essential to regulate reactor pressure vessel embrittlement. A number of comments suggested changes that were clarifications to the proposed rule, including proposals to clarify the procedure for calculating the reference temperatures in the preservice condition, RT_{NDT}, and, at end of reactor life, RT_{PTS}. One comment noted that the proposed rule omitted part of the procedure in Regulatory Guide 1.99, presently being applied by the NRC, that permits adjustments for differences in chemistry between surveillance material and the vessel material when using credible surveillance data to calculate a best fit chemistry factor for transition temperature shifts due to irradiation. Several comments proposed changes in the criteria for establishing whether surveillance material data is credible that would result in a less restrictive basis for using surveillance data in determining the transition temperature shift. The comments argued that the proposed rule is ambiguous with respect to the use of information from other sources that contain limiting material for a specific plant and that the NRC must have the flexibility to approve use of such information on a case-by-case basis. Several comments proposed limiting the basis for making changes of RT_{PTS} subject to the approval of the Director, NRR.

The NRC recognizes that 10 CFR 50.61 contains an unusual amount of prescriptive material and that the comments proposing simplification have merit. Some changes to the rule have been made to provide flexibility, where appropriate. The NRC staff is evaluating subsequent changes that would be more performance based. However, the NRC staff believes that this rule, as written, is needed to ensure that plants apply the appropriate method for determining RT_{PTS} and that the appropriate reference to the thermal annealing rule be applied for the pressurized thermal shock situation.

A number of clarifications were made to the rule. The paragraphs dealing with the determination of RT_{PTS} were modified to make clear that RT_{PTS} is a unique, end of life, case of RT_{NDT} and to clarify the procedure for determining these values. As suggested, the adjustment procedure was added to the rule to permit accounting for differences in chemistry between surveillance materials and reactor vessel materials when calculating chemistry factors. With respect to the plant specific material surveillance data that is permitted to be used in a surveillance program, the rule was modified to make clear that such data includes results from other plant's surveillance programs and test reactors. Several clarifications were made to the criteria for determining credible material. The NRC determined that the requirements for approval by the Director, NRR, for

changes in RT_{PTS} are appropriate and should not be modified.

Thermal Annealing Rule (10 CFR 50.66)

Twelve individual comments were received on the proposed Thermal Annealing Rule, 10 CFR 50.66. These comments included a number of suggestions for clarification of details of the proposed rule. Three of the comments addressed the requirements that, after the annealing operation, the reembrittlement rate of the reactor vessel due to neutron irradiation must be estimated and must be monitored using a surveillance program which conforms to Appendix H of 10 CFR 50, ''Reactor Vessel Materials Surveillance Program.'' The comments are summarized as follows:

(1) The supplementary information section for the proposed rule is silent on what is acceptable if limiting material is not available. The rule should provide appropriate requirements on the method for monitoring reembrittlement after annealing for those plants that do not have limiting material for their surveillance program and the monitoring plans should be consistent with the preannealing surveillance program approved by the NRC staff;

(2) Appendix H does not define an acceptable post-anneal surveillance program, the reference to Appendix H should be deleted, and the post-anneal surveillance program should be defined in the annealing plan that is approved by the staff; and

(3) The term reembrittlement rate is unclear as to the period of time to be used for its determination, and a wording change is proposed for the requirement that would relate change in toughness to fluence accumulated after the anneal.

Three of the comments addressed the requirements in the proposed rule that the Thermal Annealing Operation Plan include time-temperature profiles which represent the annealing conditions that may not be exceeded during the annealing operation and are to be used for determining the amount of recovery of the fracture toughness of the material due to annealing. The comments suggested that, instead of a single time-temperature profile, bounding time and temperature conditions be established for the maximum values that would be used for thermal and stress analysis and to verify the re-qualification inspection and test program, and the minimum values that would be used to establish the amount of recovery of fracture toughness and for reembrittlement rate estimates. The bounding values would be based upon the estimated uncertainties in the times and temperatures and the actual annealing conditions should fall within these bounds.

Two comments addressed the section on Certification of Annealing Effectiveness. One comment suggested deleting the requirement in the proposed rule for certification of the annealing effectiveness and instead adding a provision in the Thermal Annealing Operating Plan that approval prior to subsequent power operation be required only if the anneal was not performed in accordance with the approved plan. The comment also suggested that, if the licensee terminates the annealing before achieving the specified time but otherwise maintains the annealing envelop such that no concern exists for stress or thermal damage, no additional constraints be imposed on subsequent operations and no credit be given for annealing. The second comment suggested that (1) the staff's review of the annealing report (certification report) need not be completed prior to reinitiating power operation if the anneal was performed in accordance with the approved Thermal Annealing Operating Plan, (2) reporting and quantification of the actual recovery results need not be reported unless the vessel was at or above the PTS screening criteria when annealing was started, and (3) the Thermal Annealing Operating Plan should specify the minimum content and a schedule for reporting the annealing results. The commenter provided a proposed list of criteria, content, and schedule for reporting the annealing results.

One comment stated that no guidance was provided in the proposed rule on what constitutes components ''affected'' by the annealing operation that are required to be reported in the Thermal Annealing Operating Plan. The comment suggested alternative wording that components to be reported should be structures and components that are expected to experience significant temperature gradient or stress variations during the thermal annealing operation. One comment suggested qualifying the provision in the proposed rule that the effects of localized high temperatures must be evaluated for changes in thermal and mechanical properties of the reactor vessel insulation for those cases where such changes may be negligible at annealing conditions. One comment suggested that the use of applicable material data, such as data from integrated surveillance programs, be an optional part of the computational methods for determining fracture toughness recovery.

The NRC reviewed the comments received on the proposed rule in detail. After consideration, the NRC reached the conclusion that most of the comments are not inconsistent with the intent of the proposed rule and in some cases reflect a need for clarification of the rule. In these cases, alternative wording that clarified the intent of the rule was substituted in the text. With respect to the comments on the requirement that reembrittlement rate after annealing must be monitored using a surveillance program, the NRC is aware that some plants do not have limiting materials for their existing preannealing surveillance programs. For these situations the staff has approved alternative surveillance plans on a case-by-case basis. Clearly, these plants will not have limiting material for surveillance programs for use in determining reembrittlement rates after annealing.

The NRC recognizes that Appendix H of 10 CFR Part 50, which is referenced in this rule, does not specifically address the surveillance of an annealed reactor vessel. However, the requirements of Appendix H to 10 CFR Part 50 apply to all reactors including the specific case of an annealed reactor vessel. To clarify the surveillance requirements of an annealed plant, the final rule has been modified to include, as suggested, that the post-anneal reembrittlement is to be monitored using a surveillance program defined in the Thermal Annealing Report and that the surveillance program must conform to the intent of Appendix H to 10 CFR Part 50.

The term reembrittlement ''rate'' in the proposed rule was intended to mean the projected amount of reembrittlement over a specific fluence period. It is recognized that reembrittlement is not a straight line function of fluence. Determination of reembrittlement rate is discussed in more detail in Draft Regulatory Guide 1.162, ''Format and Content of Report for Thermal Annealing of Reactor Pressure Vessels.'' In Regulatory Guide 1.162, the approved method for estimating the reembrittlement rate, the lateral shift method, results in the same embrittlement trend as that used for the pre-anneal operating period. To avoid confusion the term ''rate'' has been changed to ''trend'' in the final rule and the regulatory guide.

The NRC agrees with the comments that the time and temperature profile required in the annealing operating plan should be bounding values. In this regard, Regulatory Guide DG–1027 calls for the thermal annealing operating plan to include identification of the

limitations and permitted variations in temperature, time, heatup and cooldown rate. For clarification, the final rule has been modified to use the terms ''bounding conditions for times and temperatures and heatup and cooldown schedules'' to describe conditions that may not be exceeded during the annealing operation, and the lower limit time and temperature of the actual anneal is used for determining the projected recovery of fracture toughness by annealing.

The NRC considers that the intent of paragraphs (c), Completion or Termination of Thermal Annealing, and (d), Thermal Annealing Results Report, of the final rule to be consistent with the two comments on that subject. The final rule does not require that the NRC approve restart following the annealing operation if the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program was complied with. The NRC accepts the suggestion that the rule should be more specific on the items the licensee should include in the report and has included the list in the final rule.

Finally, the NRC agrees with the suggestion to make clear that a report is not required if:

(1) The licensee terminates the anneal prior to completion;

(2) The partial anneal was otherwise in accordance with the Thermal Annealing Plan;

(3) The licensee does not elect to take credit for any recovery. A statement was added to the Final Rule to cover the early termination situation.

The NRC has accepted the suggested clarifications of what constitutes an ''affected'' component and the qualification on the requirement to evaluate changes in properties on reactor vessel insulation if these are negligible. The NRC considers it unnecessary to include a reference in the rule to data from integrated surveillance programs as an optional part of the computational methods to determine fracture toughness recovery. Generic computational methods for this purpose are provided in the Regulatory Guide 1.162. However, the final rule does not prohibit use of alternative methods if adequate justification is provided.

Appendix G to 10 CFR Part 50

Two comments were received on the Appendix G to 10 CFR Part 50 of the proposed rule. The NEI comment, which was endorsed by five utilities and one NSSS organization, included a table with six items on Appendix G. The other comment on Appendix G was received from one of the five utilities. Two of the comments identified typographical errors and suggested a change in organization to improve clarity. One of the comments suggested revising the rule to change the definition of reference temperature, RT_{NDT}, for cases where plants do not have data to comply with code procedures for determining RT_{NDT}. One comment suggested a change in the title of Table 1, ''Pressure and Temperature Requirements,'' by adding to the title ''For the Reactor Pressure Vessel'' to make clear that this table does not apply to other components in the reactor coolant pressure system and proposed adding a footnote to the table for the same purpose. One comment identified an error in the minimum temperature requirements for the hydrostatic and leak testing of the pressure vessel without fuel when the vessel pressure is equal or below 20 percent of the vessel design pressure. One of the comments suggested that two of the entries in the table were new requirements when the table was intended to provide clarification. The utility's comment disagreed with the proposed rule change to prohibit the use of nuclear heat for the performance of vessel leak and hydrostatic testing. The utility contended that using nuclear heat, by providing a significant temperature margin above the pressure and temperature limit curves, greatly reduces the probability of brittle fracture and should be allowed.

The NRC corrected the typographical errors and corrected the minimum temperature requirement for the hydrostatic and leak testing of the pressure vessel at low vessel pressures and without fuel. The title to Table 1 was changed, as suggested, for clarification.

The NRC does not agree with the proposal to change the definition of RT_{NDT}. The situation described in the comment, when data is not available to comply with code procedures, is presently handled on a case-by-case basis in accordance with MEB Branch position, MEB 5–2. The NRC staff does not agree with the comment that the two requirements cited are new requirements. Item 2.2.c. and Item 2.2.d of Table 1 are in the existing ASME code requirement and in Paragraph IV.A.3. in the rule. The NRC also does not agree with the utility's comment that using nuclear heat greatly reduces the probability of brittle fracture. The reasons for this are set forth in the February 2, 1990, letter to Messrs. Reynolds and Stenger of NUBARG from James M. Taylor, Executive Director for Operations.

Appendix H to 10 CFR Part 50

Three comments were received on Appendix H to 10 CFR 50. The comment from NEI was endorsed by the five utilities and the NSSS. Two of the five utilities submitted additional comments. NEI and one utility commented that the proposed change to Paragraph III.B.1, which establishes the applicable edition of ASTM standard E 185 for a reactor surveillance program, constituted a backfit that would require a substantial design change in the surveillance program for those plants fabricated to a code edition prior to 1973. The other two commenters suggested new changes to Appendix H to 10 CFR Part 50. One of the commenters noted that an existing provision in Appendix H to 10 CFR Part 50, not part of the proposed rule change, dealing with requirements for attaching capsule holders to the vessel wall is a reiteration of a requirement in the ASME Code and should be removed. The other commenter suggested a new change to Appendix H to 10 CFR Part 50 to add a statement to the criteria for approval of an integrated surveillance program that would permit the use of surveillance specimens for extension of license purposes. The commenter also suggested that there is an apparent conflict between Paragraph III.C.2. and Paragraph III.C.3. that address requirements for an integrated surveillance.

The provision in the proposed rule was changed and reference to ASTM E 185 73 was deleted to make clear that the surveillance programs must be designed to the edition of ASTM 185 that is current on the issue date of the ASME Code to which the reactor vessel was purchased or to a later edition through 1982. The Commission agrees with the industry comments that imposing the ASTM E 185 1973 edition is impractical because vessels purchased prior to 1973 could not necessarily comply with all of the surveillance requirements in the 1973 edition of the ASTM standard. The NRC staff believes that the provision in the present rule on requirements for attaching capsule holders to the reactor vessel wall is required for clarity and should not be deleted. The comments related to the requirements for an integrated surveillance program were not persuasive to the NRC staff. The existing provisions of the rule do not preclude the application of the integrated surveillance program for extension of license purposes. The two paragraphs purported to be in conflict address separate items; one addresses the number of materials to be irradiated,

specimen types, and number of specimens per reactor; the other addresses amount of testing.

Request for Comments on Issues Related to Thermal Annealing

Comments were received from NEI on the five issues on thermal annealing that were included in the proposed rule at the Commission's direction. In addition, OCRE and one utility, Pacific Gas and Electric, submitted comments on Issue 4, concerning the preferred regulatory process (including opportunity for public participation). Public Comments on the five issues are summarized below:

Issue 1: The technical adequacy of the NRC staff's guidance.

Comment: The detailed comments submitted on 10 CFR 50.66 are summarized in the Summary of Comments section on the Thermal Annealing Rule. In addition, NEI suggested that draft Regulatory Guide, DG–1027, be revised to include acceptance criteria where an action is required, but the acceptance criteria was not defined. NEI further commented that the re-embrittlement rate equation (DG–1027, Equation 1) appeared to be very conservative and would result in a post-anneal operating life that is less than industry believes justified.

Response: The NRC is concurrently revising the noted draft regulatory guide and will address this comment in the resolution of comments for the guide.

Issue 2: The sufficiency of the guidance and criteria to support a certification that if satisfied, a plant with an annealed vessel can safely resume operation.

Comment: NEI noted that ''The reactor pressure vessel thermal annealing rule and guide address appropriate issues to assure public health and safety and that the annealed reactor pressure vessel may be safely operated. The prior NRC staff approval of the reactor vessel annealing plan assures a clear process and criteria to restart following the vessel anneal. The licensee needs only to attest to compliance with the approved plan prior to resuming operations. The resumption of operations should not be needlessly delayed while a report documenting performance of the vessel anneal and recovery of the embrittled material properties is confirmed, because the vessel anneal will only improve the material properties. The final report should be submitted on a schedule that considers when the vessel would have exceeded the RT_{PTS} or uppershelf energy (USE) screening criteria without an anneal. The material property recovery will document prior to the time when the vessel would have exceeded the screening criteria, thereby assuring that the vessel is safe to operate at restart and for the duration justified by the material embrittlement recovery.''

Response: NRC agrees with the NEI comment, except NRC believes it is necessary for the licensee to submit the final report within three months of completing or terminating the anneal, unless an extension is authorized by the Director, Office of Nuclear Reactor Regulation.

Issue 3: Whether health and safety concerns are best served by approval of the thermal annealing plan or of readiness for restart.

Comment: NEI noted that ''The performance of a reactor pressure vessel anneal in accordance with an approved annealing plan improves the public health and safety by reducing the probability of core melt frequency. This improvement occurs because of the increase in reactor vessel material ductility. The amount of recovery achieved by a thermal anneal will be documented prior to the original date when the reactor vessel would have exceeded the PTS or USE screening limit. Therefore, a demonstration for ''restart readiness'' is an extra burden that will not provide any further improvement of the public health and safety.''

Response: The NRC's determination as to the procedures for NRC review of the Thermal Annealing Operation Plan, Requalification Inspection and Test Program and justification for restart discussed below in further detail in the Opportunities for Public Participation section.

Issue 4: The preferred regulatory process (including opportunities for public participation) and the commenter's basis for recommending a particular process.

Comment: NEI noted that ''The industry recommends that a hearing opportunity be provided, but that it be a non-adjudicatory, 10 CFR Part 2, Subpart L type hearing on the docketed record. The essential features of the hearing process proposed are as follows. The NRC would at time of receiving the licensee proposed annealing plan issue a Federal Register announcement that staff is performing the review per 10 CFR 50.66. A Subpart L hearing could be held, if requested by an intervener, after the NRC staff has issued a safety evaluation report on the licensee annealing plan, but prior to commencement of the reactor vessel thermal annealing unless the NRC staff makes a ''no significant hazards determination.'' Enclosure 4 provides additional details that support this industry position.'' Additional detailed comments by NEI and the comments on this subject by OCRE are discussed under the Opportunities for Public Participation heading.

Response: The rule provides for public participation in the regulatory process by incorporating a public meeting on the Licensee's Thermal Annealing Report a minimum of 30 days before the start of thermal annealing, and a public meeting after the licensee completes the anneal but before the reactor is restarted. The opportunity for public hearings in thermal annealing should be limited to those cases where there is an unreviewed safety question or a change to the Technical Specifications or where the licensee did not comply with the Thermal Annealing Operating Plan and Requalification Inspection and Test Program. Expanded discussion on this issue is provided below under the Opportunities for Public Participation heading.

Issue 5: Whether there are health and safety issues concerning thermal annealing that cannot be addressed generically and would warrant plant-specific consideration.

Comment: NEI noted that ''Thermal annealing to reduce material irradiation embrittlement is a well understood metallurgical phenomenon. The supporting thermal and stress analysis used to demonstrate that the vessel is not damaged during the anneal are standard technologies used at nuclear plants. Because thermal annealing uses well understood technology, public health and safety is reasonably assured.''

Response: The NRC agrees with this comment.

Opportunities for Public Participation

The Supplementary Information section of the proposed rule discussed the four options the Commission considered for structuring the regulatory process related to public participation in the NRC's review and approval of a licensee's proposal for thermal annealing of a reactor vessel. The proposed rule, at the Commission's direction, requested comments on the preferred regulatory process (including opportunities for public participation). The four options included:

(1) No hearings under the rule as proposed;

(2) Discretionary opportunity for hearing under rule as proposed in which situation the Commission would decide on a case-by-case basis to determine whether a hearing should be held;

(3) Required opportunity for hearing under rule as proposed, but work could commence if the NRC were to make a ''no significant hazard determination'' on the proposed thermal annealing; and

(4) Modify the proposed rule to require suspension of license prior and during the thermal annealing at which time no hearing would be afforded and the license would only be reinstated if the licensee demonstrates that it has addressed the reactor embrittlement such that it is acceptable to operate the plant.

Three comments were submitted on the subject. OCRE and NEI addressed all of the alternatives in detail and they, as well as one utility, identified and discussed individual preferred alternatives.

NEI commented that each of the four alternatives has a sufficiently serious flaw to prevent adoption. With respect to the no hearing alternative, NEI agrees that annealing is presently subject to approval by the Director of NRR in accordance with Part 50 Appendix G rather than being the subject of a license amendment as an unreviewed safety question under § 50.59. However, NEI believes that annealing is an important process from a regulatory standpoint and that public participation, in the form of informal hearings, is appropriate. NEI objected to a discretionary opportunity for a hearing because it provides significant uncertainty in the process for licensees and members of the public. NEI's objection to requiring a hearing, as discussed in staff Option 3, is that it would allow those who object to the resumption of operation, on other than technical grounds, to use hearings to delay restart. Option 4 is objectionable to NEI because it does not provide the licensee with any stability or predictability since the licensee would be required to demonstrate compliance after the annealing was performed, and does not provide the public with any opportunity to express its views.

NEI further commented that a license amendment is not necessary to approve a thermal annealing plan because annealing will not change the reactor vessel or other components in a manner inconsistent with the facility technical specifications nor will it require changes in the FSAR, and further, that a licensee is not required to modify its procedures to address or accommodate the annealing process. NEI noted that, while there is an incentive for the licensee to obtain credit for its improved P/T curves, and could seek a licensee amendment to do so, the licensee's existing P/T curves could remain in force.

Despite the conclusion that a license amendment is not necessary for thermal annealing, NEI recommended that a hearing opportunity be provided, but that it be a non-adjudicatory, Subpart L type hearing on the record. NEI gave the following advantages for this approach: (1) The NRC would be provided with a clear understanding of the licensee's annealing process, and the NRC's hearing process; (2) a Subpart L hearing is held on the written record and typically does not include the discovery or live testimony associated with adjudicatory hearings, but allows the public to participate in a meaningful way without consuming the vast NRC, licensee, and public resources required for an adjudicatory hearing; and (3) it would provide predictability and stability by ensuring that all issues which could be subject to a hearing are addressed prior to restart. Any inspection or test performed in order to restart would be for the purpose of confirming compliance with the rule.

OCRE supported the proposed rule provided that the public hearing rights were preserved with regard to reactor pressure vessel annealing. It is OCRE's position on the request for public comment that, based on the Sholly decision, the NRC must offer the opportunity for a formal adjudicatory hearing on the application for annealing and on the licensee's justification for subsequent operation where the licensee cannot certify that the thermal annealing was performed in accordance with the approved application. OCRE commented that approval by the Director of NRR of the application for annealing and restart of the reactor, if the licensee cannot certify that annealing was performed in accordance with the approved application, will give the licensee the authority to operate in ways in which they otherwise could not, and is thus, a de facto license amendment. OCRE fully supported Option 3 which requires opportunity for hearing under the rule as proposed. OCRE suggested that the adequacy of the thermal annealing plan, as well as the vessel's ability to perform its safety function after annealing, could be raised in the hearing on the thermal annealing plan and that the licensee's implementation of the thermal annealing plan could not commence until any hearing is concluded or unless the NRC makes a ''no significant hazards determination'' with respect to thermal annealing.

With respect to Option 1, OCRE concluded that the informal hearings or public meetings proposed by the Commission for the initial thermal annealing are not a substitute for adjudicatory hearings required by the Atomic Energy Act (AEA) and do not give the interveners the same rights as they would have in a Section 189a hearing. OCRE found Option 2 preferable to having no hearing. However, OCRE contended that this option is flawed by the assumption that ''Section 189a of the AEA does not afford an interested member of the public a right to request a hearing.'' They contend that approval by the Director, NRR to anneal the reactor pressure vessel or to restart after annealing does constitute a de facto operating licensing amendment for which the opportunity for a hearing is required. OCRE found Options 1 and 4 unacceptable in that they do not provide the opportunity for a formal adjudicatory hearing.

The comment from the utility suggested that Option 1 is the appropriate approach as long as the annealing process to be implemented is approved in advance by the NRC staff and the utility certifies that they have complied with the approved annealing process during the annealing operation, as provided for in the proposed rule. The utility further commented that if Technical Specifications changes or amendments to the operating license are required in order to perform the annealing then the opportunity for hearings would be required due to the normal license amendment process and if the final safety analysis report (FSAR) were required to be updated to reflect the thermal annealing process, the provisions of 10 CFR 50.59 would apply. The utility suggested that if those changes did not constitute an ''unreviewed safety question,'' no amendment would be needed and the license amendment process should not be invoked and that if a member of the public is concerned about a licensee's compliance with the NRC approved thermal annealing plan, those concerns could be addressed pursuant to the 10 CFR 2.206 petition process. The utility commented that, under its proposal, existing regulatory provisions for public participation would apply as appropriate and no new prescriptive requirements would be necessary.

The Commission has considered the public comments and has modified the proposed rule as follows. A licensee that seeks to utilize thermal annealing to mitigate the effects of neutron irradiation of the nuclear reactor vessel must, at least three years prior to the date at which the limiting fracture toughness criteria in § 50.61 or Appendix G to Part 50 would be exceeded, submit a Thermal Annealing Report to the NRC staff for review. The

report shall contain four sections: (i) Thermal Annealing Operating Plan, (ii) Requalification Inspection and Test Program, (iii) Program for determining Fracture Toughness Recovery and Reembrittlement Trend, and (iv) a section identifying any changes to the description of the facility as described in the updated final safety analysis report (FSAR) which constitute unreviewed safety questions (USQs) under § 50.59, and changes to the facility's technical specifications, which are necessary either to perform the thermal annealing, or to operate following completion of the annealing. Section 50.66(a) provides that the NRC will, within three years of submission of a licensee's annealing report, document its views on whether the plan for conducting thermal annealing constitutes an unreviewed safety question or otherwise requires a change to the plant's technical specifications. Such a determination is the threshold determination for whether NRC approval is required before undertaking the activity. In the event the NRC were to conclude, contrary to the licensee, that an unreviewed safety question is present or a change to the technical specifications is necessary, the NRC would, as a discretionary enforcement matter, issue an appropriate order to the licensee prohibiting annealing prior to issuance of a license amendment. An opportunity for formal adjudicatory hearing would be provided in connection with the license amendment; however, if the NRC makes a finding that the proposed change to the FSAR description or technical specification constitutes a ''no significant hazards consideration'' pursuant to Section 189.(a)(2)(A), the licensee may conduct the thermal annealing prior to completion of any hearing. In any event, at least 30 days before the licensee starts to thermal anneal and before the NRC completes its review, the NRC will hold a public meeting on the licensee's proposed Thermal Annealing Plan and Requalification Inspection and Test Program.

Following the completion of the annealing operation, the licensee must confirm in writing to the Director, Office of Nuclear Reactor Regulation, that the thermal annealing was performed in accordance with the Thermal Annealing Operating Plan and the Requalification and Inspection Test Program. In support of this confirmation, the licensee must submit a report, within three months of completion or termination of the anneal, that presents the results of the annealing operation. Within two weeks of the licensee's written confirmation that the thermal annealing was completed in accordance with the Thermal Annealing Plan, and prior to restart, the NRC shall: (1) Place in its public document room a summary of the NRC staff's inspection of the licensee's thermal annealing process to confirm that the thermal annealing was completed in accordance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program, and (2) hold a public meeting with the licensee to permit the licensee to explain the results of the reactor vessel annealing to the NRC and the public, for the NRC to discuss its inspection of the reactor vessel annealing process, and to provide an opportunity for the public to comment to the NRC on the annealing operation and the results of the Staff's inspection.

Within 45 days of the licensee's written confirmation that the thermal annealing was completed, the NRC shall complete full documentation of the NRC's inspection of the licensee's annealing process to confirm that the annealing was completed in accordance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program.

The licensee may resume operation if: (1) The licensee concludes that the thermal annealing operation was performed in compliance with the Thermal Annealing Operating Plan, the Requalification Inspection and Test Program, and the provisions of Section 50.66(b), (2) a summary of the NRC's inspection of the thermal annealing is placed in the NRC public document room as required by Section 50.66(c) (2) and (3) the NRC holds the public meeting required by Section 50.66(f)(2), unless the staff takes action against the licensee. Since NRC approval to resume operation is not necessary, an opportunity for hearing would not be provided in this situation. If, however, the licensee cannot conclude that the thermal annealing was performed in compliance with the Thermal Annealing Operating Plan or the Requalification Inspection and Test Program, the licensee must submit a justification for continued operation to the Director. If the noncompliance presents an unreviewed safety question, as determined by the licensee or directed by the NRC following its review of the report, then the plant may not restart until the Director has approved restart. Those failures to comply with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program, which either (1) Are considered to be ''unreviewed safety questions'' or (2) require changes to the technical specifications as a result of the noncompliances, would also be subject to an opportunity for a formal adjudicatory hearing in accordance with the Commission's regulations governing license amendments. However, the licensee may restart prior to completion of the hearing if the Director makes a finding that such restart constitutes a ''no significant hazards consideration,'' as provided under Section 189.(a)(2)(A) of the Atomic Energy Act of 1954, as amended.

The regulatory process for thermal annealing and the associated hearing opportunities are consistent with long-standing NRC regulatory practices defining those matters which present sufficient potential effect on public health and safety (e.g., are unreviewed safety questions) to justify both prior NRC review of the change, and an opportunity for hearings (with the associated time and resource impacts on both the licensee and the NRC). With respect to the thermal annealing review process, the Commission reassessed the regulatory requirements and processes for assuring safety. The Commission determined that the most important safety matters are normally addressed in license conditions, technical specifications, and the FSAR. The regulatory process for NRC consideration of licensee-initiated changes concerning these matters, and the associated opportunities for hearings is in 10 CFR 50.59. In view of this well-established regulatory process for important safety information, the Commission determined that a regulatory process requiring NRC approval of a thermal annealing plan is not necessary, because the licensee is already required to comply with its license conditions, technical specifications, and FSAR. Important changes to license conditions, technical specifications, and FSAR from a safety standpoint are subject to both prior NRC review and approval and an opportunity for hearing. With respect to restart following completion of the annealing, the 15-day delay period should be sufficient time for review of the licensee's input given the NRC staff's understanding of the annealing operation plan prior to implementation, ongoing resident inspections and headquarters inspections of the implementation of thermal annealing operating plan. The Commission did not adopt NEI's suggestion for informal hearings where the Director must approve restart if the Thermal Annealing Operating Plan and Requalification Inspection and Test Program were not complied with, because the Commission does not see

any distinction (in terms of safety implications) between the subject matter of hearings under this rule, as compared with other actions under Part 50 which would require formal hearings.

As discussed earlier in the supplementary information, previously performed research analyses indicated the potential for plastic deformation of the main coolant piping for a typical U.S. plant design and anticipated annealing conditions. There are also questions regarding how thermal growth of the pressure vessel is treated, and the adequacy of the thermal and stress analyses used to predict response of the overall system under thermal annealing conditions. Additionally, there may be questions in other areas such as temperature limits for the concrete structures, and potential radiological hazards associated with removing and storing the reactor internals during the annealing process, and fire hazards associated with heating the vessel.

Recognition of the numerous complex technical questions related to 4 thermal annealing and of the potential benefits for operating nuclear power plants has resulted in a cooperative effort, funded by the U.S. Department of Energy and the industry, to perform Annealing Demonstration Projects. Projects are planned to demonstrate two different annealing processes, evaluating heater designs and vessel designs. It is anticipated that the annealing demonstration projects will answer many of the generic questions regarding thermal annealing of U.S. pressure vessel and piping designs.

The Thermal Annealing Report, required by the thermal annealing rule, is designed to facilitate a detailed review by the licensee of plant-specific questions and considerations in performing a thermal annealing. The proposed rule specifically discusses the potential for unreviewed safety questions and technical specification changes that may result from or be related to thermal annealing of the reactor pressure vessel. With completion of the demonstration projects and as the staff and industry gain experience with thermal annealing, many of the issues related to annealing will be better understood and related questions will be answered. However, until this experience is realized, the staff will critically review licensee determinations regarding unreviewed safety questions and the need for technical specification changes associated with each proposed thermal annealing. The level of staff effort is expected to be significantly greater during its review of the initial proposed vessel annealings than that which will be required after experience is gained.

The thermal annealing rule has been structured to provide time for the staff to thoroughly review the licensee's annealing plan and determination regarding unreviewed safety questions and the need for technical specification changes. If the staff identifies an unreviewed safety question or the need for a technical specification change, the licensee would be so notified and the existing NRC regulatory practices would be invoked to address the issues.

Backfitting Issues

Comments were received on backfitting issues from the Nuclear Utility Backfitting and Reform Group (NUBARG). NUBARG commented that they do not object to the new NRC position in Appendix G to 10 CFR Part 50 which prohibits core criticality before completion of hydrostatic pressure and leak tests as a conservative measure to enhance safety. However, they are concerned that amending Appendix G on the basis of a compliance exception may set a bad precedent for avoiding backfitting analyses. NUBARG stated that ''The logic of the proposed rule would seem to allow the NRC to avoid a backfitting analysis by (1) invoking the intent of one requirement to override the explicit provisions of another, (2) using the compliance exception when the practice being eliminated seems specifically contemplated by and specified in the pertinent regulation, and (3) overlooking the fact that the NRC has apparently accepted this position in practice by some licensees * * *'' In NUBARG's view, this proposed amendment should be supported by a backfit analysis. The Commission has reviewed this comment and has concluded that use of the compliance exception under § 50.109 for the changes in Appendix G to 10 CFR Part 50 is appropriate. The Backfit Analysis section contains further discussion on this subject. The issue of explicitly prohibiting core criticality before completing pressure and leak tests has been addressed previously (letter from J. M. Taylor, EDO, to N. S. Reynolds and D. F. Stenger, NUBARG, dated February 2, 1990) and the NUBARG comment did not provide new information. The Commission has concluded that any backfit requirements in this amendment are necessary to bring the facilities into compliance with licenses, or the rules and orders of the Commission, or into conformance with written commitments by the licensees. Therefore, a backfit analysis is not required pursuant to 10 CFR 50.109(a)(4)(i).

NUBARG also commented on the amendment to Appendix H to 10 CFR Part 50 regarding surveillance that would preclude reducing the amount of testing if the initial test results agreed with predicted results. Although NUBARG recognizes the change would be prospective, it believes that NRC should provide flexibility to allow continued relief for any licensee who lacks such an authorization but has relied on the provision. The Commission believes that sufficient flexibility already exists in that licensees who do not have an authorization may seek an exemption under 10 CFR Part 50.12.

Another aspect of the backfitting concern raised by NUBARG addresses the proposed amendment to § 50.61 which, based on the adequate protection exception, would impose a uniform methodology for calculating the reference temperature. NUBARG contends that to rely on the adequate protection exception is arguably erroneous because the change in methodology is not likely an adequate protection issue (i.e., for most plants, the screening criteria will not be approached for many years). As discussed further under Backfit Analysis, the Commission believes that a new backfit analysis is not required for this conforming change, which corrects an inadvertent omission from the previous rulemaking. Therefore, the Commission concludes that the adequate protection basis for the backfit continues to apply from the previous rulemaking (56 FR 22300; May 15, 1991) to § 50.61.

Criminal Penalties

For purposes of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule under one or more of Sections 161b, 161i or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of human environment and, therefore, an environmental impact statement is not required.

The individual actions covered in this final rule would either serve to enhance safety of the reactor pressure vessel, thereby decreasing the environmental impact of plant operation, or have no

impact on the environment. Therefore, in all cases these individual actions will not have an adverse impact on the environment.

PTS Rule (10 CFR 50.61)

The inclusion of thermal annealing as an option for mitigating the effects of neutron irradiation serves to decrease the environmental impact of plant operation by enhancing the safety of the reactor pressure vessel.

The incorporation of the Regulatory Guide 1.99, Revision 2, method for determining RT_{NDT} into the PTS rule has no impact on the environment because this change will result in values of RT_{PTS} which are consistent with those currently used in plant operation.

The restructuring of the PTS rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, an environmental assessment is not necessary for this change.

Thermal Annealing Rule (10 CFR 50.66)

The thermal annealing rule (10 CFR 50.66) permits and provides requirements for the thermal annealing of a reactor vessel to restore fracture properties of the reactor vessel material which have been degraded by neutron irradiation. This final rule only applies when a licensee elects to use it. The final rule provides an alternative for assuring compliance with the requirements in 10 CFR 50.61 and Appendix G of 10 CFR Part 50.

The application of thermal annealing to a reactor vessel improves the condition of the reactor vessel material. In addition, this rule establishes requirements to avoid damaging the reactor system and to protect against accidents during the annealing operation.

This rule is one of several regulatory requirements that will function to ensure reactor vessel integrity. In that sense, this rule has a positive impact on the environment by reducing the potential for vessel failure. For these reasons, the Commission has determined that there is no significant impact and, therefore, an environmental statement is not required.

Appendix G to 10 CFR Part 50

The prohibition of core criticality before completion of the required pressure and leak tests will serve to reduce the potential for vessel failure, and thereby decrease the potential environmental impact of plant operation.

The restructuring of Sections IV and V of Appendix G is clarifying or corrective in nature, and is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, an environmental assessment is not necessary for this change.

The changing of the reference from Appendix G of Section III of the ASME Code to Appendix G of Section XI of the ASME Code has no impact on the environment because the requirements in the Appendices are identical. Therefore, there is no adverse impact on the environment from this change.

The referencing of the thermal annealing rule results in no adverse impact on the environment because Appendix G currently permits the use of thermal annealing to reduce fracture toughness loss of the RPV materials due to irradiation embrittlement.

Appendix H to 10 CFR Part 50

Concerning the amendments to Appendix H to 10 CFR Part 50 in the final rule, the requirement that all irradiation surveillance tests be made (i.e., no reduction in testing is permitted) will have a positive impact on the environment in helping to assure the integrity of the reactor pressure vessel.

The restructuring of Section II.C is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, an environmental assessment is not necessary for this change.

The clarification of the applicable version of ASTM Standard E 185 will result in no adverse impact to the environment since there will be no change to current surveillance programs. Changes to future surveillance programs will make the programs more effective in assessing irradiation embrittlement effects to the RPV materials, thereby helping to assure the integrity of the reactor pressure vessel

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0011.

The public reporting burden for this collection of information is estimated to average 6,000 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this 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 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

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 NRC staff has prepared a regulatory analysis for the amendments to 10 CFR 50.61, Appendix G of 10 CFR Part 50, and Appendix H of 10 CFR Part 50 that describes the factors and alternatives considered by the Commission in deciding to issue these amendments. A copy of the regulatory analysis is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555–0001. Single copies of the analysis may be obtained from Alfred Taboada, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6014.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rules which are affected by the amendments will: (1) Preclude brittle fracture of embrittled vessels during PTS events, (2) provide the general fracture toughness requirements for RPVs, including ductile fracture toughness requirements and pressure-temperature limits, (3) provide the requirements for surveillance programs to monitor irradiation embrittlement of RPV beltline materials, and (4) provide for a method for restoring the fracture toughness of RPV beltline materials used in nuclear facilities licensed under the provision of 10 CFR 50.21(b) and 10 CFR 50.22. The companies that own these facilities do not fall within the scope of the definition of ''small entities'' as set forth in the Regulatory Flexibility Act, the Small Business Size Standards in regulations issued by the Small Business Administration at 13 CFR Part 121, or the size standards established by the NRC at 10 CFR 2.810 (60 FR 18344; April 11, 1995).

Backfit Analysis

PTS Rule (10 CFR 50.61)

The revision to § 50.61 requires licensees to calculate RT_{PTS} using the same methodology specified in Regulatory Guide 1.99, Revision 2, for determining RT_{NDT}. This change was logically a requisite part of the previous rulemaking (56 FR 22300; May 15, 1991) to § 50.61 that set forth a unified method for calculating radiation embrittlement of the reactor beltline materials in Part 50. However, the Commission, at that time, inadvertently failed to make the conforming change to § 50.61. The Commission believes that the backfit statement for the previous amendment, which determined that the backfit was necessary to ensure that the facility continues to provide adequate protection to the public health and safety, is applicable to this conforming change to § 50.61.

The restructuring of the PTS rule does not impose any backfits as defined in 10 CFR 50.109(a)(1) because there is no change in requirements due to this restructuring.

The inclusion of thermal annealing in § 50.61 does not constitute a backfit as defined in 10 CFR 50.109(a)(1) because the decision to perform annealing is voluntary, no annealing has been conducted in this country, and there are no staff positions or Commission requirements relied upon by licensees that are being changed.

Thermal Annealing Rule (10 CFR 50.66)

The final thermal annealing rule establishes requirements with respect to applications for thermal annealing. However, the Commission has determined that the rule does not impose a ''backfit'' as defined in 10 CFR 50.109(a)(1). The thermal annealing rule does not require any licensee to perform thermal annealing. Under existing requirements, all licensees are required to evaluate whether they exceed the PTS screening limits in 10 CFR 50.61 and the Charpy upper shelf screening limits in Appendix G of CFR Part 50. However, these rules provide an alternative means for meeting these screening limits (e.g., performing thermal annealing). No licensee currently has pending before the NRC an application for thermal annealing, nor has any current licensee been granted permission to conduct thermal annealing. The rule does not reflect any new or different NRC staff position which conflicts with a prior NRC staff position or Commission rule. Thus, the final rule will have a purely prospective effect on future applications for thermal annealing. The Commission has stated in other rulemakings establishing prospective requirements (10 CFR Part 52 and the License Renewal Rule, 10 CFR Part 54) that the Backfit Rule was not intended to protect the future applicant from current changes in Commission requirements. Accordingly, the Commission concludes that the rule does not impose backfits and a backfit analysis need not be prepared for the final thermal annealing rule.

Appendix G to 10 CFR Part 50

The restructuring of Sections IV and V of this appendix, referencing of the thermal annealing rule, changing the reference from Appendix G of Section III of the ASME Code to Appendix G of Section XI of the ASME Code, and deleting the ''design to permit annealing'' requirement do not impose any backfits as defined in 10 CFR 50.109(a)(1), because they are either prospective in nature or are of a clarifying nature.

10 CFR Part 50, Appendix G, Paragraph IV.2.d. of the final rule explicitly prohibits core criticality before completion of ASME Code hydrostatic pressure and leak tests. This is intended to make clear that licensees may not use nuclear heat in order to perform ASME Code hydrostatic tests. This amendment can be construed as a backfit, inasmuch as the prior version of 10 CFR Part 50, Appendix G, Paragraph IV.A.5 could be read to permit core criticality during ASME hydrostatic tests and Section XI of the ASME Code does not explicitly prohibit core criticality prior to completion of these tests. However, the Commission never intended the disputed language in Paragraph IV.A.5 of Appendix G to permit core criticality before successful completion of the required ASME hydrostatic tests. The scope of Appendix G is ''fracture toughness requirements'' only; that scope is stated clearly in the title of Appendix G, and Appendix G was not intended to specify system operational requirements. It is not correct, therefore, to interpret paragraph IV.A.5. as permitting nuclear hydrotesting. The final phrase in IV.A.5, ''depending on whether the core is critical during the test,'' was included in the rule for the sake of completeness, to specify appropriate fracture toughness requirements in the event that a licensee for some reason wanted to have the core critical during hydrotest, and was given approval to do so (e.g., as in the case of the Hatch units, where nuclear hydrotesting was allowed one last time as an approved exception.) The ASME Code's hydrostatic testing provisions for the reactor coolant pressure boundary (RCPB) provides the necessary assurance that GDC–14 is met. GDC–14 *inter alia* requires RCPB testing in order to provide an extremely low probability of RCPB failure, in terms of abnormal leakage, rapidly propagating failure, and gross rupture. Using heat produced by a critical reactor core to perform such testing essentially undercuts the basic safety principle embodied in GDC–14 that testing should be completed prior to nuclear reactor operation. It makes little sense to allow core criticality—thereby allowing the reactor to be in an operational condition where a loss of coolant could have significant consequences—prior to successful completion of tests that are intended to ensure that the probability of such coolant losses during such an operational condition are extremely low.[1] The ASME Code, Section XI, requires that the System Leakage Test be performed prior to plant startup following each refueling outage (Table-2500–1, Examination Category B–P, Note 2). The only way to interpret the ASME Code as permitting core criticality prior to completion of the hydrostatic tests is to read the term, ''plant startup'' as referring to something other than reactor criticality. This is neither the normal industry practice, nor has it been the NRC staff's longstanding interpretation of this provision of the ASME code. Indeed, it does not appear that the NRC staff has construed either Appendix G, Paragraph IV.A.5 nor Section XI of the ASME Code as permitting core criticality prior to successful completion of ASME Code hydrostatic tests. Moreover, the vast majority of nuclear utility licensees do not use nuclear heat to perform ASME code hydrostatic tests. This suggests that most licensees hold the same interpretation of Appendix G and Section XI of the ASME Code as the Commission. In sum, the Commission believes Section XI of the ASME Code, which is endorsed by 10 CFR 50.55a, implicitly prohibits core criticality prior to successful completion of hydrostatic testing. Therefore, the Commission concludes that the change in the language of Appendix G, Paragraph IV.2.d. is necessary to assure compliance with 10 CFR 50.55a and the ASME Code.

[1] The Commission is aware that NUBARG has presented an argument to the NRC that performance of ASME Code hydrostatic tests are more effective at the higher temperatures achieved when using nuclear heat, as compared with the heat sources normally employed by utilities in performing the hydrostatic tests. However, for the reasons set forth in the 1990 letter from James M. Taylor, EDO to N. S. Reynolds and D.F. Stenger, NUBARG, the Commission rejects this argument.

The Commission has concluded that any backfit requirements in this amendment are necessary to bring the facilities into compliance with licenses, or the rules and orders of the Commission, or into conformance with written commitments by the licensees. Therefore, a backfit analysis is not required pursuant to 10 CFR 50.109(a)(4)(i).

Appendix H to 10 CFR Part 50

The amendments to Appendix H to 10 CFR Part 50 are either prospective in nature or of a clarifying nature, and hence 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 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and record keeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The general authority citation for Part 50 is corrected to read as set forth below, and the section-specific authority citations continue to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat 955 (42 U.S.C. 2237).

2. In § 50.8, paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.63, 50.64, 50.65, 50.66, 70.71, 50.72, 50.73, 50.75, 50.80, 50.82, 50.90, 50.91, 50.120, and Appendices A, B, E, G, H, I, J, K, M, N, O, Q, and R, to this part.

* * * * *

3. Section 50.61 is revised to read as follows:

§ 50.61 Fracture toughness requirements for protection against pressurized thermal shock events.

(a) Definitions. For the purposes of this section:

(1) *ASME Code* means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section III, Division I, ''Rules for the Construction of Nuclear Power Plant Components,'' edition and addenda and any limitations and modifications thereof as specified in § 50.55a.

(2) *Pressurized Thermal Shock Event* means an event or transient in pressurized water reactors (PWRs) causing severe overcooling (thermal shock) concurrent with or followed by significant pressure in the reactor vessel.

(3) *Reactor Vessel Beltline* means the region of the reactor vessel (shell material including welds, heat affected zones and plates or forgings) that directly surrounds the effective height of the active core and adjacent regions of the reactor vessel that are predicted to experience sufficient neutron radiation damage to be considered in the selection of the most limiting material with regard to radiation damage.

(4) RT_{NDT} means the reference temperature for a reactor vessel material, under any conditions. For the reactor vessel beltline materials, RT_{NDT} must account for the effects of neutron radiation.

(5) $RT_{NDT(U)}$ means the reference temperature for a reactor vessel material in the pre-service or unirradiated condition, evaluated according to the procedures in the ASME Code, Paragraph NB–2331 or other methods approved by the Director, Office of Nuclear Reactor Regulation.

(6) *EOL Fluence* means the best-estimate neutron fluence projected for a specific vessel beltline material at the clad-base-metal interface on the inside surface of the vessel at the location where the material receives the highest fluence on the expiration date of the operating license.

(7) RT_{PTS} means the reference temperature, RT_{NDT}, evaluated for the EOL Fluence for each of the vessel beltline materials, using the procedures of paragraph (c) of this section.

(8) *PTS Screening Criterion* means the value of RT_{PTS} for the vessel beltline material above which the plant cannot continue to operate without justification.

(b) Requirements.

(1) For each pressurized water nuclear power reactor for which an operating license has been issued, the licensee shall have projected values of RT_{PTS}, accepted by the NRC, for each reactor vessel beltline material for the EOL fluence of the material. The assessment of RT_{PTS} must use the calculation procedures given in paragraph (c)(1) of this section, except as provided in paragraphs (c)(2) and (c)(3) of this section. The assessment must specify the bases for the projected value of RT_{PTS} for each vessel beltline material, including the assumptions regarding core loading patterns, and must specify the copper and nickel contents and the fluence value used in the calculation for each beltline material. This assessment must be updated whenever there is a significant[2] change in projected values of RT_{PTS}, or upon a request for a change in the expiration date for operation of the facility.

(2) The pressurized thermal shock (PTS) screening criterion is 270 °F for plates, forgings, and axial weld materials, and 300 °F for circumferential weld materials. For the purpose of comparison with this criterion, the value of RT_{PTS} for the reactor vessel must be evaluated according to the procedures of paragraph (c) of this section, for each weld and plate, or forging, in the reactor vessel beltline. RT_{PTS} must be determined for each vessel beltline material using the EOL fluence for that material.

(3) For each pressurized water nuclear power reactor for which the value of RT_{PTS} for any material in the beltline is projected to exceed the PTS screening criterion using the EOL fluence, the licensee shall implement those flux

[2] Changes to RT_{PTS} values are considered significant if either the previous value or the current value, or both values, exceed the screening criterion prior to the expiration of the operating license, including any renewed term, if applicable, for the plant.

reduction programs that are reasonably practicable to avoid exceeding the PTS screening criterion set forth in paragraph (b)(2) of this section. The schedule for implementation of flux reduction measures may take into account the schedule for submittal and anticipated approval by the Director, Office of Nuclear Reactor Regulation, of detailed plant-specific analyses, submitted to demonstrate acceptable risk with RT_{PTS} above the screening limit due to plant modifications, new information or new analysis techniques.

(4) For each pressurized water nuclear power reactor for which the analysis required by paragraph (b)(3) of this section indicates that no reasonably practicable flux reduction program will prevent RT_{PTS} from exceeding the PTS screening criterion using the EOL fluence, the licensee shall submit a safety analysis to determine what, if any, modifications to equipment, systems, and operation are necessary to prevent potential failure of the reactor vessel as a result of postulated PTS events if continued operation beyond the screening criterion is allowed. In the analysis, the licensee may determine the properties of the reactor vessel materials based on available information, research results, and plant surveillance data, and may use probabilistic fracture mechanics techniques. This analysis must be submitted at least three years before RT_{PTS} is projected to exceed the PTS screening criterion.

(5) After consideration of the licensee's analyses, including effects of proposed corrective actions, if any, submitted in accordance with paragraphs (b)(3) and (b)(4) of this section, the Director, Office of Nuclear Reactor Regulation, may, on a case-by-case basis, approve operation of the facility with RT_{PTS} in excess of the PTS screening criterion. The Director, Office of Nuclear Reactor Regulation, will consider factors significantly affecting the potential for failure of the reactor vessel in reaching a decision.

(6) If the Director, Office of Nuclear Reactor Regulation, concludes, pursuant to paragraph (b)(5) of this section, that operation of the facility with RT_{PTS} in excess of the PTS screening criterion cannot be approved on the basis of the licensee's analyses submitted in accordance with paragraphs (b)(3) and (b)(4) of this section, the licensee shall request and receive approval by the Director, Office of Nuclear Reactor Regulation, prior to any operation beyond the criterion. The request must be based upon modifications to equipment, systems, and operation of the facility in addition to those previously proposed in the submitted analyses that would reduce the potential for failure of the reactor vessel due to PTS events, or upon further analyses based upon new information or improved methodology.

(7) If the limiting RT_{PTS} value of the plant is projected to exceed the screening criteria in paragraph (b)(2), or the criteria in paragraphs (b)(3) through (b)(6) of this section cannot be satisfied, the reactor vessel beltline may be given a thermal annealing treatment to recover the fracture toughness of the material, subject to the requirements of § 50.66. The reactor vessel may continue to be operated only for that service period within which the predicted fracture toughness of the vessel beltline materials satisfy the requirements of paragraphs (b)(2) through (b)(6) of this section, with RT_{PTS} accounting for the effects of annealing and subsequent irradiation.

(c) Calculation of RT_{PTS}. RT_{PTS} must be calculated for each vessel beltline material using a fluence value, f, which is the EOL fluence for the material. RT_{PTS} must be evaluated using the same procedures used to calculate RT_{NDT}, as indicated in paragraph (c)(1) of this section, and as provided in paragraphs (c)(2) and (c)(3) of this section.

(1) Equation 1 must be used to calculate values of RT_{NDT} for each weld and plate, or forging, in the reactor vessel beltline.

Equation 1:

$$RT_{NDT}=RT_{NDT(U)}+M+\Delta RT_{NDT}$$

(i) If a measured value of $RT_{NDT(U)}$ is not available, a generic mean value for the class[3] of material may be used if there are sufficient test results to establish a mean and a standard deviation for the class.

(ii) For generic values of weld metal, the following generic mean values must be used unless justification for different values is provided: 0°F for welds made with Linde 80 flux, and −56°F for welds made with Linde 0091, 1092 and 124 and ARCOS B–5 weld fluxes.

(iii) *M* means the margin to be added to account for uncertainties in the values of $RT_{NDT(U)}$, copper and nickel contents, fluence and the calculational procedures. M is evaluated from Equation 2.

Equation 2: $$M = 2\sqrt{\sigma_U^2 + \sigma_\Delta^2}$$

(A) In Equation 2, σ_U is the standard deviation for $RT_{NDT(U)}$. If a measured value of $RT_{NDT(U)}$ is used, then σ_U is determined from the precision of the test method. If a measured value of $RT_{NDT(U)}$ is not available and a generic mean value for that class of materials is used, then σ_U is the standard deviation obtained from the set of data used to establish the mean. If a generic mean value given in paragraph (c)(1)(i)(B) of this section for welds is used, then σ_U is 17°F.

(B) In Equation 2, σ_Δ is the standard deviation for ΔRT_{NDT}. The value of σ_Δ to be used is 28°F for welds and 17°F for base metal; the value of σ_Δ need not exceed one-half of ΔRT_{NDT}.

(iv) ΔRT_{NDT} is the mean value of the transition temperature shift, or change in RT_{NDT}, due to irradiation, and must be calculated using Equation 3.

Equation 3: $\Delta RT_{NDT}=(CF)f^{(0.28-0.10 \log f)}$

(A) *CF* (°F) is the chemistry factor, which is a function of copper and nickel content. CF is given in Table 1 for welds and in Table 2 for base metal (plates and forgings). Linear interpolation is permitted. In Tables 1 and 2, ''Wt-% copper'' and ''Wt-% nickel'' are the best-estimate values for the material, which will normally be the mean of the measured values for a plate or forging. For a weld, the best estimate values will normally be the mean of the measured values for a weld deposit made using the same weld wire heat number as the critical vessel weld. If these values are not available, the upper limiting values given in the material specifications to which the vessel material was fabricated may be used. If not available, conservative estimates (mean plus one standard deviation) based on generic data[4] may be used if justification is provided. If none of these alternatives are available, 0.35% copper and 1.0% nickel must be assumed.

(B) *f* is the best estimate neutron fluence, in units of 10^{19} n/cm^2 (E greater than 1 MeV), at the clad-base-metal interface on the inside surface of the vessel at the location where the material in question receives the highest fluence for the period of service in question. As specified in this paragraph, the EOL fluence for the vessel beltline material is used in calculating KRT_{PTS}.

(v) Equation 4 must be used for determining RT_{PTS} using equation 3 with EOL fluence values for determining ΔRT_{PTS}.

Equation 4: $RT_{PTS}=RT_{NDT(U)}+M+\Delta RT_{PTS}$

(2) To verify that RT_{NDT} for each vessel beltline material is a bounding value for the specific reactor vessel, licensees shall consider plant-specific information that could affect the level of

[3] The class of material for estimating $RT_{NDT(U)}$ is generally determined for welds by the type of welding flux (Linde 80, or other), and for base metal by the material specification.

[4] Data from reactor vessels fabricated to the same material specification in the same shop as the vessel in question and in the same time period is an example of ''generic data.''

embrittlement. This information includes but is not limited to the reactor vessel operating temperature and any related surveillance program[5] results.

(i) Results from the plant-specific surveillance program must be integrated into the RT_{NDT} estimate if the plant-specific surveillance data has been deemed credible as judged by the following criteria:

(A) The materials in the surveillance capsules must be those which are the controlling materials with regard to radiation embrittlement.

(B) Scatter in the plots of Charpy energy versus temperature for the irradiated and unirradiated conditions must be small enough to permit the determination of the 30-foot-pound temperature unambiguously.

(C) Where there are two or more sets of surveillance data from one reactor, the scatter of ΔRT_{NDT} values must be less than 28°F for welds and 17°F for base metal. Even if the range in the capsule fluences is large (two or more orders of magnitude), the scatter may not exceed twice those values.

(D) The irradiation temperature of the Charpy specimens in the capsule must equal the vessel wall temperature at the cladding/base metal interface within ±25°F.

(E) The surveillance data for the correlation monitor material in the capsule, if present, must fall within the scatter band of the data base for the material.

(ii)(A) Surveillance data deemed credible according to the criteria of paragraph (c)(2)(i) of this section must be used to determine a material-specific value of CF for use in Equation 3. A material-specific value of CF is determined from Equation 5.

$$\text{Equation 5:} \quad CF = \frac{\sum_{i=1}^{n}\left[A_i \times f_i^{(0.28-0.10\log f_i)}\right]}{\sum_{i=1}^{n}\left[f_i^{(0.56-0.20\log f_i)}\right]}$$

(B) In Equation 5, ''n'' is the number of surveillance data points, ''A_i'' is the measured value of ΔRT_{NDT} and ''f_i'' is the fluence for each surveillance data point. If there is clear evidence that the copper and nickel content of the surveillance weld differs from the vessel weld, i.e. differs from the average for the weld wire heat number associated with the vessel weld and the surveillance weld, the measured values of ΔRT_{NDT} must be adjusted for differences in copper and nickel content by multiplying them by the ratio of the chemistry factor for the vessel material to that for the surveillance weld.

(iii) For cases in which the results from a credible plant-specific surveillance program are used, the value of σ_Δ to be used is 14°F for welds and 8.5°F for base metal; the value of σ_Δ need not exceed one-half of DRT_{NDT}.

(iv) The use of results from the plant-specific surveillance program may result in an RT_{NDT} that is higher or lower than those determined in paragraph (c)(1).

(3) Any information that is believed to improve the accuracy of the RT_{PTS} value significantly must be reported to the Director, Office of Nuclear Reactor Regulation. Any value of RT_{PTS} that has been modified using the procedures of paragraph (c)(2) of this section is subject to the approval of the Director, Office of Nuclear Reactor Regulation, when used as provided in this section.

TABLE 1.—CHEMISTRY FACTOR FOR WELD METALS, °F

Copper, wt-%	Nickel, wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0	20	20	20	20	20	20	20
0.01	20	20	20	20	20	20	20
0.02	21	26	27	27	27	27	27
0.03	22	35	41	41	41	41	41
0.04	24	43	54	54	54	54	54
0.05	26	49	67	68	68	68	68
0.06	29	52	77	82	82	82	82
0.07	32	55	85	95	95	95	95
0.08	36	58	90	106	108	108	108
0.09	40	61	94	115	122	122	122
0.10	44	65	97	122	133	135	135
0.11	49	68	101	130	144	148	148
0.12	52	72	103	135	153	161	161
0.13	58	76	106	139	162	172	176
0.14	61	79	109	142	168	182	188
0.15	66	84	112	146	175	191	200
0.16	70	88	115	149	178	199	211
0.17	75	92	119	151	184	207	221
0.18	79	95	122	154	187	214	230
0.19	83	100	126	157	191	220	238
0.20	88	104	129	160	194	223	245
0.21	92	108	133	164	197	229	252

[5] Surveillance program results means any data that demonstrates the embrittlement trends for the limiting beltline material, including but not limited to data from test reactors or from surveillance programs at other plants with or without surveillance program integrated per 10 CFR Part 50, Appendix H.

TABLE 1.—CHEMISTRY FACTOR FOR WELD METALS, °F—Continued

Copper, wt-%	Nickel, wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0.22	97	112	137	167	200	232	257
0.23	101	117	140	169	203	236	263
0.24	105	121	144	173	206	239	268
0.25	110	126	148	176	209	243	272
0.26	113	130	151	180	212	246	276
0.27	119	134	155	184	216	249	280
0.28	122	138	160	187	218	251	284
0.29	128	142	164	191	222	254	287
0.30	131	146	167	194	225	257	290
0.31	136	151	172	198	228	260	293
0.32	140	155	175	202	231	263	296
0.33	144	160	180	205	234	266	299
0.34	149	164	184	209	238	269	302
0.35	153	168	187	212	241	272	305
0.36	158	172	191	216	245	275	308
0.37	162	177	196	220	248	278	311
0.38	166	182	200	223	250	281	314
0.39	171	185	203	227	254	285	317
0.40	175	189	207	231	257	288	320

TABLE 2.—CHEMISTRY FACTOR FOR BASE METALS, °F

Copper, wt-%	Nickel, wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0	20	20	20	20	20	20	20
0.01	20	20	20	20	20	20	20
0.02	20	20	20	20	20	20	20
0.03	20	20	20	20	20	20	20
0.04	22	26	26	26	26	26	26
0.05	25	31	31	31	31	31	31
0.06	28	37	37	37	37	37	37
0.07	31	43	44	44	44	44	44
0.08	34	48	51	51	51	51	51
0.09	37	53	58	58	58	58	58
0.10	41	58	65	65	67	67	67
0.11	45	62	72	74	77	77	77
0.12	49	67	79	83	86	86	86
0.13	53	71	85	91	96	96	96
0.14	57	75	91	100	105	106	106
0.15	61	80	99	110	115	117	117
0.16	65	84	104	118	123	125	125
0.17	69	88	110	127	132	135	135
0.18	73	92	115	134	141	144	144
0.19	78	97	120	142	150	154	154
0.20	82	102	125	149	159	164	165
0.21	86	107	129	155	167	172	174
0.22	91	112	134	161	176	181	184
0.23	95	117	138	167	184	190	194
0.24	100	121	143	172	191	199	204
0.25	104	126	148	176	199	208	214
0.26	109	130	151	180	205	216	221
0.27	114	134	155	184	211	225	230
0.28	119	138	160	187	216	233	239
0.29	124	142	164	191	221	241	248
0.30	129	146	167	194	225	249	257
0.31	134	151	172	198	228	255	266
0.32	139	155	175	202	231	260	274
0.33	144	160	180	205	234	264	282
0.34	149	164	184	209	238	268	290
0.35	153	168	187	212	241	272	298
0.36	158	173	191	216	245	275	303
0.37	162	177	196	220	248	278	308
0.38	166	182	200	223	250	281	313
0.39	171	185	203	227	254	285	317
0.40	175	189	207	231	257	288	320

4. A new § 50.66 is added under the center heading ''Issuance, Limitations, and Conditions of Licenses and Construction Permits'' to read as follows:

§ 50.66 Requirements for thermal annealing of the reactor pressure vessel.

(a) For those light water nuclear power reactors where neutron radiation has reduced the fracture toughness of the reactor vessel materials, a thermal annealing may be applied to the reactor vessel to recover the fracture toughness of the material. The use of a thermal annealing treatment is subject to the requirements in this section. A report describing the licensee's plan for conducting the thermal annealing must be submitted in accordance with § 50.4 at least three years prior to the date at which the limiting fracture toughness criteria in § 50.61 or Appendix G to Part 50 would be exceeded. Within three years of the submittal of the Thermal Annealing Report and at least thirty days prior to the start of the thermal annealing, the NRC will review the Thermal Annealing Report and place the results of its evaluation in its Public Document Room. The licensee may begin the thermal anneal after:

(1) Submitting the Thermal Annealing Report required by paragraph (b) of this section;

(2) the NRC places the results of its evaluation of the Thermal Annealing Report in the Public Document Room; and

(3) the requirements of paragraph (f)(1) of this section have been satisfied.

(b) Thermal Annealing Report. The Thermal Annealing Report must include: a Thermal Annealing Operating Plan; a Requalification Inspection and Test Program; a Fracture Toughness Recovery and Reembrittlement Trend Assurance Program; and Identification of Unreviewed Safety Questions and Technical Specification Changes.

(1) Thermal Annealing Operating Plan.

The thermal annealing operating plan must include:

(i) A detailed description of the pressure vessel and all structures and components that are expected to experience significant thermal or stress effects during the thermal annealing operation;

(ii) An evaluation of the effects of mechanical and thermal stresses and temperatures on the vessel, containment, biological shield, attached piping and appurtenances, and adjacent equipment and components to demonstrate that operability of the reactor will not be detrimentally affected. This evaluation must include:

(A) Detailed thermal and structural analyses to establish the time and temperature profile of the annealing operation. These analyses must include heatup and cooldown rates, and must demonstrate that localized temperatures, thermal stress gradients, and subsequent residual stresses will not result in unacceptable dimensional changes or distortions in the vessel, attached piping and appurtenances, and that the thermal annealing cycle will not result in unacceptable degradation of the fatigue life of these components.

(B) The effects of localized high temperatures on degradation of the concrete adjacent to the vessel and changes in thermal and mechanical properties, if any, of the reactor vessel insulation, and on detrimental effects, if any, on containment and the biological shield. If the design temperature limitations for the adjacent concrete structure are to be exceeded during the thermal annealing operation, an acceptable maximum temperature for the concrete must be established for the annealing operation using appropriate test data.

(iii) The methods, including heat source, instrumentation and procedures proposed for performing the thermal annealing. This shall include any special precautions necessary to minimize occupational exposure, in accordance with the As Low As Reasonably Achievable (ALARA) principle and the provisions of § 20.1206.

(iv) The proposed thermal annealing operating parameters, including bounding conditions for temperatures and times, and heatup and cooldown schedules.

(A) The thermal annealing time and temperature parameters selected must be based on projecting sufficient recovery of fracture toughness, using the procedures of paragraph (e) of this section, to satisfy the requirements of § 50.60 and § 50.61 for the proposed period of operation addressed in the application.

(B) The time and temperature parameters evaluated as part of the thermal annealing operating plan, and supported by the evaluation results of paragraph (b)(1)(ii) of this section, represent the bounding times and temperatures for the thermal annealing operation. If these bounding conditions for times and temperatures are violated during the thermal annealing operation, then the annealing operation is considered not in accordance with the Thermal Annealing Operating Plan, as required by paragraph (c)(1) of this section, and the licensee must comply with paragraph (c)(2) of this section.

(2) Requalification Inspection and Test Program. The inspection and test program to requalify the annealed reactor vessel must include the detailed monitoring, inspections, and tests proposed to demonstrate that the limitations on temperatures, times and temperature profiles, and stresses evaluated for the proposed thermal annealing conditions of paragraph (b)(1)(iv) of this section have not been exceeded, and to determine the thermal annealing time and temperature to be used in quantifying the fracture toughness recovery. The requalification inspection and test program must demonstrate that the thermal annealing operation has not degraded the reactor vessel, attached piping or appurtenances, or the adjacent concrete structures to a degree that could affect the safe operation of the reactor.

(3) Fracture Toughness Recovery and Reembrittlement Trend Assurance Program. The percent recovery of RT_{NDT} and Charpy upper-shelf energy due to the thermal annealing treatment must be determined based on the time and temperature of the actual vessel thermal anneal. The recovery of RT_{NDT} and Charpy upper-shelf energy provide the basis for establishing the post-anneal RT_{NDT} and Charpy upper-shelf energy for each vessel material. Changes in the RT_{NDT} and Charpy upper-shelf energy with subsequent plant operation must be determined using the post-anneal values of these parameters in conjunction with the projected reembrittlement trend determined in accordance with paragraph (b)(3)(ii) of this section. Recovery and reembrittlement evaluations shall include:

(i) Recovery Evaluations.

(A) The percent recovery of both RT_{NDT} and Charpy upper-shelf energy must be determined by one of the procedures described in paragraph (e) of this section, using the proposed lower bound thermal annealing time and temperature conditions described in the operating plan.

(B) If the percent recovery is determined from testing surveillance specimens or from testing materials removed from the reactor vessel, then it shall be demonstrated that the proposed thermal annealing parameters used in the test program are equal to or bounded by those used in the vessel annealing operation.

(C) If generic computational methods are used, appropriate justification must be submitted as a part of the application.

(ii) Reembrittlement Evaluations.

(A) The projected post-anneal reembrittlement of RT_{NDT} must be

calculated using the procedures in § 50.61(c), or must be determined using the same basis as that used for the pre-anneal operating period. The projected change due to post-anneal reembrittlement for Charpy upper-shelf energy must be determined using the same basis as that used for the pre-anneal operating period.

(B) The post-anneal reembrittlement trend of both RT_{NDT} and Charpy upper-shelf energy must be estimated, and must be monitored using a surveillance program defined in the Thermal Annealing Report and which conforms to the intent of Appendix H of this part, ''Reactor Vessel Material Surveillance Program Requirements.''

(4) Identification of Unreviewed Safety Questions and Technical Specification Changes. Any changes to the facility as described in the updated final safety analysis report constituting unreviewed safety questions, and any changes to the technical specifications, which are necessary to either conduct the thermal annealing or operate the nuclear power reactor following the annealing, must be identified. The section shall demonstrate that the Commission's requirements continue to be complied with, and that there is reasonable assurance of adequate protection to the public health and safety following the changes.

(c) Completion or Termination of Thermal Annealing.

(1) If the thermal annealing was completed in accordance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program, the licensee shall so confirm in writing to the Director, Office of Nuclear Reactor Regulation. The licensee may restart its reactor after the requirements of paragraph (f)(2) of this section have been met.

(2) If the thermal annealing was completed but the annealing was not performed in accordance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program, the licensee shall submit a summary of lack of compliance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program and a justification for subsequent operation to the Director, Office of Nuclear Reactor Regulation. Any changes to the facility as described in the updated final safety analysis report which are attributable to the noncompliances and constitute unreviewed safety questions, and any changes to the technical specifications which are required as a result of the noncompliances, shall also be identified.

(i) If no unreviewed safety questions or changes to technical specifications are identified, the licensee may restart its reactor after the requirements of paragraph (f)(2) of this section have been met.

(ii) If any unreviewed safety questions or changes to technical specifications are identified, the licensee may not restart its reactor until approval is obtained from the Director, Office of Nuclear Reactor Regulation and the requirements of paragraph (f)(2) of this section have been met.

(3) If the thermal annealing was terminated prior to completion, the licensee shall immediately notify the NRC of the premature termination of the thermal anneal.

(i) If the partial annealing was otherwise performed in accordance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program, and the licensee does not elect to take credit for any recovery, the licensee need not submit the Thermal Annealing Results Report required by paragraph (d) of this section but instead shall confirm in writing to the Director, Office of Nuclear Reactor Regulation that the partial annealing was otherwise performed in accordance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program. The licensee may restart its reactor after the requirements of paragraph (f)(2) of this section have been met.

(ii) If the partial annealing was otherwise performed in accordance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program, and the licensee elects to take full or partial credit for the partial annealing, the licensee shall confirm in writing to the Director, Office of Nuclear Reactor Regulation that the partial annealing was otherwise performed in compliance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program. The licensee may restart its reactor after the requirements of paragraph (f)(2) of this section have been met.

(iii) If the partial annealing was not performed in accordance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program, the licensee shall submit a summary of lack of compliance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program and a justification for subsequent operation to the Director, Office of Nuclear Reactor Regulation. Any changes to the facility as described in the updated final safety analysis report which are attributable to the noncompliances and constitute unreviewed safety questions, and any changes to the technical specifications which are required as a result of the noncompliances, shall also be identified.

(A) If no unreviewed safety questions or changes to technical specifications are identified, the licensee may restart its reactor after the requirements of paragraph (f)(2) of this section have been met.

(B) If any unreviewed safety questions or changes to technical specifications are identified, the licensee may not restart its reactor until approval is obtained from the Director, Office of Nuclear Reactor Regulation and the requirements of paragraph (f)(2) of this section have been met.

(d) Thermal Annealing Results Report. Every licensee that either completes a thermal annealing, or that terminates an annealing but elects to take full or partial credit for the annealing, shall provide the following information within three months of completing the thermal anneal, unless an extension is authorized by the Director, Office of Nuclear Reactor Regulation:

(1) The time and temperature profiles of the actual thermal annealing;

(2) The post-anneal RT_{NDT} and Charpy upper-shelf energy values of the reactor vessel materials for use in subsequent reactor operation;

(3) The projected post-anneal reembrittlement trends for both RT_{NDT} and Charpy upper-shelf energy; and

(4) The projected values of RT_{PTS} and Charpy upper-shelf energy at the end of the proposed period of operation addressed in the Thermal Annealing Report.

(e) Procedures for Determining the Recovery of Fracture Toughness. The procedures of this paragraph must be used to determine the percent recovery of ΔRT_{NDT}, R_t, and percent recovery of Charpy upper-shelf energy, R_u. In all cases, R_t and R_u may not exceed 100.

(1) For those reactors with surveillance programs which have developed credible surveillance data as defined in § 50.61, percent recovery due to thermal annealing (R_t and R_u) must be evaluated by testing surveillance specimens that have been withdrawn from the surveillance program and that have been annealed under the same time and temperature conditions as those given the beltline material.

(2) Alternatively, the percent recovery due to thermal annealing (R_t and R_u) may be determined from the results of

a verification test program employing materials removed from the beltline region of the reactor vessel[6] and that have been annealed under the same time and temperature conditions as those given the beltline material.

(3) Generic computational methods may be used to determine recovery if adequate justification is provided.

(f) Public information and participation.

(1) Upon receipt of a Thermal Annealing Report, and a minimum of 30 days before the licensee starts thermal annealing, the Commission shall:

(i) Notify and solicit comments from local and State governments in the vicinity of the site where the thermal annealing will take place and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the thermal annealing,

(ii) Publish a notice of a public meeting in the Federal Register and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, to solicit comments from the public, and

(iii) Hold a public meeting on the licensee's Thermal Annealing Report.

(2) Within 15 days after the NRC's receipt of the licensee submissions required by paragraphs (c)(1), (c)(2) and (c)(3)(i)–(iii) of this section, the NRC staff shall place in the NRC Public Document Room a summary of its inspection of the licensee's thermal annealing, and the Commission shall hold a public meeting:

(i) For the licensee to explain to NRC and the public the results of the reactor pressure vessel annealing,

(ii) for the NRC to discuss its inspection of the reactor vessel annealing, and

(iii) for the NRC to receive public comments on the annealing.

(3) Within 45 days of NRC's receipt of the licensee submissions required by paragraphs (c)(1), (c)(2) and (c)(3)(i)–(iii) of this section, the NRC staff shall complete full documentation of its inspection of the licensee's annealing process and place this documentation in the NRC Public Document Room.

5. In 10 CFR Part 50, Appendix G is revised to read as follows:

Appendix G to Part 50—Fracture Toughness Requirements

I. Introduction and scope.
II. Definitions.
III. Fracture toughness tests.
IV. Fracture toughness requirements.

I. Introduction and Scope

This appendix specifies fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light water nuclear power reactors to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime.

The ASME Code forms the basis for the requirements of this appendix. ''ASME Code'' means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. If no section is specified, the reference is to Section III, Division 1, ''Rules for Construction of Nuclear Power Plant Components.'' ''Section XI'' means Section XI, Division 1, ''Rules for Inservice Inspection of Nuclear Power Plant Components.'' If no edition or addenda are specified, the ASME Code edition and addenda and any limitations and modifications thereof, which are specified in § 50.55a, are applicable.

The sections, editions and addenda of the ASME Boiler and Pressure Vessel Code specified in § 50.55a have been approved for incorporation by reference by the Director of the Federal Register. A notice of any changes made to the material incorporated by reference will be published in the Federal Register. Copies of the ASME Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017, and are available for inspection at the NRC Library, 11545 Rockville Pike, Two White Flint North, Rockville, MD 20852–2738.

The requirements of this appendix apply to the following materials:

A. Carbon and low-alloy ferritic steel plate, forgings, castings, and pipe with specified minimum yield strengths not over 50,000 psi (345 MPa), and to those with specified minimum yield strengths greater than 50,000 psi (345 MPa) but not over 90,000 psi (621 MPa) if qualified by using methods equivalent to those described in paragraph G–2110 of Appendix G of Section XI of the latest edition and addenda of the ASME Code incorporated by reference into § 50.55a(b)(2).

B. Welds and weld heat-affected zones in the materials specified in paragraph I.A. of this appendix.

C. Materials for bolting and other types of fasteners with specified minimum yield strengths not over 130,000 psi (896 MPa).

Note: The adequacy of the fracture toughness of other ferritic materials not covered in this section must be demonstrated to the Director, Office of Nuclear Reactor Regulation, on an individual case basis.

II. Definitions

A. *Ferritic material* means carbon and low-alloy steels, higher alloy steels including all stainless alloys of the 4xx series, and maraging and precipitation hardening steels with a predominantly body-centered cubic crystal structure.

B. *System hydrostatic tests* means all preoperational system leakage and hydrostatic pressure tests and all system leakage and hydrostatic pressure tests performed during the service life of the pressure boundary in compliance with the ASME Code, Section XI.

C. *Specified minimum yield strength* means the minimum yield strength (in the unirradiated condition) of a material specified in the construction code under which the component is built under § 50.55a.

D. RT_{NDT} means the reference temperature of the material, for all conditions.

(i) For the pre-service or unirradiated condition, RT_{NDT} is evaluated according to the procedures in the ASME Code, Paragraph NB–2331.

(ii) For the reactor vessel beltline materials, RT_{NDT} must account for the effects of neutron radiation.

E. RT_{NDT} means the transition temperature shift, or change in RT_{NDT}, due to neutron radiation effects, which is evaluated as the difference in the 30 ft-lb (41 J) index temperatures from the average Charpy curves measured before and after irradiation.

F. *Beltline* or *Beltline region of reactor vessel* means the region of the reactor vessel (shell material including welds, heat affected zones, and plates or forgings) that directly surrounds the effective height of the active core and adjacent regions of the reactor vessel that are predicted to experience sufficient neutron radiation damage to be considered in the selection of the most limiting material with regard to radiation damage.

III. Fracture Toughness Tests

A. To demonstrate compliance with the fracture toughness requirements of Section IV of this appendix, ferritic materials must be tested in accordance with the ASME Code and, for the beltline materials, the test requirements of Appendix H of this part. For a reactor vessel that was constructed to an ASME Code earlier than the Summer 1972 Addenda of the 1971 Edition (under § 50.55a), the fracture toughness data and data analyses must be supplemented in a manner approved by the Director, Office of Nuclear Reactor Regulation, to demonstrate equivalence with the fracture toughness requirements of this appendix.

B. Test methods for supplemental fracture toughness tests described in paragraph IV.A.1.b of this appendix must be submitted to and approved by the Director, Office of Nuclear Reactor Regulation, prior to testing.

C. All fracture toughness test programs conducted in accordance with paragraphs III.A and III.B must comply with ASME Code requirements for calibration of test equipment, qualification of test personnel, and retention of records of these functions and of the test data.

IV. Fracture Toughness Requirements

A. The pressure-retaining components of the reactor coolant pressure boundary that are made of ferritic materials must meet the requirements of the ASME Code, supplemented by the additional requirements set forth below, for fracture toughness during system hydrostatic tests and any condition of

[6] For those cases where materials are removed from the beltline of the pressure vessel, the stress limits of the applicable portions of the ASME Code Section III must be satisfied, including consideration of fatigue and corrosion, regardless of the Code of record for the vessel design.

normal operation, including anticipated operational occurrences. Reactor vessels may continue to be operated only for that service period within which the requirements of this section are satisfied. For the reactor vessel beltline materials, including welds, plates and forgings, the values of RT_{NDT} and Charpy upper-shelf energy must account for the effects of neutron radiation, including the results of the surveillance program of Appendix H of this part. The effects of neutron radiation must consider the radiation conditions (i.e., the fluence) at the deepest point on the crack front of the flaw assumed in the analysis.

1. Reactor Vessel Charpy Upper-Shelf Energy Requirements

a. Reactor vessel beltline materials must have Charpy upper-shelf energy,[1] in the transverse direction for base material and along the weld for weld material according to the ASME Code, of no less than 75 ft-lb (102 J) initially and must maintain Charpy upper-shelf energy throughout the life of the vessel of no less than 50 ft-lb (68 J), unless it is demonstrated in a manner approved by the Director, Office of Nuclear Reactor Regulation, that lower values of Charpy upper-shelf energy will provide margins of safety against fracture equivalent to those required by Appendix G of Section XI of the ASME Code. This analysis must use the latest edition and addenda of the ASME Code incorporated by reference into § 50.55a(b)(2) at the time the analysis is submitted.

b. Additional evidence of the fracture toughness of the beltline materials after exposure to neutron irradiation may be obtained from results of supplemental fracture toughness tests for use in the analysis specified in section IV.A.1.a.

c. The analysis for satisfying the requirements of section IV.A.1 of this appendix must be submitted, as specified in § 50.4, for review and approval on an individual case basis at least three years prior to the date when the predicted Charpy upper-shelf energy will no longer satisfy the requirements of section IV.A.1 of this appendix, or on a schedule approved by the Director, Office of Nuclear Reactor Regulation.

2. Pressure-Temperature Limits and Minimum Temperature Requirements

a. Pressure-temperature limits and minimum temperature requirements for the reactor vessel are given in Table 3, and are defined by the operating condition (i.e., hydrostatic pressure and leak tests, or normal operation including anticipated operational occurrences), the vessel pressure, whether or not fuel is in the vessel, and whether the core is critical. In Table 3, the vessel pressure is defined as a percentage of the preservice system hydrostatic test pressure. The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.

b. The pressure-temperature limits identified as ''ASME Appendix G limits'' in Table 3 require that the limits must be at least as conservative as limits obtained by following the methods of analysis and the margins of safety of Appendix G of Section XI of the ASME Code.

c. The minimum temperature requirements given in Table 3 pertain to the controlling material, which is either the material in the closure flange or the material in the beltline region with the highest reference temperature. As specified in Table 3, the minimum temperature requirements and the controlling material depend on the operating condition (i.e., hydrostatic pressure and leak tests, or normal operation including anticipated operational occurrences), the vessel pressure, whether fuel is in the vessel, and whether the core is critical. The metal temperature of the controlling material, in the region of the controlling material which has the least favorable combination of stress and temperature, must exceed the appropriate minimum temperature requirement for the condition and pressure of the vessel specified in Table 1.

d. Pressure tests and leak tests of the reactor vessel that are required by Section XI of the ASME Code must be completed before the core is critical.

B. If the procedures of Section IV.A. of this appendix do not indicate the existence of an equivalent safety margin, the reactor vessel beltline may be given a thermal annealing treatment to recover the fracture toughness of the material, subject to the requirements of § 50.66. The reactor vessel may continue to be operated only for that service period within which the predicted fracture toughness of the beltline region materials satisfies the requirements of Section IV.A. of this appendix using the values of RT_{NDT} and Charpy upper-shelf energy that include the effects of annealing and subsequent irradiation.

TABLE 1.—PRESSURE AND TEMPERATURE REQUIREMENTS FOR THE REACTOR PRESSURE VESSEL

Operating condition	Vessel pressure [1]	Requirements for pressure-temperature limits	Minimum temperature requirements
1. Hydrostatic pressure and leak tests (core is not critical):			
1.a Fuel in the vessel	≤20%	ASME Appendix G Limits	(2)
1.b Fuel in the vessel	>20%	ASME Appendix G Limits	(2) +90°F (6)
1.c No fuel in the vessel (Preservice Hydrotest Only)	ALL	(Not Applicable)	(3) +60°F
2. Normal operation (incl. heat-up and cool-down), including anticipated operational occurrences:			
2.a Core not critical	≤20%	ASME Appendix G Limits	(2)
2.b Core not critical	>20%	ASME Appendix G Limits	(2) +120°F (6)
2.c Core critical	≤20%	ASME Appendix G Limits + 40°F	Larger of [(4)] or [(2) + 40°F]
2.d Core critical	>20%	ASME Appendix G Limits + 40°F	Larger of [(4)] or [(2) + 160°F]
2.e Core critical for BWR (5)	≤20%	ASME Appendix G Limits + 40°F	(2) + 60°F

[1] Percent of the preservice system hydrostatic test pressure.
[2] The highest reference temperature of the material in the closure flange region that is highly stressed by the bolt preload.
[3] The highest reference temperature of the vessel.
[4] The minimum permissible temperature for the inservice system hydrostatic pressure test.
[5] For boiling water reactors (BWR) with water level within the normal range for power operation.
[6] Lower temperatures are permissible if they can be justified by showing that the margins of safety of the controlling region are equivalent to those required for the beltline when it is controlling.

[1] Defined in ASTM E 185–79 and –82 which are incorporated by reference in Appendix H to Part 50.

6. In 10 CFR Part 50, Appendix H is revised to read as follows:

Appendix H to Part 50—Reactor Vessel Material Surveillance Program Requirements

I. Introduction
II. Definitions
III. Surveillance Program Criteria
IV. Report of Test Results

I. Introduction

The purpose of the material surveillance program required by this appendix is to monitor changes in the fracture toughness properties of ferritic materials in the reactor vessel beltline region of light water nuclear power reactors which result from exposure of these materials to neutron irradiation and the thermal environment. Under the program, fracture toughness test data are obtained from material specimens exposed in surveillance capsules, which are withdrawn periodically from the reactor vessel. These data will be used as described in Section IV of Appendix G to Part 50.

ASTM E 185–73, –79, and –82, ''Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels,'' which are referenced in the following paragraphs, have been approved for incorporation by reference by the Director of the Federal Register. Copies of ASTM E 185–73, –79, and –82, may be purchased from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 and are available for inspection at the NRC Library, 11545 Rockville Pike, Two White Flint North, Rockville, MD 20852–2738.

II. Definitions

All terms used in this Appendix have the same meaning as in Appendix G.

III. Surveillance Program Criteria

A. No material surveillance program is required for reactor vessels for which it can be conservatively demonstrated by analytical methods applied to experimental data and tests performed on comparable vessels, making appropriate allowances for all uncertainties in the measurements, that the peak neutron fluence at the end of the design life of the vessel will not exceed 10^{17} n/cm^2 (E > 1 MeV).

B. Reactor vessels that do not meet the conditions of paragraph III.A of this appendix must have their beltline materials monitored by a surveillance program complying with ASTM E 185, as modified by this appendix.

1. The design of the surveillance program and the withdrawal schedule must meet the requirements of the edition of ASTM E 185 that is current on the issue date of the ASME Code to which the reactor vessel was purchased. Later editions of ASTM E 185 may be used, but including only those editions through 1982. For each capsule withdrawal, the test procedures and reporting requirements must meet the requirements of ASTM E 185–82 to the extent practicable for the configuration of the specimens in the capsule.

2. Surveillance specimen capsules must be located near the inside vessel wall in the beltline region so that the specimen irradiation history duplicates, to the extent practicable within the physical constraints of the system, the neutron spectrum, temperature history, and maximum neutron fluence experienced by the reactor vessel inner surface. If the capsule holders are attached to the vessel wall or to the vessel cladding, construction and inservice inspection of the attachments and attachment welds must be done according to the requirements for permanent structural attachments to reactor vessels given in Sections III and XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). The design and location of the capsule holders must permit insertion of replacement capsules. Accelerated irradiation capsules may be used in addition to the required number of surveillance capsules.

3. A proposed withdrawal schedule must be submitted with a technical justification as specified in § 50.4. The proposed schedule must be approved prior to implementation.

C. Requirements for an Integrated Surveillance Program.

1. In an integrated surveillance program, the representative materials chosen for surveillance for a reactor are irradiated in one or more other reactors that have similar design and operating features. Integrated surveillance programs must be approved by the Director, Office of Nuclear Reactor Regulation, on a case-by-case basis. Criteria for approval include the following:

a. The reactor in which the materials will be irradiated and the reactor for which the materials are being irradiated must have sufficiently similar design and operating features to permit accurate comparisons of the predicted amount of radiation damage.

b. Each reactor must have an adequate dosimetry program.

c. There must be adequate arrangement for data sharing between plants.

d. There must be a contingency plan to assure that the surveillance program for each reactor will not be jeopardized by operation at reduced power level or by an extended outage of another reactor from which data are expected.

e. There must be substantial advantages to be gained, such as reduced power outages or reduced personnel exposure to radiation, as a direct result of not requiring surveillance capsules in all reactors in the set.

2. No reduction in the requirements for number of materials to be irradiated, specimen types, or number of specimens per reactor is permitted.

3. After (the effective date of this section), no reduction in the amount of testing is permitted unless previously authorized by the Director, Office of Nuclear Reactor Regulation.

IV. Report of Test Results

A. Each capsule withdrawal and the test results must be the subject of a summary technical report to be submitted, as specified in § 50.4, within one year of the date of capsule withdrawal, unless an extension is granted by the Director, Office of Nuclear Reactor Regulation.

B. The report must include the data required by ASTM E 185, as specified in paragraph III.B.1 of this appendix, and the results of all fracture toughness tests conducted on the beltline materials in the irradiated and unirradiated conditions.

C. If a change in the Technical Specifications is required, either in the pressure-temperature limits or in the operating procedures required to meet the limits, the expected date for submittal of the revised Technical Specifications must be provided with the report.

Dated at Rockville MD, this 12th day of December, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–30665 Filed 12–18–95; 8:45 am]

BILLING CODE 7590–01–P

federal register

Tuesday
December 19, 1995

Part V

Department of Transportation

Coast Guard

46 CFR Parts 10 and 12

National Driver Registration and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[CGD 91–212]

RIN 2115–AD93

National Driver Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: In furtherance of the President's Regulatory Reinvention Initiative, this rulemaking establishes Coast Guard regulations which implement the provisions of the Oil Pollution Act of 1990 (OPA 90) that permit the Coast Guard to review information from the National Driver Register on an applicant prior to issuing or renewing a license, certificate of registry (COR), or merchant mariner's document (MMD). This rulemaking also addresses OPA 90 provisions that permit the Coast Guard to review the criminal records of applicants prior to issuing a license, COR or MMD. In addition, it establishes regulations that permit criminal record checks of any individual applying for a raise in grade of a license or COR; a renewal of a license, COR, or MMD; or an endorsement of an MMD with a new expiration date. This rulemaking provides the Coast Guard an opportunity to identify an applicant who has been convicted of certain motor vehicle offenses or convicted of certain serious crimes.

EFFECTIVE DATE: January 18, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–212), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart Walker, Marine Personnel Qualifications (G–MCO–1), (202) 267–0475. This telephone records messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Drafting Information. The principal persons involved in drafting this document are Mr. James W. Cratty, Project Manager, Project Development Branch (G–MES–2) and Ms. Jacqueline Sullivan, Project Counsel, Office of the Chief Counsel (G–LRA).

Regulatory History

On March 13, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''National Driver Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents'' in the Federal Register (60 FR 13570). The Coast Guard received 29 letters commenting on the proposal. Several comments requested a public hearing. The Coast Guard determined that a public hearing is unnecessary and that all of the issues contained in the comments are addressed in this rulemaking.

Background and Purpose

1. General

Under the authority of 46 U.S.C. 7101, the Coast Guard issues licenses to qualified officers such as masters, mates, pilots, engineers, operators, and radio officers. It also issues certificates of registry (CORs) to qualified staff officers such as pursers, medical doctors, and professional nurses.

The Coast Guard issues merchant mariner's documents (MMDs), with certain exceptions described in 46 U.S.C. 8701, to vessel personnel for service aboard U.S. flag merchant vessels of more than 100 gross tons which operate on waters other than rivers and lakes. The MMD serves as a certificate of identification and qualification, authorizing work in different capacities on deck and in the engine and steward's departments. The MMD, with an appropriate endorsement, is also the credential issued to qualified tankermen. Many merchant mariners who hold licenses and CORs also hold MMDs.

All licensing and documentation transactions are processed at Coast Guard Regional Examination Centers (RECs) exercising the authority of the Officer in Charge, Marine Inspection (OCMIs).

Sections 4101(a) and (b) and section 4102(e) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) amend 46 U.S.C. 7101, 7302, and 7109, respectively, to authorize the Coast Guard to conduct criminal record checks of any individual applying for a license, COR, or MMD; for a raise in grade of a license or COR; for a renewal of a license, COR, or MMD; or for an endorsement of an MMD with a new expiration date. Some individuals with criminal records may be unsuitable candidates for a license, COR, or MMD because they present a risk to passengers, fellow crew members, or the safe operation of a vessel.

As amended, 46 U.S.C. 7101 and 7302 prohibit the Coast Guard from issuing a license, COR, or MMD to an applicant unless the applicant makes available to the Coast Guard any information contained in the National Driver Register (NDR) related to an offense committed by the applicant that is described in sections 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (49 U.S.C. Chapter 303). These offenses are: operation of a motor vehicle under the influence of, or while impaired by, alcohol or a controlled substance; and any traffic violation(s) arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

Although an individual's motor vehicle record may not be directly related to his or her maritime career, a record of alcohol or drug-related motor vehicle offenses, or other motor vehicle offenses as specified in sections 205(a)(3)(A) and (B) of the NDR Act of 1982, indicates that the individual may have a disregard for his or her own safety or the safety of others and therefore may not be suitable for maritime employment.

Section 4105(b) of OPA 90 amended 46 U.S.C. Chapter 75, to require the Coast Guard to make the information received from the NDR available to the applicant for review and written comment before the Coast Guard uses this information as a basis for denying, suspending, revoking, or taking other action on that individual's license, COR, or MMD.

Before Congress enacted OPA 90, an individual who applied for a license, COR, or MMD was not required to provide the Coast Guard with NDR information. However, an applicant for a license or COR was asked on the application form if he or she had been convicted of any offense(s) other than minor traffic violation(s). Information provided by the applicant regarding conviction(s) for other than minor traffic violation(s), including Driving Under the Influence (DUI) or Driving While Intoxicated (DWI), was used to evaluate the applicant's qualifications to hold a license or COR.

2. Criminal Record Review Under Current Regulations

a. Licenses and CORs. The current regulations at 46 CFR 10.205, ''Requirements for original licenses and certificates of registry,'' require the applicant to have his or her fingerprints taken during the application process. The Coast Guard uses the fingerprints to determine if a criminal record exists for

the individual. Section 10.205(f)(2) authorizes the OCMI to reject an application if the criminal record check, or other information, indicates that an applicant's habits of life and character are such that the applicant cannot be entrusted with the duties and responsibilities associated with a license or COR. The OCMI notifes the applicant of the reason(s) for disapproval.

Section 10.205(f)(4) indicates that, in the event a license or COR has been issued before adverse information on the applicant's character or habits of life, or information indicating that the application is false or incomplete, is obtained the OCMI may notify the individual that the license or COR is null and void and direct the holder to return the license or certificate to the OCMI.

Under 46 CFR 10.209, ''Requirements for renewal of a license,'' each renewal applicant must use a standard form furnished by the Coast Guard. The form asks the applicant to identify any criminal convictions or history of drug use. Under § 10.209(b), an applicant may not have his or her license renewed if facts which would render a renewal improper have come to the Coast Guard's attention.

The Coast Guard currently performs a license renewal criminal record check when an individual has identified a conviction or drug use on the application. In addition, the Coast Guard performs a criminal record check on applicants for renewal whom it suspects have criminal records or a history of drug use. The Conference Report on OPA 90 (H.R. Conf. Rep. No. 101–653) recognizes these existing Coast Guard procedures.

Related regulations in 46 CFR part 10, ''Requirements for raise of grade of a license'' (§ 10.207) and ''Issuance of duplicate of license or certificate of registry'' (§ 10.219), currently do not address criminal record checks.

b. Merchant Mariner's Documents. The regulations contained at 46 CFR part 12, ''Certification of Seamen,'' do not address fingerprinting an applicant for an MMD specifically for a criminal record check; however, under existing practice, the Coast Guard fingerprints an individual applying for his or her original MMD and performs a criminal record check on the applicant. The Coast Guard does not fingerprint and check the criminal record of a person obtaining a duplicate MMD or an additional MMD endorsement.

Under law existing prior to OPA 90, the Coast Guard was not required to consider the character and habits of life of an applicant for an MMD as it was for licenses and CORs. The only specific statutory provision concerning dangerous drug use or criminal convictions authorized the Coast Guard to deny an MMD to an applicant convicted for a dangerous drug offense within 10 years prior to the date of application (46 U.S.C. 7503). The Coast Guard has also been authorized to deny an MMD to a person who has ever used or has ever been addicted to a dangerous drug unless the applicant provides satisfactory proof that he or she is suitable for employment in the merchant marine.

3. National Driver Register Access

The National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation (DOT) maintains the NDR, which is a nationwide repository of information on drivers. The NDR is part of a voluntary cooperative program that assists State motor vehicle driver licensing agencies and certain Federal agencies in gaining access to data on an individual's motor vehicle driving record. The NDR Act of 1982 prohibits the use of information in the NDR that is more than 3 years old, unless that information relates to a current suspension or revocation of the individual's license to operate a motor vehicle.

At present, access to the NDR must be made through participating States. DOT has proposed legislation to amend section 307 of the NDR Act of 1982 to allow direct NDR access by Federal agencies. If the proposed legislation is enacted, the Coast Guard intends to adopt the direct access methodology.

Discussion of Comments and Changes

Twenty-nine letters were received in response to the NPRM. The Coast Guard has considered all of the comments and, in some instances, revised the proposed regulations as appropriate. The comments have been grouped by issue and are discussed as follows.

1. Coast Guard Authority

Seven comments suggested the regulations are intrusive into the lives of mariners and questioned the Coast Guard's authority to review information from the National Driver Register and review criminal record information in issuing licenses, CORs, or MMDs. OPA 90 authorized the Coast Guard to conduct criminal record checks and review information from the National Driver Register on any individual applying for a license, COR, or MMD; for a renewal of a license, COR, or MMD; or for an endorsement of an MMD with a new expiration date. The Coast Guard is implementing these provisions to exclude from holding merchant mariner credentials those individuals whose history indicates a lack of concern regarding the safety of themselves, others, the marine environment, and the safe operation of a vessel.

Two comments suggested that since the term ''renewal'' is not mentioned in 46 U.S.C. 7302(c) and (d), the review of criminal records and the National Driver Register only applies to original document applications. The Coast Guard disagrees. The review of criminal records and the NDR is relevant to all documents applied for under 46 U.S.C. 7302, including renewal of MMDs or endorsement of MMDs with a new expiration date. Similarly, in 46 U.S.C. 7101(h), individuals applying for a license or COR include all individuals applying for a raise in grade or renewal.

One comment stated that the Coast Guard, rather than the employer, is in the best position to monitor and provide assurance of rehabilitation for individuals with an alcohol or drug problem. The Coast Guard lacks the legal authority and resources to continuously monitor individuals with drug or alcohol problems. Checks can be made at a point convenient to the mariner and the Coast Guard, for example, renewal or raise in grade. Monitoring individuals is within the scope of employer responsibilities because the employer is more likely to evaluate an employee's work and conduct on a regular basis.

Two comments stated that the regulations are unnecessary because the merchant marine is self-regulating. The comments submitted that mariners who pose a threat to the safe operation of a ship, personnel, or passengers will be excluded by other mariners or employers. The Coast Guard determined that the mariners' or employer's ability to self-regulate cannot attain the scope of the Coast Guard's ability to regulate merchant marine personnel. Also, the Coast Guard has been delegated the authority of general superintendence over the merchant marine and merchant marine personnel in the interest of marine safety and seamen's welfare. The Coast Guard, as the agency authorized to issue merchant mariner's credentials, must ensure, to the best of its ability, that individuals who receive these credentials do not present a possible threat to personnel, passengers, or the safe operation of a vessel.

2. Relationship Between Convictions and Job Performance

Eight comments suggested that there is little or no relationship between a person's criminal or driving offenses on

land and their maritime related job performance. The Coast Guard disagrees. An individual's record of alcohol or drug-related, or other motor vehicle offenses as specified in sections 205(a)(3) (A) and (B) of the NDR Act of 1982, indicates that the individual may have a disregard for his or her own safety or the safety of others and therefore may not be suitable for maritime employment. The Conference Report on OPA 90 (H.R. Conf. Rep. No. 101–653) explains that alcohol impairment may have played a role in the Exxon Valdez incident. Motor vehicle offenses involving the abuse of alcohol and drugs may evince possible unsafe vessel operations. Congressional intent, as presented in the Conference Report on OPA 90, was to provide an additional tool in an effort to promote a drug- and alcohol-free workplace in maritime industry. Also, the Coast Guard concluded that applicants who have been convicted of violent criminal offenses or serious property offenses may pose a threat to ship personnel, passengers, the marine environment, and the safe operation of the ship. The Coast Guard may increase ship safety by denying seafarer's documents to individuals who demonstrate a lack of concern for safety through a record of criminal or motor vehicle offenses.

3. The National Driver Register

Two comments indicated that the Coast Guard is only able to review information from the National Driver Register three years prior to the check. The comments noted that the information from an NDR file check would not cover the full 5 years between document renewal. The NDR Act prohibits the Coast Guard from gaining access to information more than three years old, unless the information is about a revocation or suspension of driving privileges still in effect (49 U.S.C. 30305(b)(5)).

One comment suggested that NDR checks may be a federalism issue, since most driving offenses are state offenses. The Coast Guard is among the authorized agencies granted access to the NDR. The NDR Act establishes guidelines for obtaining information from the NDR for the purposes of evaluating individuals who hold, or are applying for a license or certificate of registry under 46 U.S.C. 7101, or a merchant mariner's document under 46 U.S.C. 7302 (49 U.S.C. 30305(b)(5)).

One comment requested clarification of ''racing on the highways.'' According to the National Highway Traffic Safety Administration, racing on the highways means formal or informal contest racing on a public highway.

Another comment stated that if the NDR is a voluntary system, the Coast Guard may not be able to check information from non-participating states. Since all of the states and the District of Columbia are participants in the NDR program, the Coast Guard can conduct checks on any individual in the United States with motor vehicle driving record information.

One comment noted a decision rendered on April 5, 1995, by the United States Circuit Court for the Fourth Circuit in a case entitled, *American Trucking Associations Inc.* v. *Federal Highway Administration*. In that case, the court's decision was based on the fact that off-duty alcohol use is generally not relevant criteria in determining eligibility for employment. In its decision, the court was interpreting the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143), which applied to the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, and the Federal Transit Administration, but not to the Coast Guard. This case involved preemployment testing requirements for alcohol use. This final rule is under separate authority and does not involve the preemployment testing of individuals for alcohol.

The Coast Guard is providing information to applicants who wish to conduct an NDR file check for their personal use. The NDR allows individuals to request a file check in accordance with the Federal Privacy Act of 1974 (Pub. L. 93–579). New sections 10.201(i)(4) and 12.02–4(d)(4) describe the procedures to follow to receive the results of a NDR file check. The information in a personal NDR file check is intended for use by the applicant only, and may not be used in the licensing and certification process.

The Coast Guard concluded the term ''NDR listed convictions'' needed further clarification. The final rule adds a definition for ''NDR listed convictions'' to its list of definitions in § 10.103 and § 12.01–6. The new definition will reflect the convictions in 49 U.S.C. 30304(a)(3)(A) and (B) which are authorized by the National Highway Safety Transportation Administration to be used by the Coast Guard to evaluate applicants for merchant mariner's documents.

In the NPRM, § 10.201(b) and § 12.02–4(a) did not discuss individuals with NDR convictions due to the addiction or abuse of alcohol. The Coast Guard added a statement to § 10.201(b) and § 12.02–4(a) to ensure individuals with such NDR convictions furnish satisfactory evidence of suitability for service in the merchant mariner to be eligible for a license, COR, or a merchant mariner's document.

4. Past Offenses

Several comments recommended implementing these regulations in a prospective manner, where the Coast Guard would only consider offenses occurring after the effective date of the regulations. These comments stated that, in the past, many mariners have not challenged false charges due to their work schedule and the threat of loss of employment. The regulations allow mariners ample opportunity to provide the OCMI with evidence of suitability for service in the merchant marine, and to explain the circumstances of an offense. If the application is denied, an appeal process and reconsideration are available.

A few comments suggested that mariners would have altered their behavior if they had prior knowledge of the effect of off-duty conduct on employment. In the past, the Coast Guard has been conducting criminal record review for original applications for licenses and CORs, and under existing practice conducts a criminal record review of original applicants for MMDs. Applicants are already accountable for past behavior when they apply for their original documents. The Coast Guard is expanding its requirements to include spot-checks of individuals applying for a raise in grade of a license, COR, or MMD; an endorsement on a MMD with a new expiration date; and a renewal of a license, COR, or MMD. The NDR checks were created to identify vessel personnel with motor vehicle offenses related to the use of alcohol and drugs or the unsafe operation of a motor vehicle. The Coast Guard determined that the certification and licensing of persons involved with the abuse of these substances or the unsafe operation of a motor vehicle may lead to unsafe vessel operations.

Some comments discussed the Coast Guard's consideration of charges against mariners that have been stricken from the record through remediation or compensation and how this defeats public policy and discourages individuals from participating in remediation or compensation. As stated in the definition of ''conviction'' provided in this final rule, a later expungement of the conviction will not negate a conviction unless it is proved to the OCMI that the expungement is based upon a showing that the court's earlier conviction was in error. The Coast Guard concluded that consideration of all convictions is

important to determining the character and habits of life of applicants for merchant mariner's credentials.

Four comments stated that denial of credentials on the grounds of a past offense is punishing an individual twice for the same offense, and for this reason the final rule is unconstitutional. The Coast Guard disagrees. Merchant mariner's credentials are certificates of qualification that authorize individuals to perform certain duties on a vessel. In the interest of marine safety, the Coast Guard examines applicants to determine their suitability to hold merchant marine credentials. Past offenses are a good indicator of whether a person is a possible threat to the safety of ship operation, personnel, the marine environment, or passengers. Basing the decision of whether to grant a merchant mariner's credentials on the factors articulated in this rule is not punishment of those whose applications are denied. It is instead a reasonable way to protect life and property at sea.

The Coast Guard added the statement, ''Applicants must provide written disclosure for all prior convictions at the time of application,'' to § 10.201(h) and § 12.02–4(c). The sentence will provide consistency between this final rule and the current application procedures.

5. Assessment Periods

Five comments addressed the minimum and maximum assessment periods for which the OCMI will consider a conviction in the evaluation of an applicant for merchant mariner's credentials.

One comment expressed that the assessment periods appeared to be arbitrary. The Coast Guard has reviewed three reports from the U.S. Department of Justice, Bureau of Justice Statistics (BJS). These reports are entitled, ''Recidivism of Prisoners Released in 1983'', Recidivism of Felons on Probation, 1988–1989,'' and ''Recidivism of Young Parolees''. The reports revealed high rates of rearrest for released prisoners, felons on probation, and young parolees. Based on a sample of State prisoners released in 1983, 62.5 percent were rearrested for a felony or serious misdemeanor within 3 years. Using a sample of felons sentenced to probation in 1986, a report found that 62 percent of the probationers either had a disciplinary hearing for violating a condition of their probation or were arrested for another felony within three years. Another BJS study, based on a sample of young parolees between the ages of 17 and 22, found that 69 percent of young parolees were rearrested for a serious crime within 6 years of their release from prison. One of the reports found that of the prisoners in the study, those with a prior arrest for a violent offense had a greater likelihood of rearrest than other released prisoners. Therefore, the categories of violent crimes in Tables 10.201(h) and 12.02–4(c) have longer assessment periods. The Coast Guard determined that the assessment periods, as published in the NPRM, are a sufficient guideline for the OCMI to consider the convictions of applicants. The assessment periods take into account both recidivism of the categories of crimes and the consequences of their occurrence.

Several comments suggested reducing the length of the assessment periods and including supervised parole or probation as part of the assessment periods. The Coast Guard established the assessment periods as guidelines for the OCMI when evaluating an applicant with criminal convictions. The assessment periods do not prevent an individual from applying before the minimum assessment period has elapsed or between minimum and maximum assessment periods.

A person who applies before the minimum time period has elapsed must provide the OCMI with evidence of suitability for maritime employment. This final rule provides a list of factors in § 10.201(j) and § 12.02–4(e) for the OCMI to use as a guide in considering an applicant before the minimum assessment period has elapsed.

The applicant may also apply for merchant mariner's credentials between the minimum and maximum assessment periods. During this period, the Coast Guard will issue a license, COR, or MMD to the applicant unless there are offsetting factors. Type of offsetting factors are listed in § 10.201(h)(5) and § 12.02–4(c)(5).

After further review, the Coast Guard determined that the OCMI would benefit from examining periods of supervised probation and parole as part of the assessment periods. Periods of supervised probation and parole, like periods of unsupervised probation and parole, allow individuals to adjust to civilian life. Therefore, the OCMI may include periods of probation and parole in the assessment periods with a letter of recommendation from a parole or probation officer. The Coast Guard also revised § 10.201(h)(2) and § 12.02–4(c)(2) to clarify when the assessment period commences.

One comment objected to the evaluating factor in §§ 10.201(j) and 12.02–4(e) concerning membership in a rehabilitation group. The comment noted that many of these groups are anonymous and information on membership and attendance is usually confidential or nonexistent. The Coast Guard will accept as proof of active membership a broad range of items, such as a letter from a counselor, or the signature or stamp of a secretary from the group an individual is attending.

6. Direct and Indirect Benefits

Three comments recommended supporting the benefit analysis in the NPRM with statistical data. The Coast Guard stated in the NPRM that the direct and societal benefits from this final rule are not quantifiable. Historical data are insufficient to perform an analysis of benefits. The Coast Guard concluded that even if maritime accidents are reduced by a small percentage, savings will accrue to the maritime industry through lower repair and medical costs and to the public through environmental protection.

7. Additional Comments and Changes

Another comment suggested that the OCMI consider dangerous drug offenses more than ten years prior to the application for a license, COR, or MMD if there are subsequent dangerous drug offenses. The Coast Guard determined that consideration of dangerous drug convictions occurring ten years before application combined with subsequent violations are helpful in establishing a behavior pattern. The Coast Guard is amending § 10.201(h)(2) and § 12.02–4(c)(2) to include dangerous drug convictions occurring more than 10 years prior to the date of application if an individual has subsequent violations. Tables 10.201(h) and 12.02–4(c) were also amended to reflect the consideration of dangerous drug offenses more than 10 years old if there are subsequent dangerous drug offenses.

The Coast Guard determined that some NDR convictions could also be criminal convictions. When deciding on an appropriate assessment period, the OCMI should be able to use the guidelines found in the criminal conviction table and the NDR conviction table. Therefore, § 10.201(h)(3) and § 12.02–4(c)(3) were revised to add Table 10.201(i) and Table 12.02–4(d), respectively. Also, § 10.201(i) and § 12.02–4(d) were revised to allow the OCMI to use criminal conviction assessment period guidelines where appropriate.

The Coast Guard revised Tables 10.201(i) and 12.02–4(d) to clarify the assessment period for 2 or more motor vehicle convictions. The phrase ''which ever is longer'' was deleted from the assessment period of applicants for merchant mariner's documents, licenses, and certificates of registry with

2 or more motor vehicle convictions involving dangerous drugs or alcohol.

The Coast Guard revised § 10.201(j) and § 12.02–4(e) to include applicants who are users of, or addicted to dangerous drugs. This revision was made to ensure consistency with § 10.201(b) and § 12.02–4(e).

The other comments received were general in nature and supported this Coast Guard rulemaking.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. The Evaluation is summarized as follows.

1. Criminal Record Review

Coast Guard costs attributable to implementing the provisions authorizing the criminal record review of applicants for licenses, CORs, and MMDs in sections 4101(a) and 4102(e) of OPA 90 will be incurred by the RECs and Coast Guard Headquarters. These costs are associated with reviewing and processing the criminal record review data through the Federal Bureau of Investigation (FBI). The REC will assume the primary responsibility for the final review of the criminal record report received from the FBI.

Because current Coast Guard regulations and practices require all applicants for the original issuance of licenses, CORs, or MMDs to submit to criminal record reviews by the taking of fingerprints, these costs are not newly incurred as a result of this rulemaking, and therefore, are not included in this regulatory assessment. The costs associated with the requirements for criminal record reviews apply only to a raise in grade of a license or COR; an endorsement on an MMD with a new expiration date; or renewal of a license, COR, or MMD. The Coast Guard plans to spot-check the criminal records of individuals applying for these merchant mariner credentials. For the purpose of estimating costs, the Coast Guard has assumed that 1 of every 30 of these applicants will be spot-checked.

Approximately 10,881 licenses are expected to be renewed each year. An estimated 363 (10,881/30) spot criminal record checks will be performed on these applicants.

Approximately 18,000 MMDs are expected to be renewed each year. An estimated 600 (18,000/30) spot criminal record checks will be done on these applicants.

Approximately 300 CORs are expected to be renewed each year. An estimated 10 (300/30) spot criminal record checks will be performed on these applicants.

Approximately 3,740 raises of grade for license and COR endorsements are expected to be issued each year. An estimated 125 (3,740/30) spot criminal record checks will be performed on these applicants.

Approximatley 4,025 supplemental MMD endorsements are issued each year. An estimated 134 (4,025/30) spot criminal record checks will be done on these applicants.

The total number of spot criminal record checks will amount to approximately 1,232 (See Table I.).

TABLE I

Type of action	No. applicants	No. checked
License Renewal	10,881	363
MMD Renewals	18,000	600
COR Renewals	300	10
Raise of grade (licenses) and higher grade of COR	3,740	125
Supplemental endorsements (MMDs)	4,025	134
Total Number of Spot Criminal Record Checks		1,232

It will cost the Coast Guard approximately $17 per criminal record check to process the fingerprints through the FBI for an estimated annual cost of $20,944.

Based on a sample survey of the REC's experience with criminal records conducted by the Coast Guard in 1992, 8 percent of the applicants are estimated to have records with the FBI. Of those with records, it is estimated that 9 percent have records significant to the application evaluation. Thus, only 0.72 percent of the applicants had actionable convictions on their records. Therefore, of the reissue and renewal applicants sampled, it is estimated that 99 will have records with the FBI, and a total of 9 of the 1,232 applicants will have records significant to the license evaluation. The Coast Guard estimates that the costs for the 99 applicants with convictions to furnish the necessary documents to exonerate themselves will be minimal. Costs are expected to total approximately $19 per court record for aggregate annual applicant costs of approximately $1,900.

The Coast Guard estimates that 75 percent, or 924, of the spot-checked applicants for a raise in grade of a license or COR, a renewal of a license or COR, or any MMD with a new expiration date will apply by mail. For those 924 applicants, the estimated costs include the time for the applicant to go to his or her local police department, submit to fingerprinting, and return to his or her residence. The Coast Guard estimates that this would take approximately 1.5 hrs. of the applicant's time. Total respondent costs are estimated to be $22,700.

Twenty-five percent, or 308, of the spot-checked applicants are expected to choose to go to an REC to conduct their renewal transactions. For those 308 applicants, additional costs attributed to the criminal record check will be insignificant.

2. National Driver Register Access

The Coast Guard estimates that it will conduct 57,435 NDR checks annually for all individuals applying for the original issuance, renewal, or endorsement with a new expiration date of merchant mariner's credentials. The Coast Guard's costs for NDR checks involve providing an interface with the NDR computer and clerical resources to process record checks and notifications to applicants with NDR records. These costs are estimated to be $120,000 annually, with the potential for substantial reduction in cost if direct

access to the NDR data by the RECs is authorized. The RECs will write letters to those applicants who have a probable identification (hit), and review any associated court records as forwarded by applicants.

The Coast Guard estimates that initial computer hardware and software and necessary connection to the NDR will be under $20,000. The Coast Guard estimates the annual cost of a dedicated telephone line from Coast Guard Headquarters to the Commonwealth of Virginia will be $12,000 ($6/hr.×8 hrs./day×250 days/yr.). The initial annual Coast Guard REC costs are estimated to be $58,354 (57,435 checks×0.05 hr./check×/$20/hr. for a clerical employee, plus $0.32/stamp×2,872 hits). Initially, the Coast Guard will dedicate one full-time clerical employee at Coast Guard Headquarters to forward data to the Commonwealth of Virginia for processing. This cost is estimated to be $40,000 ($20/hr. for a clerical employee×8 hrs./day×250 days). Therefore, the initial annual Coast Guard cost associated with the National Driver Register portion of the rule is estimated to total approximately $111,400.

Annual respondent costs associated with NDR checks include the time to fill out the NDR consent form which is considered to be insignificant. In 50 percent of the 2,872 hits, or 1,436 cases, applicants will have clean driving records and the OCMI will issue their merchant mariner's credentials without further expense. For the other 50 percent of applicants, or 1,436, costs are expected to be less than $20.00 per court record submitted to the Coast Guard for estimated annual respondent costs of $26,700.

The dollar value of direct and societal benefits flowing from spot-checking applicants' criminal records and from reviewing applicants' NDR records are not quantifiable but may be substantial.

The Coast Guard anticipates that, as a result of this rule, a number of applicants will be identified, based upon their criminal record or adverse driving record, whose conduct indicates that they should not be trusted to safely perform shipboard duties. Those applicants will not be granted merchant mariner credentials.

Direct benefits would include the potential for—

- Fewer margin groundings and other accidents;
- Reduced property loss;
- Fewer releases of oil and hazardous materials into the marine environment; and
- Fewer injuries and reduced loss of life among merchant mariners and other seagoing personnel.

The Coast Guard also anticipates several indirect benefits. Within the community of applicants for merchant mariner's credentials, knowledge of the Coast Guard's enhanced periodic record-checking program may dissuade recidivism among merchant mariners with past criminal, or serious traffic records. The program may also discourage some convicted criminals, users of dangerous drugs, and serious traffic offenders from seeking new credentials or renewals, and may also encourage some applicants who are convicted criminals or users of dangerous drugs to truthfully complete questions that address these issues on the applications forms. Users of dangerous drugs in the U.S. merchant marine may be encouraged to seek counseling and treatment before incurring a criminal record or dangerous drug history with the FBI. In addition, merchant mariners and prospective merchant mariners may be encouraged to maintain a satisfactory standard of personal conduct.

Historical data are insufficient to quantify benefits; however, should this program manage to save even one line per year at $2.7 million per statistical life saved (which reflects a reasonable estimate of people's presumed willingness-to-pay for safety), its benefits would exceed its costs. If maritime accidents were reduced even by a small percentage, savings would accrue to the maritime industry through lower repair and medical costs and to the public through environmental protection.

Small Entities

The costs to small entities will not be significant because the costs of spot-checking applicants' criminal records and reviewing NDR records will be borne by the Coast Guard. The Coast Guard expects the impact of this regulation on small entities to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section numbers are §§ 10.201, 10.205, 10.207, 10.209, 10.805, 12.02–4, and 12.02–9. The corresponding OMB number is OMB Control Number 2115–0514.

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, the regulations are categorically excluded from further environmental documentation. Paragraph 2.B.2 of that instruction excludes administrative actions and procedural regulations and policies which clearly do not have any environmental impact. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 10 and 12 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7101, 7106, 7107, 7109, 7302, 7505, 7701; 49 CFR 1.46. Section 10.107 also issued under 44 U.S.C. 3507.

2. In § 10.103, the definitions of ''conviction,'' ''National Driver Register,'' and ''NDR listed convictions'' are added to read as follows:

§ 10.103 Definitions of terms used in this part.

* * * * *

Conviction means the applicant for a license or certificate of registry has been found guilty by judgment or plea by a court of record of the United States, the District of Columbia or any State or territory of the United States of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982 (49 U.S.C. 30304). Conviction of more than

one offense at a single trial will be considered to be multiple convictions. If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forego appeal of a trial court's conviction, then the applicant will be considered to have received a conviction. A later expungement of the conviction will not negate a conviction unless it is proved to the OCMI that the expungement is based upon a showing that the court's earlier conviction was in error.

* * * * *

National Driver Register (NDR) means the nationwide repository of information on drivers maintained by the National Highway Traffic Safety Administration as provided under 49 U.S.C. Chapter 303.

NDR listed convictions means a conviction of any of the following motor vehicle-related offenses or comparable offenses:

(a) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or

(b) A traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

* * * * *

3. In § 10.201, paragraph (b) is revised and paragraphs (h), (i), and (j) are added to read as follows:

§ 10.201 Eligibility for licenses and certificates of registry, general.

* * * * *

(b) No person who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any State or territory of the United States is eligible for a license or certificate of registry, except as provided by the provisions of paragraph (h) of this section. No person who has ever been the user of, or addicted to the use of, a dangerous drug, or has ever been convicted of an offense described in section 205 of the National Driver Register Act of 1982 (49 U.S.C. 30304) due to the addiction or abuse of alcohol is eligible for a license or certificate of registry unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (j) of this section.

* * * * *

(h) *Criminal Record Review.* The OCMI may review the criminal record of an applicant for the issuance of a license or certificate of registry issued as an original or reissued with a new expiration date. An applicant conducting simultaneous merchant mariner's credential transactions shall undergo only one criminal record check. Applicants must provide written disclosure of all prior convictions at the time of application.

(1) If the applicant is advised that a criminal record check is required by the OCMI, applicants shall provide their fingerprints at the time of application. The fingerprints will be used to determine whether the applicant has a record of a criminal conviction. An application may be disapproved if a criminal record review leads the OCMI to determine that the applicant's habits of life and character are such that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which application is made. If an application is disapproved, the OCMI will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the reconsideration and appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal.

(2) The OCMI may use Table 10.201(h) to evaluate applicants for licenses and certificates of registry who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the OCMI will establish an appropriate assessment period using the list as a guide. The assessment period commences when an applicant is no longer incarcerated. The applicant must establish proof of the time incarcerated and periods of probation and parole to the satisfaction of the OCMI. The assessment period may include supervised or unsupervised probation or parole. A conviction for a drug offense more than 10 years prior to the date of application will not alone be grounds for denial.

(3) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in Table 10.201(h) and Table 10.201(i) based upon the applicant's convictions; the maximum assessment period will be the longest shown in Table 10.201(h) and Table 10.201(i) based upon the applicant's convictions.

(4) If a person with a criminal conviction applies for a license or certificate of registry before the minimum assessment period shown in Table 10.201(h), or established by the OCMI under paragraph (h)(2) of this section has elapsed, then the applicant must provide evidence of suitability for service in the merchant marine. Factors which are evidence of suitability for service in the merchant marine are listed in paragraph (j) of this section. The OCMI will consider the applicant's evidence and may issue the license or certificate of registry in less than the listed minimum assessment period if the OCMI is satisfied that the applicant is suitable to hold the license or certificate of registry for which he or she has applied. If an applicant does not provide evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the OCMI.

(5) If a person with a criminal conviction applies for a license or certificate of registry during the time between the minimum and maximum assessment periods shown in Table 10.201(h) or established by the OCMI under paragraph (h)(2) of this section, the OCMI will consider the conviction and, unless there are offsetting factors, may grant the applicant the license or certificate of registry for which he or she has applied. Offsetting factors include multiple convictions, failure to comply with court orders (e.g., child support orders), previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the OCMI considers the applicant unsuitable for service in the merchant marine at the time of application, the OCMI will disapprove the application.

(6) If a person with a criminal conviction applies for a license or certificate of registry after the maximum assessment period shown in Table 10.201(h) or established by the OCMI under paragraph (h)(2) of this section has elapsed, then the OCMI will grant the applicant the license or certificate of registry for which he or she has applied unless the OCMI has reason to believe the applicant is still unsuitable for service in the merchant marine. If the OCMI disapproves an application based upon a conviction older than the maximum assessment period, the OCMI will notify the applicant in writing of the reason(s) for the disapproval. The OCMI will also inform the applicant, in writing, that the reconsideration and appeal procedures contained in § 1.03 of this chapter apply.

TABLE 10.201(h).—GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE CRIMINAL CONVICTIONS

Crime[1]	Assessment periods	
	Minimum	Maximum
Crimes Against Persons		
Homicide (intentional)	7 years	20 years.
Homicide (unintentional)	5 years	10 years.
Assault (aggravated)	5 years	10 years.
Assault (simple)	1 year	5 years.
Sexual Assault (rape, child molestation)	5 years	10 years.
Robbery	5 years	10 years.
Other crimes against persons[2].		
Crimes Against Property		
Burglary	3 years	10 years.
Larceny (embezzlement)	3 years	5 years.
Other crimes against property[2].		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highways	1 year	2 years.
Other vehicular crimes[2].		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety[2].		
Crimes Involving National Security		
Terrorism, Acts of Sabotage, Espionage and related offenses	7 years	20 years.
Criminal Violations of Environmental Laws		
Criminal violations of environmental laws involving improper handling of pollutants or hazardous materials	1 year	10 years.
Dangerous Drug Offenses[3, 4, 5]		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions[6].		

[1] Conviction of attempt, solicitation, aiding and abetting, accessory after the fact, and conspiracy to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

[2] Other crimes are to be reviewed by the OCMI to determine the minimum and maximum assessment periods depending on the nature of the crime.

[3] Applicable only to original applications for licenses or CORs. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (b) of this section. Note: Applicants for reissue of a license or COR with a new expiration date including a renewal or a raise of grade, who have been convicted of a dangerous drug offense while holding a license or COR, may have their applications withheld until appropriate action has been completed by the OCMI under the regulations which appear in 46 CFR part 5 governing administrative actions against merchant mariner credentials.

[4] The OCMI may consider dangerous drug convictions more than 10 years old only if there has been a dangerous drug conviction within the past 10 years.

[5] Applicants must demonstrate rehabilitation under paragraph (j) of this section, including applicants with dangerous drug use convictions more than ten years old.

[6] Other dangerous drug convictions are to be reviewed by the Officer in Charge, Marine Inspection on a case by case basis to determine the appropriate assessment periods depending on the nature of the offense.

(i) *National Driver Register.* A license or certificate of registry will not be issued as an original or reissued with a new expiration date unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3) (A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways). The OCMI will not consider NDR listed civil convictions that are more than 3 years old from the date of request unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. The OCMI may determine minimum and maximum

assessment periods for NDR listed criminal convictions using Table 10.201(h). An applicant conducting simultaneous merchant mariner's credential transactions is subject to only one NDR check.

(1) Any application may be disapproved if information from the NDR check leads the OCMI to determine that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which the application is made. If an application is disapproved, the OCMI will notify the applicant in writing of the reason(s) for disapproval and advise the application that the appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal.

(2) Prior to disapproving an application because of information received from the NDR, the OCMI will make the information available to the applicant for review and written comment. The applicant may submit records from the applicable State concerning driving record and convictions to the Coast Guard Regional Examination Center (REC) processing the application. The REC will hold an application with NDR listed convictions pending the completion of the evaluation and delivery by the individual of the underlying State records.

(3) The guidelines in Table 10.201(i) will be used by the OCMI in evaluating applicants for licenses and certificates of registry who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the OCMI under Table 10.201(h) as applicable.

(4) An applicant may request an NDR file check for *personal* use in accordance with the Federal Privacy Act of 1974 (Pub. L. 93–579) by contacting the NDR at the following address: National Driver Register, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

(i) Applicants should request Form NDR–PRV or provide the following information on a notarized letter:

(A) Full legal name;

(B) Other names used;

(C) Complete mailing address;

(D) Driver license number;

(E) Eye color;

(F) Social security number;

(G) Height;

(H) Weight; and

(I) Sex.

(ii) The NDR will respond to every valid inquiry including requests which produce no record(s) on the NDR file. Records can be made available, within a reasonable amount of time after the request, for personal inspection and copying during regular working hours at 7:45 a.m. to 4:15 p.m., each day except Federal holidays.

TABLE 10.201(i).—GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL [1]

No. of convictions	Date of conviction	Assessment period
1	Less than 1 year	1 year from date of conviction.
1	More than 1, less than 3 years.	Application will be processed, unless suspension or revocation [2] is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1	More than 3 years old	Not necessary unless suspension or revocation is still in effect.
2 or more	Any less than 3 years old.	1 year since last conviction and at least 3 years from 2nd most recent conviction, unless suspension or revocation is still in effect.
2 or more	All more than 3 years old.	Application will be processed unless suspension or revocation is still in effect.

[1] Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (b) of this section.

[2] Suspension or revocation, when referred to in Table 10.201(i), means a State suspension or revocation of a motor vehicle operator's license.

(j) If an applicant has one or more alcohol or dangerous drug related criminal or NDR listed convictions; if the applicant has ever been the user of, or addicted to the use of, a dangerous drug; or if the applicant applies before the minimum assessment period for his or her conviction has elapsed; the OCMI may consider the following factors, as applicable, in assessing the applicant's suitability to hold a license or certificate of registry. This list is intended as a guide for the OCMI. The OCMI may consider other factors which he or she judges appropriate to a particular applicant, such as:

(1) Proof of completion of an accredited alcohol- or drug-abuse rehabilitation program.

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous.

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine including parole or probation officers.

(4) Steady employment.

(5) Successful completion of all conditions of parole or probation.

4. In § 10.205, paragraph (f)(2) is revised and paragraph (k) is added to read as follows:

§ 10.205 Requriements for original licensees and certificates of registry.

* * * * *

(f) * * *

(1) * * *

(2) The OCMI may review the criminal record check of each applicant for an original license or certificate of registry according to the procedures set forth in § 10.201(h).

* * * * *

(k) *National Driver Register.* Each applicant for an original license or certificate of registry shall consent to an NDR check under § 10.201(i).

5. In § 10.207, paragraphs (h) and (i) are added to read as follows:

§ 10.207 Requirements for raise in grade of license.

* * * * *

(h) *Criminal Record Review.* Each applicant for a raise of grade may be required to submit to a criminal record check under § 10.201(h).

(i) *National Driver Register.* Each applicant for a raise of grade of a license shall consent to an NDR check under § 10.201(i) if the license is reissued with a new expiration date.

6. In § 10.209, paragraphs (i) and (j) are added to read as follows:

§ 10.209 Requirements for the renewal of licenses or certificates of registry.

* * * * *

(i) Each applicant for a renewal may be required to consent to a criminal record check under § 10.201(h).

(j) Each applicant for renewal of a license or certificate of registry shall

consent to an NDR check under § 10.201(i).

PART 12—CERTIFICATION OF SEAMEN

7. The authority citation for part 12 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

8. In § 12.01–6, the definitions of ''conviction,'' ''National Driver Register,'' and ''NDR listed convictions'' are added to read as follows:

§ 12.01–6 Definitions of terms used in this part.

* * * * *

Conviction means the applicant for a merchant mariner's document has been found guilty by judgment or plea by a court of record of the Untied States, the District of Columbia or any State or territory of the United States of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982 (49 U.S.C. 30304). If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forego appeal of a trial court's conviction, then the applicant will be considered to have received a conviction. A later expungement of the conviction will not negate a conviction unless it is proved to the OCMI that the expungement is based upon a showing that the court's earlier conviction was in error.

* * * * *

National Driver Register (NDR) means the nationwide repository of information on drivers maintained by the National Highway Traffic Safety Administration as provided under 49 U.S.C. Chapter 303.

NDR listed convictions means a conviction of any of the following motor vehicle-related offenses or comparable offenses:

(a) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or

(b) A traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

9. In § 12.02–4, paragraph (a) is revised, paragraph (b) is removed, existing paragraph (c) is redesignated as paragraph (b), and new paragraphs (c), (d) and (e) are added to read as follows:

§ 12.02–4 Basis for denial of documents.

(a) No person who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any State or territory of the United States is eligible for an original merchant mariner's document, except as provided by the provisions of paragraph (c) of this section. No person who has ever been the user of, or addicted to the use of, a dangerous drug, or has ever been convicted of an offense described in section 205 of the National Driver Register Act of 1982 (49 U.S.C. 30304) due to the addiction or abuse of alcohol is eligible for a merchant mariner's document unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (e) of this section.

* * * * *

(c) *Criminal Record Review.* The Officer in Charge, Marine Inspection, may require a criminal record check of an applicant for a merchant mariner's document issued as an original or reissued with a new expiration date. An applicant conducting simultaneous merchant mariner's credential transactions shall undergo only one criminal record check. Applicants must provide written disclosure of all prior convictions at the time of application.

(1) If a criminal record check is required by the Officer in Charge, Marine Inspection, applicants shall provide fingerprints at the time of application. The fingerprints will be used to determine whether the applicant has a record of a criminal conviction. An application may be disapproved if the individual's criminal record leads the Officer in Charge, Marine Inspection to determine that the applicant cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which application is made. If an application is disapproved, the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal.

(2) The Officer in Charge, Marine Inspection will use Table 12.02–4(c) to evaluate applicants for merchant mariner's documents who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the Officer in Charge, Marine Inspection will establish an appropriate assessment period using the list as a guide. The assessment period commences when an applicant is no longer incarcerated. The applicant must establish proof of the time incarcerated and periods of probation and parole to the satisfaction of the Officer in Charge, Marine Inspection. The assessment period may include supervised or unsupervised probation or parole. A conviction for a drug offense more than 10 years prior to the date of application will not alone be grounds for denial.

(3) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in Table 12.02–4(c) and Table 12.02–4(d) based upon the applicant's convictions; the maximum assessment period will be the longest shown in Table 12.02–4(c) and Table 12.02–4(d) based upon the applicant's convictions.

(4) If a person with a criminal conviction applies for a merchant mariner's document before the minimum assessment period shown in Table 12.02–4(c), or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section has elapsed, then the applicant must provide, as part of the application package, evidence of suitability for service in the merchant marine. Factors which are evidence of suitability for service in the merchant marine are listed in paragraph (e) of this section. The Officer in Charge, Marine Inspection will consider the applicant's evidence submitted with the application and may issue the merchant mariner's document in less than the listed minimum assessment period if the Officer in Charge, Marine Inspection is satisfied that the applicant is suitable to hold the merchant mariner's document for which he or she has applied. If an application filed before the minimum assessment period has elapsed does not include evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the Officer in Charge, Marine Inspection until the applicant provides the necessary evidence as set forth in paragraph (e) of this section.

(5) If a person with a criminal conviction applies for a merchant mariner's document during the time between the minimum and maximum assessment periods shown in Table 12.02–4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section, then the Officer in Charge, Marine Inspection shall consider the conviction and, unless there are offsetting factors, shall grant the applicant the merchant mariner's document for which he or she

has applied. Offsetting factors include such factors as multiple convictions, failure to comply with court orders (e.g., child support orders), previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the Officer in Charge, Marine Inspection considers the applicant unsuitable for service in the merchant marine at the time of application, the Officer in Charge, Marine Inspection may disapprove the application.

(6) If a person with a criminal conviction applies for a merchant mariner's document after the maximum assessment period shown in Table 12.02–4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section has elapsed, then the Officer in Charge, Marine Inspection will grant the applicant the merchant mariner's document for which he or she has applied unless the Officer in Charge, Marine Inspection considers the applicant still unsuitable for service in the merchant marine. If the Officer in Charge, Marine Inspection disapproves an applicant with a conviction older than the maximum assessment period listed in Table 12.02–4(c), the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for the disapproval including the Officer in Charge, Marine Inspection's reason(s) for considering a conviction older than the maximum assessment period listed in Table 12.02–4(c). The Officer in Charge, Marine Inspection will also inform the applicant, in writing, that the reconsideration and appeal procedures contained in § 1.03 of this chapter apply.

TABLE 12.02–4(c).—GUIDELINES FOR EVALUATING APPLICANTS FOR MERCHANT MARINER'S DOCUMENTS WHO HAVE CRIMINAL CONVICTIONS

Crime [1]	Assessment periods	
	Minimum	Maximum
Crimes Against Persons		
Homicide (intentional)	7 years	20 years.
Homicide (unintentional)	5 years	10 years.
Assault (aggravated)	5 years	10 years.
Assault (simple)	1 year	5 years.
Sexual Assault (rape, child molestation)	5 years	10 years.
Other crimes against persons [2].		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highway	1 year	2 years.
Other vehicular crimes [2].		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety [2].		
Crimes Involving National Security		
Terrorism, Acts of Sabotage, Espionage and related offenses	7 years	20 years.
Dangerous Drug Offenses [3,4,5]		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions [6].		

[1] Conviction of attempts, solicitations, aiding and abetting, accessory after the fact, and conspiracies to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

[2] Other crimes are to be reviewed by the Officer in Charge, Marine Inspection to determine the minimum and maximum assessment periods depending on the nature of the crime.

[3] Applicable to original applications only. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section. Note: Applicants for reissue of a merchant mariner's document with a new expiration date including a renewal or additional endorsement(s), who have been convicted of a dangerous drug offense while holding a merchant mariner's document, may have their application withheld until appropriate action has been completed by the Officer in Charge, Marine Inspection under the regulations which appear in 46 CFR part 5 governing the administrative actions against merchant mariner credentials.

[4] The OCMI may consider dangerous drug convictions more than 10 years old only if there has been a dangerous drug conviction within the past 10 years.

[5] Applicants must demonstrate rehabilitation under paragraph (e) of this section, including applicants with dangerous drug use convictions more than ten years old.

[6] Other dangerous drug convictions are to be reviewed by the Officer in Charge, Marine Inspection on a case by case basis to determine the appropriate assessment period depending on the nature of the offense.

(d) *National Driver Register.* A merchant mariner's document will not be issued or reissued with a new expiration date unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3)(A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways). The Officer in Charge, Marine Inspection will not consider NDR listed civil convictions that are more than 3 years old from the date of request unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. The Officer in Charge Marine Inspection may determine minimum and maximum assessment periods for NDR listed criminal convictions using Table 12.02–4(c). An applicant conducting simultaneous merchant mariner's credential transactions is subject to only one NDR check.

(1) Any application may be disapproved if information from the NDR check leads the Officer in Charge, Marine Inspection to determine that the applicant cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which the application is made. If an application is disapproved, the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply. No examination will be given or merchant mariner's document issued pending decision on appeal.

(2) Prior to disapproving an application because of information received from the NDR, the Officer in Charge, Marine Inspection will make the information available to the applicant for review and written comment. The applicant may submit reports from the applicable State concerning driving record and convictions to the Coast Guard Regional Examination Center (REC) processing the application. The REC will hold an application with NDR listed convictions pending the completion of the evaluation and delivery by the individual of the underlying State records.

(3) The guidelines in Table 12.02–4(d) will be used by the Officer in Charge, Marine Inspection when evaluating applicants for merchant mariner's documents who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the Officer in Charge, Marine Inspection under Table 12.02–4(c) as applicable.

(4) An applicant may request an NDR file check for *personal* use in accordance with the Federal Privacy Act of 1974 (Pub. L. 93–579) by contacting the NDR at the following address: National Driver Register, Nassif Building, 400 7th Street SW., Washington, DC 20590.

(i) Applicants should request Form NDR–PRV or provide the following information on a notarized letter:

(A) Full legal name;

(B) Other names used;

(C) Complete mailing address;

(D) Driver license number;

(E) Eye color;

(F) Social security number;

(G) Height;

(H) Weight; and

(I) Sex.

(ii) The NDR will respond to every valid inquiry including requests which produce no record(s) on the NDR file. Records can be made available, within a reasonable amount of time after the request, for personal inspection and copying during regular working hours at 7:45 a.m. to 4:15 p.m., each day except Federal holidays.

TABLE 12.02–4(d).—GUIDELINES FOR EVALUATING APPLICANTS FOR MERCHANT MARINER'S DOCUMENTS WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL [1]

No. of convictions	Date of conviction	Assessment period
1	Less than 1 year	1 year from date of conviction.
1	More than 1, less than 3 years.	Application will be processed, unless suspension, or revocation [2] is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1	More than 3 years old	Not necessary unless suspension or revocation is still in effect.
2 or more	Any less than 3 years old.	1 year since last conviction and at least 3 years from 2nd most recent conviction, unless suspension or revocation is still in effect.
2 or more	All more than 3 years old.	Application will be processed unless suspension or revocation is still in effect.

[1] Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section.

[2] Suspension or revocation, when referred to in Table 12.02–4(d), means a State suspension or revocation of a motor vehicle operator's license.

(e) If an applicant for an original merchant mariner's document has one or more alcohol or dangerous drug related criminal or NDR listed convictions; if the applicant has ever been the user of, or addicted to the use of, a dangerous drug; or if the applicant applies before the minimum assessment period for his or her conviction has elapsed; the Officer in Charge, Marine Inspection may consider the following factors, as applicable, in assessing the applicant's suitability to hold a merchant mariner's document. This list is intended as a guideline. The Officer in Charge, Marine Inspection may consider other factors which he or she judges appropriate, such as:

(1) Proof of completion of an accredited alcohol- or drug-abuse rehabilitation program.

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics or Narcotics Anonymous.

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine including parole or probation officers.

(4) Steady employment.

(5) Successful completion of all conditions of parole or probation.

10. In § 12.02–9, paragraphs (g) and (h) are added to read as follows:

§ 12.02–9 Application for documents.

* * * * *

(g) Each applicant for an original merchant mariner's document may be required to submit to a criminal record check as required by § 12.02–4(c).

(h) Each applicant for an original merchant mariner's document or a merchant mariner's document reissued with a new expiration date shall comply

with the NDR requirements in § 12.02–4(d).

Dated: December 12, 1995.

G.N. Naccara,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–30677 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–14–M

federal register

Tuesday
December 19, 1995

Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Transportation of Hazardous Materials By Rail; Miscellaneous Amendments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 179

[Docket No. HM–216; Notice No. 95–16]

RIN 2137–AC66

Transportation of Hazardous Materials By Rail; Miscellaneous Amendments

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

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: RSPA is proposing to incorporate into the Department's Hazardous Materials Regulations (HMR) a number of changes to rail requirements based on rulemaking petitions from industry and RSPA initiatives. This action is necessary to update the regulations and to respond to petitions for rulemaking. The intended effect of these regulatory changes is to improve safety and reduce costs to offerors and transporters of hazardous materials.

DATES: Comments must be received on or before February 22, 1996.

ADDRESSES: Address comments to Dockets Unit (DHM–30), Hazardous Materials Safety, RSPA, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street S.W., Washington, DC 20590–0001. Office hours are 8:30 am to 5:00 pm Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: Beth Romo, telephone (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, Washington DC, 20590–0001, or James H. Rader, telephone (202) 366–0510, Office of Safety Assurance and Compliance, Federal Railroad Administration, Washington DC, 20590–0001.

SUPPLEMENTARY INFORMATION: This document proposes miscellaneous changes to rail requirements contained in the HMR. These proposed changes are based either on petitions for rulemaking submitted in accordance with 49 CFR 106.31 or agency initiative and are intended to reduce regulatory burdens by simplifying or updating existing regulations.

This rule, as proposed, is consistent with the goals of President Clinton's Regulatory Reinvention Initiative. The President directed Federal agencies to review all agency regulations and eliminate or revise those that are outdated or in need of reform. A notice issued April 4, 1995 by RSPA requested comments on regulatory reform (Docket HM–222; 60 FR 17049) and announced a comprehensive review of the HMR to identify provisions that are candidates for elimination, revision, clarification, or relaxation. Certain proposed changes in this document reflect the results of this review.

I. Summary of Proposed Regulatory Changes by Section

Listed below is a section-by-section summary of the proposed changes and, where applicable, the assigned petition number.

Part 171

Section 171.7. Various American Society for Testing and Materials (ASTM) standards would be updated to reflect the most current version. Other ASTM standards that no longer would be referenced in the proposed revision of § 179.12 would be removed.

Part 172

Section 172.101: The Hazardous Materials Table. In the Hazardous Materials Table, several entries would be revised based on petitions for rulemaking and agency initiative. Proposed revisions include:

—Twenty-nine entries would be revised by removing Special Provision B12 assigned to those entries in Column (7). This special provision requires the marking of tank cars with the proper shipping name or common name of the material. RSPA is proposing to limit the applicability of this marking requirement to certain materials that pose a higher risk in transportation.

—For the entry ''Dimethylhydrazine, unsymmetrical'', in Column (7) Special Provision B79 would be removed. ''Dimethylhydrazine, unsymmetrical'' currently is assigned Special Provisions B74 and B79. Special Provision B74 requires the use of a tank car conforming to a Class 105S, 106, 110, 112J, or 114J. Special Provision B79 requires each tank car to have a tank head puncture system if the tank was constructed prior to April 1, 1989. Because Special Provision B74 requires all tank cars to meet the requirements of B79, referencing Special Provision B79 is unnecessary.

—For the entry for Calcium carbide, Special Provision B59 would be added for both Packing Group I and II entries. This special provision will authorize the continued use of Class AAR 207 tank cars for the transportation of calcium carbide after October 1, 1996.

Section 172.102. Special Provisions B4 and B10 would be revised to remove a prohibition on the use of Association of American Railroads (AAR) 206 tank cars. In the § 172.101 Hazardous Materials Table (HMT), each commodity assigned this special provision must be in a packaging authorized in § 173.243, which does not allow an AAR 206 tank car.

Special Provision B5 would be revised to authorize use of tank cars, constructed from other than aluminum plate, for ammonium nitrate fertilizer.

Consistent with proposed changes to tank car marking requirements discussed previously in conjunction with proposed changes to the Hazardous Materials Table, Special Provision B12 would be removed. The requirement to mark the proper shipping name or common name of a material on a tank car would be limited to certain materials that present a higher risk in transportation, as proposed in § 172.330.

Special Provisions B42, B65, B71, B72, B74, and B76 would be revised for clarity. RSPA and FRA have received numerous inquiries concerning the use of tank cars having higher test pressures than those authorized under these special provisions. RSPA is proposing to revise these provisions to clarify that any class tank car with a higher test pressure than authorized also may be used. Special Provisions B42, B65, and B76 also would be revised to authorize the optional marking of the tank to a lower pressure specification. The current regulations require the lower pressure specification marking for certain commodities. RSPA and FRA believe that tank cars qualified to meet a specific specification should be marked to indicate that specification. RSPA is proposing the optional marking requirement to authorize the remarking of qualified tank cars to the higher pressure specification. For example, currently tank cars transporting acetone cyanohydrin are required to conform to a DOT 105S, 112J, or 114J specification provided the tank test pressure is 300 psig or greater. In addition, the tank car specification must be remarked to indicate a tank test pressure of 200 psig, and each tank car must be equipped with a safety relief device having a start-

to-discharge pressure setting of 150 psig. RSPA is proposing that these tank cars remain marked at the higher pressure specification while maintaining the currently applied safety relief device (e.g., DOT 105S300W, Safety Valve 150 LB).

RSPA is proposing to remove a requirement in Special Provision B57 that the shipping name CHLOROPRENE must be marked on a tank car. This marking requirement is included in the proposed revision of § 172.330(a)(1). RSPA also is revising the first sentence of Special Provision B78 to specify test pressure and clarify which rail cars are authorized.

Section 172.203. Currently, rail carrier shipping paper requirements are contained in both Parts 172 and 174. In this notice, RSPA proposes to move the shipping paper requirements in Part 174 to Part 172. RSPA and FRA believe that by consolidating the shipping paper requirements, including additional shipping paper entries for tank cars containing the residue of a hazardous material, compliance will be improved. Paragraph (e)(2) currently references paragraph (e)(3) and § 174.25 for shipping paper description requirements for residues of hazardous materials in tank cars. These references would be replaced with a specific requirement to precede the basic shipping description with the wording ''RESIDUE, LAST CONTAINED.'' Paragraph (g)(1) also would be revised to reflect the incorporation of shipping paper requirements currently contained in Part 174 by a requirement to identify a rail car, freight container, transport vehicle, or portable tank that contains a hazardous material by ''reporting mark and number.''

Section 172.205. Based on a petition [P–1053] from AAR, RSPA would revise paragraph (f) for consistency with Environmental Protection Agency (EPA) hazardous waste manifest requirements for transportation by rail contained in 40 CFR 263.20(f).

Section 172.330. Paragraph (a)(1) would be revised to clarify marking requirements for tank cars. Marking requirements currently contained in § 172.102 special provisions and in Parts 173 and 179 would be incorporated into § 172.330 or removed as part of this revision. The requirement to mark the proper shipping name or common name of a hazardous material on a tank car would be limited to Division 2.1 and 2.3 materials, Division 2.2 materials in a Class DOT 107 tank car, anhydrous ammonia, ammonia solutions with more than 50% ammonia, bromine and bromine solutions, hydrogen cyanide, chloroprene, and refrigerant or dispersant gases, as defined in § 173.115.

Section 172.510. Paragraph (a) would be revised to require the placement of each placard on a white square background for each class DOT 113 tank car used to transport a Division 2.1 (flammable gas) material. The white square background notifies railroad switching crews that the car may not be cut off while in motion. The current regulations only require rail cars containing Divisions 1.1 and 1.2 explosives, Division 2.3 Hazard Zone A materials and Division 6.1 PG I Hazard Zone A materials to have the white square background, but not the class DOT 113 tank car. This change will simplify the switching requirements for rail cars by communicating, through a white square background, that a class DOT 113 tank car transporting a Division 2.1 material may not be cut off while in motion. RSPA and FRA believe that this requirement will make it easier to train yard switching employees and reduce the potential for overspeed impacts. The inner support system for class 113 tank cars is designed to withstand loads producing accelerations of 7''g'' longitudinal, 3''g'' transverse, and 3''g'' vertical. Consequently, it is imperative that railroads shove this class of car to rest to prevent yielding of the support system.

Sections 172.510 and 172.526. Provisions applying to the specifications and use of RESIDUE placards would be removed in these sections. The RESIDUE placard is not required by any other mode and, because the information provided through a RESIDUE placard can be adequately conveyed through primary and subsidiary placards and shipping paper information, RSPA and FRA believe that this placard is unnecessary. Further, FRA reports that during the last six years its inspectors cited missing, faded, or incorrect placards on nearly 22,000 occasions. By removing the RESIDUE placard requirement, RSPA and FRA believe that offerors will use permanent adhesive placards, such as those used on highway vehicles, thereby increasing compliance with HMR placarding requirements. Also, RSPA and FRA understand that Transport Canada is considering removing the RESIDUE placard from its Transportation of Dangerous Goods Regulations to the extent that, in December 1993, it issued a newsletter asking for public comment. Such an action by Transport Canada would have a direct effect on transborder shipments; consequently, RSPA and FRA believe a proposal to remove this requirement from the HMR is appropriate.

Part 173

Section 173.24b. RSPA is proposing to amend paragraph (a) to recognize the insulation properties of thermal protection applied to tank cars. The proposed rule would allow for a ''mid-range'' temperature for the calculation of outage and filling limits, provided the insulation qualities provide an overall thermal conductance at 15.5°C (60°F) of no more than 10.22 kilojoules per hour per square meter per degrees Celsius (0.5 Btu per hour per square foot per degree F) temperature differential. This proposal is based on a petition for rulemaking submitted by the Propane Gas Association of Canada [P–1251], developed in cooperation with Transport Canada.

Section 173.29. Paragraph (f) would be removed, consistent with the proposed removal of § 172.510(c).

Section 173.314. Paragraph (b)(5), which contains provisions for marking the proper shipping name of certain Class 2 materials on tank cars, would be removed because these provisions also appear in § 172.330. Paragraph (b)(6) would be redesignated (b)(5) and amended to revise requirements for heat-resistant gaskets. In 1988, the National Transportation Safety Board (NTSB) recommended that FRA: (1) establish performance standards for determining the acceptability of heat-resistant gaskets on tank cars; and (2) evaluate the effect on gasket compatibility and heat-resistant performance of sealants used for installing gaskets on tank cars. NTSB recommended that FRA establish performance criteria to decide what sealant is acceptable and conditions for its use. (Butadiene Release and Fire from GATX 55996 at the CSX Terminal Junction Interchange, New Orleans, Louisiana, September 8, 1987 (NTSB/HZM–88/01)). As a result of the NTSB recommendation, RSPA published an Advanced Notice of Proposed Rulemaking (ANPRM) on May 18, 1990, under Docket HM–175A [Notice 90–8; 55 FR 20242] requesting comments on gasket specifications and the use of sealant materials. Commenters to the ANPRM expressed concerns regarding the technical complications for defining gasket specifications in the regulations, since there are many variables in torquing values for the fitting closure/gasket combination and the chemical compatibility of the gasket material. In a Notice of Proposed Rulemaking (NPRM) published October 8, 1993 [58 FR 52574] under Docket HM–175A, RSPA and FRA announced that several

topics, including gasket specifications, raised in earlier notices either were too technically complex or insufficiently developed to address in that NPRM and would be handled in a separate rulemaking action.

Although the commenters to the ANPRM pointed out many technical complications associated with defining gasket specifications for all products authorized in tank cars, RSPA and FRA believe that a performance standard for heat-resistant gaskets is necessary for Division 2.1 materials and anhydrous ammonia to ensure that installed gaskets will not degrade at elevated temperatures (see § 173.314(b)(6) for current requirements). In this NPRM, RSPA is proposing a performance standard for heat-resistant gaskets based on information obtained from the Fluid Sealing Association's *Non Metallic Gasket Handbook*. The handbook shows that asbestos, a common heat-resistant gasket material, has a maximum temperature range of 230–340°C (450–650°F). Consequently, RSPA is proposing to specify that a heat-resistant gasket can survive temperatures at or above 230°C. This is comparable to the temperature indicated in the Fluid Sealing Association's handbook. This proposal also would expand the use of heat-resistant gaskets to all Division 2.3 materials.

Commenters stated that to seal a joint, the installed gasket is compressed (by applying a bolt load to the flange body surfaces) into the imperfection of the joint and a tight, leakproof barrier occurs. The use of sealants for installing gaskets is therefore unnecessary and may lead to gasket displacement. Based on these comments, RSPA is proposing to prohibit the use of sealants for installing gaskets on tank cars used to transport Division 2.1 and 2.3 materials and anhydrous ammonia.

RSPA also is proposing to authorize Class DOT 112J and 112T specification tank cars for the transportation of dimethyl ether. Currently, RSPA only authorizes the use of a DOT 105A300W tank car. This proposal is based on an exemption issued to Aeropres Corporation (DOT–E 11000) and a petition for rulemaking [P–1253]. RSPA also is proposing to remove Note 2 in paragraph (c) of the table. For the entry ''Ammonia, anhydrous or ammonia solutions >50 percent ammonia'' in the second column ''Note 2'' would be revised to read ''Note 3''. This would allow shippers to calculate the outage and filling limits for tank cars based on changes proposed in § 173.24b.

In addition, paragraph (i), which provides alternate settings for safety relief valves on tank car tanks used for certain commodities, would be removed. Removal of this paragraph is consistent with the proposed consolidation of pressure relief device requirements in § 179.15.

Part 174

In 1985, AAR petitioned RSPA (P–983) to rewrite Part 174, stating that the regulations in this part are ''awkwardly arranged, often redundant, and in many places obsolete.'' AAR supplied a complete rewrite of Part 174 as part of its petition. Subsequently, various rulemaking actions such as HM–175A (final rule adopted improved crashworthiness for tank cars), HM–201 (final rule adopted new methods of tank car testing), HM–181 (mandated performance packaging standards), HM–166 (implemented many detailed changes to the HMR), HM–197 (adopted new requirements for TOFC/COFC shipments), and HM–212 (considering new standards for tank car unloading and attendance) have addressed numerous suggestions contained in petition P–983. This notice proposes additional changes based on P–983, including simplification of standards for inspection of tank cars by railroads and revisions in documentation requirements of Part 174.

Section 174.3. This section prohibits a shipment of a hazardous material not prepared in accordance with Parts 171, 172, and 173 from being offered for transportation or transported by rail. The section would be revised to reflect language contained in Parts 175 and 177 for unacceptable hazardous materials shipments.

Section 174.8 through 174.10. Inspection requirements currently contained in §§ 174.8, 174.9 and 174.10 would be consolidated into § 174.9 to clarify a railroad's inspection duties at points of origination, interchange points and other locations where rail cars must be inspected. Sections 174.8 and 174.10 would be removed. Section 174.9 would require a railroad to inspect each rail car for compliance with the HMR and other conditions that may make the car unsafe for transportation.

Under FRA's Railroad Freight Car Safety Standards (FCSS [49 CFR Part 215]), each railroad must inspect a freight car at each location where it is placed in a train. The inspection must be made by: (1) a ''designated inspector'' under § 215.11; or (2) a train crew member where a designated employee is not on duty (*see* Appendix D to Part 215). As a rule, train crew members inspect for ''imminent hazardous conditions'' that are likely to cause an accident or casualty before the train arrives at its destination. Examples provided in Appendix D include: car body leaning or listing to one side, objects dragging below, broken or missing safety appliance, lading leaking from a placarded hazardous materials car, and broken or extensively cracked wheel.

In addition to the requirements above, the HMR require an inspection of each placarded railcar when received in ''interchange.'' This notice proposes to remove the requirement to inspect placarded railcars at interchange, simply because railroad operations now permit the interchange of railroad equipment in outlying locations, usually on mainline track, that may not be acceptable for the performance of a proper inspection. For example, in ''run-through'' train operations, the train crew of the receiving railroad simply assumes responsibility of the train from the delivering train crew. No locomotives or railcars are added or removed. Since the train may exceed one mile in length, portions of the train, including portions that may have a placarded railcar containing a hazardous material, may not be accessible to the receiving train crew because of bridges, tunnels, or terrain.

As proposed, RSPA would make the locations of inspection consistent with those in the FCSS, issued by the FRA. RSPA does not intend to change the railroad's current inspection practices nor require the railroad to inspect railcars containing a hazardous material on a more frequent basis than the required presently in the HMR and FCSS. The proposed rule simply makes clear that a railroad must inspect a hazardous material laden car at locations that now require an inspection under the FCSS (by the train crew or a designated employee, where such employees are on duty).

The proposed rule further clarifies that a railroad employee need not climb each railcar to determine if, in fact, the railcar conforms to the HMR. These inspections may be performed at ''ground level.'' Where the rule proposes to require a ground level inspection for ''securement of closures,'' RSPA and FRA believe railroad employees can determine, from the ground, whether or not protective housings are open, whether or not manway openings (on non- or low-pressure tank cars) are in the ''up'' position, and whether or not the manway bonnet cover (on pressure tank cars) is open. At the bottom of the car, FRA and RSPA believe that railroad employees can determine whether or not the bottom outlet cap is in the proper, applied position.

Section 174.11. Section 174.11 would be removed because it merely references

§ 171.12a for transportation of Canadian shipments or packagings by rail car within the U.S.

Section 174.18. Section 174.18 concerning the handling of astray packages of hazardous materials is obsolete; therefore this section would be removed.

Section 174.24. Shipping paper requirements for rail carriers in Part 174 would be moved to Part 172. Revised § 174.24 would cross-reference shipping paper requirements in Part 172.

Section 174.25. When an accident occurs on the railroad, it is customary to identify the transport vehicle or freight container involved by the use of reporting marks. These marks are used for routing, cost accounting, and for tracing (or locating) individual shipments in the transportation system. If an emergency responder were to ask about the contents of an individual shipment by reporting mark, a rail carrier could provide immediate emergency response information, a copy of the shipping paper, routing information, and the name, telephone number, and location of the shipper. This information is much more detailed than simply conveying to the emergency responder the type of placard applied to the packaging. Consequently, RSPA proposes to remove the ''placard notation'' requirement since it is outdated for emergency response communication. Removing the placard notation requirement would not, however, prohibit individual rail carriers from adopting comparable requirements, if they so choose.

RSPA also is proposing to remove the requirement for a ''placard endorsement'' placed on a waybill near the reporting mark of each rail car, freight container, transport vehicle, or portable tank that contains a hazardous material when transported by rail. The current rule requires a unique endorsement based on the hazard class of the material shipped. Exceptions to the placard endorsement are provided for materials that do not require placarding (e.g., less than 1,001 pounds of a material listed in § 172.504 Table 2, in most types of transport vehicles or freight containers), Class 9 materials, and combustible liquids). RSPA is proposing to remove this requirement because technological advances in the railroad industry have made the use of the placard endorsement no longer necessary to communicate the presence of hazardous materials to railroad workers. As a general rule, railroads now use electronic data interchange and computer generated train consists (or manifests) to communicate the presence of these materials. Responders and railroad workers rely on the hazardous materials description and emergency response information on train consists and printed waybills rather than the placard endorsement. As stated earlier, removing the endorsement would not prohibit individual rail carriers from adopting comparable requirements at their discretion.

Other shipping paper requirements in this section, including those for tank cars containing the residue of a hazardous material, would either be removed or moved to Part 172.

Section 174.26. Paragraph (a) would be removed because if a carrier complies with paragraph (b), the carrier also is complying with paragraph (a), except for the ''consecutively numbered notice.'' Based on current railroad technology and computer-based information systems, this notice is obsolete. Paragraphs (b) and (c) would be renumbered paragraphs (a) and (b), respectively. Newly designated paragraph (b) would be revised to reference shipping paper requirements of Part 172 and specify use of other forms of car movement documents.

Section 174.45. This section would be removed because it merely references §§ 171.15 and 171.16 and is redundant.

Sections 174.47 and 174.48. These sections contain requirements for forwarding shipments in violation of the HMR and damaged or leaking packages. The provisions in these sections would be consolidated into revised § 174.50.

Section 174.49. This section concerns the use of open-flame lanterns for the inspection of transport vehicles known to contain flammable liquids and gases. The use of open-flame lanterns is obsolete; therefore, this section would be removed.

Section 174.50. This section would be revised by consolidating requirements of §§ 174.47, 174.48, and 174.50 and by removing all obsolete provisions. These sections stipulate that railroads may not forward damaged packages, leaking tank cars (except for necessary short moves), or any tank car found in non-compliance with the HMR, except under the terms of a DOT exemption. RSPA is proposing to simplify the overall principle in these sections by prohibiting the movement of packages that do not conform to the HMR. Packages other than tank cars would have to be repaired, reconditioned, or overpacked prior to subsequent movement. Tank cars would have to be repaired or be moved under conditions approved by FRA's Associate Administrator for Safety. This proposed regulation would allow, for example, the movement of a tank car with an emergency valve repair or capping kit under approved conditions.

Section 174.55. This section would be revised for clarity. Based on a petition [P–1042] submitted by AAR, suggesting that certain provisions of the existing section are meaningless or confusing, RSPA is proposing to streamline this section.

Section 174.67. The first sentence in paragraph (k) would be revised to remove the requirement for heater coil inlet and outlet pipes to be left open. This proposed revision is based on a petition [P–942] indicating that these pipes need to be left open only 5% of the time, when steam is applied.

Section 174.69. This section would be removed, based on a petition from AAR [P–1139], because it conflicts with applicable requirements in § 172.514.

Section 174.85. Based on corresponding changes in §§ 172.510 and 172.526 to remove provisions for a RESIDUE placard, paragraph (c) would be revised to reference a rail car containing a residue of a hazardous material rather than a rail car placarded ''RESIDUE''.

Part 179

The following sections would be revised by updating certain ASTM specifications and deleting others that are no longer used, based on a petition [P–1023] from AAR: §§ 179.100–7, 179.100–10, 179.100–20, 179.102–1, 179.102–2, 179.200–7, 179.200–24, 179.201–5, and 179.300–7.

Sections 179.12 through 179.12–7. Sections 179.12–1 through 179.12–7 would be removed and § 179.12 would be revised by incorporating provisions from §§ 179.12–1 and 179.12–5. The design and materials of construction for interior heater coils require AAR approval. This NPRM proposes to remove the DOT specification requirements and allow AAR greater flexibility in approving heater system designs.

Section 179.15. This section would be added to consolidate pressure relief device requirements and adopt provisions to: (1) increase the start-to-discharge pressure of safety relief devices for tanks that have a burst pressure of 240 psig, while allowing the continued use of existing cars; (2) allow for a reduced orifice in the upstream nozzle of a pressure relief device to accommodate pressure surges; (3) increase the rupture disc burst pressure for cars so equipped; (4) standardize the start-to-discharge pressure setting for all commodities and tank car specifications; and (5) align the start-to-discharge pressure setting for tank cars with that prescribed by the ASME code.

In this notice, a pressure relief valve means a pressure relief device that is designed to open rapidly, or by opening in proportion to the increase in pressure over the opening pressure, and designed to reclose and prevent further flow of vapor after normal conditions have been restored. A nonreclosing pressure relief device is a pressure relief device actuated by inlet static pressure and designed to function by rupturing (bursting) a pressure containing disc (rupture disc) and remains open after operation.

Two ANPRMs published under Docket HM–175A (May 15, 1990; 55 FR 20242, and August 29, 1990; 55 FR 35327) solicited comments on potential costs and safety benefits derived from improvements to the crashworthiness of tank cars and restrictions on continued use of tank cars in hazardous materials service that no longer meet current safety requirements. RSPA issued the ANPRM, in part, to address an AAR petition requesting an increase in the start-to-discharge pressure of a nonreclosing pressure relief device and a reduction in the size of the upstream nozzle (P–1083). Commenters responding to the ANPRM suggested that tanks with a 60 psig test pressure and built with 7/16 inch wall thicknesses could be converted to a 100 psig tank test pressure (subject to an inspection and AAR approval), but opposed any conversion of DOT 115A or AAR 206W tank cars because of wall thickness. Most commenters supported increasing the start-to-discharge pressure of a nonreclosing pressure relief device to prevent rupture of the disc from in-transit pressure surges.

The Railway Progress Institute (RPI) suggested in its comment that the optimum flow capacity for a pressure relief device is the minimum required to prevent tank car rupture in fire conditions. The RPI and other commenters opposed increasing the flow capacity of certain pressure relief valves and stated that both large and small capacity pressure relief valves discharge the same amount of product. Large capacity pressure relief valves, as opposed to small capacity valves, release large amounts of product for brief durations.

A petition for rulemaking submitted by the Chemical Manufacturers Association (CMA) supported the ANPRM and AAR's petition (P–1270). CMA suggested that reclosing pressure relief valves should have a start-to-discharge pressure setting consistent with several DOT exemptions for nonreclosing pressure relief devices (i.e., 165 percent of the tank test pressure or 33 percent of the tank burst pressure).

RSPA published an NPRM under Docket HM–175A on October 8, 1993 (58 FR 52574) but did not propose changes to the HMR concerning pressure relief devices. Based on the merit of comments to Docket HM–175A and a petition for rulemaking [P–1083], RSPA is proposing to consolidate the pressure relief device requirements now contained in §§ 173.314(i), 179.100–15, 179.200–18, 179.201–7, and 179.220–19 into a new § 179.15. This proposal incorporates a performance-based flow capacity requirement to prevent excess pressure build-up within the tank, under fire conditions for both reclosing and nonreclosing pressure relief devices. Further, RSPA is not proposing an increase in the flow capacity of a pressure relief device (including those devices used on tank cars transporting materials toxic by inhalation), based on comments received to Docket HM–175A.

For most tank car specifications, the current start-to-discharge pressure setting for pressure relief devices is 30 percent of the tank burst pressure (33 percent of the tank burst pressure for certain commodities listed in § 173.314(i) and in two DOT exemptions: DOT-E 10288 and DOT-E 10328). Flow capacity of the pressure relief device is set at 33 percent of the tank burst pressure. For nonpressure tank car specifications, however, the start-to-discharge pressure setting of a pressure relief device is about 15 percent of the tank burst pressure. To allow for an equivalent start-to-discharge pressure setting for both pressure and nonpressure tank car specifications, RSPA is proposing a start-to-discharge pressure setting of up to 33 percent of the tank burst pressure for all commodities and specifications. Based on the physical-chemical properties of the material (vapor pressure, static head, and gas padding pressure of the product within the tank), this notice also proposes to authorize a reduction in the start-to-discharge pressure setting. This proposal is consistent with Section VIII, UG–125, of the American Society of Mechanical Engineers Pressure Vessels Code (ASME) and an exemption (DOT-E 11184) that authorizes the transportation of certain flammable liquid products in DOT 105J300W tank cars having a start-to-discharge pressure setting of 75 psig as opposed to 225 psig. Further, because of costs associated with modifying existing tank cars to conform to this proposed requirement and because there is no apparent safety reason to require any modification to existing tank cars, this NPRM proposes to allow the continued use of tank cars having a start-to-discharge pressure set at 15 percent of burst.

In addition, this notice proposes that a tank car equipped with a nonreclosing pressure relief device must have installed a rupture disc designed to burst at 33 percent of the tank burst pressure within one year after any final rule issued in this docket. For example, a DOT 111A100W2 tank car would have a rupture disc designed to burst at 165 psig within one year after any final rule issued in this docket. This proposal is based on provisions in several exemptions (e.g., DOT-E 10118 and DOT-E 10354), several petitions for rulemaking, and the number of rupture disc failures reported to RSPA's Hazardous Materials Information System.

The location for pressure relief devices would be revised in proposed paragraph (g) to allow for the mounting of pressure relief valves on a hinged manway cover plate. The current regulations require mounting a pressure relief valve on the tank dome, manway cover plate, or on a nozzle on top of the tank shell. This notice proposes to require a pressure relief device to communicate with the vapor space above the lading.

Sections 179.100–15, 179.200–18, 179.201–7, and 179.220–19. These sections contain provisions for safety relief devices. For consistency with the proposed consolidation of safety relief device provisions in § 179.15, RSPA is proposing to remove these sections from the HMR.

Sections 179.101–1 and 179.201–1. RSPA proposes to revise individual specification requirements for pressure tank cars and non-pressure tank cars, respectively. The proposed revisions will correct many typographical errors and remove several special references that are no longer applicable. RSPA also proposes to add a new class ''DOT 120A'' specification tank car and a new ''DOT 111A60W6'' specification tank car in the table based on two petitions for rulemaking [P–1044 and P–1119] from AAR. Furthermore, RSPA proposes to remove certain entries from the table since these provisions are currently found in the text proceeding the table (see for example §§ 179.200–11, 179.200–14, and 179.200–16).

Section 179.102–4. Paragraph (d), which specifies at least one safety relief valve on a tank car tank used to transport vinyl fluoride, inhibited, would be removed, consistent with the proposed consolidation of safety relief device provisions in § 179.15. In

addition, paragraphs (b) and (c) would be redesignated paragraphs (a) and (b), paragraphs (e) through (k) would be redesignated paragraphs (c) through (i), and reserved paragraph (l) would be removed.

Section 179.103–5. Based on the merits of a petition [P–1048] submitted by AAR, paragraph (b)(2) would be revised to adopt requirements for the attachment of unloading connections for bottom outlets on pressure tank cars. This proposed revision would reflect existing requirements for bottom outlets on non-pressure tank cars.

Section 179.200–7. In addition to the proposed revision of the paragraph (b) table discussed previously, certain ASTM specifications would be revised to remove references to outdated publications. The entry for ASTM B 209–70, Alloy 6061 would be removed, as would footnotes 4 and 5 associated with that entry. Footnote 2 following the paragraph (d) table would be revised to reference Practice A of ASTM A 262–85, which is a definitive, rapid method of identifying, by simple etching, those specimens free of susceptibility to intergranular attack. This revision is based on a petition [P–1049] from AAR, and also requests referencing this Footnote 2 in § 179.201–4.

Section 179.200–14. The first sentence of paragraph (a) and the first sentence of paragraph (b) would be revised to recognize the new outage and filling limits for tank cars adopted in Docket HM–181.

Section 179.200–16. RSPA is proposing to revise the first sentence in paragraph (d) to require an outage scale visible through the manway opening when using a gaging device. This revision is based on the proposed changes to § 179.201–1.

Section 179.200–24. The reference to ''ASTM A 285C'' would be revised to read ''ASTM A 516''.

Section 179.201–4. This section specifies material requirements for fittings, tubes, castings, projections, and closures. Based on a petition [P–1049] submitted by AAR, this section would be revised to refer to Footnote 2 of § 179.200–7(d) rather than the AAR Specifications.

Section 179.221–1. RSPA is proposing to revise the class DOT 115A specification table as noted in the discussion of §§ 179.101–1 and 179.201–1.

Sections 179.222, 179.222–1, and 179.500–17. These sections would be removed because identical provisions are contained elsewhere in the HMR.

II. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

The economic impact of this proposed rule is expected to result in only minimal costs to certain persons subject to the HMR and may result in modest cost savings to a small number of persons subject to the HMR and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted. This certification may be revised as a result of public comment.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents pertaining to hazardous material, and requirements respecting the number, content, and placement of such documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

If adopted as final, this rule would preempt State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d) as the Federal requirements.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects, after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA requests comments on what the effective date of Federal Preemption should be for the requirements in this proposed rule that concern covered subjects.

C. Regulatory Flexibility Act

This proposed rule would respond to petitions for rulemaking. It is intended to provide clarification of the regulations and relax certain requirements. Therefore, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

There are no new information collection requirements in this proposed rule.

E. Regulation Identifier Number (RIN)

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

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.7 [Amended]

2. In § 171.7, in the table in paragraph (a)(3), the following changes are made:

a. The following entries would be removed: ASTM A 53–69a, ASTM A 178–70, ASTM A 192–69, ASTM A 269–69, ASTM A 312–70a, ASTM B 161–70, ASTM B 210–70, ASTM B 221–76, ASTM B 241–76.

b. For the entry ''ASTM A 20–81'', the reference ''20–81'' would be revised to read ''A 20–94''.

c. For the entry ''ASTM A 240–82'', the reference ''240–82'' would be revised to read ''240–94'', and the wording ''Fusion-Welded Unfired'' would be removed.

d. For the entry ''ASTM A 262–68'', the reference ''262–68'' would be revised to read ''262–93'', the word ''Recommended'' would be removed and the word ''Standard'', added in its place and the word ''Austenitic'' would be added immediately before ''Stainless Steels''.

e. For the entry ''ASTM A 302–78'', the reference ''302–78'' would be revised to read ''302–93''.

f. For the entry ''ASTM A 370–77'', the reference ''370–77'' would be revised to read ''370–94'', the word ''Test'' would be added immediately following the word ''Standard'' and the word ''Definition'' would be revised to read ''Definitions''.

g. For the entry ''ASTM A 515–69'', the reference ''515–69'' would be revised to read ''515–92'', and the wording ''Carbon Steel Plates for Pressure Vessels'' would be removed and the wording ''Standard Specification for Pressure Vessel Plates, Carbon Steel'' would be added in its place.

h. For the entry ''ASTM A 516–79b'', the reference ''516–79b'' would be revised to read ''516–90''.

i. For the entry ''ASTM A 537–80'', the reference ''537–80'' would be revised to read ''537–91''.

j. For the entry ''ASTM B 162–69'', the reference ''162–69'' would be revised to read ''162–93''.

k. For the entry ''ASTM B 209–69'', the reference ''209–69'' would be revised to read ''209–93'' and the wording ''Aluminum Alloy'' would be revised to read ''Aluminum and Aluminum-Alloy''.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for Part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

4. In § 172.101, in the Hazardous Materials Table, the following changes would be made:

a. For the following entries, in Column (7), Special Provision ''B12,'' would be removed:

Acrolein, inhibited;
Bromine *or* Bromine solutions;
Bromine chloride;
Dinitrogen tetroxide, liquefied;
Formic acid;
Hydrocyanic acid, aqueous solutions *or* Hydrogen cyanide, aqueous solutions *with not more than 20 percent hydrogen cyanide;*
Hydrocyanic acid, aqueous solutions *with less than 5 percent hydrogen cyanide;*
Hydrofluoric acid, solution, *with more than 60 percent strength;*
Hydrofluoric acid, solution, *with not more than 60 percent strength;*
Hydrogen cyanide, stabilized *with less than 3 percent water;*
Hydrogen fluoride, anhydrous;
Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water and not more than 5 percent peroxyacetic acid;*
Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary);*
Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary);*
Hydrogen peroxide, stabilized *or* Hydrogen peroxide aqueous solutions, stabilized *with more than 60 percent hydrogen peroxide;*
Motor fuel anti-knock mixtures;
Nitric acid *other than red fuming, with more than 70 percent nitric acid;*
Nitric acid *other than red fuming, with not more than 70 percent nitric acid;*
Nitric oxide;
Nitric oxide and dinitrogen tetroxide mixtures *or* Nitric oxide and nitrogen dioxide mixtures;
Perchloryl fluoride;
Phosphorus, amorphous;
Phosphorus, white dry *or* Phosphorus, white, under water *or* Phosphorus, white, in solution *or* Phosphorus, yellow dry *or* Phosphorus, yellow, under water *or* Phosphorus, yellow, in solution;
Phosphorous white, molten;
Potassium nitrate and sodium nitrite mixtures;
Sulfur trioxide, inhibited; and
Sulfur trioxide, uninhibited.

b. For the entries ''Carbon dioxide, solid *or* Dry ice'' and ''Potassium permanganate'', in Column (7), Special Provision ''B12'' would be removed.

c. For the entry ''Dimethylhydrazine, unsymmetrical'', in Column (7), Special Provision ''B79,'' would be removed.

5. In § 172.102, in paragraph (c)(3), Special Provisions B12 and B79 would be removed and Special Provisions B42, B65, B71, B72, B74, B76 and the first sentence of B78 would be revised to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(3) * * *

Code/Special Provisions

* * * * *

B42 Tank cars must have a test pressure of 34.47 Bar (500 psig) or greater and conform to Class 105J. Each tank car must have a safety relief device having a start-to-discharge pressure of 10.34 Bar (150 psig). The tank car specification may be marked to indicate a test pressure of 13.79 Bar (200 psig).

* * * * *

B65 Tank cars must have a test pressure of 34.47 Bar (500 psig) or greater and conform to Class 105J. Each tank car must have a safety relief device having a start-to-discharge pressure of 15.51 Bar (225 psig). The tank car specification may be marked to indicate a test pressure of 20.68 Bar (300 psig).

* * * * *

B71 Tank cars must have a test pressure of 20.68 Bar (300 psig) or greater and conform to Class 105, 112, or 114.

B72 Tank cars must have a test pressure of 34.47 Bar (500 psig) or greater and conform to Class 105J, 106, or 110.

B74 Tank cars must have a test pressure of 20.68 Bar (300 psig) or greater and conform to Class 105S, 106, 110, 112J, or 114J.

B76 Tank cars must have a test pressure of 20.68 Bar (300 psig) or greater and conform to Class 105S, 112J, or 114J. Each tank car must have a safety relief device having a start-to-discharge pressure of 10.34 Bar (150 psig). The tank car specification may be marked to indicate a test pressure of 13.79 Bar (200 psig).

* * * * *

B78 Tank cars must have a test pressure of 4.14 Bar (60 psig) or greater and conform to Class 103, 104, 105, 109, 111, 112, or 114. * * *

* * * * *

§ 172.102 [Amended]

6. In addition, in § 172.102, in paragraph (c)(3), the following changes would be made:

a. For Special Provision B4, the wording ''AAR 206 tank car tanks and'' would be removed.

b. For Special Provision B5, the wording ''DOT 103 ALW, 111A60 ALW tank car tanks and'' would be removed.

c. For Special Provision B10, the wording ''AAR 206 tank car tanks,'' would be removed.

d. For Special Provision B57, the wording ''complying with § 179.221–1 of this subchapter and the outer shell must be stenciled ''CHLOROPRENE'' on both sides in letters not less than 102 mm (4 inches) high'' would be removed.

7. In § 172.203, paragraphs (e)(2) and (g) would be revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(e) * * *

(2) The description on the shipping paper for a tank car containing the residue of a hazardous material must include the phrase, ''RESIDUE: LAST CONTAINED. . .'' before the basic description.

* * * * *

(g) *Transportation by rail.* (1) The shipping paper for a rail car, freight container, transport vehicle, or portable tank that contains a hazardous material must include the reporting mark and number of the rail car, freight container, transport vehicle, or portable tank.

(2) The shipping paper for each DOT–113 tank car containing a Division 2.1 material or its residue must contain an appropriate notation, such as ''DOT 113'', and the statement ''Do not hump or cut off car while in motion.''

(3) When shipments of elevated temperature materials are transported under the exception permitted in § 173.247(h)(3) of this subchapter, the shipping paper must contain an appropriate notation, such as ''Maximum operating speed 15 mph.''.

* * * * *

8. In § 172.205, paragraph (f) would be revised to read as follows:

§ 172.205 Hazardous waste manifest.

* * * * *

(f) *Transportation by rail.* Notwithstanding the requirements of paragraphs (d) and (e) of this section, the following requirements apply:

(1) When accepting hazardous waste from a non-rail transporter, the initial rail transporter must:

(i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next non-rail transporter, if any; or

(B) The designated facility, if the shipment is delivered to that facility by rail; or

(C) The last rail transporter designated to handle the waste in the United States; and

(iv) Retain one copy of the manifest and rail shipping paper in accordance with 40 CFR 263.22.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) When delivering hazardous waste to the designated facility, a rail transporter must:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with 40 CFR 263.22.

(4) When delivering hazardous waste to a non-rail transporter a rail transporter must:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with 40 CFR 263.22.

(5) Before accepting hazardous waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

* * * * *

9. In § 172.330, paragraph (a)(1) would be revised to read as follows:

§ 172.330 Tank cars and multi-unit tank car tanks.

(a) * * *

(1) In a tank car unless the following conditions are met:

(i) The tank car must be marked on each side and each end as required by § 172.302 with the identification number specified for the material in the § 172.101 Table; and

(ii) A tank car containing any of the following materials must be marked on each side with the key words of the proper shipping name specified for the material in the § 172.101 Table, or with a common name authorized for the material in this subchapter (e.g., ''Refrigerant Gas''):

(A) Division 2.1 or Division 2.3 materials;

(B) Anhydrous ammonia or an ammonia solution with more than 50% ammonia;

(C) A refrigerant or dispersant gas, as defined in § 173.115 of this subchapter;

(D) Bromine or bromine solutions;

(E) Chloroprene, inhibited;

(F) Hydrogen cyanide; or

(G) A Division 2.2 material in a Class DOT 107 tank car.

* * * * *

10. In § 172.510, paragraph (a) would be revised, paragraphs (b) and (c) would be removed, and paragraphs (d) and (e) would be redesignated as paragraphs (b) and (c), respectively, to read as follows:

§ 172.510 Special placarding provisions: Rail.

(a) *White square background.* The following must have the specified placards placed on a white square background, as described in § 172.527:

(1) Division 1.1 and 1.2 (explosive) materials which require EXPLOSIVES 1.1 or EXPLOSIVES 1.2 placards affixed to the rail car;

(2) Materials poisonous by inhalation in Hazard Zone A, including tank cars containing only a residue of the material; and

(3) Class DOT 113 tank cars used to transport a Division 2.1 (flammable gas) material, including tank cars containing only a residue of the material.

* * * * *

§ 172.526 [Removed and reserved]

11. Section 172.526 would be removed and reserved.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for Part 173 would continue to read as follows:

Authority: 49 U.S.C. 5102–5127; 49 CFR 1.53.

13. In § 173.24b, paragraph (a)(3) would be removed and paragraph (a)(1) would be revised to read as follows:

§ 173.24b Additional general requirements for bulk packagings.

(a) *Outage and filling limits.* (1) Liquids and liquefied gases must be so loaded that the outage is at least one percent (two percent for anhydrous ammonia and five percent for materials poisonous by inhalation) of the total capacity of a cargo tank, portable tank, tank car (including dome capacity),

multi-unit tank car tank, or any compartment thereof, at the following reference temperatures—

(i) 46°C (115°F) for noninsulated tanks;

(ii) 43°C (110°F) for tank cars having a thermal protection system, incorporating a metal jacket, that provides an overall thermal conductance at 15.5°C (60°F) of no more than 10.22 kilojoules per hour per square meter per degrees Celsius (0.5 Btu per hour/ per square foot/ per degree F) temperature differential; or

(iii) 41°C (105°F) for insulated tanks.

* * * * *

§ 173.29 [Amended]

14. In § 173.29, paragraph (f) would be removed and reserved.

15. In § 173.314, as currently in effect, paragraph (b)(5) would be removed, paragraph (b)(6) would be redesignated as paragraph (b)(5) and revised, and paragraph (i) would be removed and reserved, to read as follows:

§ 173.314 Requirements for compressed gases in tank car tanks.

* * * * *

(b) * * *

(5) Each tank car used for the transportation of a Division 2.1 or 2.3 material or anhydrous ammonia must have gaskets capable of surviving temperatures at or above 230°C (450°F). The use of sealants to install gaskets is prohibited.

* * * * *

§ 173.314 [Amended]

16. In addition, in § 173.314, as amended at 60 FR 49074, effective July 1, 1996, the following changes would be made:

a. In the paragraph (c) table, in Column 2, for the entry ''Ammonia, anhydrous, or ammonia solutions >50 percent ammonia'', ''Note 2'' would be removed and ''Note 3'' added in its place.

b. In paragraph (c), in Column 3, for the entry ''Dimethyl ether'', the class designations ''112'' and ''114'' would be added in appropriate numerical order.

c. In the notes following the paragraph (c) table, Note 2, would be removed and reserved.

PART 174—CARRIAGE BY RAIL

17. The authority citation for Part 174 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

18. Section 174.3 would be revised to read as follows:

§ 174.3 Unacceptable hazardous materials shipments.

No person may accept for transportation or transport by rail any shipment of hazardous material that is not in accordance with the requirements of this subchapter.

§ 174.8 [Removed]

20. Section 174.8 would be removed.

21. Section 174.9 would be revised to read as follows:

§ 174.9 Inspection and acceptance.

At each location where a hazardous material is accepted for transportation or placed in a train, the carrier shall externally inspect each rail car containing the hazardous material, at ground level, for required markings, labels, placards, securement of closures, leakage, and for the requirements of part 215 of this title.

§ 174.10 [Removed]

22. Section 174.10 would be removed.

§ 174.11 [Removed]

23. Section 174.11 would be removed.

§ 174.18 [Removed]

24. Section 174.18 would be removed.

25. Section 174.24 would be revised to read as follows:

§ 174.24 Shipping papers.

A carrier may not accept or transport a hazardous material by rail unless the material is properly described on a shipping paper in the manner prescribed in part 172 of this subchapter. An originating carrier must have a copy of the shipping paper that bears the shipper's certification as required by § 172.204 of this subchapter.

§ 174.25 [Removed]

26. Section 174.25 would be removed.

27. In § 174.26, paragraph (a) would be removed, paragraphs (b) and (c) would be redesignated as paragraphs (a) and (b), respectively, and newly redesignated paragraph (b) would be revised to read as follows:

§ 174.26 Notice to train crews of placarded cars.

* * * * *

(b) A member of the train crew of a train transporting a hazardous material must have a copy of the shipping papers, train consist, or other car movement document for the hazardous material being transported showing the information required by part 172 of this subchapter.

§ 174.45 [Removed]

28. Section 174.45 would be removed.

§§ 174.47 through 174.49 [Removed]

29. Sections 174.47, 174.48 and 174.49 would be removed.

30. Section 174.50 would be revised to read as follows:

§ 174.50 Leaking packages.

Leaking packages other than tank cars may not be forwarded until repaired, reconditioned, or overpacked in accordance with § 173.3 of this subchapter. Except as otherwise provided, a tank car that no longer conforms to this subchapter may not be forwarded unless repaired or approved, in writing, for movement by the Associate Administrator for Safety, Federal Railroad Administration. For the applicable address and telephone number, see part 107, appendix A, of this chapter. A leaking tank car containing any hazardous material may be switched to a location distant from habitation and highways if the move can be safely made and, in the case of a liquid leak, if precautions are taken against the spread of the liquid.

31. Section 174.55 would be revised to read as follows:

§ 174.55 General requirements.

(a) Except as otherwise provided, each packaging containing hazardous materials being transported by rail must be secured within the transport vehicle so that the packaging will not become damaged to an extent that would affect its integrity under conditions normally incident to rail transportation.

(b) Each package of hazardous materials bearing package orientation markings prescribed in § 172.312 of this subchapter must be secured within the transport vehicle in accordance with the orientation indicated by the markings.

(c) The doors of the transport vehicle may not be used as support for the securement system or the package beyond their design strength as required by the AAR's Manual of Standards and Recommended Practices, Specification M–930 (for containers) and M–931 (for trailers).

§ 174.67 [Amended]

32. In § 174.67, in paragraph (k), the wording '', except that heater coil inlet and outlet pipes must be left open for drainage'' would be removed.

§ 174.69 [Removed]

33. Section 174.69 would be removed.

34. Section 174.85 would be amended by revising paragraph (c) to read as follows:

§ 174.85 Position in train of placarded cars, transport vehicles, freight containers, and bulk packagings.

* * * * *

(c) A rail car containing the residue of a hazardous material must be separated from a locomotive or occupied caboose by at least one non-placarded rail car.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

35. The authority citation for part 179 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

36. Section 179.12 would be revised to read as follows:

§ 179.12 Interior heater systems.

(a) Interior heater systems shall be of approved design and materials. If a tank is divided into compartments, a separate system shall be provided for each compartment.

(b) Each interior heater system shall be hydrostatically tested at not less than 13.79 bar (200 psi) and shall hold the pressure for 10 minutes without leakage or evidence of distress.

§§ 179.12–1 through 179.12–7 [Removed]

37. Sections 179.12–1 through 179.12–7 would be removed.

38. Section 179.15 would be added to read as follows:

§ 179.15 Pressure relief devices.

Except for DOT Class 106, 107, 110, and 113 tank cars, tanks must have a pressure relief system that conforms to the following requirements:

(a) *Performance standard.* Each tank must have a pressure relief system having sufficient flow capacity to prevent pressure build-up in the tank to no more than the flow rating pressure of the pressure relief device in fire conditions as defined in Appendix A of the Association of American Railroads Specifications for Tank Cars.

(b) *Settings for pressure relief valves.* (1) Except as provided in paragraph (b)(2) of this section, a reclosing pressure relief valve must have a minimum start-to-discharge pressure equal to the sum of the lading vapor pressure at the reference temperature (46 °C (115 °F) for noninsulated tanks, 41 °C (105 °F) for insulated tanks) plus the static head plus gas padding pressure. The start-to-discharge pressure may not be lower than 5.17 Bar (75 psig) or exceed 33 percent of the minimum tank burst pressure.

(2) Tanks built prior to [one year after publication of final rule] having a minimum tank burst pressure of 34.47 Bar (500 psig) or less may be equipped with a reclosing pressure relief valve having a start-to-discharge pressure of not less than 14.5 percent of the minimum tank burst pressure but no more than 33 percent of the minimum tank burst pressure.

(3) The vapor tight pressure of a reclosing pressure relief valve must be at least 80 percent of the start-to-discharge pressure.

(4) The valve flow rating pressure must be 110 percent of the start-to-discharge pressure for tanks having a minimum tank burst pressure greater than 34.47 Bar (500 psig) and from 110 percent to 130 percent for tanks having a minimum tank burst pressure less than or equal to 34.47 Bar (500 psig).

(5) The tolerance for a reclosing pressure relief valve is ± 3 psi for valves with a start-to-discharge pressure of 6.89 Bar (100 psig) or less and ± 3 percent for valves with a start-to-discharge pressure greater than 6.89 Bar (100 psig).

(c) *Flow capacity of pressure relief systems.* The total flow capacity of each reclosing and nonreclosing pressure relief device must conform to Appendix A of the Association of American Railroads Specifications for Tank Cars.

(d) *Flow capacity tests.* The manufacturer of any reclosing or nonreclosing pressure relief device must design and test the device in accordance with Appendix A of the Association of American Railroads Specifications for Tank Cars.

(e) *Combination pressure relief systems.* (1) When a reclosing pressure relief valve is used in combination with a breaking pin device, the breaking pin must be designed to fail at the start-to-discharge pressure specified in paragraph (b) of this section, and the reclosing pressure relief valve must be designed to discharge at 95 percent of the start-to-discharge pressure.

(2) When a reclosing pressure relief valve is used in combination with a rupture disc, the rupture disc must be designed to fail at the start-to-discharge pressure specified in paragraph (b) of this section, and the reclosing pressure relief valve must be designed to discharge 95 percent of the start-to-discharge pressure. A device must be installed to detect any accumulation of pressure between the rupture disc and the reclosing pressure relief valve. The detection device must be a needle valve, trycock, or tell-tale indicator. The detection device must be closed during transportation.

(f) *Non-reclosing pressure relief device.* In addition to paragraphs (a), (c), and (d) of this section, a nonreclosing pressure relief device must conform to the following requirements:

(1) After [one year after publication of final rule], a non-reclosing pressure relief device must incorporate a rupture disc designed to burst at 33 percent of the tank burst pressure.

(2) The approach channel and the discharge channel may not reduce the required minimum flow capacity of the pressure relief device.

(3) The nonreclosing pressure relief device must be designed to prevent interchange with other fittings installed on the tank car, must have a structure that encloses and clamps the rupture disc in position (preventing any distortion or damage to the rupture disc when properly applied), and must have a cover, with suitable means of preventing misplacement, designed to direct any discharge of the lading downward.

(4) The nonreclosing pressure relief device must be closed with a rupture disc that is compatible with the lading and manufactured in accordance with Appendix A of the AAR Specifications for Tank Cars.

(g) *Location of relief devices.* Each pressure relief device must communicate with the vapor space above the lading on the longitudinal center line as near as practicable to the center of the tank.

(h) *Marking of pressure relief devices.* Each pressure relief device and rupture disc must be permanently marked in accordance with the Appendix A of the Association of American Railroads Specifications for Tank Cars.

39. In § 179.100–7, the table following paragraph (a) would be revised to read as follows:

§ 179.100–7 Materials.

(a) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition [1]	Minimum elongation in 2 inches (percent) welded condition (longitudinal)
ASTM A 516	70,000	20
AAR TC128, Gr. B	81,000	19
ASTM A 537, Class 1	70,000	23
ASTM A 302, Gr. B ..	80,000	20

[1] Maximum stresses to be used in calculations.

* * * * *

§ 179.100–7 [Amended]

40. In addition, in § 179.100–7, the following changes would be made:

a. In the table following paragraph (b), the last entry ''ASTM B 209–70, Alloy 6061 [4]'' would be removed, and the wording ''209–70'' would be revised to read ''209'' each place it appears.

b. In the footnotes to the paragraph (b) table, Footnotes 4 and 5 would be

removed and Footnote 6 would be redesignated as Footnote 4.

c. In the table following paragraph (c)(1), the wording ''A240–70'' would be revised to read ''A 240'' each place it appears.

d. In paragraph (c)(2) (i), the wording ''A262–68'' would be revised to read ''A 262'', the word ''Recommended'' would be revised to read ''Standard'', and the word ''Austenitic'' would be added immediately before ''Stainless Steel''.

§ 179.100–10 [Amended]

41. In § 179.100–10, in paragraph (c), the wording ''ASTM A240–70'' would be revised to read ''ASTM A 240''.

§ 179.100–15 [Removed and reserved]

42. Section 179.100–15 would be removed and reserved.

§ 179.100–20 [Amended]

43. In § 179.100–20, in the paragraph (a) table, for the entry ''Material'', in the second column, the wording ''ASTM A515–70'' would be revised to read ''ASTM A 516''.

44. Section 179.101–1 would be revised to read as follows:

§ 179.101–1 Individual specification requirements.

In addition to § 179.100, the individual specification requirements are as follows:

DOT specification	Insulation	Bursting pressure (psi)	Minimum plate thickness (inches)	Test pressure (psi)	Manway cover thickness	Bottom outlet	Bottom washout	Reference (179.***)
105A100ALW	Yes	500	5/8	100	[2] 2 1/2	No	No	
105A200ALW	Yes	500	5/8	200	[2] 2 1/2	No	No	
105A300ALW	Yes	750	5/8	300	[2] 2 5/8	No	No	
105A100W	Yes	500	[3] 9/16	100	2 1/4	No	No	
105A200W	Yes	500	[3] 9/16	200	2 1/4	No	No	
105A300W	Yes	750	[1] 11/16	300	[7] 2 1/4	No	No	
105A400W	Yes	1,000	[1] 11/16	400	[7] 2 1/4	No	No	
105A500W	Yes	1,250	[1] 11/16	500	2 1/4	No	No	102–1, 102–2
105A600W	Yes	1,500	[1] 11/16	600	2 1/4	No	No	102–4, 102–17
109A100ALW	Optional	500	5/8	100	[2] 2 1/2	No	Optional	
109A200ALW	Optional	500	5/8	200	[2] 2 1/2	No	Optional	
109A300ALW	Optional	750	5/8	300	[2] 2 5/8	No	Optional	
109A300W	Optional	500	[1] 11/16	300	2 1/4	No	Optional	
112A200W	Optional[4]	500	[3, 5] 9/16	200	2 1/4	No	No	
112A340W	Optional[4]	850	[1] 11/16	340	2 1/4	No	No	
112A400W	Optional[4]	1,000	[1] 11/16	400	2 1/4	No	No	
112A500W	Optional[4]	1,250	[1] 11/16	500	2 1/4	No	No	
114A340W	Optional[4]	850	[1] 11/16	340	([6])	Optional	Optional	103
114A400W	Optional[4]	1,000	[1] 11/16	400	([6])	Optional	Optional	103
120A200ALW	Yes	500	5/8	200	[2] 2 1/2	Optional	Optional	103
120A100W	Yes	500	3 9/16	100	2 1/4	Optional	Optional	103
120A200W	Yes	500	3 9/16	200	2 1/4	Optional	Optional	103
120A300W	Yes	750	[1] 11/16	300	2 1/4	Optional	Optional	103
120A400W	Yes	1,000	[1] 11/16	400	2 1/4	Optional	Optional	103
120A500W	Yes	1,250	[1] 11/16	500	2 1/4	Optional	Optional	103

[1] When steel of 65,000 to 81,000 p.s.i. minimum tensile strength is used, the thickness of plates shall be not less than 5/8 inch, and when steel of 81,000 p.s.i. minimum tensile strength is used, the minimum thickness of plates shall be not less than 9/16 inch.
[2] When approved material other than aluminum alloys are used, the thickness shall be not less than 2 1/4 inches.
[3] When steel of 65,000 p.s.i. minimum tensile strength is used, minimum thickness of plates shall be not less than 1/2 inch.
[4] Tank cars not equipped with a thermal protection or an insulation system used for the transportation of a Class 2 (compressed gas) material must have at least the upper two-thirds of the exterior of the tank, including manway nozzle and all appurtenances in contact with this area, finished with a reflective coat of white paint.
[5] For inside diameter of 87 inches or less, the thickness of plates shall be not less than 1/2 inch.
[6] See AAR specifications for tank cars, Appendix E, E4.01 and § 179.103–2.
[7] When the use of nickel is required by the lading, the thickness shall not be less than two inches.

§ 179.102–1 [Amended]

45. In § 179.102–1, in paragraph (a)(1), the following changes would be made:

a. In the first sentence, the wording ''A516–79b'' would be revised to read ''A 516''.

b. At the end of the third sentence, the wording ''A370–77'' would be revised to read ''A 370''.

c. In the last sentence, the wording ''A240–79'' would be revised to read ''A 240''.

§ 179.102–2 [Amended]

46. In § 179.102–2, in paragraph (a)(1), the wording ''A516–70a'' would be revised to read ''A 516'' and the wording ''TC–128–70'' would be revised to read ''TC–128''.

§ 179.102–4 [Amended]

47. In § 179.102–4, the following changes would be made:

a. Paragraph (d) would be removed.

b. Paragraphs (b) and (c) would be redesignated as paragraphs (a) and (b), respectively.

c. Paragraphs (e) through (k) would be redesignated as paragraphs (c) through (i), respectively.

d. Paragraph (l) would be removed.

48. In § 179.103–5, in paragraph (a)(3), the word ''valve'' would be removed, and paragraph (b)(2) would be revised to read as follows:

§ 179.103–5 Bottom outlets.

* * * * *

(b) * * *

(2) To provide for the attachment of unloading connections, the discharge end of the bottom outlet nozzle or reducer, the valve body of the exterior valve, or some fixed attachment thereto, shall be provided with one of the following arrangements or an approved modification thereof. (See appendix E. Fig. E17 of the AAR Specifications for Tank Cars for illustrations of some of the possible arrangements.)

(i) A bolted flange closure arrangement including a minimum 1-inch NPT pipe plug (see Fig. E17.1) or including an auxiliary valve with a threaded closure.

(ii) A threaded cap closure arrangement including a minimum 1-inch NPT pipe plug (see Fig. E17.2) or including an auxiliary valve with a threaded closure.

(iii) A quick-coupling device using a threaded plug closure of at least 1-inch NPT or having a threaded cap closure with a minimum 1-inch NPT pipe plug (see Fig. E17.3 through E17.5). A minimum 1-inch auxiliary test valve with a threaded closure may be substituted for the 1-inch pipe plug (see Fig E17.6). If the threaded cap closure does not have a pipe plug or integral auxiliary test valve, a minimum 1-inch NPT pipe plug shall be installed in the outlet nozzle above the closure (see Fig. E17.7).

(iv) A two-piece quick-coupling device using a clamped dust cap must include an in-line auxiliary valve, either integral with the quick-coupling device or located between the primary bottom outlet valve and the quick-coupling device. The quick-coupling device closure dust cap or outlet nozzle shall be fitted with a minimum 1-inch NPT closure (see Fig. E17.8 and E17.9).

* * * * *

49. Section 179.200–7 would be amended by revising the table following paragraph (b) to read as follows:

§ 179.200–7 Materials.

* * * * *

(b) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition[1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)
ASTM A 515, Gr. 70 .	70,000	20
ASTM A 516, Gr. 70 .	70,000	20
AAR TC 128, Gr. B ..	81,000	19

[1] Maximum stresses to be used in calculations.

* * * * *

§ 179.200–7 [Amended]

50. In addition, in § 179.200–7, the following changes would be made:

a. In the table following paragraph (c), the last entry ''ASTM B 209–70, Alloy 60614'' would be removed, and in the first column, for each entry, the wording ''209–70'' would be revised to read ''209''.

b. In the paragraph (c) table, Footnotes 4 and 5 would be removed and Footnote 6 would be redesignated as Footnote 4.

c. In the table following paragraph (d), in the first column, for each entry, the wording ''240–70'' would be revised to read ''240''.

d. In Footnote 2 in the paragraph (d) table, the wording ''the following procedures in ASTM Specification A 262–68 titled, 'Recommended Practices for Detecting Susceptibility to Intergranular Attack in Stainless Steels,' and must exhibit corrosion rates not exceeding the following:'' would be revised to read ''Practice A of ASTM Specification A 262 titled, 'Standard Practices for Detecting Susceptibility to Intergranular Attack in Austenitic Stainless Steels.' If the specimen does not pass Practice A, Practice B or C must be used and the corrosion rates may not exceed the following:''.

e. In the table following paragraph (e), in the first column, the wording ''162–69[2]'' would be revised to read ''162[2]''.

f. In the table following paragraph (f), in the first column, the wording ''302–69a'' would be revised to read ''302''.

51. In § 179.200–14, the first sentence of paragraph (a) and the first sentence of paragraph (b) would be revised to read as follows:

§ 179.200–14 Expansion capacity.

(a) Tanks shall have expansion capacity as prescribed in this subchapter. * * *

(b) For tank cars having an expansion dome, the expansion capacity is the total capacity of the tank and dome combined. * * *

* * * * *

52. In § 179.200–16, the first sentence in paragraph (d) would be revised to read as follows:

§ 179.200–16 Gauging devices, top loading and unloading devices, venting and air inlet devices.

* * * * *

(d) When using a gauging device, an outage scale visible through the manway opening shall be provided. * * *

* * * * *

§ 179.200–18 [Removed]

53. Section 179.200–18 would be removed.

§ 179.200–24 [Amended]

54. In § 179.200–24, in the paragraph (a) table, for the entry ''Material'' , in the second column, the wording ''ASTM A285 C'' would be revised to read ''ASTM A 516''.

55. Section 179.201–1 would be revised to read as follows:

§ 179.201–1 Individual specification requirements.

In addition to § 179.200, the individual specification requirements are as follows:

DOT Specification[1]	Insulation	Bursting pressure (psi)	Minimum plate thickness (inches)	Test pressure (psi)	Bottom outlet	Bottom washout	References (179.201–***)
103A–ALW	Optional	240	½	60	No	Optional	
103AW	Optional	240	179.201–2	60	No	Optional	
103ALW	Optional	240	½	60	Optional	Optional	6(a).
103ANW	Optional	240	179.201–2	60	No	Optional	6(d).
103BW	Optional	240	179.201–2	60	No	No	6(b), 3.
103CW	Optional	240	179.201–2	60	No	No	6(c), 4, 5.
103DW	Optional	240	179.201–2	60	Optional	Optional	6(a), 6(c), 4, 5.
103EW	Optional	240	179.201–2	60	No	Optional	6(c), 4, 5.
103W	Optional	240	179.201–2	60	Optional	Optional	6(a).
104W	Yes	240	179.201–2	60	Optional	Optional	6(a).
111A60ALW1	Optional	240	½	60	Optional	Optional	6(a).
111A60ALW2	Optional	240	½	60	No	Optional	
111A60W1	Optional	240	7/16	60	Optional	Optional	6(a).
111A60W2	Optional	240	7/16	60	No	Optional	
111A60W5	Optional	240	7/16	60	No	No	3, 6(b).

DOT Specification [1]	Insulation	Bursting pressure (psi)	Minimum plate thickness (inches)	Test pressure (psi)	Bottom outlet	Bottom washout	References (179.201–***)
111A60W6	Optional	240	7/16	60	Optional	Optional	4, 5, 6(a), 6(c).
111A60W7	Optional	240	7/16	60	No	No	4, 5, 6(a).
111A100ALW1	Optional	500	5/8	100	Optional	Optional	6(a).
111A100ALW2	Optional	500	5/8	100	No	Optional	
111A100W1	Optional	500	7/16	100	Optional	Optional	6(a).
111A100W2	Optional	500	7/16	100	No	Optional	
111A100W3	Yes	500	7/16	100	Optional	Optional	6(a).
111A100W4	Yes (see 179.211–11).	500	7/16	100	No	No	6(a), 8, 10.
111A100W5	Optional	500	7/16	100	No	No	3.
111A100W6	Optional	500	7/16	100	Optional	Optional	4, 5, 6(a) and 6(b).
111A100W7	Optional	500	7/16	100	No	No	4, 5, 6(c).

[1] Tanks marked ''ALW'' are constructed from aluminum alloy plate; ''AN'' nickel plate; ''CW,'' ''DW,'' ''EW,'' ''W6,'' and ''W7'' high alloy steel or manganese-molybdenum steel plate; and those marked ''BW'' or ''W5'' must have an interior lining that conforms to § 179.201–3.

§ 179.201–4 [Amended]

56. In § 179.201–4, at the end of the paragraph, the wording ''AAR Specifications for Tank Cars, appendix M, M3.03(b) and M4.05(d)'' would be revised to read ''ASTM Specification A 262''.

§ 179.201–5 [Amended]

57. In § 179.201–5, in paragraphs (a) and (b), the wording ''ASTM A240–70'' would be revised to read ''ASTM Specification A 240'' each place it appears.

§ 179.201–7 [Removed]

58. Section 179.201–7 would be removed.

§ 179.220–19 [Removed]

59. Section 179.220–19 would be removed.

60. Section 179.221–1 would be revised as follows:

§ 179.221–1 Individual specification requirements.

In addition to § 179.220, the individual specification requirements are as follows:

DOT Specification [1]	Insulation	Bursting pressure (psi)	Minimum plate thickness (inches)	Test pressure (psi)	Bottom outlet	Bottom washout	Reference (179.221–***)
115A60W1	Yes	240	1/8	60	Optional	Optional	1.
115A60ALW	Yes	240	3/16	60	Optional	Optional..	
115A60W6	Yes	240	1/8	60	Optional	Optional	1.

[1] Tanks converted to DOT–1A series from existing forge-welded specification, DOT–105A 300, 490, or 500 tanks, by modification using conversion details complying with DOT–1–11A specification requirements, shall be stenciled by substituting the letter ''F'' for the letter ''W'' in the specification designation.

§ 179.222 [Removed]

61. Section 179.222 would be removed.

§ 179.222–1 [Removed]

62. Section 179.222–1 would be removed.

§ 179.300–7 [Amended]

63. In § 179.300–7, the following changes would be made:

a. In the table at the end of paragraph (a), the wording ''A 285–69'' would be revised to read ''A 285'' each place it appears, and the wording ''A 515–69'' would be revised to read ''A 515'' each place it appears.

b. In the table at the end of paragraph (b), the wording ''285–69'' would be revised to read ''285''.

§ 179.500–17 [Amended]

64. In § 179.500–17, paragraph (a)(7) would be removed.

Issued in Washington, DC on December 7, 1995 under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–30408 Filed 12–18–95; 8:45 am]

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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

Grain Inspection, Packers and Stockyards Administration

Federal regulatory review:
- Official and unofficial weighing services within assigned areas of responsibility
  - Reinstatement of prior regulations; published 12-19-95

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Asbestos—
  - Multi-layered systems analysis; clarification; published 12-19-95

FEDERAL RESERVE SYSTEM

Depository institutions; reserve requirements (Regulation D):
- Transaction accounts; reserve requirements ratio; published 11-24-95

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:
- Indian gaming profits to tribal members; withholding on distributions; published 12-19-95

Comments Due Next Week

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (tart) grown in Michigan et al.; comments due by 12-29-95; published 11-29-95

Oranges, grapefruit, tangerines, and tangelos grown in Florida; comments due by 12-28-95; published 11-28-95

Potatoes (Irish) grown in—
- Idaho and Oregon; comments due by 12-26-95; published 11-24-95

Prunes (dried) produced in California; comments due by 12-26-95; published 11-24-95

Tomatoes grown in Florida; comments due by 12-26-95; published 11-24-95

AGRICULTURE DEPARTMENT

Food and Consumer Service

Child nutrition programs:
- National school lunch program—
  - Cheese alternate products specifications removal; comments due by 12-27-95; published 11-27-95

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; comments due by 12-28-95; published 11-29-95
- Gulf of Alaska groundfish; comments due by 12-29-95; published 11-30-95

DEFENSE DEPARTMENT

Acquisition regulations:
- Defense Federal Acquisition Regulation supplement; contractor purchasing system reviews; comments due by 12-26-95; published 10-27-95

Federal Acquisition Regulation (FAR):
- Contingent fees; comments due by 12-26-95; published 10-26-95

ENVIRONMENTAL PROTECTION AGENCY

Clean Air Act:
- State operating permits program—
  - Kentucky; comments due by 12-26-95; published 11-24-95

Water pollution control:
- Sewage sludge; use or disposal standards; comments due by 12-26-95; published 10-25-95

FARM CREDIT ADMINISTRATION

Farm credit system:
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  - Global debt; comments due by 12-26-95; published 11-24-95
- Loan policies and operations—
  - Loan information disclosure; comments due by 12-26-95; published 11-24-95

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Calling party telephone number—
  - Privacy requirements; comments due by 12-27-95; published 12-11-95

Radio stations; table of assignments:
- Georgia; comments due by 12-26-95; published 11-8-95
- New Mexico; comments due by 12-26-95; published 11-9-95
- Oklahoma; comments due by 12-26-95; published 11-9-95

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:
- Membership approval; statutory eligibility requirements; comments due by 12-26-95; published 10-27-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Head Start Program:
- Eligibility, recruitment, selection, enrollment, and attendance requirements; comments due by 12-26-95; published 10-25-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
- Polymers—

Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers, etc.; comments due by 12-26-95; published 11-24-95

Human drugs:

Antibiotic drugs—

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National Park Service

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Surface Mining Reclamation and Enforcement Office

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Virginia; comments due by 12-27-95; published 11-27-95

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Motor Vehicle Theft Prevention Act program regulations; comments due by 12-26-95; published 10-24-95

JUSTICE DEPARTMENT

Prisons Bureau

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LABOR DEPARTMENT

Occupational Safety and Health Administration

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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NATIONAL LABOR RELATIONS BOARD

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